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A Historical Analysis of Territorial Government in Utah Under Alfred Cumming, 1857-1861

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A HISTORICAL ANALYSIS OF TERRITORIAL GOVERNMENT IN UTAH
UNDER ALFRED CUMMINGS, 1857-1861

A Thesis
Presented to
the Department of History
Brigham Young University
Provo, Utah

In Partial Fulfillment
of the Requirements for the Degree
Master of Arts in History

by
Charles S. Peterson
July, 1958
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This study of the administration of Utah’s earliest gentile

governor is made as a step toward a more complete understanding of the

administrative functions of Utah’s territorial government. Because the

territorial history of Utah was marked by an almost constant controversy

between the Mormons and the various elements of the federal government,

an unusual amount has been written about the period. However, the

available material concerning the years of 1857 to 1861 is often highly

colored. The dedication of the partisan groups is amply attested, but

such accounts offer all too little insight into the daily relations of

government.

An effort has been made to look behind the strife to the day-to-
day routine. This has been complicated by the lack of administrative

source material, and, as the study has proceeded, it has become increas-
ingly apparent that controversy embodied a vital part of the Cumming

administration and accordingly cannot be ignored. This is true because

of two reasons: the first and more important being that the functions

and duties of government were often molded by conflicts; and the second

being that the agents of government, the citizens of Utah, and all others

involved tended to record the activities of controversy much more thor-

oughly than they did the functions of tranquility. As a consequence,

the materials on hand tell of the difficulties of the era. Therefore,

this thesis, too, must deal with controversy.
The scope of this study has been limited to the period of Alfred Cuming's administration which began with his appointment in July of 1857 and ended when he took his leave of the territory in May of 1861. For the purpose of unity, the developments of the period have, in most cases, been approached from the standpoint of their relation to the Governor. Reference to previous periods has been made only as the unfolding of events during the Cuming administration has required it.

The writer has not intended that the study be all-inclusive of developments that fall within its time period. Events that have received considerable attention in popular histories of Utah have been avoided or mentioned only briefly and in context of their relation to the lesser known happenings recorded here. Consequently, the writer has not concentrated on such happenings as the march of the array to Utah, its conflict with the Mormons in Green River County, the forces afoot in the United States to make a negotiated peace possible, nor the negotiations themselves.
CHAPTER I

TERRITORIAL ADMINISTRATION IN PREPARATION

Introduction

The development of Utah's political institutions has been the object of considerable study. The unique circumstances of her settlement by the Mormon Pioneers have stimulated interest, while the almost continuous political clash of the territorial period has provided a rich field for the partisan writer. Controversies have been dwelt upon and convictions defended, but it seems that all too little effort has gone into seeking behind the details of controversy to consider the general administration of government as a means of more fully understanding Utah's peculiar political heritage.

This political heritage had its immediate origin in the trek of the Mormons to the Great Basin and the establishment of the Utah community in 1847. During the earliest years as Utah's first citizens arrived, they were governed by an ecclesiastical government headed by church President Brigham Young and administered from the church subdivisions of stakes and wards. While the area the Mormons settled had belonged to Mexico in 1847, it became part of the United States with the signing of the Treaty of Guadalupe-Hidalgo on February 2, 1848. Just one year later on March 5, 1849, a constitutional convention convened in Salt Lake City at which

the citizens of Utah took their first steps toward formal political organization. The efforts of Utah to organize a government were acknowledged in Washington in September of 1850, at which time Utah was made a territory as part of the great compromise of that year.2

Utah's earliest territorial government was headed by Brigham Young. Two other Mormons, Seth N. Blair and Joseph L. Heywood were appointed United States Attorney and Marshal, respectively, while the judiciary was comprised of Lemuel G. Brandenburg, Perry E. Broccoli, and Scrub-babel Snow, all from the East.3

The note of political conflict that was to typify Utah's territorial period was soon sounded as Judge Broccoli came to the territory determined to use the bench of the Federal Court as a springboard to Congress. The Mormons, having already selected Almon W. Babbitt as territorial delegate, first turned a deaf ear and, as Broccoli became offensive, responded with open resentment. On finding that his ambitions were thwarted, Broccoli turned on the Mormons and a controversy ensued into which Judge Brandenburg was also drawn and which finally resulted in the angry departure of these two from the territory.4

The period between 1851 and 1856 passed with a variety of lesser conflicts but 1857 saw the development of problems with deeper implications. By this time, Judges W. W. Drummond, George P. Stiles, and John Kinney occupied the Utah bench. The latter was well disposed toward the

2Ibid, p. 168. The Territory of Utah was created on September 9, 1850, as one of the provisions of the Compromise of 1850, an agreement between the North and the South.

3Ibid.

4Ibid, pp. 170-175.
Mormons, but the other two judges in company with the Territorial Surveyor General David A. Burr entered into active combat with certain Mormons. As the controversy raged, the Mormon-baiting officials felt that they not only sustained great personal indignity but that the federal judiciary was flaunted and the law ignored. After a final disturbance caused by an alleged illegal entry into the office of Judge Drummond, the officers left for the East. On the way, Judge Drummond worked up a number of effective charges against the Mormons which were forwarded to the President in March of 1857. The furor raised by these and other charges against the Mormons resulted in a Presidential decision to replace Governor Brigham Young with an appointee from the East.

To assure that the new governor and his supporting officials could establish themselves in the territory, an armed force, variously known as Johnston's Army, the Utah Army, or the Utah Expedition, was to accompany them to Utah. The expedition was dispatched in small contingents as rapidly as they became available; the first detachments left Fort Leavenworth on July 18, 1857, while the Second Dragoons did not leave until the middle of September. Because of political developments, Brigadier-General W. S. Harney, who was originally ordered to command the Utah Army, was replaced by the Texan Colonel Albert Sidney Johnston. As Johnston was unable to assume command immediately, Colonel E. B. Alexander was in temporary charge of the advance units of the expedition as they approached Utah. As Colonel Alexander met the resistance of the Mormon militia in the fall of 1857, his indecisive leadership coupled with the

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6Ibid., pp. 203-204.

7Neff, p. 462.
harassing and delaying defense waged by the Mormons, with its resultant loss of supplies and livestock, prolonged the army's march until the winter snows forced a complete halt. After an abortive attempt to reach the fine wintering grounds near Fort Hall in present day Idaho, winter quarters were established at Fort Bridger in what was then Green River County of Utah Territory, and the encampment was given the name of Camp Scott. On November 19, 1857, most of the civil officials arrived at Camp Scott in company with Colonel Phillip St. George Cooke's Second Dragoons which had formed the rear guard of the expedition. In the immediate vicinity of the camp, the civil officers established a tent village which was called Eckelsville, after Delano R. Eckels, the Chief Justice of Utah's Supreme Court who, unlike the rest of the civil appointees, had accompanied Colonel Alexander's forces into Utah earlier in the autumn. Here, in company with a discomfited and embarrassed army, the "gentile" government spent its first winter in Utah Territory.

Antecedents

The administration of Governor Alfred Cumming was the first of Utah's "imported" governments. It came to Utah in the arms of Johnston's Army in 1857 and stayed to establish itself as a vital part of the territory's political history. It should be remembered, however, that Governor Cumming and his associates were by no means the first non-Utah appointees made to the territorial government. In 1850 Brigham Young received his commission as governor from President Fillmore, who at the same time appointed B. C. Harris of Vermont as Territorial Secretary of

8Neff, pp. 467-468. 9Roberts, pp. 300-301.
State. However, the gentile appointees found their real strength in the judicial department, as all three of the district judges came from the East.

Appointment of these gentile outsiders was resented in Utah, but resentment toward officials appointed from outside the territory was by no means a quality unique to Utah. Territorial residents traditionally resented having non-local officials imposed upon them, but the appointment of foreign administrative officers was especially odious. These foreign officers had little or no abiding interest in the territories and were often absent from their duties for months at a time. Aside from the mediocrity of the work performed by these outsiders, the frontiersman felt that he was being deprived of an American right; that is, that through these appointments, he lost the right enjoyed by the citizens of the various states of selecting his own officers. However, under the federal judiciary system, justices, marshals, and commissioners were often appointed in the states as well as in the territories; consequently, the federally appointed judiciary was accepted in better grace.

Utah's enthusiasm for the earliest imported appointees had many of the elements common to general territorial views; at the same time, Mormon antipathy ran deeper because of past experiences. Some satisfaction was without doubt drawn from the fact that in the first territorial administration Brigham Young controlled two important elements of government—the administrative branch and Indian affairs. However, in Brocchus' at-

11Neff, p. 168.  
12Ibid.  
14Ibid., p. 51.
tempt to capture the territorial congressional seat, Utahns of the 1850's soon had ample evidence that at least one of the federally appointed judges had little taste for subservience to Brigham Young. 15

Subsequent to Brocclus' wrathful departure from the territory, Utah's political front underwent a period that was relatively quiet in spite of occasional difficulties. However, as the close of the Mormons' first decade in the West approached, this quiescent period was shattered by the controversies involving Surveyor General Burr and the Federal Judges Drummond and Stiles. The Mormons, still suspicious from their maltreatment in Missouri and Illinois, regarded the affair as another breach of tranquility caused by outside appointees. A number of the federal officials, foremost among whom was Drummond, were sufficiently aroused to carry the matter to Washington. Drummond's six point charge against the Mormons was particularly effective and resulted in such political agitation against the "offensive" Mormons that it seemed politically inexpedient for the federal administration to ignore it. 16 In his attack, Drummond went so far as to recommend the selection of non-Mormon civil officials and the use of a military force to install them in office. 17

The dispatching of the Utah Expedition during the summer and fall of 1857 is ample evidence that Buchanan regarded Drummond's evaluation of the situation as accurate. 18 At this time, the President felt that a re-

15Neff, p. 171.
17Ibid.
18The President's message to Congress for 1857-58 appears in U. S., Congress, Appendix to the Congressional Globe, 35th cong., 1st Sess., 1857, p. 5. Relevant to restoring the supremacy of the constitution in Utah,
bellion did exist and that the obvious thing to do was get a force in the field to quell it. The effort of getting a large portion of the United States Army to Fort Leavenworth on the western frontier consumed much of the summer. The course of the army from Fort Leavenworth to Salt Lake City is well known; hence, this thesis will not deal with its movements except as they bear on the activities of the civil officers.

**Officials Appointed**

The appointment of the civil officers for Utah took place during the spring and summer of 1857. Drummond had arrived back in the States in March of that year, and by May the administration had made some effort to locate a fit man for governor. As Pomeroy points out in his *The Territories and the United States, 1861-1890*, the history of presidential appointments for the territories has not been among the more compelling features of our American system. The parsimony of congressional salary authorization and the remoteness of the territories inhibited the President's choice of men. Even when these difficulties were overcome, many Presidents exhibited laxity in making the appointments. In a similar spirit, the new officers frequently showed reluctance to go to the scene of their labors.

Despite circumstances calling for immediate action, President Buchanan showed no great alacrity in making the appointments for Utah. It is possible that at this point he felt the army was the more important

Buchanan made the following remarks:

"In order to effect this purpose I appointed a new Governor and other Federal officers for Utah, and sent with them a military force for their protection, and aid as a posse comitatus, in case of need, in the execution of laws.

"...This is the first rebellion which has existed in our Territories; and humanity itself requires that we should put it down in such a manner that it shall be the last."

19 Pomeroy, pp. 62-63. 20 Ibid.
element of the Utah strategy and that immediate appointment of civil officers would be premature. Likewise, an effort to fill the Utah offices with men of high caliber may have delayed the President's action. The difficulty of finding a man of great competence for the post of governor posed a special problem. Among the prominent men unsuccessfully approached was Benjamin McCulloch of Texas, who later came to Utah as a Peace Commissioner. The New York Times portrayed him as a man of force and ability and seems to have felt that he could successfully fill the position.21

Another evidence that care was shown in the selection of these officers is seen in the letter of reprimand written later by United States Attorney General Jeremiah Black to the justices of the Utah District Courts.22 Black points out that the incumbent judges were chosen from among a wide field of candidates and that "the choice was grounded solely on your high character for learning, sound judgement, and integrity."23

In any event, the administration moved slowly. McCulloch had been approached during the spring of 1857. Shortly thereafter, a St. Louis paper reported that Colonel Cumming, Superintendent of Indian affairs on the Upper Missouri, was tendered the job but had declined.24 After this, the government seemed disposed to let the matter rest for a time. Late in June, while Cumming was in Washington, he was again approached con-

23Ibid.
24Missouri Republican, May 12, 1857, newspaper clipping included in the Alfred Cumming Papers of Office, 1857-1861, MSS at Duke University, microfilms in the Brigham Young University library. Cited hereafter as Cumming's Papers in this work.
cerning the position, and this time he was more favorably inclined toward the proposition. He left Washington on a quick trip to Kansas, after which he planned to return and receive his commission as governor. Matters in the West evidently kept Cumming from returning to Washington as scheduled, for, on July 3, Secretary of State Lewis Cass enclosed his commission, dated July 11, with the following note:

The President having appointed you to be Governor of the Territory of Utah, I here with enclose your Commission. You will be pleased to inform this Department of the receipt of it, and should it be accepted, of the name of the State or Country in which you were born.

Meanwhile, the President also appointed Delano R. Eckels, of Indiana, to the position of Chief Justice. Little is known of this appointment; however, there is indication that it took place during the spring, since reference is made to Eckels' possible appointment in the New York Times as early as May 27. Eckels put his business in shape, made an early departure, and was the only one of the civil officers that accompanied Colonel Alexander's command as it made its autumn approach to the territory.

Eckels witnessed the disastrous Han Fork "campaign" as the army struggled up this tributary of Black's Fork, which flows into the Green

26 Letter of Secretary of State Cass to Governor Cumming, July 3, 1857, Cumming's Papers. In a day when government is seemingly obsessed with character investigations, it is interesting to note the administrations complete lack of information revealing Cumming's background. This lack of concern for such matters is given further emphasis by the small amount of information requested by the Secretary of State.
River, in its unsuccessful attempt to reach a site near Fort Hall, which, because of its abundance of grass and willows, was considered a good place to encamp. His own revulsion to the resistance displayed by the Mormons coupled with the effect of the army's reaction evidently gave great depth to his hostility against the rebellious Mormons. His experience with the army during this fall campaign also had some bearing on the alliance that was later formed between the judiciary and the army.

John Hartnett, like Governor Cumming a resident of St. Louis, was appointed Territorial Secretary of State. Hartnett previously was a merchant of that city and had suffered some ill health in the indoor environment required by his business; he later cited this as one of the reasons for accepting the position. The unusual circumstances under which his appointment took place are readily apparent in the letters of instruction received by both Hartnett and Cumming. Hartnett's commission was sent to Cumming by First Comptroller William Medill on August 7, with instructions to issue it to Hartnett at such time as his bond was posted satisfactorily with the Governor.

At the same time, Hartnett was given instructions pertaining to posting this bond and taking his oath of office. The Comptroller generally required that a bond be posted and a copy of

29 Letter from Chief Comptroller W. Medill to Governor Cumming, August 7, 1857, Cumming's Papers.

30 Journal History of the Church of Jesus Christ of Latter-day Saints, entry of August 9, 1858, MSS in LDS Church Historian's Office, Salt Lake City. Typewritten copies of documents and clippings from newspapers. Cited hereafter as Journal History in this work.

31 Letter of Medill to Cumming, August 7, 1857, found in Utah, "Secretary of Territory Correspondence, 1857," Territorial Executive Records, 1856-61, MSS in Utah State Historical Society, Archives Division, Salt Lake City, as are all the Territorial Executive Records cited in this work.
the oath of office be filed with him prior to the issuance of a commission; the waiving of these rules by the administration is indicative of the urgency felt in this situation. Indeed, Medill gave direct voice to this urgency by ordering Hartnett to accompany the Governor to Utah and to lose no time in doing so. 32

In spite of the stress felt by Comptroller Medill and other officials in Washington, no great effort to get under way seems to have been made by either Cumming or Hartnett. Some time after August 7, when the above mentioned letters to the two St. Louis appointees were written, Cumming made a visit to Washington where he conferred with the President and, in the words of The Atlantic Monthly:

Dilly-dallied in the East, travelling from St. Louis to Washington and back again begging for an increase of salary, for a sum of money to be placed at his disposal for secret service, and for transportation to the Territory.... 33

In asking for an increased compensation, Cumming was carrying on the tradition of territorial officers. A constant complaint at the inadequacy of their salaries typified not only the Utah appointees but those of almost every other territory. 34 Cumming's pleas may have received unusual consideration, for his request that special provisions be made in the case of himself and the other officers going into the rebellious territory of Utah seems not to have drawn an immediate negative reply. In September, he received a letter from the First Comptroller informing him that, under an Act passed on March 3, 1857, his salary could

32Ibid.
34Pomeroy, pp. 36-37.
be no more than the conventional $2,500.00 per annum.\textsuperscript{35} This sum was payable on a quarterly basis, and Cumming was authorized to draw it from the date of his commission. The same Act also increased the Governor's contingent expense fund to $1,500.00. Heretofore, under the provisions of the Territorial Organic Act, the contingent fund had been limited to $1,000.00.\textsuperscript{36} This appropriation was earmarked for such uses as payment of office rent, buying supplies, and clerk hire. The fund could be drawn out at the discretion of the Governor and, as the following excerpt from the instructions of the First Comptroller indicates, allowed considerable leeway in its use:

An advance of the whole or any part of this appropriation, as you shall decide, will be made to you on the receipt of a requisition therefore, directed to the Secretary of the Treasury. The Secretary decided in the Case of Governors Bart and Reeder of Kansas, that a bond would not be required for the proper disposal in this special appropriation.

These funds are designed to pay the rent of an office for the Governor, for stationary, blank books, Candles, fuel and other just and necessary expenses required by the Governor in the general business of his office. It has been usual for the Governor in the Territory to pay the balance remaining over and above such expenditures to a clerk or clerks or so much thereof as has been found to be necessary.

No more than the amount appropriated can be expended in a fiscal year,—the amount, therefore, you shall pay your clerk on account of salary will depend upon the extent of your disbursements under other heads.\textsuperscript{37}

Tardy Departure

In spite of The Atlantic Monthly's assertion to the contrary, Cumming could hardly have "dilly-dallied" in the East. He had not arrived in Washington by the seventh of August, yet, by the twenty-fifth, he had

\textsuperscript{35}Letter of Medill to Cumming, September 10, 1857, Cumming's Papers.
\textsuperscript{36}Ibid.
\textsuperscript{37}Ibid.
returned, cared for the loose ends of his Indian Agency business, and was enroute for Fort Leavenworth. The Governor's party arrived in Leavenworth on September 1, where they were forced to bide their time as Colonel Cooke's Second Dragoons awaited orders. These were received by September 4, but an additional ten days were consumed in outfitting the command. Unusual difficulty was encountered in supplying this portion of the expedition with wagons and draft animals, as earlier trains had exhausted the supply.

Leavenworth was the major point of departure for the Utah Expedition. The various detachments of the army assembled and outfitted there; hence, the Governor and the Secretary of State were directed to Leavenworth to take their departure in company with the "troops that are ordered." It seems reasonable to assume that, in an effort to get the civil government west as rapidly as possible, similar instructions were given to other officers. However, if other officers had been ordered to Fort Leavenworth and were actually in the Governor's party as it left for Utah, no mention is made of them in the first six weeks of the journey. The Governor made his first reference to his fellow officers on October 26 at Fort Laramie. Here, in a quick note written to Secretary of State

38 Letter of Mrs. Elizabeth Cumming to her sister-in-law Anne Cumming, August 25, 1857, ibid.

39 Letter of Elizabeth Cumming to Anne Cumming, September 5, 1857, from Leavenworth City, ibid.

40 Ibid.

41 Letters of Medill to Cumming and Hartnett, August 7, 1857, U. S. State Department, State Department Territorial Papers, 1853-1870, MSS in National Archives, Washington, D. C. Microfilm copies in the Brigham Young University Library.
Cass, he says:

I will leave this camp today, enroute for Salt Lake City, accompanied by the Secretary, District Attorney, Marshal, and Superintendent of Indian Affairs for the Territory of Utah. The Chief Justice and the Post Master are in advance.42

At least one of the foregoing officers had not accompanied Cooke from Fort Leavenworth. Jacob Forney of Pennsylvania had received his commission as Superintendent of Indians on September 9, 1857, and, with the least possible delay had placed his own affairs in order and set out for his superintendent. In his annual report to the Indian Commissioner in 1858, Forney relates:

...It was the opinion of the Secretary of the Interior and yourself (Indian Commissioner Denver) that I could reach Fort Leavenworth in time to come out under the protection of Colonel Cooke's Command, but I found on my arrival at the fort that the command had left and were enroute twelve days. I did not overtake it until it reached Fort Laramie.43

Shortly after the Governor arrived at Fort Bridger, he records the presence of the following members of the civil force and notes the position each held: "Chief Justice D. R. Eckels, Secretary of State Hartnett, Attorney J. M. Hockaday, Marshal P. K. Dotson, Superintendent Forney, Agent Garland Hurt and Post Master Morrell.44

A quick glance at these names will apprise the student of Utah history that a number of these officers were no strangers to the territory. Indian Agent Hurt had arrived in Utah during the spring of 1855

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42 Letter of Alfred Cumming to Secretary of State Lewis Cass, October 26, 1857, from Fort Laramie, Cumming's Papers.


44 Letter of Cumming to Cass, November 1857, from Fort Bridger, Cumming's Papers.
and had worked closely with Superintendent Brigham Young. The Attorney General, J. M. Hockaday, had also served during the period that Judge Drummond sat on the Utah Bench. Marshal Peter K. Dotson had likewise spent some time as a resident of the territory.


46 J. M. Hockaday had evidently spent some time in Utah. He is listed by Neff, p. 337, as being among the foremost merchants in Salt Lake City in 1854. His appointment as Attorney General evidently came at a subsequent date. Writing in the New York Times, May 26, 1857, p. 1, Judge Drummond regretted to inform his readers of the manner in which Hockaday had been "swindled and cheated for years out of his princely fortune," and feared that if the Mormons continued to pursue their rebellious course Hockaday would be forced to resign and return. Hockaday resigned all right, but, rather than returning, seems to have involved himself in the effort to establish a central route for the overland mail. According to Neff, p. 724, "J. M. Hockaday & Co., full heir to a revised contract which provided for a weekly dispatch of mails, timed on a twenty day schedule, in a four mule outfit, the award to begin May 1st, 1858, and run the two and a half years to November 1, 1860."

47 Peter K. Dotson is mentioned as having been a former resident of the state. See his own report of a visit to Ben Simons, a half-breed sub-chief of the Shoshones, April 28, 1858, State Department Territorial Papers.

The following pardon is found among the "1857 Governor Proclamation Pardons," Territorial Executive Records:

"Know Ye, That Whereas one Peter K. Dodson was fined in the sum of Four Hundred dollars in the Probate Court of Great Salt Lake County on a charge of Accessory before the fact, by advising and abetting in the breaking open a door, in a certain Tannery, in Great Salt Lake County...Whereas a Petition signed by residents of Great Salt Lake County has been to me presented, praying that said fine be remitted."

A petition for the remittance of Dodson's fine was presented, and Governor Young granted a pardon of the fine and ordered Dodson's release on February 17, 1857. The question presents itself here—are Peter K. Dodson and Peter K. Dotson the same man? This writer is inclined to think so.
From the standpoint of the United States Government, this group of eight men constituted the civil authority of the territory. Notwithstanding the efforts of the administration and the army to hurry them into Salt Lake City, they were isolated at an army encampment one hundred miles from that territorial center of population. To a certain degree, theirs was the position of a government in exile. Snow and mountain miles stood as effective barriers between them and the citizens they were to govern, and, before the winter was over, at least one of their number, Attorney General Hockaday, left the public service to enter private business.48

The activities of this group of eight men during the winter of 1857 and 1858 were of real consequence to the development of political affairs in Utah. Their winter at Camp Scott gave ample time for the earliest developments of the Cumming administration, namely the maturing of their convictions on the treatment of the Mormons and the forming of political cliques. The future performance of these men conformed to a singular degree with the patterns established during these snowbound months at Camp Scott.

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48 After Hockaday's resignation, W. J. McCormick of Camp Scott served as Attorney General pro tempore until the arrival of Alexander Wilson in the fall of 1858. See Correspondence to and from McCormick while in this capacity, July 31: August 5; August 10, 1858, State Department Territorial Papers.
CHAPTER II

SNOWBOUND ADMINISTRATION

At Camp Scott

After a very trying journey, the main body of the civil staff arrived on November 19, 1857, at the army's winter quarters near Fort Bridger. The days of light snow and rain encountered as they ascended the slope east of Fort Laramie had later given way to the devastating storm that finally halted the whole expedition. Colonel Cooke in an oft-quoted phrase likened the advance of his Second Dragoons from South Pass westward to a disastrous retreat.  

1 In spite of these hardships, Cooke's command was spared the extreme humiliation that the rest of the expedition had been subjected to by the Mormon guerrillas.

As sorely as the loss of animals and supplies was felt, there can be little question that the army's pride had suffered a more telling blow. Such wounds of pride require special therapy which only the humiliation of the enemy, in this case the Mormons, could supply. When the Governor entered Camp Scott, he found a body of men who not only reflected the ugly attitude toward the Mormons that had been current in the East at the time of their departure but who now nurtured fresh resentments founded on personal embarrassment and discomfort.

As late as October 27, the Governor had been confident that he

would be able to proceed directly to his seat of government. He was, no doubt, aware that the success of such a venture depended on a number of conditions beyond his control; yet he felt the urgency of the situation demanded an early contact with the citizens of Utah.

Severe snowstorms and the burning of supply trains and grass by the Mormon militia had thwarted all attempts of Colonel Johnston's command to proceed. Conferences with Judge Eckels and Colonel Johnston quickly dissuaded the Governor of plans to attempt an immediate and singlehanded entry. As the army had advanced on Utah Territory in September, Brigham Young had issued two proclamations ordering the army not to trespass on Utah soil and expressing the general hostility of the Mormons toward the whole expedition including the civil officers. In the face of this hostility, a more practical aspect of which had been exhibited by the Mormons in their autumn defense of the territory, the leaders at Camp Scott wisely concluded that an unescorted trip into Salt Lake City at this juncture could but end in failure.

Evidently, the Governor accepted these views, as he straightway issued a proclamation stating, among other things, his intent to spend the winter at Camp Scott. The proclamation and its accompanying letter to President Young are plain spoken and firm but show very little prejudice or resentment; both were written within forty-eight hours of Alfred Cumming's arrival at Fort Bridger. The proclamation is not only ex-

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2 Ibid., pp. 34-35.

3 Cumming's proclamation and letter were written from Green River County near Fort Bridger in November of 1857. Executive Record Book B, 1852-1871, in Utah State Historical Society, Archives Division, Salt Lake City, as are all the Executive Record Books cited in this work.
pressive of the Governor's frame of mind but also indictment the Mormons and
presents Cumming's plan of approach. He says:

...I will proceed at this point to make the preliminary arrange-
ments for the temporary organization of the Territorial Government.
Many treasonable acts of violence having recently been committed by
lawless individuals supposed to have been commanded by the late
Executive [Brigham Young]. Such persons are in a State of rebellion.
Proceedings will be instituted against them in a Court organized by
Chief Justice Eckels, held in this County, which Court will supersede
the necessity of appointing military commissions for the trial of such
Offenders.

It is my duty to enforce unconditional obedience to the Constitu-
tion, to the Organic law of this Territory, and to all the other laws
of Congress, applicable to you. To enable me to effect this object,
I will, in the event of resistance, rely, first, upon a posse comita-
tus of the well disposed portion of the inhabitants of this Territory,
and will only resort to a military posse in case of necessity....

I come among you with no prejudices or enmities, and by the exer-
cise of a just and firm administration, I hope to command your confi-
dence. Freedom of conscience, and the use of your own peculiar mode
of serving God, are sacred rights, the exercise of which is guaranteed
by the Constitution and with which it is not the province of the Govern-
ment, or the disposition of its representatives in this Territory to
interfere.

In virtue of authority as Commander in Chief of the Militia of
this Territory, I hereby command all armed bodies of individuals, by
whomever organized, to disband, and return to their respective homes.
The penalty of disobedience to this command, will subject the offend-
ers to the punishment due to traitors.4

By issuing this proclamation, Governor Cumming accomplished sev-
eral important purposes at a single stroke, and the net result placed him
in a position of potential, if not actual, control. To the Mormons, he
had expressed the attitude of the Federal Government and made a state-
ment concerning his views on religious freedom that, had it been given
due regard in Utah, would have been highly gratifying.5 The proclama-

4Ibid.

5The Mormons, however, were blinded to this favorable disposition
by the intensity of their conviction that the whole expedition was evil.
The Journal History, entry of April 12, 1858, records the Latter-day
Saint reaction to Cumming's proclamation and other activity at Camp
Scott.
intimated that, despite its charges of treason, the Mormons might expect a degree of clemency, if they made the concessions demanded. Although previous experience had made the Mormons distrustful, this intimation should have given the Latter-day Saints cause to hope for better treatment.

Cumming's tolerance for Latter-day Saint religious practice was directly opposed to the position espoused by Judge Eckels who, in searching for some means of indicting the Mormons for polygamy, decided that they could be prosecuted under the Mexican law that had governed the territory before its seizure by the United States. Cumming's proclamation strongly implied that during his administration the official views toward polygamy would not only be liberal and tolerant but that the judiciary would find little support from the executive office in prosecuting the Mormons for this offense. While taking this position which placed him in opposition to Judge Eckels, Cumming at the same time committed himself to the use of civil courts in the proceedings against the Mormons rather than establishing military commissions. This forestalled any possible move by

"...Not the first act of Alfred Cumming since he entered the territory has been in accordance with the laws of the United States. He organized a temporary government when a permanent one was already in existence. He located a seat of government in a military camp... issued a proclamation declaring all the citizens of the territory traitors, proclaimed the organization of a court in violation of the laws of Congress..."

Wayne Stout writing recently reflects the following attitude toward the Cumming Proclamation that must have been garnered from remarks made by his illustrious progenitor Hosea Stout prior to Cumming's entry into the valley: "It is evident that this would be tyrant had never read the Declaration of Independence and cared less for its principles... A reading of the Proclamation to the people of Utah proves Cumming did not believe that "all men are created equal..." See Wayne Stout, Hosea Stout, Utah's Pioneer Statesman (Salt Lake City: Privately Printed, 1953), pp. 221-222.

6Letter of Judge Delano R. Eckels to Secretary of State Cass, July 9, 1858, State Department Territorial Papers.
Colonel Johnston to place proceedings against the Mormons in the hands of a military tribunal. If this had occurred, of course, it would have greatly reduced the power of the Governor to direct affairs in Utah.

Organization of Government

In his proclamation, the Governor declared his intent to establish a territorial administration in Green River County. As already noted, a large portion of the federal appointees were present in the county; consequently, no problem was anticipated with regard to personnel. However, a government with no people to govern and with virtually no funds with which to finance itself is faced with some obvious problems. In spite of the latter difficulties, the officers in Green River County represented the United States Government, so an official organization was necessary.

Once this was accomplished, many of the governmental officers could do little more than plan and wait. However, Superintendent of Indian Affairs Forney, who had made an unusual effort to reach his superintendency, found that his haste had not been in vain. The unusual circumstances of a war among the whites and the presence of an army in the area proved to be powerful drawing cards to the Indian tribes. Various groups of them camped in the neighborhood of Camp Scott throughout most of the winter. Mrs. Cumming, writing to her sister-in-law Anne Cumming, mentions a band of Utes that encamped in the immediate vicinity of the tents that served as the Governor's mansion and executive offices.7

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7When finally established in Ecklesville, the tent settlement occupied by civilians near Camp Scott, the Governor lived in five tents—one serving as a parlor and executive office and the others fulfilling the demands of housing and eating. See letter of Elizabeth Cumming to Anne Cumming, November 29, 1857, Cumming's Papers.
Gone — Cumming

Outpost of spies on the Southeast

Fig. 1

GOVERNOR CUMMING'S TENT. CAMP SCOTT
Forney spent considerable time in conference with the prominent chiefs and tribes of Utah during this period. He found them inclined to be friendly, noted their extreme poverty, and decried his own inability to relieve their hardship.

The judicial branch was also relatively active during this winter. A provision of the Organic Act specified that:

The said territory shall be divided into three judicial districts, and a district court shall be held in each of said districts by one of the justices of the Supreme Court, at such time and place as may be prescribed by law; and the judges shall, after their appointments respectively, reside in the districts which shall assign them.

In spite of the clear injunction of the Organic Act that the districts be divided and judges assigned by territorial legislation, steps were taken to organize and hold court in Green River County. This action was not only highly irregular but also illegal; it was justifiable only because the officers considered that all regular provisions were made invalid by the rebellious state of the territory. Governor Cumming saw the need of immediately organizing the court but was greatly disturbed at the prospect of violating an act of Congress in order to do so. In a letter to Secretary of State Cass, he recommended that authority should be modified enabling the executive and the judges to fix legally the loca-

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9 Ibid.
11 Letter from Cumming to Cass, November 23, 1857, Cumming's Papers.
tion and time of holding court.\textsuperscript{12}

The dearth of activity at Camp Scott and pressing business in the States quickly convinced Secretary of State Hartnett that he should return East.\textsuperscript{13} The route east was open throughout the entire winter and lightly laden parties made periodic trips. The first party out was a group of merchants who had profitably disposed of a wagon train load of merchandize which the snows had kept from their destination in Salt Lake City. Hartnett was convinced that all the territorial papers of office had been destroyed and, in order to grasp the functions of his calling, felt that he must return to Washington and go through the Chief Comptroller's Utah file.\textsuperscript{14} He had expressed his desires pertaining to this matter shortly after the officers had arrived in Camp Scott but deferred his actual departure until January 25, 1858.\textsuperscript{15} Perhaps this hesitation was due to the Governor's unequivocal opposition to his going. Cumming was convinced that Hartnett's motives were purely private, and he called Hartnett's attention to the administration's lack of enthusiasm for abandoning territorial posts. The proposed trip would take a minimum of five months, and Cumming correctly foresaw that such a period of absence would result in considerable inconvenience to the public service.\textsuperscript{16} Despite the Governor's remonstrances, Hartnett did make the trip east, carrying with

\textsuperscript{12}Ibid.

\textsuperscript{13}Letter of Elizabeth Cumming to Anne Cumming, December 12, 1857, Cumming's Papers.

\textsuperscript{14}Letter from Secretary Hartnett to Comptroller's Office, November 30, 1857, State Department Territorial Papers.

\textsuperscript{15}Ibid.

\textsuperscript{16}Letter from Cumming to Cass, January 24, 1858, ibid.
him the Governor's official letter of protest at being thus abandoned during a period of such unrest.

Winter in Washington

Other members of the official family likewise evinced interest in a trip East. The judiciary had not only encountered problems of legality in setting a time and place for holding court, but, as it endeavored to function, it was confronted with a more pressing problem. Since the territorial funds were in the hands of the Mormons, the court could not finance its functions. In an effort to overcome this handicap, Judge Eckels dispatched District Attorney Hockaday and the Secretary of the District Court, Albert G. Brown, to Washington on January 5. **17** Upon his arrival in Washington, Brown wrote to Secretary Cass:

The point of the Judge's recommendation on this subject was, that, the Territorial treasury of Utah being inaccessible to the new civil officers, the United States should defray the expense of conducting the Territorial courts and enforcing the Territorial laws, until access can be had to that Treasury.... **18**

Brown also referred to the absence of the associate justices and presented Eckels' plan that one Lieutenant Kelly of the Tenth Infantry be commissioned to serve temporarily in this capacity. **19** Eckels' message evidently came to the attention of Congress, which passed the following resolution on March 17, 1858:

Resolved by the Senate and the House of Representatives of the United States in Congress assembled, That the expenses of holding the United States Courts in the Territory of Utah, during the continuance of the present disturbances therein, be paid out of the judiciary fund, under the limitations contained in the existing laws in respect

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**17** Letter of Albert G. Brown to Secretary Cass, March 15, 1858, written in Washington, ibid.

**18** Ibid.

**19** Ibid.
to fees. Provided, that on restoration of peace in said Territory, the expenses of said courts, when exercising jurisdiction under the territorial laws, shall be chargeable to the Territory, or the counties in the Territory.

The Chief Justice's request for the commissioning of someone on the scene to act as associate justice in the absence of his tardy fellows was less favorably received, since no action was taken.

Meanwhile, a shift in sentiment about the Utah affair was developing. This trend was discernible in the House of Representatives in a movement to bar Utah's territorial delegate John N. Bernhisel from his congressional seat. Although most Congressmen felt that Brigham Young was treasonous, they were sharply divided on the issue of the rebelliousness of the people of Utah. The more temperate faction felt that depriving Bernhisel of his seat in the House would imply that Utah was at war with the United States and indict a great number of innocent citizens, which incidentally was an implication that would hardly have been shied at a few months earlier. After much debate, Bernhisel was seated and Utah retained her voice in the United States Congress.

Another unrelated but vitally important congressional action was the Senate's ratification of the President's recess commissioning of Cumming and his fellow officers. Once the necessary approval of the Senate was given, a new commission was dispatched to each officer.

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\text{20 U. S., Congress, Congressional Globe, 1857-58, 35th Cong., 1st Sess., p. 1175.}
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\text{21 Ibid., p. 165.}
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\text{22 See approved governor's commission dated January 18, 1858, Executive Record Book B.}
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Green River County

The autumn of 1837 had seen a general retraction of Mormon outposts. As the threat of Johnston's Army became more real, an effort was made to consolidate the strength of the church as well as to vacate isolated settlements that might be subjected to pressure from unfriendly forces. Green River County, though in the more immediate vicinity of Salt Lake City, was outside the Mormon perimeter of defense, lying as it did on the path of any advancing force. Consequently, it was abandoned in the general move to the Mormon heartland.

Although Green River County was within the original confines of the territory, it had not been organized as a county until 1854, at which time the Legislative Assembly defined the limits of the county and appointed a Probate Judge who was empowered to establish a county government when and where he considered it to be expedient. Election returns for this era show that the county was lightly populated and that its county government was never completely staffed during its pre-war history.

With the army's coming, the recently depopulated county experienced not only a military occupation but also a great influx of residents. This incoming population was comprised of teamsters and other camp-followers, who by their very nature necessitated the provision of some means

23 Neff, p. 232.
of civil control. On December 16, 1857, Ben Simons, a half-breed sub-
chief of the Shoshones whom Dr. Forney had already interviewed at Camp
Scott, appeared in Salt Lake City where his accounts of the situation at
Camp Scott were eagerly received. The Journal History records his visit:

Ben Simons arrived this afternoon and called upon the president
with Dimick B. Huntington. He said there was six two or three
classes of men now in the Army, one party was the military and the
other was called Freemen, there was a fight between them and seven
men were killed. Colonel Johnston sent the military to quell the mob
and Governor Cumming told them to go back that when he wanted his
assistance he would call for it.25

In an effort to avoid further lawlessness, a large number of the
camp-followers were formed into volunteer military companies. In spite
of this step, it became obvious that some civil authority must be exerted
in order to control the portion that was unwilling to enter the army even
on a temporary basis. The District Court, under Judge Beckles, assumed
this responsibility and, during the first period, was the only judicial
organ in the county. As the weeks wore on, Cumming considered the ad-
visability of setting up parts of the county organization in order to aid
in establishing control. In February he wrote to Secretary Cass:

All the civil officers of this County have been evacuated by the
incumbents. The necessity of the case constrains me to fill these
offices. I think that the appointment of suitable persons in this
and other Counties which may be similarly situated will enable me
to establish order and obedience to law.26

Earlier in the month, Cumming had appointed former Surveyor
General David A. Burr to the position of Justice of Peace; he was ap-
parently the only county official appointed at this time.27 The pres-

26Letter of Cumming to Cass, February 1858, State Department
Territorial Papers.
27Ibid. See Burr’s appointment, February 2, 1858. Also see
Neff, p. 679, for a brief recount of Burr’s previous experiences in Utah.
ence at Eckelsville of the United States Marshal for the territory off-
set the need for a county sheriff, and the temporary nature of the com-
community made the appointment of selectmen and other county officials super-
fluous.

Discord

As suggested above, a strong variance of opinion developed be-
tween the Governor and the Chief Justice. This breach widened during the
winter and spring, and it was often considered that the intervention of
Colonel Thomas L. Kane, a long time friend of the Mormons, had much to do
with the loss of official unity in Camp Scott. Kane, because of his
sympathy for the Mormons, had made a winter trip via the west coast to
Salt Lake City where he spent some time in conference with the Mormon
leaders. Thereafter, he made the arduous trip through the snow covered
canyon passes to Camp Scott, where he and the Governor became such fast
friends that Cumming's opponents quickly proclaimed that he had in effect
become Kane's captive. Doubtlessly Kane aggravated the situation between
Cumming and Eckels, but, after careful study of the period, it appears that
if the Governor became the Colonel's captive it was with a marked degree
of willingness.

Indeed, the degree of willingness with which Cumming embraced
Kane to the exclusion of General Johnston and Judge Eckels indicates that
Kane embodied the unexpected appearance of a much needed ally. During the
few weeks Kane was in Camp Scott, he had so little to do with General
Johnston that men of the latter's command considered it an open affront.28

28"Diary of John W. Phelps," entry of November 29, 1857, MSS in
Brigham Young University Library. (Microfilm)
During this time, Kane and the Governor worked out a simple plan whereby Kane was to be the sole escort of Cumming in an early trip to Salt Lake City.\(^{29}\) While it is true that Judge Eckels and most of the other officers at Camp Scott regarded this plan with the utmost pessimism, it cannot be said that it was the first of Cumming's actions to which they had reacted unfavorably. Throughout Cumming's administration, he demonstrated a high regard for the constitution and the law. This disposition to respect constitutional rights is seen in his first proclamation, where he denies the right and intent of government to interfere with matters of a religious nature.\(^ {30}\) Officers at Camp Scott felt at this time that the Governor's proclamation was moderate and showed a definite willingness to compromise.\(^ {31}\)

Moreover, well before Kane's intervention, there were two clearly defined factions among the federal officials in regard to polygamy. In a letter written on July 9, 1858 concerning this matter, Chief Justice Eckels made this remark to Secretary Cass: "...Governor Cumming has more than once during the winter informed me your opinions were against me. I have said to him in reply, that I cannot and will not believe it."\(^ {32}\) After the Governor had returned to Fort Bridger from his first visit to the Mormon capital, his wife wrote concerning the polygamy controversy:

...And did not Alfred over and over tell the Judge: 'Sir, the government does not meddle with their peculiar institutions, Congress

\(^{29}\)Roberts, IV, pp. 341-359.

\(^{30}\)See "Proclamation," November 21, 1857, State Department Territorial Papers.

\(^{31}\)"Diary of John W. Phelps," entry of November 26, 1857, p. 172.

\(^{32}\)Letter of Chief Justice Eckels to Secretary Cass, July 9, 1858, State Department Territorial Papers.
cannot do it—I have, you have no business with it—to enforce the United States Laws is all we have to do."33

In contrast to Cumming's attitude, Eckels spent the last part of the winter working up charges of treason against Brigham Young and sixty-six other leading Mormons.34 Furthermore, it is significant that Eckels deferred making open charges against polygamy until Cumming had departed for Salt Lake City on April 5, 1858.35

A point that will bear re-emphasis is that a well defined split of opinion existed long before Colonel Kane appeared with his plan of reconciliation. Governor Cumming and Superintendent Forney espoused a more pacific course, while the rest of the civil and all of the military officers concurred in feeling that a hard-fisted policy was needed to quell the rebellious Mormon spirit.36

Kane arrived at Camp Scott from Salt Lake City on March 12, 1857, and immediately went into conference with the Governor, who gladly accepted him as an accredited messenger from the President.37 The Governor

33Letter from Elizabeth Cumming to Anne Cumming, May 28, 1858, Cumming's Papers.

34See "Deposition of 1858," State Department Territorial Papers; also see letter of Elizabeth Cumming to Anne Cumming, May 28, 1858, Cumming's Papers.

35Letter of Eckels to Cass, June 4, 1858, State Department Territorial Papers.

36Ibid.

37"The Utah Expedition," The Atlantic Monthly, III (April 1859), p. 479. In his recent work "The Utah Territorial Militia," typescript copy in LDS Church Historian's Office, Salt Lake City, p. 408, Colonel Hamilton Gardner reports that the Governor was joined by Kane on March 10, 1858.

38In an interesting example of how Kane's official standing was regarded at Camp Scott, Provost Marshal Grover reported the following to Major Porter of the Tenth Infantry on March 16, 1857:

..."Upon leaving Colonel Kane, however conversation occurred between Governor Cumming and myself during which he informed me Colonel Kane was an accredited agent to him (a fact upon which I had not been previously informed...)," Cumming's Papers.
evidently found the views of Kane as well as those of the President to his liking, for, as previously mentioned, he and Kane developed a co-operative plan whereby the Governor would be able to meet the Mormon leaders and try to arrange for a peaceful entry into the valley. Mrs. Cumming, writing as the Governor departed for Salt Lake City on April 5, records that Cumming sought to make provisions to have his views carried out in the event of mishap. She then continues: "I say Alfred's views, for Mr. Buchanan has given him carte blanche as to nearly all Utah matters." Granting that Mrs. Cumming was of-times naive in her political analysis, some value can none the less be placed on her statement, as the factors alluded to above seem to bear her out.

At the time of Hartnett's trip to the States in January, Cumming wrote to Secretary Cass pointing out the danger of Secretary Hartnett's absence. He foresaw the rise of circumstances that might demand the presence of Hartnett. Now, as the Governor contemplated a trip into the stronghold of the Mormons, the foreseen need for a subordinate upon whom the mantle of administrative duties might be placed was urgently felt. This urgency was especially manifest to the Governor because of the lack of enthusiasm for his proposed trip to Salt Lake City displayed by General Johnston and the Chief Justice. Had the Secretary been there, the Governor would at least have been able to turn to another member of the administrative branch of government, who, because of pro-

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39 Letter of Elizabeth Cumming to Anne Cumming, April 5, 1858, ibid.

40 Letter of Cumming to Cass, January 24, 1858, State Department Territorial Papers.

fessional ties and association, would have been most apt to be loyal to the Governor's views.

The danger of an unescorted foray into the midst of the Mormons could not be ignored. The Governor warned his wife that he might be imprisoned and that, in such event, he would send for her at once.42 With this apprehension in mind, the Governor chose as Secretary of State pro tempore A. J. McCormick, who served later as a temporary Attorney General to the territory.43 Mrs. Cumming, in one of her frequent epistles to "Sister Anne", tells of the reasons for this appointment:

In view of this possibility of the Governor's imprisonment, he has today appointed a New Secretary of State. He is to remain here, so that if the Mormons think to confuse and baffle the new government by imprisoning or injuring in any way the new governor, they will find themselves mistaken and as he had communicated his views and instructions about Mormon matters to the new Secretary of State so that whatever happens, Alfred's views will be carried out in great measure.44

During the Governor's sojourn among the Mormons, an active opposition movement was afoot in Camp Scott. The newly appointed Secretary of State, who was to have seen that "Alfred's views will be carried out" was little bound by any pledge he may have made to the Governor, as he actively aided the opposition group.45 Speculation as to the Governor's whereabouts and success ran rampant; this was intensified as the expected time of return arrived and passed. Mrs. Cumming, though aware of Alfred's whereabouts, was thoroughly alarmed and made every effort to keep her husband apprised of development by letter.46 General opinion at Camp Scott held that Cumming was either a fool who had been taken in by the Mormons or a scoundrel who was involved in some unholy league with them.

43 Ibid.  
44 Ibid.  
46 Ibid., April 21, 1858.
One writer described the situation as follows:

If the disposition to obey the Governor and to second and sustain him in the exercise of his office is not greater within the valley than it seems to be at Camp Scott and Fort Bridger, the extent of the Governor's authority is certainly limited enough. Whether or not Brigham Young and his people have combined together, while seeming to acknowledge Cumming as Governor--in fact to set aside and override his authority, at least it is very certain that such a combination exists in full force at Camp Scott, with Mr. Chief Justice Eckels at its head. Perhaps there is something in the air of Utah that stimulates to treason, rebellion and resistance to authority. Whether that be so or not, the authority of Cumming as Governor seems just now quite as much in danger from the Chief Justice, the civil officers, and the army sent to Utah at such an expense to place him and sustain him in the Governor's chair, as from those whose anticipated opposition to his authority led to such costly preparations to uphold it. In fact, it would seem that, on the question of due respect to Cumming's gubernatorial authority, the people inside the valley and those out of it had completely changed ground. The resistance to Governor Cumming is not now on the part of Brigham Young and the Mormons generally, but on the part of Chief Justice Eckels, Marshal Dotson, General Johnston, the camp, and the camp-followers.47

During Cumming's absence, Judge Eckels had instituted proceedings against the polygamous Mormons. Because he had not yet been able to take any of those charged with polygamy prisoner, his action had little legal meaning, but it did serve to express his opposition to the Governor. On May 28, 1858, Mrs. Cumming wrote of the Judge's action:

Eckels, Chief Justice, as soon as Alfred had left for Salt Lake made a charge (to the grand jury assembled here) against polygamy, two hours after Alfred had left. Colonel Kane said on hearing it on their return 'Good God! His life has been in danger every hour, every minute, since he left here--nothing but his own undaunted courage and principle has saved him. He has gone unaided into all the settlements, through lands sworn to take his life, and has come out safe--but, had a rumor of this action of Eckels reached there he would have had a hundred bullets in him in less than ten minutes'.48

After spending more than a month in Salt Lake City and its envi-

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48 Letter of Elizabeth Cumming to Anne Cumming, May 28, 1858, Cumming's Papers.
rons, Cumming and Kane returned to Camp Scott. Upon his arrival, the Governor immediately discharged both his Secretary of State and the Justice of Peace for complicity in the conniving at the camp in Cumming's absence. The fact that these two officers received their appointments from the Governor made them subject to his removal, while the rest of the civil officers held commissions from the hand of the President which placed them outside the realm of the Governor's authority. In the light of this fact, it becomes apparent that the Governor's action was more than a personal reprimand to two unruly officers—it was an effort to decrease the official power of the body that opposed him.

After Cumming had made his permanent entry into Salt Lake City early in June, a more indirect but no less determined effort to remove certain of the Presidential appointees drew the Governor into the arms of the Mormon people. There is no indication that Cumming made the initial advance in the matter, but, almost immediately upon his arrival, the Governor and citizens of Utah cooperated in an effort to secure the removal of a number of the offending officers. A lengthy petition signed by a number of citizens was accompanied by the following note to Secretary Cass written on June 20, 1858, which clearly expresses the Governor's opinion:

I have the honor of transmitting a Petition from Citizens of this Territory requesting the President to remove from Office Chief Justice Eckels, Post Master Norrell, Indian Agents Hurt and Craig. All the gentlemen whose names are mentioned in the Petition are unusually obnoxious to the people of the Territory. An in my opinion ought to be promptly removed from their respective offices.

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49 Ibid.

50 See the petition and the governor's note to the Secretary of State of June 20, 1858, State Department Territorial Papers.

51 Ibid.
With this action, the controversy between the Governor and the Chief Justice reached a temporary climax. The difference of their views had undoubtedly been of great moment in the settlement of the Utah "rebellion" and continued to play an important role in territorial affairs for the remainder of Beckles' time on the Utah bench.

Commissioners and Investigation

The trend toward moderation in dealing with the Mormons exhibited by Congress in the seating of Bernhisel as territorial delegate ripened during the winter of 1857-58 and finally resulted in a Presidential proclamation pardoning the Mormons. As the roads became passable in the spring, this pardon was carried to Utah by a two man peace commission consisting of L. W. Powell, onetime governor of Kentucky, and Benjamin McCullogh, Senator from Texas.52 In addition to bearing the President's pardon, the commission was instructed to make a belated effort to find the facts and seek a peaceful solution to the problem.53 On May 29, Commissioners Powell and McCullogh arrived in Camp Scott where they remained only two days prior to continuing on to Salt Lake City.54 They entered the city in what author Hamilton Gardner terms a "broadside of proclamations--from the President, the Territorial Governor, the peace commissioners and the Commanding General.55

The commissioners did little while in the West; the temporizing

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52 See Cass'es letter of April 17, 1858, informing Cumming that the peace commissioners were enroute and identifying them, State Department Territorial Papers.


54 Roberts, IV, pp. 419-440.

55 Gardner, p. 410.
portion of their mission had already been effected by Cumming and Kane. The commissioners seemed little inclined to make a full investigation prior to the entry of the army, though such an investigation was sincerely hoped for by the Mormons. The varied reports of their activities while in Utah complicate any attempt to determine just where their sympathies actually lay. Each of the numerous factions seems to have felt that the commissioners would be their special envoy to Washington. Eckels plainly regarded Powell as his spokesman to the President, and Brigham Young felt that the commissioners had pledged their aid in the campaign to remove Eckels, Hurt, Morrell and Craig. Perhaps the fact that the Commis-

56 The New York Tribune, July 3, 1858, as quoted by Tullidge, states:

"In this resistance to the authority of Governor Cumming and combination to reduce him, if possible, to a cipher, the recently arrived, Peace Commissioners according to all accounts, have joined, actuated possibly by a feeling of jealousy that they should have been anticipated by Governor Cumming and the work of pacification taken out of their hands. Nor, if we are to believe the letters from the camp, do these gentlemen confine themselves merely to thwarting the policy of Governor Cumming and nullifying his authority as Governor. They do, indeed, much further than that. The President's proclamation, of which they are the bearers, does not meet their approbation, or appear to them adapted to the exigencies of the case. They harmonize completely, we are told, with Judge Eckels and General Johnston, and are not content with upsetting and overriding the Governor, but are resolved to upset and override the President too. The proclamation is, therefore, to be construed—by the help, we suppose, of that profound jurist, Judge Eckels—in conformity to their ideas. In other words it is to be nullified and set aside."

57 Deseret News, September 22, 1858.

58 Letter from Eckels to Cass, July 9, 1858, State Department Territorial Papers.

59 See letter from Brigham Young to Thomas L. Kane, October 22, 1858, Utah Humanities Review II (January 1948), p. 156, which states:

"The removal of Hurt, Craig, Morrell and other U. S. civil officers here, whose removal has long since been petitioned for with the best of reasons, and which the Peace Commissioners expressed themselves almost assured would be at once attended to upon presentation, seems
sioners found little to do contributed to their tendency to espouse causes,

Recapitulation

On June 26, the United States Army made final the occupation of Utah by marching through the capital city and camping in its neighborhood. The period of preparation and waiting was over and more normal conditions could now be anticipated. Without doubt, Colonel Kane's efforts contributed toward normalcy; however, the steadfast position of the Governor and the growth of opposing parties at Camp Scott had likewise combined in contributing to a peaceful settlement.

as yet to sleep in some hole or corner in Washington, leaving a strong impression that some power outside of either the 'Golden Rule' or constitutional law, stands between us and the granting of our first petition, since that adjustment, for a small share of the cheapest description of American inalienable rights..."
CHAPTER III

GOVERNOR CUMMING: BACKGROUND AND QUALIFICATION

A Native of Georgia

On June 26, 1858, the army made its long heralded but virtually unobserved entry into the heart of Mormondom. ¹ Salt Lake City was temporarily evacuated, as the distrustful inhabitants had departed for Utah County and other points in southern Utah. The Governor and the peace commissioners were firm in their declaration of the army's peaceful intent. However, the independence shown by General Johnston,² when he began his march from Camp Scott a week earlier than the Governor had anticipated, did little to assure the fleeing Mormons of the army's subordination to the civil authorities.³

¹For accounts of the army's entry into Salt Lake City see the following:
Roberts, IV, pp. 444-45.

²During the winter, President Buchanan had commissioned Johnston a Brevet Brigadier General, because of the wisdom he had manifest in his command of the Utah Expedition; Roberts, IV, p. 421.

³See exchange of letters regarding Johnston's departure from Camp Scott. Cumming to General Johnston, June 15; June 19, 1858, Cumming's Papers.
The Mormons had good reason to be wary, as they were better informed of the actual tenor of army feeling than were the Governor and peace commissioners and found little in their knowledge to palliate their disquietude.\(^4\) Moreover, the civil authorities, including the Governor, were still largely unknown to them.

Until Cumming actually entered the Mormon community in April, he had been regarded by the citizens of Utah as the very symbol of oppression and tyranny.\(^5\) George A. Smith voiced the public ignorance concerning Cumming's background when he declared that, prior to meeting the Governor, he had falsely assumed that he was the same offensive Cumming of Missouri who had harassed the Mormons during their stay in that state.\(^6\)

Unfortunately, Cumming spent nearly four years among the people of Utah without any record of his pre-Utah activities being made, so we know little more of him today than did Smith. However, a little information can be gleaned from the Alfred Cumming's Papers of Office, 1857-1861, the Annual Reports of the Indian Commissioners, and sundry other sources.

Cumming was born in the tiny town of Summerville, situated in Chattooga county in Georgia's northwestern corner.\(^7\) His family had considerable local prominence, and Cumming's brother William was of greater

\(^4\)The Mormons were generally well informed of matters in the army's stronghold by reports given them by Indians (Journal History, entry of December 16, 1857) and deserting teamsters and soldiers (Hosea Stout Journal, entry of October 11, 1857, Vol. 6-8, p. 428. Original copy in library of the Utah State Historical Society, Salt Lake City.)

\(^5\)Journal History, entry of April 12, 1858.

\(^6\)Ibid.

\(^7\)Lucian Lamar Knight, Georgia's Landmarks, Memorials and Legends, II, pp. 313-19. (This source was taken from a letter to the author from the Atlanta Historical Society; the publishing material was not included.)
reknown within their homestate than was Alfred.\(^8\) No word of Cumming's childhood and schooling is available, but it can be safely assumed that he was relatively well educated, as his letters all evidence a considerable skill in the use of the English language and his grasp of political affairs indicates that he had considerable legal understanding. Cumming's earliest adult endeavors were in the mercantile business in Augusta, Georgia. For a time, his enterprise prospered, and he was considered to be one of the "extensive" merchants of the city.\(^9\) However, his venture soon came to grief and he engaged in other activities.

During his stay in Augusta, Cumming ran successfully for Mayor. His term of office was marred by an epidemic of cholera that caused a great number of deaths and a general exodus of the genteel class from the city.\(^10\) During this crisis, Cumming distinguished himself by remaining in Augusta and rendering unceasing service to the stricken. While Cumming was in Utah, a California paper gave the following short account of Cumming's deportment during the epidemic:

...During the dreadful reign of the cholera in 1836, Governor—then Colonel—Cumming was Mayor of Augusta, Ga. His conduct throughout that trying epoch was heroic and self-sacrificing. Night and day he devoted his time and services to alleviating the cause of his suffering fellow citizens.\(^11\)

\(^8\)William J. Norther, Men of Mark in Georgia, III, pp. 454-55. (Information sent by the Atlanta Historical Society who failed to identify further.) In reading an undated newspaper clipping from the New York Courier in the Cumming's Papers, one wonders if this brother of "mark" is the same that made his mark by being the "antagonist of Gov. McDuffie, in the famous duel in which the latter was maimed for life."

\(^9\)Unidentified newscropping in the Cumming's Papers mention his mercantile business.

\(^10\)Several newscropping included in the Cumming's Papers contain accounts of this. One of the better is from an undated Clipping from the San Francisco Times.

\(^11\)Ibid.
These services were gratefully acknowledged by his fellows, and the newspapers at the time of his appointment to governor point to this episode as being illustrative of his sterling qualities.

Cumming married Elizabeth Wells Randall of Boston, who was the granddaughter of Samuel Adams of Revolutionary War fame. The San Francisco Times wrote that Cumming had "married a daughter of one of the most distinguished physicians of Boston, a lady possessing the most elegant accomplishments." Among these accomplishments was some ability as a secretary, as the Governor's lady served as his private secretary during most of his Utah administration. The reasons for this service were two-fold: first, by so doing, Mrs. Cumming increased the family salary by forty percent; and second, the delicate nature of the situation demanded that the Governor employ someone in whose loyalty he had absolute confidence.

Apparently the Cummings were childless, for, although Mrs. Cumming corresponded frequently and intimately with a number of relatives, the context of her letters always precludes the possibility of the recipient being a son or daughter. Nor does she ever refer to a child of her own in any of these personal letters.

12 Unidentified newsclippings in the Cumming's Papers remark that Elizabeth Cumming is the granddaughter of Adams.

13 San Francisco Times, undated clipping.

14 See "Abstract Number 1 of September 1, 1857," made out by Cumming and directed to the United States Treasury for clerk hire to be paid to E. W. Cumming; Cumming's Papers. Other abstracts appear on differing dates.

15 Letter of Elizabeth Cumming to Anne Cumming, April 21, 1858, Cumming's Papers.

16 Elizabeth Cumming's correspondence included in Cumming's Papers.
Frontier Experience

After the failure of his business in Augusta, Cumming became a sutler in the army and spent a number of years in this capacity at Jefferson Barracks in St. Louis.\(^{17}\) He served with General Zachary Taylor in Mexico and afterward made an official army visit to California.\(^{18}\)

During the summer of 1853, Cumming was appointed Superintendent of Indian affairs for the Central Superintendency.\(^{19}\) From his headquarters at St. Louis, he administered a vast area, extending from the North Platte to the Arkansas and as far west as the headwaters of the Missouri.\(^{20}\) It is interesting to note that he organized an agency at Fort Laramie which was contiguous to the Utah Superintendency; thus, Cumming had administered an area bordering on the territory over which he was later called to govern.\(^{21}\) A number of the more populous tribes of American Indians made their homes within the confines of Cumming's domain. In 1853, the agent of the Upper Missouri reported that the six bands of Sioux in his agency totaled 1,955 lodges or about 15,640 Indians, while the Sac and Fox, the Assiniboines, and the Mandans each had well over 2,000 tribe members.\(^{22}\)

\(^{17}\) San Francisco Times, undated clipping.

\(^{18}\) Ibid.

\(^{19}\) Reporting to Indian Commissioner George W. Manypenny on September 22, 1853, Cumming clearly indicates the recency of his appointment in the following line: "In consequence of having so recently entered upon my official duties, I will be obliged to refer the department, for more specific information, to the special reports of the several agents." Annual Report of the Commissioner of Indian Affairs, Doc. 25, 1853, p. 80.

\(^{20}\) For general size and confines of the Central Superintendency see Annual Report of the Commissioner of Indian Affairs, Docs. 23-46, 1855, pp. 68-118.

\(^{21}\) Ibid., Docs. 25-28, pp. 78-85.

\(^{22}\) Ibid., Doc. 43, 1853, pp. 112-19.
The annual report of 1853 lists seven agencies in the superintendency. Over these agencies were seven men responsible to Cumming; these men ran the Indian farms and agency schools and handled the general activities of dispensing gifts and annuities. Because of national interest in a cross continental railway and the westward movement of Americans, the Indian country of the Great Plains was at this time undergoing a serious infiltration of white settlers. A number of treaties were negotiated that opened large portions of the area to settlement. Cumming recognized that the Indians were confronted with a rapidly changing environment and took steps to prepare them for it. Writing in 1854, he gives the following analysis of the situation and its demands:

The changes the late treaties will produce in the condition of the Indians, surrounded, as they will hereafter be, by a dense white population, afford matter for grave consideration. All experience goes to show that the contiguity of the Indian to the white man has been productive of disaster to the former, rather than advantage; to obviate this, it is all-important to use every means to induce the Indians to betake themselves at once to agriculture; and with this object in view, I am of opinion that the employment of suitable, discreet persons to assist them by their counsels, instruction and example, under the supervision of the agents, would be of great advantage, and gradually clear the way for the introduction of mechanical and other arts of civilized life. The schools, too, could be made subservient to the purpose, by combining, as is now done in some of these institutions, a moderate degree of manual labor with education.

Recognizing that his staff of seven agents was incapable of adequately administering Indian affairs over the whole of the superintendency,

23Ibid., Docs. 25-44, 1853, pp. 80-131.

24Ibid. Among the seven agents under Cumming was the famous mountain man Thomas Fitzpatrick, who during 1853 had served as a special commissioner for the Department of Interior in negotiating a number of treaties with the Comanches, Kiowas, and Apaches. In spite of his designation as a commissioner, he is still listed as an agent of the Central Superintendency in the Index of the 1853 report, p. 26.

Cumming requested and received more agents. By 1857 the number of agents within the superintendency had doubled, and the auxiliary services of schooling and farming showed a commensurate increase.

In 1855 Cumming was sent as a member of a commission to the Blackfeet and other tribes at the headwaters of the Missouri. Since the other members of the commission were both residents of the Pacific Northwest and because of Cumming's more convenient location at St. Louis, he was chosen to head this commission.

In July Cumming embarked by river steamer for Fort Benton on the upper reaches of the Missouri. Because of the seasonal fall in the water level, the steamer was forced to stop at Fort Union some two-hundred and fifty miles downstream from Fort Benton. Cumming planned to proceed on up the river by keel boat on the twenty-eighth day of July, but something detained him, since he had only made his way one-hundred miles up.

26 Ibid.
27 Ibid., Docs. 54-81, 1857, pp. 117-181.
28 Ibid., Doc. 104, 1855, pp. 208-209.
29 Ibid., Doc. 105, 1855, p. 212. The other members of the commission were Governor Isaac Stevens of Washington Territory and Superintendent Joel Palmer of Oregon. The latter was detained in Oregon, so Cumming and Stevens actually formed the commission. Also see Doc. 108, p. 213.
30 Fort Benton was generally considered to be the height of navigation of the Missouri River and was located some thirty miles east of present day Great Falls, Montana.
31 Fort Union was situated near the present day border between Montana and North Dakota. Because of the dry season, the level of the river had fallen three feet, a depth of only two feet, which was too shallow for even the shallow draft river steamers of the day. Consequently, the Superintendent was obliged to procure several keel boats on which he and a large amount of Indian annuities were to be conveyed on to Fort Benton. See Annual Report of the Commissioner of Indian Affairs, Doc. 107, 1855, p. 217.
the river to the confluence of the Milk and Missouri Rivers by August 14, when he met his fellow commissioner Governor Isaac Stevens from Washington Territory. They organized the commission at this point and proceeded to Fort Benton. There a further delay developed as they waited to contact the various Indian tribes and to obtain the services of an interpreter.

The treaty they negotiated was much like most of the Indian treaties of the period. In exchange for certain navigational and road building rights and a vow of amity, the Indians were to receive annual annuities totalling $50,000.00. Further, the Indians were assigned to specific tribal areas and a promise to cease their inter-tribal strife was also extracted from them. The entire season was evidently consumed in making this trip, for Cumming had not yet returned to St. Louis on October 19, 1855, when his clerk John Haverty wrote the annual report for the superintendent.

Southern Orientation

Comment concerning Cumming's background should not be concluded without re-emphasizing his southern birth and orientation. As a resident of Georgia, he had observed the development of much of the slave contro-

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32Ibid., Doc. 108, 1855, p. 218.

33It is interesting to note that two future Governors of Utah Territory served together on this commission; Cumming, of course, was one of the commissioners and James Doty was chosen by Cumming and Stevens to act as secretary for the counsel. Doty was appointed by Lincoln to the post of Superintendent of Indian Affairs in Utah in 1861 and was promoted to the Governor's post in 1862.

34Annual Report of the Commissioner of Indian Affairs, Doc. 105, 1855, p. 211.

35Ibid., Doc. 23, 1855, p. 68.
versy including the "nullification" movement in South Carolina. By his actions in Utah, Cumming bore testimony of his respect for state rightism and strict construction of the Constitution.

At the time of their journey to Utah, the Cumings had at least one Negro servant. In spite of her New England birth, Mrs. Cumming expressed some satisfaction at the service rendered by "my good Dundee". Cumming further showed his attachment to Southern tradition in his public activity. He was almost pedantic and unreasonable in his desire to cling to the letter of the Constitution and the Territorial Organic Act. As we shall see, the Governor very pointedly displayed this dedication to strict construction of basic laws a number of times during his stay in the territory. This dedication transcended loyalty to any one group or party, as, at one time or another, it was employed to the dissatisfaction of every other element of the territorial government. Though the Mormons were occasionally provoked at the constitutional obstacles cast in their paths by the Governor, the keen awareness of state's rights felt by this native Southerner rebounded to their benefit.

Hardly a Toper

At the time of his first entry into Utah, the Governor was fifty-five years of age. He was a big man, weighing in the neighborhood of 240 pounds. George A. Smith's first impression was that the Governor was a toper, or a heavy drinker. He adjusted this appraisal at a more thorough examination and concluded that "he was a moderate drinker and a

\[36\text{Letter of Elizabeth Cumming to Anne Cumming, April 21, 1857, Cumming's Papers.}\]

\[37\text{Journal History, entry of April 13, 1858.}\]
Hearty eater," 38 His first appearance impressed the Journal History's chronicler to record:

He was well dressed in black had a ruddy face and grey hair; his head was small round the top, one would think he had more chops than brains....

This biographical sketch is lamentably brief but should be of value in further understanding the Cumming Administration.

38 Ibid.

39 Ibid.
CHAPTER IV

FUNCTIONS OF THE EXECUTIVE DEPARTMENT
DURING GOVERNOR CUMMING'S ADMINISTRATION

Securing Governmental Control

Upon receiving Buchanan's commission on July 11, 1857, Alfred Cumming, though still in St. Louis, became the official Governor of Utah Territory. However, Cumming was still confronted with several formal steps to legalize his appointment as well as with the more important problem of assuming actual control of the territorial government. When he accepted the position, there still remained the formal steps of senate ratification of his recess commission and of taking the oath of office in Utah Territory. These steps were merely matters of time, but the problem of being accepted as the administering Governor of Utah loomed as a major difficulty. In due time, the commission was ratified and the necessary legal oath of office was taken on Utah soil, but Brigham Young still sat in the territorial executive office and was the recipient of the warm support of the citizens of Utah. By the provisions of the Organic Act which

1The President's Commission with Senate ratification, January 18, 1858, will be found in Cumming's Papers and Executive Record Book B. For Cumming's oath of office taken before Judge Eckels on February 2, 1858, at Camp Scott, Utah Territory, see Executive Record Book B.


Roberts, p. 332, gives an account of mass meetings held in Salt Lake City and the resultant memorials expressive of the highest loyalty to Brigham Young.
James Buchanan
President of the United States of America

To all who shall see these Presents... Greeting.

Unto you, that being specially trusted and confided in the integrity and ability of Alfred Cumming of Virginia, have nominated, and by and with the advice and consent of the Senate, do appoint and do hereby commission, Alfred Cumming, to be Secretary of War, and do authorise and empower him to execute and perform the duties of that Office, according to Law, and to have and to hold the said Office, with all the powers, privileges and immunities of aforesaid.

In testimony whereof, I have caused this Instrument to be made patent and the Seal of the United States to be hereunto affixed.

Given under my hand at the City of Washington, the nineteenth day of January, in the year of our Lord one thousand eight hundred and fifty-eight and of the Independence of the United States of America the eighty-second.

James Buchanan
President of the United States

By the President
First seating of the Senate

Salt Lake, June Twenty-second

Ichabod Davis
Tailor of Utah

Alfred Cumming, being of the Twenty-seventh degree of the Family of the United States, and do hereby accept the duties of the Office of Secretary of War, and faithfully discharge the duties of Secretary of War during my continuance in Office.

The foregoing Affidavit is this day subscribed
and sworn to before me, February 2d, 1858.

O. R. Biddle
Chef. for 4th Reg. U.S.

Fig. 3
created the territory, the governor was appointed for a period of four
years or until removed by the President; consequently, Brigham Young, who
never received a Presidential order relieving him of his position, was not
only governor by popular choice and by virtue of the Mormon militia and
inclement weather but actually had a legal claim to the position.\textsuperscript{3}
Buchanan's failure to formally relieve Young of his commission greatly
strengthened the Mormon leader's position and, in so doing, complicated
Cumming's situation to a commensurate degree.

Cumming himself displayed little concern at this aspect of his
problem, but officials in Washington encountered real difficulty in
determining at what date Brigham Young's salary should be terminated.\textsuperscript{4}
Despite the appointment of a new governor, the sending of an army, and
confusion in Washington, it remained for Brigham and the citizens of
Utah to effect Young's removal by recognizing Cumming as their new
governor. There can be no doubt that Cumming felt the shakiness of his
position as well as considerable sympathy for the Mormons, for, as The
Atlantic Monthly wrote following his entry into Salt Lake City:

\begin{quote}
His position was full of difficulties. He had been recognized in his
official character, it is true; but he was conscious that every Mormon
acknowledged a political influence superior to his own, which was
directing the emigration southward, and leaving him governor of empty
villages and deserted fields.\textsuperscript{5}
\end{quote}

\textsuperscript{3}The Organic Act, Section II.

\textsuperscript{4}Letter of Medill to Assistant Secretary of State Appleton, December
10, 1857, Territorial Papers of the United States Senate, Utah Series,
1849-1863, MSS National Archives, Washington, D. C. Microfilms in the
library of the Brigham Young University.

\textsuperscript{5}'The Utah Expedition,' The Atlantic Monthly, III (April 1859),
p. 484. In 1855, Brigham Young had weathered what this periodical termed
"a feeble, and of course unsuccessful" attempt to remove him. During the
summer of that year, Lieutenant-Colonel B. J. Steptoe
The unusual circumstances which surrounded the disputed office of Governor of Utah prefaced an administration that came to have a number of unusual aspects of its own. As Buchanan had declared, the so-called "Utah Rebellion" was the first that had occurred in the territories of the United States. By sending an army to quell rebellion in such a manner as to discourage similar occurrences, the United States gave assurance that the man occupying the governor's chair would be confronted with peculiar and trying problems.6

The prolific Utah writer Edward Tullidge later recognized and succinctly stated the problem as follows:

The situation here is different to that of any State or Territory in the Union, and as a natural consequence, a resident of any other section knows little of the real necessities of Utah. No matter how well fitted a man might be for the executive department of his own State, that does not by any means fit him to fill the position of the Governor of Utah.7

Although these lines were penned over two decades subsequent to Cumming's time, the forces that lent them validity in 1883 already existed in 1857.

"A meritorious, but too amiable officer of the regular army... led a battalion overland, wintering in Salt Lake City. It was at his option, at any time during his sojourn, to have claimed the supreme executive authority. He did not do so, but even headed a recommendation to President Pierce for the reappointment of Brigham Young.... Late in the spring, he marched away to California, after having expressed to the President that it was 'his unqualified Opinion, based on personal acquaintance, that Brigham Young is (was) the most suitable person for the office of Governor'". Ibid., III (March 1859), p. 363.


Naturally, the forceful methods used in quashing this so-called rebellion precipitated a great amount of protest and condemnation from the Mormons. Prior to the actual initiation of his administrative work among them in April of 1858, Cuming had been a major object of Mormon wrath. A Mormon chronicler writing in the Journal History recorded the following reaction to the initial Mormon contact with Alfred Cuming:

City corporation, sic Mayor, Alderman and some councilors went out to meet the animal, styled Gov. Cuming... Not the first act of Alfred Cuming, since he entered the territory has been in accordance with the laws of the U. S. He organized a temporary government when a permanent one was already in existence. He located a seat of government in a military camp (100 miles from the settlements), issued a proclamation declaring all the citizens of the territory traitors, proclaimed the organization of a court in violation of the laws of Congress which declared that a court shall not be held until the three supreme judges, shall meet at the capitol and determine the times and places; and all this without his being legally sworn into office, which renders his acts a farce. He sent two missionaries, who had been picked up on the way and detained as prisoners; for being Mormon in religion in the snow and cold (100 miles) without blankets or sufficient clothing, to bear his proclamation to the people of Utah; and as if in bitter irony, he requested the receipt to be acknowledged by return messengers...

However, Mormon animosity shortly reversed itself and Cuming soon became a favorite of the citizens of Utah. The change in Mormon

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8 Supra, p. 40.
9 Journal History, entry of April 12, 1858.
10 This change of attitude is amply attested to by the conduct of the citizens of Utah during Cuming's administration. For a number of interesting references to this re-evaluation of the Governor in Mormon writing of the time see Letter from Brigham Young to Thomas L. Kane, October 22, 1858, Utah Humanities Review, II (January 1948), p. 56. The Deseret News (September 22, 1858), p. 158, gives the following resume of the Governor's reception:

"We met the Governor early in the spring, a hale, whole-souled old gentleman, and heard him talk pretty plainly, something about Allegiance, respect to Constitution and Laws, and pursuit of peaceful industry. He is not much of a public speaker, or at least he was not, but his heroic conduct supplied the place of eloquence. His only fault abroad appears to be that we like him and that he can actually exercise his
feeling toward Cumming commenced when he made his unescorted visit among them in April and May of 1858. The Mormons had come to feel that the civil officials were cowering behind army sabres; therefore, Cumming's display of courage in visiting the Utahn's without an army guard made the initial favorable impression. During this first visit, the Governor lowered the barriers by lending a sympathetic and impartial ear to the Mormon side of the controversy. His concern at the Mormon's flight to the south and for the abandoned and unprotected property of the settlements in northern Utah also drew them to him. Later, when the army entered Salt Lake Valley, his respect for Mormon property and rights was openly manifest in his efforts to protect them. Also, during Cumming's first visit to Salt Lake City, the first word of the President's pardon arrived, which, coupled with the Governor's demonstration of friendship and sympathy, was a powerful factor in precipitating the peace that was arranged. However, a realization of the ultimate futility of resistance likely resulted in a more peaceful disposition on the part of the Mormons. With a desire for peace in mind, they listened readily to reports of the discord between the Governor and the other officers at Camp Scott, of which

official functions in Utah mildly. He seems to realize that the citizens of Utah are a part of the government and that it is his more immediate duty to attend to lawful interests and protect their Constitutional rights as well as see that the laws are faithfully executed."

The following reflection of the gubernatorial family's reaction to their reception is found in a letter Mrs. Cumming wrote to her sister-in-law Anne Cumming on September 1, 1858.

"...The community, enmasse, seem to be thankful, that if they cannot have their adored Brigham Young, for Governor, they have in his stead, one, who they all seem to regard as a just and honorable man, who will not betray their interests. Feeling thus, all that a people can do to make his stay here comfortable, they do—from Brigham Young, down to the most humble member of the community. I do not mean by pleasant words, and festivities etc., but by entering into, and endeavoring to carry out his views." Cumming's Papers.

11 See Letter of Cass to Cumming, April 22, 1858, State Department Territorial Papers.
their friend Colonel Kane doubtlessly told them. In hope that they could make one faction of the federal government their champion, the Mormons made every effort to cooperate with the Governor.

Unfortunately, enthusiasm for Cumming did not and could not extend to the government in Washington nor to the other federal representatives in Utah. Because of a strong and natural tendency to censure for mistakes rather than appreciate kindly intent, it was difficult for the miscreant territory to realize that, in its instructions to and support of Governor Cumming, the Buchanan administration demonstrated a favorable disposition toward them.12 No attempt need be made here to analyze the pressures that resulted in the apparent change from the government's earlier punitive mood to the tolerance of its administration during Cumming's term as Governor. It has generally been assumed that the leniency exhibited by the dispatching of pardon bearing peace commissioners in the spring of 1858 represented a real reversal from the course Buchanan had set in motion when he ordered the Utah Army west in 1857. However, even during the early months of stern parental anger toward the Mormons, the United States exhibited a marked degree of restraint in the actual orders given to its officers. In a letter of instruction to Cumming on July 30, 1857, Secretary of State Cass made the following extraordinary statement of the federal position and outlined a policy in which the Buchanan adm-

12 Good examples of the administration's support of Cumming are seen in the controversy between the Governor, Judiciary, and the Military during the spring of 1859 when the latter branches collaborated in an effort to impose a legal proceeding of a highly dubious sort on the residents of Provo. At this time, the judges were severely reprimanded by the United States Attorney General, and General Johnston was ordered to honor only such requisitions for military aid as came from the Governor's hand. See Letter of Attorney General Jeremiah S. Black to the Utah Judges, May 17, 1859, Senate Executive Documents, No. 32, 36th Cong., 1st Sess., pp. 2-4, and the order of Secretary of War John B. Floyd to General Johnston, May 6, 1859, House Executive Documents, No. 78, 36th Cong., 1st Sess., p. 31.
administration supported Cumming in his pacifist program for the next four years:

...The condition of things in Utah is well known to you. The President has found it necessary to reorganize the Territorial Government by the appointment of new officers, and has been gratified by your willingness to accept the Commission of Governor.

Appreciating your ability and experience, he confidently relies upon your exertions, by a firm and prudent administration of the government to secure the supremacy of the law. It is expected that the new officers, judicial and executive, will repair to the Territory, without unnecessary delay. A detachment of the army is under orders to take up a position in that country, for the performance of the ordinary military duties of security and protection upon our frontiers, and also, if necessary, to aid in the enforcement of the law. The commanding officer has been ordered to carry into effect your requisitions for the service of the troops in support of the public peace. A copy of these orders from the War Department is herewith communicated.

It is not necessary to advert to the circumstances which have drawn the attention of the people of the United States to passing events in Utah, and which have excited the solicitude of the President. With any peculiar opinions of the inhabitants, however deplorable in themselves or revolting to the public sentiment of the country, the Executive Government has no legitimate concern, and no design to interfere. Our social and political institutions recognize the utmost freedom of discussion, and men are justly obnoxious to legal penalties for their actions only and not for their opinions. The sentiment so happily expressed by Mr. Jefferson, that error of opinion may be safely tolerated, where reason is left free to combat it, meets the ready concurrence of the American people. It is your duty to take care that the laws are faithfully executed and to maintain the peace and good order of the Territory, and also to support by your power and authority the civil officers in the performance of their duties. If these officers, when thus engaged, are forcibly opposed or have just reason to expect opposition, they have the right to call such portions of the Posse Comitatus to their aid, as they may deem necessary. If circumstances should lead you to believe that the ordinary force, at the disposal of such officers, will be insufficient to overcome any resistance, that may be reasonably anticipated, then you are authorized to call for such number of troops as the occasion may require, who will act as a posse comitatus, and while thus employed they will be under the direction of the proper civil officer, and act in conformity with the instructions you may give, as the Chief Executive Magistrate of the Territory. It is believed that these general suggestions will be found sufficient for such exigencies as may arise. The great object is to assert the supremacy of the law, and to do this in the mode and by the means which the law points out. The President trusts that occasion for resorting to the employment of military force, will not arise; but should actual resistance take place, while you meet it with prudence and discretion, it must be met with firmness, and the whole force placed at your disposal must be employed if need
be, to put an end to illegal opposition. And should your means not prove sufficient, the President will take care that it be increased, for he is determined to exert all the requisite power of the Executive to preserve the authority of the law in the Territory of Utah.

As to the execution of the general duties which will devolve upon you as the Governor of a Territory, it is not deemed necessary to give you any specific instructions. The laws will be in your possession and will be your guide.  

In remarking that it was unnecessary to refer to the circumstances which had drawn the attention of the people and the President of the United States to the passing events in Utah, Cass acknowledged that the anti-Mormon reports had been largely accepted. Buchanan's failure to adequately and accurately inform himself of the validity of these reports was one of the great mistakes of the Utah affair. Once the stories of rebellion told by the offended federal officials [see Chapter 1] were accepted and vigorous measures taken to suppress the supposed outbreak, the damage was done and rebellion actually existed in the hearts of the Mormon people. It is therefore obvious that, like so many other unfortunate affairs, the Utah War could likely have been avoided had the lines of communication and information been more open.

While guilty of gross errors in its basic position, the government's policy as outlined by Secretary Cass was one well designed to usher a straying people back to their national loyalties. Cumming's duties regarding the rebellion are briefly stated, and his basic objective (that of securing the supremacy of the law) is defined. He was admonished to take the necessary action only "in the mode and by the means which the law points out." Furthermore, the directive stated a regard for the freedoms

13Letter of Secretary of State Cass to Governor Cumming, July 30, 1857, State Department Territorial Papers.

14ibid.

15ibid.
and rights of citizens that the federal government during subsequent administrations did not maintain. While displaying respect for the rights of the people, it also authorized the use of the army if the situation demanded. However, even while going to this extreme, Cass's directive stated that it was to be employed only by the requisition of the Governor and under direction of the civil officer involved.

Even these brief directions concerning the Utah Rebellion were more detailed in nature than were Cass's instructions for the execution of the Governor's general administrative functions. Cass passed quickly by this particular aspect of Cumming's calling, pausing only long enough to declare that the Governor had access to the laws and that they were to be his guide. The laws regulating Cumming's actions were of two types: first, federal laws governing the territorial system; and second, the territorial statutes. By this arrangement, the Governor served two masters. The federal government made gubernatorial appointments and under

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16. The Anti-bigamy Act of July 1, 1862 was an early departure from Cass's non-intervention policy.

17. Letter of Secretary of State Cass to Governor Cumming, July 30, 1857, Cumming's Papers.

18. Ibid.

19. Most of the federal legislation regulating territorial policy is found in the various Organic Acts of the Territories, see The Organic Act, Appendix I. General regulations applying to all territories are found in U. S., Congress, Revised Statutes of the United States, 1876, pp. 326-327. For territorial regulation, see such compilations as Utah, Territorial Legislature, Compiled Laws of Utah, 1874, and Acts, Resolutions and Memorials Passed at the Several Annual Sessions of the Legislative Assembly of the Territory of Utah from 1851-1870 Inclusive (Salt Lake City: Joseph Bull, Public Printer, 1870). Hereafter cited as Acts, Resolutions and Memorials in this work.
the American system also held firmly to the purse strings. Because he was subject to removal from Washington as well as dependent on the national treasury for income, the Governor was closely bound to the federal government and the administration had every reason to anticipate that federal regulations would be obeyed.

Constancy in Duty

The Act of 1850 establishing Utah as a territory specified that the "governor shall reside within said territory". Alfred Cumming showed unusual tenacity in his performance of this part of his duties. Although he applied for and was granted leave of absence during the summers of 1859 and 1860, he never availed himself of these leaves, for he felt that the pressures of his office would not permit a trip to the States. In writing to Washington in December of 1859, at which time he was not only performing his own official function but was carrying the duties of the Secretary of State and the Superintendent of Indian Affairs, he stated that because he had been unable to take advantage of the proffered leaves, his interests in the States had suffered greatly. He further stated that only the urgent conviction that the public service would suffer in

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20 Not only did the federal government pay the salary of the Territorial Executive, but, a short time after Cumming's term, any kind of supplementary pay from territorial sources was made illegal. See Section 1855, Revised Statutes of the United States, 1876.

21 The Organic Act, Section II.

22 Letter of Governor Cumming to Secretary of State Cass, December 15, 1859, Cumming's Papers.
his absence had held him at his post in Utah.23

Cuming's devotion to his office becomes more striking by comparison to the propensity of the other appointed officers to leave the scene of their calling. During Cuming's term, all the rest of the original slate of civil officers were absent from the territory at least once, while several made a number of trips. 24

For a time in 1860, the Governor was the only federal official in the territory with exception of two Indian Agents. As mentioned above, Cuming assumed the duties of both Secretary Hartnett and Superintendent Forney during their absence in 1859 and 1860. The Marshal, P. K. Dotson had resigned in November of 1859 because of the Governor's policy toward the Mormons and, according to Dotson's statement, because of the inadequacy of the salary. Also, the Territorial Attorney General, Alexander Wilson had returned to the East in August of the same year because of

23 Cuming writing to Cass stated:
"It is known to you that I have had granted to me, many months ago, a leave of absence, obtained for the purpose of visiting my home, where business of an important character required and still requires my personal attention. Nothing could have prevented me from availing myself of that leave, which you were kind enough to give, but a firm conviction that I could not with safety leave my official duties here, under the circumstances by which I was and am still surrounded." Ibid.

24 An interesting example is Judge Eckels, who left the territory in September of 1858. In view of Eckels' effort to get to the scene of his duty in the fall of 1857 and of his loudly proclaimed interest in bringing the Mormon malefactorsto justice, his departure at that particular time is most interesting, because he had recently gone to considerable trouble to set the time and place of holding his District Court. However, with all his effort and with all his interest in bringing justice to the territory, he found it expedient to make a circuitous journey home via Sandy Point, Oregon at the moment when he should have been holding court in Farmington, Utah. The season of the year precluded his immediate return, and his absence extended to nine months. See Hosea Stout Journal, Vols. 608, pp. 461-64, 500.
financial reasons and his wife's poor health. Also, the two Associate Justices of the District Court had left Utah in the fall of 1859, while Chief Justice Eckels tarried only until the roads became passable in the spring of 1860. Eckels' departure in April left the Governor completely to himself with the Mormons until the arrival of newly appointed officers in the late summer, which, incidentally, may have been a pleasing situation to the Governor.

Like the rest of the officials, Cumming felt strongly the need to make an occasional trip East, but the whole complex of relations between the various branches of the government and the citizens of Utah so strongly impressed upon him the necessity of his continued attention that Cumming remained at his post until the spring of 1861. By this time the complexion of the situation was vastly altered, as the Civil War drew the attention of the United States from such remote and relatively unimportant territorial affairs. Also, new and more favorably inclined appointees had replaced the original members of the judiciary and the army had been virtually withdrawn from the territory. His four year term was nearly com-

25 For an account of Dotson's departure see the Mountaineer, November 12, 1859, and Deseret News, November 9, 1859. Alexander Wilson's preparations and plans of departure are recorded in the Journal History, entry of August 22, 1859.

26 Letter of Governor Cumming to Secretary of State Cass, March 1, 1860, State Department Territorial Papers. In an effort to curb such wholesale absence from office, the federal government had issued a circular in 1853 stating that no absent officer would be paid for such time as he was out of the territory without leave of absence from the proper department. See "Secretary of Territory Correspondence, 1857," Territorial Executive Records.

27 The Deseret News, August 29; September 26; October 10, 1860, tells of the arrival of the newly appointed judges. Also see the Journal History, entry of June 28; July 11, 1860 and the Mountaineer, August 11, 1860, as well as Supra, Chapter VI, for accounts of these judicial appoint-
pleted and his section of the United States had entered into a much larger rebellion against the government he served, so it is hardly surprising to find Cumming taking advantage of the leave granted him when the mountain routes became passable in the spring of 1861. 23

Relations with the Army and the Militia

Cumming early demonstrated just how important he considered his

ments. In reporting the proposed removal of the army from Utah, the Deseret News, April 11, 1860, extracted the following from the orders of Secretary of War Floyd:

"The military force of the Department of Utah will be reduced to three companies of the 2nd Dragoons, three companies of 4th Artillery, and four companies of the 10th Infantry. Colonel P. St. George Cooke, 2nd Dragoons is assigned to the command.... The remainder of the force now in Utah will be withdraw as early as possible in the spring."

The following disposition of the Utah forces was made:

"Three of the six companies of the 10th Infantry and the two companies of the 2nd Dragoons will occupy Ft. Garland, New Mexico. The 5th regiment of Infantry will relieve the 3rd Infantry in New Mexico. The 7th Infantry will also take post in that Department—four companies at the Gila Copper Mines, and six companies near the mines in Arizona.

23. The Deseret News, May 23, 1861, recounts the Governor's departure:

"His Excellency Governor Cumming, accompanied by his lady, left this city on the evening of Friday last, on his return to the States, having, as understood, asked for, and obtained from the department leave of absence for some six or eight months, and it is presumed that he does not expect nor intend to come back again and resume his official duties.

"His entrance into Great Salt Lake City, on the 12th of April, 1858, was attended with some considerable parade and ceremony, but, being somewhat eccentric, it seemed to be his wish to avoid any demonstration of his friends on the occasion of his departure, carefully concealing from them, as far as possible, the time when it might be expected to take place, during the day closing up his business affairs, and late in the afternoon started out so ceremoniously, that it was not generally known that he had gone till the next morning."

Although Mormons of the period were quick to point out that a number of the most avid Mormon rebel hunters of 1857 and 1858 were now in open rebellion themselves, the Mormon loyalty to Cumming precluded like attacks against the Governor. In the article quoted above, the Deseret News implies that regardless of what his future actions should be, Cumming's course in Utah had insured him the admiration of many of the territory's residents.
presence in the territory to be by his concern for the fleeing Mormons. The Governor was thoroughly convinced of the truthfulness of Brigham Young's bold assertion that the southern migration would continue if the military advance into the territory were not halted. Later, as Young saw that the army intended to enter the territory and, therefore, grudgingly acquiesced, Cumming's whole course indicated that he feared that the Mormons might take further offense, and, by a sudden departure to Sonora or some other far off place, foil his attempt to re-establish the supremacy of the law. Consequently, he exerted his utmost energy to keep the army under control while seeking to induce the Mormons to return to their homes. Although matters of pride could hardly permit the army to forego its "triumphant" march through Salt Lake City, it did defer to the Governor's wishes and marched directly through the city. It then took a position on the west side of the Jordan River, which was somewhat removed from the settlement, in order to avoid even the suggestion of Army damage to Mormon property. During the movements of the army into the Salt Lake area, Cumming kept the leading men at the Mormon camp in Provo closely informed as to the military's plans. His growing conviction that the citizens of Utah were essentially peaceful was accompanied by a realization that the very army that had been sent out to effect their submission comprised the greatest threat to a lasting peace. Consequently, he sought to have the army removed to a more remote position than Johnston planned to take in Cedar Valley. In this case, as in almost every other, he worked through State Department channels, writing to Secretary Cass before the army had time to establish itself permanently at Camp Floyd:

29 See communications of Governor Cumming to the Mormon leaders, June 17, 1858, Cumming's Papers.
As there appears to be only a small force required to act upon an emergency as a Posse Comitatus, or for the suppression of riots, I presume that it will be found expedient to march the larger portion of that now here to such points as will effectually guard the emigration on the California trails.  

On another occasion shortly thereafter, he seconded the Mormon opinion that the site chosen by the military in Cedar Valley was ill-suited to afford protection to the greatest number of emigrants. He likewise assailed the wisdom of the army's choice on the grounds that the available grass could hardly meet the demands of the huge herds of livestock used in maintaining the post. The Governor recommended that the army move to Cache Valley where it could better protect the emigrant trails as well as find adequate forage for its animals.

Though the Governor was genuinely interested in the welfare of the emigrants, his suggestion that the army remove to Cache Valley likely received its greatest impetus from petitions of ranchers in Central Utah, who felt that the army encroached upon grazing grounds previously given to them by the territorial legislature. Although Cumming received the petitions with sympathy, he could do little more than suggest that the army move to a different locale, for by national law the territorial legislature had no right to dispose the public domain; hence, in spite of the local grants, the grazing grounds remained national property and were rightfully used by the army.

30Letter of Governor Cumming to Secretary of State Cass, July 16, 1859, Cumming's Papers.
31Letter of Cumming to Cass, August 26, 1858, ibid.
32See petition from citizens of Goshen to Governor Cumming, May 28, 1859, and letter from Johnston to Cumming, October 9, 1858, ibid.
33The Organic Act, Section II.
Another facet of military relations arose from gubernatorial use of the executive power as commander-in-chief of the territorial militia. One of the prime duties that confronted Cumming as he entered Utah was disbanding the Nauvoo Legion which then stood in the canyon gateways of Utah ready to defy the United States Army. Among the first Mormons contacted by the Governor were members of the militia who guarded Echo Canyon as Cumming made his first approach to Salt Lake City. Although the Mormon soldiers tolerated the approaching Governor, their reaction was anything but submissive. However, once Cumming gained Salt Lake City and interviewed the Mormon leaders, the militia was disbanded by his orders except for a small detachment which guarded the canyon entrance to the city. The Governor later acknowledged that the authority he exerted in successfully dispersing the concentration of armed men in the Echo Canyon region was largely through the grace of Brigham Young, who for a time continued to be Cumming's chief means of controlling the citizens of Utah. Cumming's success in discharging the militia was attested by Adjutant General James Ferguson's report to the Eighth Annual Legislature that, during the year following the Governor's entry, legion activity was very limited because of its total disorganization. However,

34 In a long epistle written from within the Mormon capital on May 2, 1858, Cumming reported:
"I have adopted means to recall the few remaining Mormons in arms, who have not yet, (it is said) complied with my request to withdraw from the Canyons and the Eastern Frontier." Three weeks later, on May 21, the Governor wrote the Commanding General:
"After a careful investigation, I am gratified in being able to inform you, that I believe, there is at present no organized armed force of its inhabitants in any part of this territory—with the exception of a small party, subject to my orders, in or near Echo Canyon."
Both letters are found in Cumming's Papers.

35 Clipping from The General Newspaper Dispatch, June 28, 1858, ibid.

it appears that the legion suffered more a period of quiescence than of annihilation, as the following year, 1859, it performed by order of the Adjutant General on the Fourth of July. 37

By demobilizing the Nauvoo Legion, the Governor sharply decreased his duties as Commander-in-chief of the militia. However, at a later date he did negotiate with Washington for certain arms and ammunition for the territorial arsenal and, in spite of the remonstrances of the federal judges, persisted in his efforts to bring arms into the territory. 38 It appears that Cumming's only contact with the militia was on those rare and unhappy occasions when some criminal received the death penalty and it was necessary for Cumming to requisition a firing squad to aid the federal marshal in the execution. 39

37Deseret News Weekly, July 6, 1859.

38The Journal History, entry of March 17, 1859, records the following conversation between Cumming and the fanatically anti-Mormon Judge Cradlebaugh:

"Governor Cumming told Judge Cradlebaugh that the Government was about distributing a large amount of arms to the Mormons. Judge Cradlebaugh said that must be a very bad policy. The Governor replied that he did not make the policy for the Government, and that he should give out the arms when they arrived, as the Mormons had never had their quota of public arms."

In spite of accusations that Mormon rifles and ammunition drawn from the supply contributed by the government armed the Indians of Nevada during the uprising of 1860 in Carson County, the Governor seems to have been unsuccessful in obtaining immediate delivery. See letter of Major C. F. Smith to the Adjutant General on June 4, 1860, War Department Letters. In May of 1860, the month of the Carson County Indian War, Cumming informed congressional delegate W. H. Hooper that:

"By an application at the office of Colonel Craig of the ordnance department, you will receive a statement of the quota of arms to which the Territory of Utah is entitled. . . . The Department agrees to deliver them upon any navigable waters of the Territory, but will not be responsible for land carriage. . . .

. . . The territory has never received any portion of the arms allowed to it. By consultation with General Wells, Commander of the Nauvoo Legion, I learned that the reception of these arms had been hitherto declined. Cumming's Papers."

39Letter of P. K. Dotson to Cumming, October 19, 1859, ibid.
In the respect of his association with the militia, Cumming’s position varied greatly from that of his predecessor. Whereas the Nauvoo Legion had heretofore been the chief agency of defense against hostile Indians and had rendered certain aid in the maintenance of civil authority, these duties were now transferred to the United States Army. There was a certain paradox in this situation as Cumming was reluctant to have the army remain in the territory and undoubtedly felt that it greatly complicated his administrative duties; yet, with the exception of times of particular stress such as followed the outbreak of bad feelings when Judge Cradlebaugh used federal troops in conjunction with the District Court in Provo, Cumming evinced no inclination to dispense with army services in favor of aid from the Nauvoo Legion.

In using the army to aid in problems of territorial law enforcement and defense, the Governor worked with and through the United States Marshal and the Superintendent of Indian Affairs. When the situation seemed to demand it, these officials requisitioned troops from the Governor, who, if he considered the need to be sufficient, relayed the requisition to the army. The earliest recorded instance of this type occurred in Camp Scott. At that time, Marshal Peter K. Dotson approached the Governor with a requisition for troops to aid in bringing Brigham Young and a number of other alleged offenders to trial. Cumming refused to furnish the required force of men, because the marshal had actually met no resistance from the Mormons; hence, the Governor could not, in accord with Cass’s earlier directive, call upon the United States Army.

40Neff, pp. 398-409, gives a thorough treatment of the Nauvoo Legion’s activity as a protective agency for the settlements of early Utah.
41See Chapter VI and VII of this work.
42See the Marshal’s request, May 25, 1858, Cumming’s Papers.
December of 1858, Dotson felt that a posse comitatus would be required to arrest certain murderers in Springville.\(^{43}\) On this occasion, the Governor first seemed inclined to give Dotson aid, as a requisition was made on the army for the required help. Later, however, he rescinded his requisition.\(^{44}\) Because of the marshal's sympathy for the judiciary faction and the fact that his duties were largely legal, the Governor had few dealings with him, and these were not marked by any special friendliness.

Cooperative Functioning with the Indian Superintendent

Relations between Governor Cumming and Superintendent of Indian Affairs Jacob Forney were much more cordial. The Superintendent had early aligned himself with the Governor and was his loyal supporter during the period of conspiracy at Camp Scott while Cumming was absent in Salt Lake City in April and May of 1858.\(^{45}\) Later, while the rest of the territorial officials awaited the army's march to Salt Lake City, Forney exhibited his

\(^{43}\)See the statement made by F. K. Dotson before Judge Cradlebaugh, December 24, 1858, ibid. This was sent to the Governor on the same date with a formal requisition for a force of federal troops drawn up by the Marshal.

\(^{44}\)Requisition from Governor Cumming to General Johnston, December 24, 1858, ibid.

\(^{45}\)During these trying days at Camp Scott, the Indian Superintendent was the foremost, if not the only, supporter of the Governor. As the Governor's sojourn in Salt Lake City had extended past the date that Camp Scott's arachair prognosticators set for his return, many feared, or rather hoped, that the Governor had become the prisoner of the Mormons. It was considered that if this captivity were not of a literal and physical nature, then certainly the Governor had become the virtual tool of Brigham Young and his cohorts. At this time, a movement was initiated to remove the Governor by exposing his supposed unfitness for his calling to the officials in Washington. Whether defamatory letters were written to the administration is not known, but of importance here was Forney's opposition to this action and his own proposal to counter with letters of support written to the President. The most detailed account of these difficulties exists in the letter of Mrs. Cumming to Anne Cumming, April 21, 1858, ibid.
regard for the Governor by accompanying him into that city on June 8.\textsuperscript{46}

The harmony and cooperation between the Governor and the Superintendent of Indian Affairs was obvious during the autumn of 1858 in their effort to cope with alleged Indian attacks upon emigrants on the Humboldt or northern route to California. The Governor's concern for the emigrants was first voiced during August, at which time he recommended that General Johnston detach one hundred troops to take a permanent position on the Humboldt River.\textsuperscript{47} The season was so far advanced that General Johnston declined, stating that immediate efforts to establish this post would be thwarted by the coming winter. He did, however, express his intent to establish a post there the following year.\textsuperscript{48}

As the autumn wore on and the presumed Indian hostilities in this western extremity of Utah were continually reported, Cumming cooperated with Dr. Forney to bring about an investigation of the Humboldt region. In preparation for a personal visit to Carson Valley through which the Humboldt River ran, Forney made a formal request to the Governor for a body of troops to act as his escort. The Governor in turn wrote the following to General Johnston:

Dr. Forney, Superintendent of Indian Affairs, has this day made a requisition for a sufficient escort to accompany him as a protection against the Indians on the route toward Carson Valley. He will probably proceed to "Stony Point" about one hundred miles beyond the first crossing of the Humboldt.

"You will please furnish the necessary protection to the Superintendent and oblige. The Superintendent expects to leave about

\textsuperscript{46}The Utah Expedition," The Atlantic Monthly, III (April 1859), p. 436.

\textsuperscript{47}Letter of Governor Cumming to General Johnston, August 26, 1858, Cumming's Papers.

\textsuperscript{48}Letter of Johnston to Cumming, September 1, 1858, War Department Letters.
the 11th. [September] 49

Forney's investigation was quickly accomplished, for he left on September 12 and early in November his trip was reported to Secretary Cass by Governor Cumming:

The Superintendent, Jacob Forney, has been very diligent in the performance of his duty. He recently returned from a trip to the Humboldt River, where I had feared the Indians would become troublesome to the mail service and the California emigration—and to which region I requested Gen'l Johnston to send an imposing force. Superintendent Forney, upon his arrival, found that the statements had been exaggerated, and dispensed with the military force, proceeding himself to "Gravelly Ford" where he found all the Indians quiet and well disposed. 50

Cumming's avowal that Forney had been very diligent in the performance of his duty may have been no more than a friendly word in behalf of a man with whom he enjoyed working, but subsequent events indicate that Forney was even at this early date under attack from his subordinates and others of the official family and was possibly in need of the Governor's support. In January of 1859, Indian Agent Garland Hurt, who had long been particularly offensive to the Mormon people, was reportedly trying to effect Forney's removal. 51 This attack may have been based solely on matters of Indian affairs, but the Superintendent's associations with Cumming

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49 Cumming's requisition of September 2, 1858, Cumming's Papers.

50 Letter of Cumming to Cass, November 3, 1858, ibid.

51 Indian Agent Garland Hurt was in the territory when Johnston's Army arrived in Green River County, and after the army was settled he joined them at Camp Scott. While there, he wrote a long letter charging the Mormons with a great number of wrongs to which they replied with a letter of like content. Now, as Forney's moderate position became more obvious, Hurt sought his removal. The Journal History, entry of January 5, 1859, records:

"...Dr. Forney, superintendent of Indian affairs, received by the last mail official notice that Dr. Hurt was removed from the Indian agency and a Mr. Morgan appointed in his stead. He kept the matter a secret, as Hurt had been making efforts to get Forney removed and himself appointed in his place as superintendent.

"Hurt was in a council with Governor Cumming, Secretary Hartnett,
likely had something to do with the attempt to remove Forney.  

In compliance with the Governor's wishes, Forney went to the Mountain Meadows in March of 1859 to investigate the unfortunate massacre which had taken place there two years earlier. Forney was temperate in his investigation and, aside from interviewing a number of the leading men in the area, including John D. Lee, and gathering a group of the surviving children for return to relatives in the States, he accomplished little. Utah's anti-Mormon element was keenly disappointed with his failure to bring back definite and damning evidence against the Mormons. James Lynch, a discharged teamster of one of the freighting companies, accompanied Forney on his expedition south, was especially rabid in his denunciation of Forney's methods, and prepared a long statement presenting...

Dr. Forney, General Wilson (the Attorney General for the territory) and Mr. Jarvis (an Indian agent)...Hurt was finding fault with the course pursued by Governor Cumming and Dr. Forney. He told Forney he would not be sustained by Pres. Buchanan, and if he didn't alter his course, he would be removed. He said, 'your course is not approved by the department any how and you are sure to be removed.' Dr. Forney replied, 'Doctor, who do you think will be appointed in my place?' Hurt answered, 'I do not know.' Forney then said, 'perhaps you think you will be appointed to succeed me.' Hurt said, 'To be honest about it, I do expect to succeed you, and shall not be at all surprised if that were the case.' Hurt soon left the room and Forney sent him by Curtis E. Bolton a copy of the official notice of his removal. Hurt has not been seen since."

52 Efforts to remove Cumming also occurred during the summer of 1858; see Orson F. Whitney, History of Utah, (Salt Lake City: George Q. Cannon and Sons Publishers, 1893), Vol. I, p. 718.

53 Edward Tullidge in his History of Salt Lake City, p. 244, wrote:

"His inability to investigate and bring to justice the authors of the Mountain Meadows Massacre, during his term of office, is known to have been a thorn in Governor Cumming's side. After him no Governor could be specially, held responsible; and thus justice tarried long...."
a "clearer view of the affair and of Forney's inexcusable failure." 54

In a letter of August 1, 1859, which unfortunately is not obtainable, Forney wrote of matters that Indian Commissioner A. B. Greenwood considered to be serious enough to merit calling him to Washington. Cumming later wrote to Greenwood:

In accordance with your letter of instructions to Superintendent Forney, in reply to his letter of August 1st, I have assumed the exercise of the authority of Acting Superintendent of Indian Affairs in Utah Territory. 55

Forney was absent from the territory for a long period. That he planned such an absence is apparent in the fact that he made a sum of money available to Cumming as well as authorizing him "during the three months next ensuing" to draw merchandise from the store of the mercantile house of Livingston and Bell. 56

When Forney did return to Utah in the spring of 1860, it was to face an investigation for the way he handled the finance of his Superintendency. Surveyor General Stambaugh, a federally appointed officer

54 James Lynch and a number of fellow dischargers were enroute to California when Forney overtook them at Beaver, Utah. Being short handed, the Superintendent employed Lynch and several others to accompany him into the Mountain Meadows area. Lynch later made out an affidavit openly indicting the Mormon people for the crime and points a special finger of accusation at John D. Lee. Forney's association with the latter and his general friendliness to the people of the country were highly aggravating to Lynch and caused him to remark that "Forney engendered antipathy in them [the Mormons] toward the judiciary." However, Lynch's testimony may have been swayed by a personal animosity for Forney, whom the discharged teamster felt did not pay as much as he had promised. See an affidavit of James Lynch sworn to before Judge Eckels on July 27, 1859, Cumming's Papers.

55 Letter of Governor Cumming to Acting-Commissioner Greenwood, November 17, 1859, ibid.

56 Livingston and Bell and Company were the executors of the fund and supplies left by Forney for running the superintendency during his absence. See agreement between Forney and Livingston and Bell, October 12, 1859, ibid.
who had entered upon his duties but a short time before, and a Major Montgomery from Camp Floyd were appointed to conduct the investigation. They began their work in April of 1860 and held forth until the first week of June.\(^57\) Unfortunately, neither the Deseret News nor the Mountain\-taineer, from which this account is drawn, state the charges or tell the results of the investigation. However, the general tone of their writing leads one to believe that these two newspapers, at least, felt that the Superintendent was unjustly charged.\(^58\)

The activities of the Superintendent of Indian Affairs are in themselves important, but the fact that Cumming assumed the responsibili\-ties of this position is of greater importance. A congressional Act of March 1857, authorized the President of the United States to relieve at his discretion the territorial governors of what had traditionally been their function as Superintendent of Indian Affairs.\(^59\) Brigham Young had served in this dual capacity,\(^60\) and a number of other governors in other

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\(^{57}\) See the Deseret News, April 25, 1860, and the Mountaineer, June 9, 1860.

\(^{58}\) Ibid.

\(^{59}\) Pomeroy, pp. 16-18.

\(^{60}\) The Organic Act, Section II, specifies that the Governor "shall perform the duties and receive the emoluments of superintendent of Indian affairs." Under these provisions, Brigham Young performed the dual responsibility during the entire course of his incumbency. In 1857, however, Brigham Young illustrated typical color and character by demanding pay for both functions under the recently passed legislation. He frankly declared, "I do think that, inasmuch as I perform the duties of both offices, I am entitled to the pay appropriated for it, and trust that you will so consider it." However, Young was hardly sanguine about receiving increased pay as he then adds, with a note of resignation, "Of course you will do as you please about paying..."

Commissioner of Indian Affairs James W. Denver did just this, declaring the claim invalid on the count that two salaries cannot at the same time be paid one person, as well as the fact that Young had become superintendent by virtue of his appointment as governor. See Annual Re-\-port of the Commissioner of Indian Affairs, 1857, pp. 310-314.
territories continued to do so until 1871 when President Grant relieved
the last governor of such duties. With his appointment coming shortly
after this legislative enactment, Cumming was among the first governors
to be commissioned under the new provision which nullified the clause in
the Organic Act specifying that the Governor "should perform the duties
and receive the emoluments of Superintendent of Indian Affairs." 62

However, Forney's departure restored the responsibilities to the
Governor. Cumming filled the position in a vigorous fashion, assuming
full authority over the agents of the superintendency and re-appraising
the farm system of maintaining and civilizing the Indians. 63 William N.
Rogers, a newly appointed agent, was directed to go to a remote Indian
farm and ordered to bring about its effective operation. 64 By one de-
vice and another, Agent Rogers avoided complying with the Governor's in-
structions and remained inactive in Salt Lake City. Although severely
tried by the agent's insubordination, Cumming was more disturbed at the
inefficiency of the farming system and expressed his dissatisfaction to
Forney and the officials of the office of Indian Affairs in Washington. 65

61 Pomeroy, pp. 16-18. 62 The Organic Act, Section II.
63 See letters of instruction from Cumming to agents, November 16,
1859, Cumming's Papers.
64 Ibid.
65 Cumming addressed letters to Dr. Forney in Washington on Novem-
ber 17, 1859, and February 15, 1860, in each of which he vigorously at-
tacks the system of Indian farming in use in Utah. In his opinion:
"the whole system of farming for Indians, whether for encouraging
their inclination for industrial pursuits, or any economical arrange-
ment, is unreasonable and utterly at variance with the experience of
the past....I will state, that my experience [Four years as superin-
tendent of one of the most populous Indian Superintendencies in the
United States] has induced me to believe that the male Indians cannot
be induced to labor, under any circumstances, and that the whole
system is false and unreliable, tending exclusively to the advance-
ment of the interests of Superintendents, Agents, Traders, Interpreters
etc." Ibid.
Relations with the Territorial Secretary of State

In addition to the portion of his duties that called for cooperation with such territorial officers as the Indian Superintendent, Cumming was closely associated with the territorial Secretary of State. During the former's term of office, two officially appointed secretaries served, as well as a secretary pro tempore that the Governor himself had appointed while he was at Camp Scott. Secretary John Hartnett, to whom we have referred in an earlier chapter, was appointed in the summer of 1857 and held the position officially until his death on March 15, 1860. However, Hartnett's active service had ceased during the previous September, when he left Utah to care for pressing personal business in St. Louis.

Cumming acted unofficially as secretary pro tempore during the year between Hartnett's departure and the arrival of the new Secretary of State Francis H. Wootton in September of 1860. Wootton, in turn, served as acting Governor for a time after Cumming's own departure from the territory in May of 1861.

66 Secretary John Hartnett served, with certain lapses, from the time of his appointment in August of 1857 until the time of his death in March of 1860. In the summer of 1860, his place was filled by Francis Wootton, who held the position until Cumming departed. During Hartnett's prolonged visit to the States during 1858, Cumming appointed J. W. McCormick to serve in his stead. See letter of Mrs. Cumming to Anne Cumming, April 21, 1858, ibid.

67 A letter of Chief Comptroller Medill to Assistant Secretary of State John Appleton, March 1860, tells of Hartnett's death and makes inquiry of how to handle his back pay. Ibid.

68 The San Francisco Bulletin, November 25, 1859, told of Hartnett's approach to St. Louis and said the following of the purpose of his visit: "He has no other object in view than paying his annual taxes, collecting dividends due upon his stocks, and looking after his property, of which he is possessed of a comfortable amount." Newspaper clipping, ibid.

69 For an account of the governor's departure from the territory see the Deseret News, May 22, 1861.
The duties and functions of the Secretary of State are listed as follows by the Organic Act:

...There shall be a secretary of said territory, who shall reside therein, and hold his office for four years, unless sooner removed by the president of the United States; he shall record and preserve all the laws and proceedings of the legislative assembly hereinafter constituted, and all the acts and proceedings of the governor in his executive department; he shall transmit one copy of the laws, and one copy of the executive proceedings, on or before the first day of December in each year, to the President of the United States, and at the same time, two copies of the laws to the speaker of the house of representatives, and the president of the senate, for the use of congress. And in the case of death, removal, resignation, or other necessary absence of the governor from the territory, the secretary shall have, and he is hereby authorized and required to execute and perform all the powers and duties of the governor during such vacancy or necessary absence, or until another governor shall be duly appointed to fill such vacancy. 70

Although not specifically enumerated above, one of the Secretary's chief duties was dispensing and accounting for appropriations covering the national government's share of territorial expenses. At this time, the appropriation to Utah was $20,000.00, a large part of which was used for payment of the legislative expenses. 71 Not only were per diem and mileage paid from this fund but also such sundry expenses as rent, and the purchase of furniture and supplies. 72 The Secretary likewise handled the important matter of public printing and paid for it from these

70 The Organic Act, Section III.
71 Appendix to the Congressional Globe, 34th Cong., 3rd Sess., pp. 56-57.
72 Considerable insight into the duties of the Territorial Secretary can be obtained by studying the "Secretary of State Correspondence Folders for the Years 1857-1861," Territorial Executive Records. The Deseret News, December 7, 1859, inveighs against the lack of consideration both Cumming and Hartnett had shown the Legislative Assembly. This article also reveals a great deal about the sundry functions of the Secretary of State.
funds.73

In performing these functions for the territorial legislature, John Hartnett was extremely reluctant to incur expenditures, and, as a consequence, was never popular with the Mormon legislators.74 Legislative antipathy for Hartnett reached its climax during the session of 1859-60 at which time Hartnett had absented himself from the territory without giving the Governor funds to meet the needs of the legislature. As is the wont of legislators, the Utah solons gave loud vent to their inconvenience, while the Mormon newspapers strongly hinted that Hartnett was actually dishonest.75

73 In writing of printing of public documents in the territories, Pomeroy, p. 31, says: "No other charge against the national government was so attractive and accessible a temptation to underpaid and ambitious federal officers. Clear cases of printers who paid in money for their contracts were exceptional, but secretaries generally awarded contracts to newspapers expected to advance their party or personal political interests.... According to a former secretary of Idaho, (Wm. B. Daniels to Seward, November 22, 1865, State Appointments File), 'the Secretary holds more power in his hands than the Governor...He can make and unmake men at pleasure.'"

There is no evidence that Hartnett sought to undermine the Governor or accepted bribes from any of the territorial papers. He did, however, tell Superintendent Forney, whose office was in the same building as Hartnett's, that he invested $400.00 in the Valley Tan Newspaper. See Journal History, entry of May 18, 1859.

74 Deseret News, December 7, 1859.

75 Seth Blair, editor of the Mountaineer newspaper editorialized on December 17, 1859:

"Would it be reasonable in us to ask the paying departments in the big Capitol to compare the bills rendered there with the articles and their cost furnished here? An attempt was made at just this sort of an accounting during the term of Secretary Wooton but no record of the findings and conclusions is available. The rapid turnover of officers in the post of Secretary of State and the general turmoil of the political situation would likely have made any degree of accuracy in such a study extremely difficult. See directive of Acting-Comptroller William Hemphill Jones, who acted as Comptroller for a time after Medill's resignation in 1860, under date of October 27, 1860, "Secretary of Treasury Department Correspondence," Territorial Executive.
During the summer of 1859, Secretary Hartnett had been granted a leave of absence provided that the Governor also approved. Governor Cumming was hesitant to be without the services of the Secretary at this time and accordingly withheld his permission. A misunderstanding ensued with Hartnett contending that Cumming had originally granted the leave and subsequently changed his mind, while the Governor stoutly maintained that he had never consented and at best had asked only for time to consider the propriety of the proposed leave. In any event, before the Governor made his final stand on the issue, Hartnett had purchased a team and wagon with which to make the trip, and, because of the money he had spent in preparation, the Secretary refused to be dissuaded from his plans.  

According to Cumming’s contention, Mr. Hartnett left without making ample provisions for the performance of his responsibilities and, as the Legislative Assembly convened in December of 1859, the Governor openly declared that he was confronted with caring for legislative needs with no funds. He very bitterly denounced Hartnett for leaving him in

Records. We believe that there has been some trifling degree of—we will not say what—going on in these matters. A man’s salary is one thing and perquisites another....We have a sort of half-nurtured idea that there is a class of men in the Great Republic who suck the milk of one portion of the nation to give them strength and sinew to tread on the necks of the balance. We would not for millions say that our most honorable and high-minded Secretary is one of that class. The display of his accounts current would probably entirely dispel such an idea. Hence, it would not be amiss to have those accounts closely scrutinized; of course entirely for the sake of his reputation.”

76 Letter of Secretary of State Cass to Hartnett, July 12, 1859, Cumming’s Papers.

77 Letter of Cumming to Cass, December 15, 1859, ibid. Also see the three cornered exchange of letters between Cumming, Cass, and Hartnett that took place during the winter of 1859-60, ibid.

78 Ibid.
such a predicament and even went so far as to recommend Hartnett's removal on the ground that he was a liability to the public service.79

However, after his fury had abated, it was found that Hartnett had left in the hands of a Stephen DeWolfe of Salt Lake City a rather large sum of money as well as sundry supplies with which the more pressing demands of the occasion were met.80 The remaining obligations were cared for later.

79 Ibid. Also see letter of Medill to Cass, January 17, 1860, State Department Territorial Papers. The administration showed little inclination to remove the Territorial Secretary. Secretary Cass evidently asked the Comptroller what he knew of the affair and received a reply that largely vindicated Hartnett. [See following footnote.] Comptroller Medill felt that the Secretary's absence was "susceptible to explanation" and erroneously assumed that Hartnett was either back in the territory "or on his way thither".

80 See Cumming's statement that DeWolfe had met the expenses of the Legislature with drafts drawn by him under the authority of Mr. Hartnett, in a letter from Cumming to Cass, February 27, 1860, wherein the Governor evinces a "forgive and forget" attitude. Cumming's Papers.

This whole affair has some remarkable and perhaps illuminating aspects. While Cumming was making ready for the annual session of the Legislative Assembly during December of 1859, he either knew nothing of the funds left in the hands of Mr. DeWolfe or he sought to create the impression that he had no knowledge of them. He roundly denounced Hartnett for a malfeasance of duty and on this grounds requested his removal. Later, in February of 1860, he acknowledges that, in spite of his earlier concern, the Legislative Assembly was taken care of with funds left in the hands of DeWolfe by Hartnett for that purpose. It seems difficult to conceive that the Governor could have been in complete darkness concerning the arrangements Hartnett made with DeWolfe as he implied in his letter of December 15. If nothing else, the hue and cry raised in the local press would have brought DeWolfe to the fore with his funds and supplies prior to the convening of the legislature. It seems safe to assume that Cumming's attack against Hartnett was no more than an expression of his personal pique toward a Secretary that had twice left the territory against the Governor's advice. The Governor's relation with Hartnett was usually most cordial and the Secretary never seems to have been openly associated with the opposing judiciary party though, as previously stated, he was part owner of the Valley Tan Newspaper which was the voice of Gentile Utah of the period.

Although Secretary Hartnett was extremely unpopular with the citizens of the territory, having been evicted from his rented office by Landlord Hiram B. Clawson for damaging the building [Journal history, entry of July 7, 1857 and later accused of dishonesty in administering government funds [Deseret News, December 7, 1857], Hartnett's relation to the Governor and to the people of Utah was one of unconcern rather than avowed
from funds received by Hartnett while in Washington during the fall of 1859.81

Incidental Administrative Duties

Aside from duties of law enforcement and legislation, the territorial administrative officers were called upon to perform a variety of incidental functions. One of the more important of these was aiding displaced persons. During his first weeks in Salt Lake City, the Governor had interviewed and offered the government's protection to all who sought to leave the territory. Because Brigham Young had, as a defensive measure, placed Utah under martial law in September of 1857, ingress and egress had been restricted. This action on Young's part had resulted in numerous accusations that people were being held in the territory against their will; consequently, the Governor opened his doors and offered federal protection to all who wished to leave. Seventy-eight persons availed themselves of antagonism. This lack of concern was likely the result of preoccupation with his affairs in the States and his own health.

81 Writing in reply to an inquiry from Secretary Cass of the State Department, Chief Comptroller Medill gave the following information concerning the actual financial provisions made by Hartnett in behalf of the Territorial Legislature:

"...Mr. Hartnett, who fills that office, [Secretary of State] in Utah, is amply supplied with means to meet every Exigency of the service. The last adjustment of his accounts at Treasury, he was found to be indebted to the United States, on account of the Expenses in question, to the extent of $8,615.30. When in this City in November last, Mr. Hartnett drew a requisition for additional funds, and on the 28th of that month, an advance was made him of $11,000.00 on the same account, making the sum at his disposal, for the service of the present fiscal year, nearly equal to the usual annual appropriation for such exigency, namely $19,615.30." January 17, 1860, State Department Territorial Papers.
the offered aid.  

After the rush of this first group, the Governor continued to receive petitions begging for help in locating and effecting the removal of persons supposed to be in Utah. Most of these involved no legal action, and the Governor and the Secretary of State both went to some effort to secure the desired information and render the assistance requested. At other times, such as in the case of Henry Polydore vs. Samuel W. Rich, in which the plaintiff's daughter Henrietta was taken by court order from the home of Rich, and in the case of the Danish Hastrut Sisters, legal help was rendered and fees were charged. Such cases as these were relatively rare, while the majority of people that sought governmental aid in behalf of some loved one were either unable to learn of their whereabouts or, in case the sought for person was found, private arrangements were made.

Most of the relations and functions discussed above were the result of the performance of duties that originated in federal legislation. As briefly mentioned earlier, there were a group of territorial laws that required certain duties of the Governor as well as created offices that to varying degrees were under the jurisdiction of the executive department. Section II of the Organic Act contains a clause that might be termed

82 See Alfred Cumming's invitation to all persons wishing to leave the Territory as recorded in his letter to Secretary Cass, May 2, 1858. See also the dispositions made by the individuals that responded to his invitation. Cumming's Papers.

83 See correspondence of the summer of 1858 for many such inquiries and the replies of the Governor and Secretary of State, ibid.

84 The State Department Territorial Papers, 1853-59, contain considerable information concerning the two cases mentioned above. They both involved young girls who had fallen "prey" to Mormon proselyting and had left their homelands and journeyed to Utah. See statement of the firm of Mc Cormick and Browne for services and cash advances in behalf of Henrietta Polydore, August 29, 1859, and Attorney General Wilson's bill to the State Department for services rendered in behalf of two Danish nationals, December 24, 1859.
a "catch-all" which specifies that the Governor "shall take care that the
laws be faithfully executed."85

To aid in executing the law, the territorial legislature created
a number of offices which came into relation with the Governor by merit
of the functions they performed. An Act of 1855 provided for a Territorial
Marshal, who was to be elected by a joint vote of both houses of the legis-71
lature for a four year term.86 The Marshal was required to file a bond
for $20,000.00 with the Secretary of State and, in accordance with Section
II of the Organic Act, was commissioned by the Governor.87 The duties of
the office were:

...to execute all orders or processes of the supreme or district
court, in all cases arising under laws of the Territory, and such
other duties as the executive may direct, or may be required by
law pertaining to the duties of his office.88

It is herein obvious that other than his duties in connection with
the courts, the Marshal was at the Governor's call. During Cumming's stay
in Utah, a Mormon by the name of John Kay served as Territorial Marshal.

His aid to the Governor in executing the law was well exhibited during and
after the District Court Trials in Provo in March of 1859. At that time,
when Judge John Cradiebaugh called in the array to act as a posse, Kay was
in Provo on legal business and wrote the Governor reporting this turn of

85 The Organic Act, Section II.
86 "An Act in Relation to Marshals and Attorneys," Acts, Resolutions
and Memorials Passed at the Several Annual Sessions of the Legislative
Assembly of the Territory of Utah (Great Salt Lake City: Joseph Cain, 1855),

87 The Organic Act, Section II.

88 "An Act in Relation to Marshals and Attorneys," Acts, Resolutions
and Memorials 1855, pp. 140-141
events as well as the general attitude of the city's residents. During the whole episode, the Marshal kept the Governor well informed.  

The role played by the army in the Provo Court proceedings stirred Mormon sentiment to such a pitch that it remained in an agitated state even after the army had returned to Camp Floyd. During this period of unrest, a vast number of rumors were extant about the oppressive intent of the army as well as of Mormons arming to meet the rumored threat. Mr. Tomlinson, likely of the Indian agency, reported a body of twenty-five or thirty armed men in the neighborhood of Goshen which he first took to be horse thieves but subsequently came to believe were Mormons. In an effort to determine how accurate this and other reports were, the Governor dispatched Marshal Kay to the Goshen area. Kay made a thorough investigation of the matter in the town, patrolled the surrounding country without discovering any unusual circumstances, and made a report to this effect.

The Governor was responsible for the territorial revenue system through the offices of the Territorial Treasurer and the Auditor of Public Accounts which had been created by an Act of January 20, 1852. The Treasurer received all moneys and property belonging to the territory. He likewise disbursed money on the counter signature of the Auditor, and kept adequate books, receipts, and vouchers, which he presented to the Governor.

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89 Journal History, entries of March 9 and March 14, 1859.

90 Albert Tracy in his "Journal of Albert Tracy 1858-60," Utah Historical Quarterly, XIII (1945), pp. 68-69, says that "something like a thousand of these people (Mormons) are known to be organized and under arms for a purpose not explained."

91 House Executive Documents, No. 78, 36th Cong., 1st Sess., p. 25.


93 "An Act to Provide for the Appointment of a Territorial Treasurer and Auditor of Public Accounts," Compiled Laws of Utah, 1876 (Salt Lake City, 1876), pp. 90-91.
in an annual report on or before December 1. Revenues were gathered by county assessors and collectors and were turned over to the territorial treasurer after the county officials had taken their commissions. Though performing a function vital to territorial welfare, these county officers were not responsible to the Governor nor to the Treasurer but answered only to the county organization. The Treasurer was never burdened with too much money, as the territory was hardly financially able to pay taxes at all. In 1860, the treasurer's report showed total receipts from taxation to be only $9,892.07. Salt Lake County paid over one-half of this amount while Beaver County accounted for only $40.00. In what must have been an outburst of optimism, the Governor himself reported that territorial revenue scarcely amounted to $13,000.00 per annum.

During the army's stay at Camp Floyd, its neighboring town of Fair-

The commission received by the county assessors and collectors varied from county to county and was evidently set by the county court. Ten percent was the general figure, but, in counties of widely dispersed population, twelve percent was allowed. See "Auditors Papers," Territorial Executive Records, 1861.


In the same source, the following informative letter from the Beaver County Clerk to the Territorial Auditor is found:

"The total assessment of Beaver County for 1862, as shown by the assessor's returns, is $70,277.00 at one per cent will make $702.77 the whole tax for 1862, for this county. The County court at their June term allowed to the Assessor and collector twelve per cent for assessing and collecting."

See letter from Cumming to Cass, March 1, 1860, Cumming's Papers.
field, or "Frogtown" as it was popularly known, was one of the territory's more populous communities and had considerable taxable real property that should have been a valuable source of revenue. Much to the chagrin of the Legislative Assembly and the Mormon county officials from Cedar Fort, a small Mormon community located a few miles northeast of Camp Floyd, the so-called "camp-follower" residents of Fairfield refused to be taxed.  

They maintained that the territory had not rendered any service in their behalf and that, consequently, they would withhold their taxes and apply them to their own public works program. Though doubtlessly overjoyed to find this excuse for not paying taxes, the dwellers of Fairfield likely had another motive of a deeper nature behind their refusal to contribute to the territory's revenue. This was a deep-seated determination not to place themselves under Mormon domination of any kind. It should be borne in mind that Fairfield was located just across a small stream from the headquarters of the Utah Department of the Army, and that, furthermore,

99 On July 30, 1860, the citizens of Fairfield drafted a set of resolutions from which the following comes:

"The town of Fairfield has been built principally by the members of this meeting. Since it has been established no protection has been ordered by the county authorities, to either life or property; no improvements have been made by the county authorities. The citizens of Fairfield have built their own bridges, made their own roads, and all other improvements, without receiving any from the county in which this place is located.

"Resolved, further, that we will resist any attempts to enforce taxes in this place." Mountaineer, January 12, 1861.

100 James Rodeback, the county assessor for Cedar County, made a statement before Probate Judge Z. Snow on December 24, 1860, from which the following was extracted:

"...The affiant [Rodeback] went to Fairfield on this business, and as Judge Moore was one of the men whose names were on the resolutions, and who had been voted for a selectman of the county, and expected to be one, I commenced on him. He replied to me 'I will be damned if we are going to pay any taxes, you may rest assured of that; instead of us paying tax the county ought to pay us $30,00.00 for roads and bridges which we have built'" Ibid.

101 "Governor's Correspondence, December 8, 1859," Territorial Executive Records.
the strongly anti-Mormon Chief Justice Delano R. Eckels made his most permanent residence at the army post and in the community of Fairfield. Under the influence of the army and the Chief Justice, Fairfield became the hotbed of anti-Mormonism, and this refusal to be taxed was typical of the town's spirit.

Mormon indignation at the temerity of the citizens of Fairfield reached its apex during the summer and fall of 1860. The newspapers had considerable to say concerning the subject, and it occupied an important place on the docket of business for the Legislative Assembly as it met in December of 1860. As the date of the session approached, the Mountaineer, whose founding and owning editors were the prominent Mormon lawyers Seth Blair and James Ferguson, diagnosed the symptoms and matter of factly prescribed the following remedy:

The collection of taxes from Fairfield, near Camp Floyd, is an excellent suggestion. During the military reign in that delightful region Camp Floyd had been largely vacated by the army during the summer of 1860, Camp Floyd and its outposts, of which Fairfield was one, became as cities of refuge to the lawless of every class who could make safe their retreat thither. The batteries were ever on hand for their protection from the officers of the law, and their sabres ever ready to cleave down the ministers of justice.

No further legislation is necessary on the subject referred to than is now in the statutes. All that is wanted is their enforcement, and that can be done.

It is not known if the laws were immediately enforced, but, by the time this Mountaineer editorial was written, the army had been largely withdrawn. With it the main reason for Fairfield's existence was removed, and the problem likely took care of itself, as the town's population

102 Judge Eckels did not disguise his preference to live in the army camp and his residence there was a source of bitterness to the Latter-day Saints throughout his term on the Utah Bench. See Editorial in the Deseret News, April 25, 1860.

103 Mountaineer, November 17, 1860.
naturally followed its source of income as the army departed from Camp Floyd.

The Territorial Auditor of Public Accounts worked closely with the Treasurer. Like the Treasurer, he was appointed for a four year period by the Legislative Assembly and received his commission from the Governor. His duties included the auditing of all public accounts and the reception and verification of the legitimacy of all requisitions for public funds. Such officers as the Adjutant General and the Territorial Commissioner of Roads made annual reports to the Auditor of the financial condition in these departments; this information he conveyed in his general report to the Governor prior to the convening of the Legislative session each year. Somewhat of his functions pertaining to dispensing funds is illustrated in a letter from J. D. McCulloch, Probate Judge of Washington County to Auditor William Clayton:

The Appropriation Bill of the Territorial Legislature approved Jan. 18th, 1861 appropriated four hundred dollars to be expended under the direction of the County Court of Washington County on the road between Toquerville and Grafton and on the road from Santa Clara to Beaver Dams two hundred dollars of which has been drawn, by order from the county court, and by order from the county court I am required to state that the remaining two hundred dollars has been worked out according to contract, made by said court with Jacob Hamblin.

Although the responsibilities of the Treasurer and Auditor were extensive, they served only part-time in their capacities. In fact, in 1859 the Territorial Legislature passed legislation providing only $200,00


105 ibid.

per year for their compensation. This would lead one to believe that the amount of time spent in official duties was indeed limited. A number of other territorial officers, including the Federal Marshal and Attorney General, received no more than this, but in the case of law enforcing officers, other sources of income were provided such as mileage payment and fees for legal services rendered.

By the time of Cumming's administration, territorial legislation had also created a number of other administrative posts. A State Road Commissioner was among the earlier of these, for, as the title hints, this position came into being while Utah still hoped for immediate statehood in January of 1850. By the terms of this act, the Road Commissioner let contracts for construction and maintenance of bridges and turnpikes and was authorized to draw from the territorial treasury to finance such improvements. However, letters like the one previously quoted from Judge McCulloch of Washington County directly to the Auditor of Public Accounts would indicate that the position of Road Commissioner might not have been filled too energetically during these early and trying years.

In 1857 the legislature provided for a "Sealer of Weights and

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107 Utah, State Legislature, Utah Session Laws 1851-84, 8th Sess. (Salt Lake City, 1864), p. 10.

108 Utah, State Legislature, Laws of Utah 1856-57 (Salt Lake City, 1857), pp. 166-180. In spite of legal fees received by the Federal Marshal and Attorney, their incomes were too small to live on. Marshal Dotson stated in his resignation that his total income per annum had been less than $1,000.00 and that this amount was far too small to sustain a family. Mountaineer, November 12, 1859.

109 Compiled Laws of Utah, 1876, pp. 100-101.

110 Ibid.

111 Letter of Judge McCulloch to Auditor Clayton, July 17, 1862, Territorial Executive Records.
Measures. This post was to be filled annually by the joint election of the Legislative Assembly and the incumbent was authorized to appoint deputies for each of the counties except the one in which he resided. An Act of 1852 gave the Governor unusual control over the Inspector of Spirituous Liquor, as he not only personally appointed the Inspector, but could remove him at pleasure.

Another Act of 1852 created the office of Code Commissioner and prescribed its duties of office. The Code Commission consisted of three members who were to suggest more effective statutes and recommend revisions of the existing laws. By the provisions of this Act it became:

...the duty of the Governor and Secretary of the Territory, the Judges of the courts, the general officers of military and all salaried or territorial officers, to give said commission information in writing, on any subject....

The Act further provided that the:

...said code Commission shall keep a journal of their proceedings, and cause to be made, two copies of the laws by them proposed; one for the use of the house, and one for the use of the council, and as many of the proposed laws as can be prepared, shall be reported to the Governor, on or before the first days of April and November respectively in each year, or at the call of the Governor who shall report the same to the Legislative Session for their enactment or disapproval, with such recommendations as he may think best.

The Governor's Messages to the Legislative Assembly usually contained recommendation for certain new legislation and sometimes requested revision of existing statutes. The following letter from Judge Eckels

112 Compiled Laws of Utah, 1876, pp. 100-101.
113 Acts, Resolutions and Memorials 1855, pp. 222-223.
115 Ibid.
116 See Cumming's annual messages to the Legislative Assembly in Messages of the Governors, MSS in Utah State Historical Society, Archives Division, Salt Lake City, pp. 76-82. (Typewritten)
to Hosea Stout is indicative of the way in which it was hoped that administrative and judicial officers would aid in the creation of new laws:

I take a deep interest in obtaining a good code of laws in Utah, and...am ready to afford the Codifier any aid in my power without fee or reward...With this view I brought to the country the best of the new codes of practice that I could find in the States, which, if you desire, will be subject to your use...There is need of a thorough code for justices to render their proceedings uniform and make these courts useful and popular. There is also much need of a good fee law providing for the time and mode of collection and the amount to be paid with provision against extortion....

I wish you to understand that I am ready to give you any aid I can in the performance of your duty as Codifier of the laws and am not particular where I work, so I can aid in getting a good one. The labor necessary to complete your work must be great; much more so, than the mass of mankind will believe, or the public be willing and able to remunerate. The time now allowed you until the meeting of the Legislature is short, but I hope the work may be ready in due time.117

Unfortunately, the fine spirit of cooperation here displayed by Eckels did not result in a mutual and successful effort to recodify the law. The very revision of the court system which he sought was a threat to the cherished Probate Courts of the Mormons and precluded any use of the help he proffered.

The officers and functions of the Cumming administration considered above are by no means all-inclusive. In fact, certain aspects of his administration which adhere to his relations with the legislature, the judiciary, and the military have been purposely ignored as they merit individual and more complete attention in later chapters of this work. The dearth of day to day records of operation restricts what we can know of Cumming's administrative machinery and its operation. However, this dearth of records itself points to the important fact that it was an administration that was sharply limited in its scope and function. In our day of thorough-

going bureaucratic government, it is difficult to conceive that this handful of officers, virtually all of whom devoted only a portion of their time to governmental duties, could have administered the needs of 55,000 widely dispersed citizens. It is safe to conclude that, even in a territory that had recently been in rebellion against the federal government, there was adherence to the Jeffersonian concept that the government which governs least, governs best.

The remoteness of Utah Territory and the urgency of its affairs resulted in Cumming receiving a broad grant of power. His instructions were general and of the most scanty nature, while the administration relied upon the Governor's ability and experience to administer a firm and prudent government. Prudence and firmness were qualities with which Cumming was seemingly blessed as he consistently adhered to the policy of moderation which Buchanan's pardon had suggested, and, once he was committed to a position, he displayed the greatest determination to abide by it.

As an administrator, Cumming was above the average though possibly not brilliant. His steadfastness, his ability to work well with the people he governed, and the fact that he stayed on the job are all factors that distinguished the Governor as a more competent administrator than his fellow officers.

During a period when most of the appointed officers claimed to find the Mormons difficult if not impossible to deal with, Cumming's smooth functioning with them was indicative that they could be worked

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118 In 1860 the Governor estimated the territorial population to be "fifty-two or fifty-three thousand" though Mormon estimates ran much higher. See House Executive Document, No. 78, 36th Cong., 1st Sess., p. 45.
with and reflected negatively on the justness of Gentile charges of Mormon lawlessness.

In assuming the responsibilities of the Indian Superintendent and the Secretary of State, Cumming displayed his capacity for work. During the winter of 1859-60, he performed their functions as well as his own, and though he was seriously embarrassed by shortage of funds in handling the Secretary's obligations to the Legislative Assembly, he none the less discharged these duties in a highly creditable manner.
CHAPTER V

CIVIL AND LEGISLATIVE RELATIONS AND TERRITORIAL DEVELOPMENT DURING THE CUMMING ADMINISTRATION

The Seventh Legislative Assembly

The exploits of Major Lot Smith and the other daring leaders who successfully halted the oncoming Utah Expedition in the fall of 1857 are included in almost every history of Utah. A short time after the winter snows had relieved the defending militia of most of their duties, another campaign of a more subtle yet no less effective nature was waged. In December of that year, many of the foremost leaders of the Nauvoo Legion left their military duties in the canyons and retired to the seat of government in Salt Lake City to meet with their fellow legislators in the Seventh Annual Session of the Legislative Assembly of the Territory of Utah.¹

As the Nauvoo Legion's stand had been one born of desperation and determination, so the meeting of the Seventh Annual Session had but one major goal and that was to impede the progress of the threatening army and the civil officers that were to be imposed upon the Mormons. Other problems confronted the members as they were sworn in by the Secretary of State pro tempore William H. Hooper on December 14, 1857, but most of these were indirectly, at least, affected by the more important business of creating barriers to harass and bother the enemy.²

¹See "Journal of the Seventh Session."

²Ibid., p. 117. Also see Hosa Stout Journal, entry of December 14, 1857, p. 436.
By the terms of the Organic Act, the "legislative power and authority of the said territory [Utah] shall be vested in the governor and a legislative assembly." From the standpoint of Brigham Young and the rest of its Mormon members, the Legislative Assembly was proceeding in strict accord with these provisions, for Brigham had never been removed from his gubernatorial post and his four year appointment had not yet expired; hence, they argued with considerable justification that their actions were valid and binding. In spite of the impending invasion, many of the circumstances under which the legislature met did not deviate from the ordinary. Their elections, seating, and all else in the organization of the legislative body were in full accord with the stipulations of the Organic Act, which outlined the structure and functions of the assembly as follows:

...The legislative assembly shall consist of a council and house of representatives. The council shall consist of thirteen members, having the qualifications of voters as hereinafter prescribed, whose term of service shall continue two years. The House of representatives shall consist of twenty-six members, possessing the same qualifications as prescribed for members of the council, and whose term of service shall continue one year....

The thirteen men sworn into the council were among the foremost in all Mormondom, while the twenty-six men seated in the House of Representatives were only slightly less illustrious. Representation was not determined strictly by counties but by representative districts which in most cases were established without special consideration to county lines. In spite of this, the various members of the Council and the House of Representatives were listed as being from their respective counties, although they sometimes represented two and oft-times three counties.

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3 The Organic Act, Section IV.  4 Ibid.  
5 Ibid.  6 Journal of the Seventh Session," pp. 9-11.  
7 The Organic Act specified that after the first apportioning which
Two members of the First Presidency of the Church, Heber C. Kimball and John Taylor, were chosen as President of the Council and Speaker of the House, respectively, thus giving the First Presidency of the Church the three leading positions in the territory's legislative machinery. Such an arrangement was in keeping with church practice but was by no means necessary to gain support of the legislative body, as the entire group strongly approved of the action of Brigham Young, Governor and President of the Church.

The first days of the session were spent in setting up the various committees and in dealing with preliminary business. On December 21, the Council and the House of Representatives met in joint session, which they continued to do for the remainder of the forty day session. They took a leisurely ten day holiday for Christmas and New Year, meeting again on Monday, January 4, 1858.

Under ordinary circumstances, the members of both houses were paid from federal funds a per diem allowance of $3.00 and an allowance of $3.00 for each twenty miles travel in coming and going to the annual sessions. Unfortunately for the legislators of the Seventh Annual Session, was done by the Governor the legislature could prescribe apportionment. Consequently, apportioning changed as the sway of political fortune and growth of population dictated; see Section IV. In spite of a number of changes, the basic apportionment remained relatively constant during Cumming's term of office and the included roster from the Eighth Session gives some idea of the way the territory was apportioned and of its membership, see Figure 4.


9The Organic Act, Section IV, states "That no one session shall exceed the term of forty days."


11The Organic Act, Section II.
they were not meeting under ordinary circumstances and no federal appropriation was forthcoming.\textsuperscript{12} Despite this and other hardships, the spirit of the session was more one of united brotherhood than the usual contentious and debative mood that typifies legislative groups.

The Organic Act had authorized the Governor and the legislature to choose a site for the seat of government at the earliest convenient moment. At the same time, the federal government granted $20,000.00 for the erection of suitable public buildings in this territorial capital.\textsuperscript{13} Fillmore City in Millard County had been chosen for this purpose because of its location near the geographic center of the territory and on a national emigration route. In spite of this favorable location, the shift in population to Fillmore that the founders had anticipated never materialized, and, with each session of the legislature, the folly of their choice became more apparent. Therefore, in order to facilitate the meeting of the legislature, the inconvenient and inaccessible seat of government was moved from Fillmore to Salt Lake City by a joint resolution on December 15,

\textsuperscript{12}The following excerpt from a letter written by Chief Comptroller Mediill to John Hartnett, April 15, 1858, clearly states the situation:

"The several questions arising with regard to the payment of the Expenses attending the sessions of the Legislative Assembly of Utah Territory of 1856-57 and 1857-58, and with which you have been made fully acquainted,\textsuperscript{1} evidently he received this information on his midwinter trip to Washington from Camp Scott,\textsuperscript{2} having been submitted to the Hon’l Secretary of the Treasury, and since considered by him, he directs me to instruct you not to pay any of the Expenses attending either of the afore said sessions of the Legislative Assembly. When harmony is restored between that Territory and the United States, you will be furnished with full instructions how to proceed...." \textsuperscript{"Secretary of Territory’s Correspondence File, 1858," Territorial Executive Records.}

\textsuperscript{13}The Organic Act, Section XII.
While the inaccessibility of Fillmore had been regarded as a liability the year before, the Legislative Assembly of 1857-58 now located the place of their next session in an even more out of the way spot because of the threat of Johnston's Army. On January 22, 1858, the following resolution was passed:

...Resolved by the Governor and Legislative Assembly of the Territory of Utah: That the Seat of Government of Utah Territory is hereby removed from Great Salt Lake City to Iron County, and that the Legislative Assembly hold its next annual session in the Tabernacle in Parowan or such other suitable place as may be provided for the purpose, under the direction of the Legislative Council.  

On December 22, 1857, Councilor Albert Carrington of the district comprised by Great Salt Lake, Shambip, and Tooele counties, introduced a bill disorganizing Green River County and attaching it to Great Salt Lake County "for election, revenue and judicial purposes; and that the representative apportioned to Green River County is hereby appointed to Great Salt Lake County." This bit of "gerrymandering" may have had no real practical value, but, it did represent an effort on the part of the embattled legislature to place a legal obstacle in the path of the incoming forces. Isaac Bullock, who had been the Probate Judge of Green River County prior to the autumn withdrawal of the Mormons as the army approached, now sat in the House of Representatives and gave full support to the legislation that abolished the constituency that had sent him to the legislature.  

14 Letter of D. H. Wells to Cumming, October 7, 1858, "Governor's Correspondence File, 1858," Territorial Executive Records.  
15 Hosea Stout Journal, Vol. 6-8, entry of January 22, 1858.  
16 "Journal of the Seventh Session," p. 5.  
17 Ibid., pp. 9-11.
In order to further inconvenience the federal officials and possibly to give the Mormons grounds from which to declare the actions of the federal appointees illegal, the legislature passed an act requiring all federal appointees for Utah Territory to take an oath of office before a Probate Judge of the Territory. This act further declared that the official must be duly commissioned and the oath of office transmitted to the Secretary of the Territory before the office holder would be authorized to perform officially.\(^{18}\) The Mormons clearly had in mind Secretary William H. Hooper of their own administration\(^7\) The Organic Act Specified:

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The Governor and Secretary to be appointed as aforesaid \(^{7}\) shall, before they act as such, respectively, take an oath or affirmation, before the district judge, or some justice of peace in the limits of said Territory, duly authorized to administer oaths and affirmations by the laws now in therein, or before the chief justice or some associate justice of the Supreme Court of the United States\(^{19}\) With this clause of the Organic Act in mind, the legislators stipulated that their enactment regulating the qualification of territorial officers superceded and invalidated all former laws regulating the qualification of officers.\(^{20}\) Of all the legislative devices employed by the Seventh Annual Legislature, this act is the braggart assumption of power. In view of the Organic Act's authorization of the federal judges to hear oaths of office and the fact that all territorial legislation could be disapproved by Congress, this passage could have had no effect on the legality of the oaths taken by the federal officials in Camp Scott.

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\(^{18}\)Hosea Stout Journal, Vol. 6-3, p. 3.

\(^{19}\)The Organic Act, Section II.

\(^{20}\)Hosea Stout Journal, Vol. 6-3, p. 3.
In an effort to provide against the eventuality of the army's entry and the assumption of power by a gentile Governor, the Legislative Assembly also took steps to place control of the manufacture and vending of strong drinks in Mormon hands. An already extant act regulating spirituous liquors was amended to give the "Trustee in Trust of the Church of Jesus Christ of Latter Day Saints" the same power or control over ardent spirits as the governor had held previously.²¹

To insure that no money was turned over to the Gentiles, the Legislature abolished the territorial tax and emptied the treasury. Taxes that were then due were to be collected and used to liquidate certain obligations of the Auditor, to pay appropriations already made, and "to be drawn from the Territorial Treasury and disbursed to by the Quarter Master of the Nauvoo Legion."²² According to Hosea Stout, all public works were to thereafter be done on "labor tithing and under the control of the Bishops."²³ At the same time, a coordinate move was made by Brigham Young to establish a system of finances that would make the Mormons virtually independent of outside financial systems. Stout tells of the "Bank of Deseret" which was established in conjunction with this:

"Meeting at Tabernacle at dark to take in consideration the subjects of a Bank &c sic. It was decided to have a church Bank charter which was passed, called the "Bank of Deseret". President Brigham Young was elected President and Heber C. Kimball, D. H. Wells, and W. R. Hooper Directors. The capital stock of said bank to be founded on a property basis and the Bills redeemable in livestock. The people passed the act of incorporation with great enthusiasm and unanimity."²⁴

The actions of the Seventh Annual Session of the Legislative Assem-

²¹ "Journal of the Seventh Session," p. 5. ²² Ibid.
²³ Hosea Stout Journal, Vol. 6-8, entry of January 19, 1858, p. 441.
²⁴ Ibid.
bly were ideally suited to support the spirit of the autumn defense of the territory. Moreover, these actions gave some justification to those who accused the Mormons of tyranny. But, at the same time, the Legislative Assembly had fought a defensive battle which had: first, attached the disorganized county of Green River to Salt Lake county even after the army and camp-followers moved in, thereby attempting to retain sufficient votes to control the populous county of Great Salt Lake; second, they had abolished the system of revenue and completely emptied the territorial treasury; third, an independent economy had been established which, in the eyes of Utah's economic historian Leonard Arrington, proved to be extraordinarily successful; fourth, they declared the provisions of the Organic Act authorizing the federal judges to take oaths of office to be null and void; fifth, they moved the seat of government into a remote place from which they could easily depart to even more isolated parts; and finally, they had placed such touchy matters as the control of strong liquors in the hands of the church.

From the standpoint of the federal government, all of these acts were without validity, as the Governor was an integral part of any territorial legislature function and Governor Cumming had, of course, been unable to fulfill his legislative duties because of his isolation in Camp Scott. On the other hand, these measures constitute a series of neat efforts to block the federal government. Although there is no intimation that such was the case, many or most of the legislators must have realized the futility of what they did, but, none the less, their action complemented the "scorched earth" policy Young intended to follow if the Mormons

were forced to leave their homes in the face of an oncoming army.26

The question then arises, what became of the legislation passed by the Seventh Legislative Assembly? The Mormon policy of resistance and "scorched earth" was abandoned and a peaceful settlement made, but little was said about this legislation. By the very paucity of materials relating to these enactments, it appears that both the Mormons and Governor Cumming were content to include the legislative deviation of the winter in the pardon granted by President Buchanan.

Cumming and the Legislature

In earlier chapters of this work, reference has been made to the cordial reception given Governor Cumming in Utah.27 Once the Mormons were satisfied that the Governor meant to work with them, he was accepted with open arms and openly praised for his good works. However, federal colleagues often inferred and occasionally stated openly that Cumming was the tool of the Mormons and that he had little power to act on his own initiative.28 The accuracy of these claims is of real importance in several respects; first, an understanding of Cumming's true stature is of importance to a study of him and of his administration; and second, and of more importance, some light is cast on the broader controversy that raged between the Mormons and the federal appointees during the next thirty years. If Mormon assertions of friendship and cooperation were only a front founded on self-interest rather than a sincere admiration, it reflects

26 Letter of Cumming to Cass, May 2, 1858, Cumming's Papers.

27 Supra, p. 40

28 For Cumming's relations with the Latter-day Saint people see "The Utah Expedition," The Atlantic Monthly, Ill (April 1859), p. 486. Also see Journal History, entry of May 13, 1858.
negatively on their claim that they were a just but persecuted people. If, however, the Governor were his own agent, and were able to make his own decisions and abide by them in the face of firm opposition from the Mormons, it indicates that, during his administration at least, the Mormons were willing to submit to just and fair controls. It also suggests that the antagonistic attitude displayed by the judiciary and to a lesser degree by the army was unnecessary.

The Governor's social contacts with the Mormons were most cordial but were evidently rather limited. During the early months of the Cumming's stay in Salt Lake City, Mrs. Cumming was often visited by one of Brigham Young's wives, and the Cummings made occasional trips with the leaders of the church that were social in nature, though matters of policy may likewise have motivated them. Later contacts seem to have been even less social in nature, as references to visits by church leaders are almost without exception of a business nature. The nature of the Cummings' social ties is perhaps best illustrated in the manner in which they left Salt Lake City in the spring of 1861. At this time, the Governor finished his business matters, and, late one afternoon, the Cummings left the city without informing anyone of the immediacy of their intended departure. It appears then that the course pursued by Cumming during his incumbency was not affected by great social affinity for the Mormons.

It is in the realm of his official relations with the Mormons, rather than in the area of social attachments, that the Governor's true position is revealed. A good share of his official involvement with Mor-

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29 Letter of Elizabeth Cumming to Anne Cumming, September 1, 1859, Cumming's Papers.

30 Deseret News, May 23, 1861.
mondom was with the Legislative Assembly which was almost completely comprised of Mormons, most of whom who were in high repute in the church. With these factors in mind, it is readily apparent that Cumming's dealings with this homogeneous body tend to reveal the extent of his subservience to the church.

During the fall of 1858, the Federal Judges Eckels and Charles Sinclair, the latter having arrived in the territory during the summer, made a trip in the company of John Hartnett and a body of soldiers to Fillmore, which according to their contention was the territorial capital, and there they ostensibly held a session of the Supreme Court.\textsuperscript{31} The Judges maintained that the Joint Resolution of 1856 removing the seat of government from Fillmore to Salt Lake City was without validity and that their action was the only legal course.\textsuperscript{32} During the preceding months, the Governor had almost without exception sided with the Mormons when any difference of opinion had occurred. He had exerted every effort to have the army stay out of Mormon communities, even going so far as to seek its removal from the territory. In the case of the location of the territorial seat of government, Cumming reversed his practice and supported the Judges. On October 6, Governor Cumming was visited by Brigham Young who had come to inquire about the Governor's position in this affair. Cumming told Young, "that he did not wish to go to Fillmore, but he thought the law required the legislature to meet there...."\textsuperscript{33}

The Mormons then launched an energetic program to convince the Governor of the folly of his conviction. The leader of this program was

\textsuperscript{31}Letter of George A. Smith, Journal History, entry of September 11, 1858.
\textsuperscript{32}Ibid.
\textsuperscript{33}Ibid, entry of October 6, 1858.
Daniel H. Wells, who by this time was acting as President of the Council in spite of the fact that Heber C. Kimball had been chosen to that post at the last session of the Legislative Assembly. The Governor met Wells and other prominent Mormons in the Church Historian's Office. The Journal History gives the following account of this meeting:

...The meeting was to consider whether according to law, the legislature should meet at Fillmore or Great Salt Lake City.

James Ferguson read a communication from General Wells to Governor Cumming, setting forth the reason why Great Salt Lake City was the place to hold the Legislature; and quoting law and precedents in favor of the course pursued by the Legislature, in temporarily changing the seat of government by joint resolution.

The Governor said he would write an answer at his earliest opportuni ty. After some conversation pro and con, the Governor retired.

The Governor appears to be firmly of the opinion that the law required the Legislature to hold its session in Fillmore.

This communication from Wells to the Governor was lengthy and well written. Because the Judges and the Governor felt that the Joint Resolution of 1856 which had made the temporary removal was illegal, Wells focused on disproving the validity of such claims. He points out that:

...By an Act of the Legislative Assembly approved January 19, 1854, (Revised Statutes, page 264) the validity of Acts and resolutions are made equal and each declared in force from the date of its publication in any public manner.

Wells then grants that the forefathers of our nation founded a two branch legislative system as a protection. He say there is no precedent, however, to prevent joint resolutions and, as evidence, calls to mind the "admission of Mississipi and Texas by joint resolution.

\[34\] Moses Stout Journal, Vol. 6-3, entry of December 17, 1858, p. 436.

\[35\] Journal History, entry of October 9, 1858.

\[36\] Letter of Wells to Cumming, October 7, 1858, "Governor's Correspondence File, 1858," Territorial Executive Records.

\[37\] Ibid.
finishes his letter with this paragraph:

That your Excellency has a legal right to make such suggestions as your good judgement may dictate for the future action of the Legislature no one can question; nor your right to veto any law or resolution they may hereafter pass. But that you can have any retroactive authority upon past acts of legislation I am sure you will not for a moment hold for yourself while your high sense of duty will not permit you to sanction on the part of others an unjustifiable infringement of legislative rights. Surely it is sufficient that in addition to the limits plainly prescribed to the Legislature, and the right of veto given to the Governor, Congress have reserved to themselves the right to nullify all Territorial enactments.38

In spite of Wells's efforts, Cumming was unmoved and in a few days replied:

...The resolution, which is relied upon for authority to change the seat of Government, was the result of the action of the members of the two branches of the Legislature, acting as one body; thus, violating the principles of the Organic Act, by attempting a form of legislation, which has, I apprehend, no precedent beyond the limits of this Territory; virtually neutralizing the power of the Council, by merging it in the Representative Branch; which destroys the individuality and independence of both branches of the General Assembly, and removes the Constitutional Check. The question appears to me, not as to the validity of a Joint Resolution, but as to the authority of a Legislative Assembly, to pass a Joint Resolution in Joint Session....39

After seeing that the Governor was firm in his decision, the Mor-

38 Ibid.

39 Letter of Cumming to Wells, October 11, 1858, "Governor's Correspondence File, 1858," Territorial Executive Records. Also, in a letter of August 21, 1857, Comptroller Medill had written the following to Secretary Hartnett: "The Sessions of the Assembly in Utah will continue by virtue of the 4th Section of the Organic Act forty days inclusive; and should be held at the Seat of Government, in the Capitol Buildings."

Though the seat of government had been changed, there was only one capitol building in Utah and it stood in Fillmore, so it is likely that the Treasury Department was anxious to see the $20,000.00 investment it had made in Fillmore be of some use. See "Secretary of Territory Correspondence, 1857," Ibid.
mons acquiesced, or at least compromised, and a plan was agreed upon whereby the assembly would convene in Fillmore first and then adjourn to reconvene in Salt Lake City. A note from Daniel H. Wells to Secretary of State Hartnett on November 16, 1853, elaborates:

It is arranged for the Legislative assembly to meet at Fillmore City, and immediately adjourn to this City. It is understood this course will meet with the approval of his Excellency Governor Cumming. It is understood that mileage is to be computed to Fillmore and no extra mileage is to be chargeable in consequence of adjourning over to this place.

When the legislature actually met on December 13, the members from the northern counties repaired first to Salt Lake City and immediately adjourned to the Legislative Hall in Fillmore. The southern members, including all those from Utah County southward, had gone directly to Fillmore where they also met on December 13. In order to organize the legislature for business, it was necessary that a quorum, or a majority of both houses, be in attendance. Thus it became necessary for the southern members, who comprised only a minority, to wait in Fillmore until sufficient northern members arrived from Salt Lake City on December 19. At this time, the legislature met officially and enacted one item

Writing to Cass on October 22, Cumming told of the Legislative Assembly's plan to comply with his wishes and said this of conditions in Fillmore:

"The present seat of Government is at a most inconvenient distance from the Center of population and holding the Session at that point involves an increased expenditure in mileage alone of about Thirteen hundred and fifty dollars. There are not suitable accommodations for the members or U. S. Officers; and the removal of Public Property will be attended with great expense." See "Governor's Correspondence File, 1858," ibid.

The election returns of 1853 give an interesting glimpse of Fillmore's relative political strength, as twenty-nine votes were cast and only three officers elected in the precinct, while Beaver, her neighbor to the south, polled 111 votes. See "Election Returns, 1853," ibid.

Letter of Wells to Hartnett, November 16, 1853, "Governor's Correspondence File, 1858," ibid.

Journals of the Council, p. 3. Ibid.
of business, namely that of adjourning the whole body to Salt Lake City.\textsuperscript{44}

This affair assumes a comic cast and seems to have taken place
only to satisfy the constitutional scruples of the Governor. It is diffi-
cult to understand just what Cumming's motives were in making this firm
stand, when it was manifest to himself and to all others that the proposals
of the Mormon Legislature were practical.\textsuperscript{45} In any event, the Legislative
Assembly had at the Governor's behest gone to great inconvenience for
which they themselves could see no real need.\textsuperscript{46}

\textsuperscript{44} It is evident that only the requisite number to make a quorum
in Fillmore made the journey. These were the officers of the body and
such members that had no pressing business in Salt Lake City. Hosea Stout
was one of those that remained behind, and he busied himself with legal
business at the District Court which was then in session under Judge
Sinclair. Hosea Stout Journal, Vol. 6-8, entry of December 13-23, 1858,
p. 476.

\textsuperscript{45} Letter of Cumming to Cass, October 22, 1858, "Governor's Corres-
pondence File, 1858," Territorial Executive Records.

\textsuperscript{46} Although the concessions of the Mormons satisfied Governor Cum-
ming, the meeting of the legislature in Fillmore had some interesting re-
percussions that drew out for some time. According to the agreement, the
legislators were to be paid only for mileage to Fillmore; their return to
Salt Lake City was to be at their own expense. During the final days of
the session, it became obvious that Hartnett intended to pay for the mile-
age to Fillmore, but to economize by not paying per diem during the time
that the members were enroute to and from Fillmore. There is a good deal
of confusion surrounding just what Hartnett finally paid and what he with-
held. However, it is clear that in an effort to gain support for his
proposed mode of payment, Hartnett wrote Alexander Wilson, who was at that
time Territorial Attorney General, for his opinion and indicated that he
would abide by the Attorney's decision. Wilson reacted in favor of the
legislators, giving a lengthy opinion, of which the following is an ex-
ccerpt:

"The adjournment and time occupied in returning to this City /\textsuperscript{Salt
Lake City/} was a necessary consequence of this action /\textsuperscript{Of Governor
Cumming's insistence that they meet in Fillmore/}, and the per diem of
members, officers and attendants who met at Fillmore and removed to
this city continued to accrue to them, in virtue of their several of-

Wilson's reaction notwithstanding, Hartnett continued to be re-
luctant to make the payment and the members of the Legislature, after an
all night wait, tired and, according to Hosea Stout, went home without
drawing their per diem in order to give Hartnett time for a "sober second
This was not the only occasion during the Eighth Session that the Legislative Assembly had deferred to the Governor. By a legislative enactment of 1857, Green River County had been attached to Salt Lake County, and the representative districts had been reapportioned accordingly. In compliance with this reapportionment, William H. Hooper of Salt Lake City was elected as the representative of that district. During the summer of 1858, the Governor had reorganized Green River County, and one William J. Osborn of Green River was also elected to the House of Representatives. In spite of the fact that Hooper had received a greater thought, Stout relates, "The feelings are warm and some sharp sayings are the consequence." See Hosea Stout Journal, entries for January 22 and 24, 1859, p. 502.

An interesting sidelight to this is found in the Journal History, entry of January 26, 1859:

"The secretary paid President Young $155 and still owes President Young $15 for the five days going to Fillmore. He takes a strange course paying some their full claims, $120, while to others he only pays $105 and to some less."

The identity of the President Young in question has been a real problem to this writer; it appears, however, that the man in question was not Brigham Young but President Joseph A. Young of the Sevier Stake, as Joseph A. Young is listed on the legislative roll as being a member from Salt Lake, Tooele, and Shumip district rather than one from the southern districts where one would expect to find him if he were at that time President of the Sevier Stake of the church.


48Journal History, entry of December 23, 1858.

49When requested to furnish the committee appointed to investigate the claim of W. J. Osborn with all the possible information on his election, the Governor noted the following in pencil at the bottom of the paper upon which the request was made:

"...By order of the Probate Judge in conformity with law an election was held on the 2nd of August at which William J. Osborn was elected a representative for Green River County--and received his certificate from the Secretary of State in the form which, ...Illegible..., has been presented by that officer." See letter of Charles C. Rich to Cumming, December 27, 1858, "Governor's Correspondence, 1858," Territorial Executive Records.


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"...By order of the Probate Judge in conformity with law an election was held on the 2nd of August at which William J. Osborn was elected a representative for Green River County--and received his certificate from the Secretary of State in the form which, ...Illegible..., has been presented by that officer." See letter of Charles C. Rich to Cumming, December 27, 1858, "Governor's Correspondence, 1858," Territorial Executive Records.
number of votes, the Governor had issued a certificate of election to Osborn in hopes of stimulating the reorganization of Green River County. As the Legislative Assembly convened, a committee was appointed to investigate the claims of the contestants for the Green River seat. However, before the committee reported back, Hooper had bowed to the Governor's wish and tendered his resignation, which the House accepted. In spite of Cumming's determined stand on the seating of Osborn and the location of the seat of government, the Legislative Assembly of that year passed "a very complimentary Resolution in respect to Governor Alfred Cumming."

Late in 1860, Governor Cumming again displayed his ability to pursue a course in opposition to that chosen by the Mormons. During the summer and fall of that year, three new members of the judiciary had arrived in Utah. The two Associate Justices, Henry R. Crosby and Judge R. P. Flanniken, had met in Salt Lake City and, in keeping with the pro-

50 Brigham Young recorded the affair in a letter to George Q. Cannon on December 24, 1858:

"During the summer Governor Cumming authorized the organization of Green River and Carson Counties, of which you doubtless heard before you left. A member of the Legislature was elected from each county in consequence; although not according to the Laws of the Territory, and the requisite number allowed by the organic act was elected by the other counties according to law. Besides this brings up two more members than are allowed by Law to claim their seats. Mr. Osborne from Green River, was sutler to the sixth regiment of infantry, had a certificate of membership awarded to him, vs. Wm. H. Hooper, though the latter had some eight or ten votes to his one; but the Governor feels strenuous for Mr. Osborne to have his seat; so to accommodate Governor Cumming's feelings Captain Hooper resigns his seat and Mr. Osborne is admitted...." Journal History, entry of December 24, 1858.

The member elected from Carson County was the Mr. Clemens who, because of irregularities connected with the election in that county, was not issued a certificate. See letter of Hartnett to John Taylor, January 5, 1859, "Secretary's Correspondence File, 1859," Territorial Executive Records.

51 Deseret News, January 26, 1859.
cedure adopted by Eckels and his associates, had assigned themselves to judicial districts.\textsuperscript{52} When John P. Kinney, who had been in Utah at an earlier date as Chief Justice,\textsuperscript{53} arrived, he ruled against the practice followed by his predecessors in not only setting the time and place but also of designating the districts in which the judges should hold court.\textsuperscript{54} As a result of this decision, the earlier action of Flenniken and Crosby was declared null and void, and it remained for the Legislative Assembly to assign the judges to the several districts before court could legally be held. As no term of the District Court had been in session for more than a year, both Kinney and the Governor were anxious to call a special session of the Legislative Assembly for the express purpose of making the necessary assignments.\textsuperscript{55} The Mormon reaction to thus being called to the territorial seat of government only a month before the date of the regular session was anything but enthusiastic.\textsuperscript{56} The Journal History records the reluctance that typified the Mormon attitude toward the proposed extra session:

Judge Kinney is endeavoring to persuade the Governor to call a special session of the Legislature to assign the Judges to their several districts, it is rumored that the Governor will call a special session on the second Monday in November. I hope not, as it would discommodate many of the members.\textsuperscript{57}

\textsuperscript{52}See the Deseret News, August 29 and September 26, 1860, for accounts of the arrival of the two judges.

\textsuperscript{53}Neff, p. 170; p. 661. Kinney later became such a favorite with the Mormons that he was chosen as a delegate to Congress in 1863.

\textsuperscript{54}Journal History, entry of October 17, 1860.

\textsuperscript{55}See letter of Cumming to Caas, March 1, 1860, in which he tells of absence of the two Associate Justices, Cradisbaugh and Sinclair, and of Eckels inactivity and his planned trip east as soon as the roads were open. Cumming's Papers.

\textsuperscript{56}Journal History, entry of October 17, 1860.

\textsuperscript{57}Ibid., entry of October 18, 1860.
In spite of Mormon protest, the Governor issued a proclamation on October 20 calling the extra session of the legislature for November 12, 1860. In his message to the legislature, he charged the members with assigning the judges to their districts and with making more liberal provisions for defraying the various costs of holding court. In an effort to avoid a recurrence of the unpleasant relations of the Eckels period, he warned them against "appearing to oppose the Judges". He also recommended that the special session of November 10, 1860 be extended in time and be regarded as the annual meeting of the Legislative Assembly, which recommendation the legislators ignored. The accomplishments of this special session are indicated in the following message of Governor Cumming to the legislature:

I have this moment received your communication, of this date, November 18, 1860 announcing that the Legislative Assembly of Utah deemed it inexpedient to make any change in the time of the meeting of the regular session, and having passed such acts as they deemed sufficient to meet the exigency are now awaiting any communication from me previous to their adjournment.

I regret to perceive upon examination of the minutes that the Assembly has failed to make the appropriations necessary to the sustaining of the District Courts at the times indicated in the acts of assignment of the judges to their respective districts. I, therefore, respectfully decline to give my official assent to the proposed assignments, and can only express my regret that this omission will deprive the Territory of those benefits which I anticipated, until the Legislature in its regular session shall make the necessary provision for sustaining such courts.

Under existing circumstances I can perceive no necessity for longer continuance of the Extra Session, convened by proclamation on the 20th of October, 1860.  

58 Mountaineer, October 20, 1860.
59 Messages of the Governors, 1851-1876, pp. 82-14 to 82-21.
60 Ibid.
61 Letter of Cumming to the Legislative Assembly, November 13, 1860, "Governor's Correspondence File," Territorial Executive Records; see also the editorial in the Mountaineer, October 1, 1859. Although according to
Although Cumming here appears confident that more adequate financial provisions would be made at the regular session, the matter was more deeply seated than it appears at first glance. The Mormons hoped to retain control of the judiciary by curtailing the fees allowed for court expenses. During the time Eckels was in Utah, the Judges had continually complained at the inadequacy of legislative provisions for payment of fees and expenses for litigation in cases pertaining to the territory. The territorial legislators maintained that, although the grants were not lavish, they were sufficient for the territorial Probate Courts to operate on and that, if the Federal Courts were bound to function, these same grants should suffice for them as well. During the earlier period, Cumming had been satisfied to let the matter lie dormant, but, in 1860 in his effort to instill a better spirit into the relations between the new judiciary and the Mormons, he disapproved the bill perhaps with the thought that, given more time at the regular session, he would be able to push it through. However, in this context, the important factors were that the Governor called the legislators together in the face of Mormon reluctance and, after they had passed a bill to defray the costs of

the Mormons the territorial officers and the Judges of the Probate Courts were able to hold court on the fees allowed by territorial provisions, the federal judges were justified in their complaint that these provisions were inadequate. In something closely akin to a "Cold War", the legislature allowed less pay per day for witnesses and jurors than board and room cost. When jurors and witnesses for the federal courts appeared at the place of court, they were caught in a cost-price squeeze that was prohibitive to the successful holding of court. On the other hand, the Probate Courts were held in and for the various counties by county officers. The officers, witnesses, and jurors most often lived at home, and, in the event their services were required in a neighbor county, they lived with former missionary companions or friends of other circumstances so that the pay allowance sufficed to maintain them. For Judge Eckels' reaction to this situation see House Executive Documents, No. 78, p. 34.

63 Mountaineer, December 22, 1860.
holding court, Cumming considered it inadequate and vetoed it.

Cumming vetoed a wide variety of bills during his period in office. Many of these were disapproved only because of technical shortcomings which Cumming sought to have modified before he signed them, but others were vetoed in the face of real legislative opposition.64

Cumming displayed his ability to disapprove of territorial legislation during the Tenth Session of the Legislative Assembly, in January of 1861, by vetoing a number of bills that had received the united support of both houses. Among these was a memorial to Congress for the admission of the State of Deseret into the Union, which was of perennial and special popularity with the territorial legislators. Furthermore, he vetoed a tax bill despite determined pressure from the leaders of the Legislative Assembly because he felt its changes were not sufficiently thoroughgoing.65

64 For an example of the veto of one of these important bills, see the following message relating to the Revenue Bill of 1860 which indicates Cumming's immovable reaction toward legislation that failed to meet his approval:

"I have the honor to acknowledge the receipt of your communication in relation to the Revenue Bill in which the Council and House of Representatives concur in declining the suggestions contained in my note of this date. In reply to which I deem it a duty to reaffirm my former suggestions. Should the Assembly determine to adhere to the opinions expressed in their recent note I do not perceive the propriety of deferring the adjournment of the Legislature. But a sense of duty and a conviction of the propriety of the reasons communicated verbally through Honorable F. D. Richards cause me to return the Bill with the expectation that the Assembly will upon reflection be induced to act in conformity with the suggestions referred to. I shall therefore, await reply."

See letter of Cumming to Wells and Taylor, President of the Council and Speaker of the House, respectively, January 20, 1860, Cumming's Papers.

65 Letter of Cumming to Wooton, Secretary of Utah Territory, January 24, 1861, Cumming's Papers.

A number of the bills vetoed by the Governor during that year were dear to the hearts of the Mormons and the Governor's action must have
Cumming's relation with the Mormon people though always one of concern was never one of servile subservience but rather that of a Governor sincerely seeking to wisely direct those over whom he governed. It appears that on certain occasions he was headstrong and perhaps let his stubbornness overcome common sense, but often the positions taken by the Governor were wiser than those chosen by the legislature. A prime example of this wisdom was his attempt to provide a good start for the incoming justices of the District Courts in the fall of 1860. Although the Mormons had felt severely imposed upon by Eckels, Cradlebaugh, and Sinclair, there was perhaps none of them who felt the same relief that Cumming did at the removal of these three judges. His anxiety at the legislature's refusal to comply with the requests made by Judge Kinney and himself at the special session was based on concern that the unfortunate circumstances of the three years just passed might be re-enacted rather than a personal pique at the members for their refusal to cooperate.

The Political Scene and Utah's Elective System

On February 2, 1860, Governor Cumming estimated that the entire population of Utah was not in excess of fifty-three thousand and that, of

caused some disappointment. None the less, one of the final acts of that legislature was the following unanimously adopted resolution:

"Resolved by the Legislative Assembly of the Territory of Utah:
That we duly appreciate and highly approve of the impartial and dignified manner in which His Excellency Gov. A. Cumming, has presided over the executive department of this Territory; his firm and unflinching course among many serious difficulties, has won for him many friends. Long may he live, as a specimen of high-minded independence."
Mountaineer, January 19, 1861.

66 Articles from the New York Tribune, March 15 and 18, 1869, quoted in the Deseret News, April 13, 1860, tell that the judges had been removed "owing to the conflict between them and the Governor."
this number, at least fifty thousand were Mormons.67 The remaining three thousand were located chiefly in the area that was then variously known as Carson County, Carson Valley, or Western Utah, all of which is now within the confines of Nevada.68 The remaining Gentile population was spread throughout the territory with minor concentration in Camp Floyd, Green River County, and Salt Lake City. Because of the isolated nature of their community, the citizens of Western Utah were often able to subvert the designs of the Mormons; however, this was rarely accomplished by the use of the ballot box.69

On the other hand, because of its proximity to the Mormons, the small minority scattered throughout the rest of Utah was confronted with an altogether different type of problem. As a result of their troubled background, climaxed as it was by the recent invasion of the army and the Mormon "Reformation" of a year earlier, the citizens of Utah presented a highly unified front that might well have challenged a far more worthy political opponent.70 In the face of this, the Gentiles of Utah could hardly hope for success, but they did actively agitate against the Mormons and offered token opposition at the polls.71

Having controlled the legislature since the territory's inception, the Mormons were in a well defended position. Section IV of The Organic Act had given the Legislative Assembly and the Governor power to prescribe the "time, place, and manner of holding and conducting all elections by the people...."72 In accordance herewith, an Act of 1852 had stipulated

67 House Executive Documents, No. 78, p. 45. 68 Ibid.

69 See the report of Governor Cumming to certain of the "Brethren", Journal History, entry of December 23, 1858.


71 New York Times, July 20, 1858. 72 The Organic Act, Section IV.
that:

The votes given at all elections shall be in the following manner, to wit: each elector shall in an audible voice, declare the name of the candidate or candidates, and the office or offices, that he would have him or them fill.73

Voting viva voce was used for one election only, as 1853 saw the enactment of a thorough bill regulating elections which, among other things, abandoned this mode of voting.74 By the terms of this law, elections were held on the precinct level with the Justice of Peace acting as judge of the annual elections which fell on the first Monday in August.75 The clause of the previous law requiring an audible vote was amended to read:

Each elector shall provide himself with a vote containing the names of the persons he wishes elected and the offices he would have them fill and present it neatly folded to the Judge of the election, who shall number it and deposit it in the ballot box; the Clerk shall then write the name of the elector, and opposite it the number of his vote.76

Whether or not this legislation was passed specifically to monitor the votes of the populace, it afforded ample opportunity for just this sort of checking, as not only the precinct officers but also the county officers "Compared the votes with the names on the list" taken by the Clerk of the elections and then preserved the list for reference.77

The first Gentile offensive at the polls was launched in Salt Lake City during the summer of 1853.78 The bulk of the Gentile population that were settling in Fairfield and in Green River County were still in

74Laws of Utah 1851-1870, pp. 89-90.
75Ibid.
76Ibid.
77Ibid.
the process of locating themselves and, consequently, did little in a political sense during this election. However, certain of the colleagues of Judge Eckels recognized that the disrupted circumstances of the Mormons afforded a political opportunity, as they were busy rehabilitating themselves after their flight to the south. These men, consequently, met in Salt Lake City and nominated a "Union" ticket composed of "the more liberal and influential Mormons." Interestingly, they nominated such men as John Taylor, Jefferson Hunt, and Seth M. Blair for the identical positions in the House of Representatives they had held the previous year and for which the "people's" party without doubt also nominated them, as they again appear on the House rosters of 1858-59. In spite of including certain Mormons (who likely resented the use of their names), the "Independents" had little cause for optimism, and one writer for the New York Times accurately evaluated the situation as follows:

It is not at all probable that our candidates will be elected in opposition to the church ticket, for the section of the law regulating elections in this Territory, which provides that the vote of each elector shall be numbered, and that, when he has deposited it in the ballot box, "the Clerk shall write the name of the elector, and opposite it the number of the vote, will keep a number from voting who would otherwise do so."

Among the more energetic close colleagues of Judge Eckels appearing on the roster of the "Independents" were Albert G. Browne, who had served as the clerk to the session of the district court held in Camp Scott by Eckels, W. J. McCormick, who had been appointed as Secretary of State pro tempore by Governor Cumming and was at the time of the August elections serving as Attorney General pro tempore under an appointment of questionable legality made by Judge Eckels, and David A. Burr, who had been Surveyor General of the Territory.

See New York Times, January 20, 1858, for the "Union ticket. Also see "Journal of the Seventh Session," pp. 9-11.

New York Times, July 20, 1858
Members of the Legislative Council and Assembly

Elected at the General Election August 1st, 1854

Utah, Cache & Box Elder Counties

Councillor: James St. John
Representative: Jonathan C. Wright

Dawson

Councillors: James St. John & James Tun
Representative: Thomas J. Wheel & Russell Lum

Great Salt Lake

Councillors: Daniel Wills, Abel Cunningham, James Fergus, James Hurlbut & Richard Jordan

Jesse & Shumship

Councillors: James W. St. John & Samuel Hurlbut
Representative: John Miller

Utah & Cedar

Councillors: Leonard & W. W. Montgomery, John T. Hardy
Representative: Isaac Bullock & John Brown

Albert H. St. John

Returns of General Election for Delegate

August 1st, 1854

No. of Votes Received by W. H. Cooper

Utah, Cache & Box Elder Counties: 233

Wash.:

Davos:

Utah:

Great Salt Lake:

Truck:

Total: 10

Sanpete: 822

Millard: 122

Shumshup: 193

Great Salt Lake: 1318

Iron County: 222

Washington C.: 174

Fig. 5
It is clear that the "Independents" met with little success this year. However, just how the election ran is difficult to determine, for during this whole summer, the only newspaper in the territory, the Deseret News, was being printed and published from an office in Fillmore where it had stopped in its flight south during the spring.\(^{82}\) Not only was the Deseret News removed from the scene of the election in question, but it was also primarily concerned with matters dealing with the advent of the army and the new government and makes no announcement of any election being held that year.\(^{83}\) However, the Territorial Executive Records for the year do contain the usual abstracts and reports of the election's outcome.\(^{84}\)

As the time of the next election approached, circumstances had returned to something akin to normality and the people of Salt Lake City met on July 6, to nominate candidates for the several offices that were to be filled. The procedure of nomination used is interesting and significant. The Territorial Delegate to Congress, John M. Bernhisel was called to the chair, after which:

It was moved, seconded and carried that a committee of three be appointed by the chairman to prepare a list of candidates to be submitted to the meeting. The chairman appointed W. H. Hooper who succeeded Bernhisel as Territorial Delegate, H. C. Kimball of the church presidency, and E. Smith [Elias Smith, editor of the Deseret News and

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\(^{82}\)The Deseret News was not returned to Salt Lake City until the first week of September. See Deseret News, September 3, 1853.

\(^{83}\)See Deseret News, summer of 1858.

\(^{84}\)One interesting bit of information contained in the "Election Return File for 1858," was the comparative number of votes cast in Utah County, 1,576, versus the smaller number of 1,253 cast in Salt Lake County. The disparity of these figures to the relative number of people inhabiting each city is indicative of the extent to which the regular life of the Latter-day Saints was still disrupted by their migration to the south. See "Election Returns, 1858," Territorial Executive Records.
long time Judge of the Salt Lake County Probate Court to said committee.

After the committee retired, the meeting was addressed by the Hon. John Taylor, who highly complimented our late delegate to Congress for the course he had taken in the discharge of his duties; he was followed by the Hon. Hosea Stout.

On the return of the committee, their chairman, Capt. Hooper, reported the following list of names of candidates, of no significance in this context; hence, will be deleted...which were severally presented to the meeting and approved of unanimously.

The unanimity displayed at this "meeting of the citizens" was by no means unusual for the territory. In most counties, the church ticket candidates had no opposition and, consequently, received all the votes cast. The unanimity was greater when territorial officers were being elected than when county officials were chosen. The Election Returns almost invariably show a few individuals refraining from voting for particular county officers which, perhaps, indicates that personal antipathies and enmities existed. There is some indication, but it is hardly conclusive, that there was an increase in the number of divergent votes cast during the three elections that took place during Cumming's stay in the territory. Utah County seemed more inclined to deviate from the single slate system than were other Mormon counties, but even her venture into the field of multiple candidates was limited and cautious.

On the other hand, the counties in which a sizeable segment of the population was Gentile moved into the multiple ticket type election in

85 Deseret News, July 6, 1859.
87 See Abstract of Votes polled in General Election of 1859 in Utah County, "Election Returns, 1859," ibid.
considerable strength in 1859. The general election was not held in Carson County until October 25, at which time three slates of candidates ran for each office. The voters in two of the precincts voted for the same men, but the electors of Precinct Five, or the Genoa Precinct, voted for a different ticket and in almost every case had sufficient votes to elect their candidates. Inasmuch as most church members had been withdrawn from Nevada, the division between these two blocs of voters was likely drawn on some line other than church membership. It is possible that the "Walker River" party constituted the lesser of these two factions as it had, prior to these elections, declared itself as opposed to the faction at Genoa in Carson County. Despite these problems in Western Utah, it was in Cedar County that the election results produced real political upheaval. One N. V. Jones of Salt Lake City told of election procedure in Camp Floyd's neighbor town of Fairfield:

I was in Fairfield, on yesterday, the day of our general election. About 9 A.M., Judge Hickies superceded the acting justice of that precinct, and I will not attempt to explain, unless the importance of the soldier's votes required the interference of his Honor. After the polls were opened, Judge Hickies announced that they were ready to receive votes and that the United States soldiers could vote at the election. In a short time Fairfield and the poll were taken as by assault, and in less than an hour the town was filled with officers and soldiers, very many of them breathing out invectives against the nominations by the "Old Citizens".

I saw soldiers pass through files of the guard where they received tickets ready folded, and after depositing them, go through a side door to a saloon where liquor was being freely dispensed, probably the

89 See County Clerk Lovell's report of elections in Carson County, October 25, 1859, General Elections 1859, Ibid.

90 Ibid.

91 See Letter of Protest from Walker River Miners, Mountaineer, October 3, 1859.

92 For correspondence pertaining to the contested election at Fairfield, consult "General Elections 1859," Territorial Executive Records.
price of their votes.\footnote{Letter to the Editor, Deseret News, August 2, 1859.}

Judge Zerubbabel Snow of the Cedar County Probate counted and compared the votes and decided that most of the 768 votes cast were illegal as the voters were soldiers, teamsters, and other non-taxpaying residents of Fairfield. He consequently awarded the county offices to the "Old Citizen" candidates, which action was supported by the Governor and the Secretary of State.\footnote{See abstract and letter of Zerubbabel Snow reporting the contested election, "General Elections, 1859," Territorial Executive Records, Second Session, "General Election, 1859," ibid.} Members of the opposition in a fruitless petition to the Secretary of State questioned Snow's authority to cast out votes and to issue certificates of election to parties other than those having the majority of the votes.\footnote{Letter of G. P. Thomas and A. F. Chefffield to Secretary Hartnett, "Secretary's General Correspondence, 1859," ibid.} Snow justified his action by an act which was passed in January of 1859, as it had become obvious to the legislators that the transients in the service of the army and the freighting companies would for the immediate future, at least, comprise a significant portion of the territorial population. This act made constant "residency", defined as having been a resident for six months preceding the election, a requisite for both holding office and voting. Furthermore, it discriminated against soldiers, declaring that they could not act as jurors, voters, nor hold office unless they were residents prior to entering the service. A final provision specified that no person was a resident unless he was a taxpayer.\footnote{Acts, Resolutions and Memorials, pp. 90-91.}

The departure of both the army and Judge Eckels during 1860 removed, respectively, Fairfield's source of income and one, if not the chief,
instigator of anti-Mormon activities. As a consequence, Fairfield did not again disrupt the territory with the irregularities of her election, and greater quiet existed during the election of 1860.

Alienation of Territory

While the political and economic fortunes of Fairfield were destined to fade with the departure of the army, the star of Western Utah was on the ascendancy. As the flood of riches from the Nevada mines and its attendant influx of miners, lawyers, and businessmen rose, so rose the political unrest. This chapter of Utah's history, during which a large part of her territorial area was lost, is an interesting and little known development of the Cumming administration. It was a development that a remote territorial government could to little to avert, as the discoveries of precious ores, their exploitation, and the foibles of national politics bolted down avenues altogether alien to that desired by the parent government in Salt Lake City.97

Carson County had been attached to Great Salt Lake County for election, revenue, and judicial purposes during the Sixth Annual Legislative Assembly in January of 1857, its disorganization thereby preceding that of Green River County which was not attached to Salt Lake County until the following December.98 Upon his arrival, Governor Cumming reacted negatively to the disorganization of each of these counties and sought to

97 Cumming hoped that a restored county organization would satisfy the citizens of Carson County and thereby make possible the retention of the area within Utah. Journal History, entry of December 23, 1858.

98 Neff, p. 227, states that subsequent to Carson County's disorganization and attachment to Salt Lake County, the residents of Western Utah unsuccessfully sought annexation to California. Also see the Mountain, September 10, 1859.
bring about their immediate reorganization.\textsuperscript{99} Late in 1858 the Governor
suggested in regard to the right of the legislature to disorganize counties:

...If all the inhabitants were to leave a county, the legislature
would not have the right to disfranchise that county, and attaching one
county to another was equal to disfranchise and it \textsuperscript{7}the county\textsuperscript{7} ought
to be entitled to representation whenever the county was settled again
and also that it was unconstitutional to attach Green River and Carson
Valleys to Salt Lake County for judicial purposes...\textsuperscript{100}

It appears that the act disorganizing Carson County in January of
1857 had as its objective just such a disfranchisement of the local citi-
zens of the county as Cumming had said a disorganization produced. Efforts
had been made in 1856 to reinforce the Mormon population of Carson Valley,
and, when these efforts failed to accomplish the purpose of controlling
the lawless mining element that was ruling the county, it was attached
to Salt Lake County to insure Mormon control.

In spite of Cumming's concern for Carson County, no effort to re-
organize the county machinery was made until 1859.\textsuperscript{101} However, in keeping
with the desire of the Governor, a Mr. Clemens of that county was elected
to the Territorial House of Representatives, but the election took place

\textsuperscript{99}Cumming commissioned William A. Carter Probate Judge of Green
River County in July of 1858, but made no move to make a similar appoint-
ment for Carson County. See Carter's Commission, July 23, 1858, Cumming's
Papers.

\textsuperscript{100} Journal History, entry for December 23, 1858. In connection
with this, it should be borne in mind that by Territorial Law the Probate
Judge was authorized to proceed with the choosing and installing of the
other officers necessary to run a county. For information concerning the
appointment of Probate Judge Childs, his functions and success in the per-
formance thereof, see exchange of letters between Cumming and Indian Agent
Frederick Dodge of the Carson Valley Agency, Cumming's Papers.

\textsuperscript{101} See exchange of letters between Cumming and Indian Agent Fred-
erick Dodge of the Carson Valley Agency, dated October 24 and November 18,
1859, ibid. Also see "Governor's Correspondence, 1858," Territorial
Executive Records.
under such informal circumstances that Secretary of State Hartnett ref-
used to issue a certificate of election to Clemens. In a Journal
History entry that purports to quote the Governor, but is perhaps more
accurately the reflection of the Mormon concept of conditions in Carson
County, the following is recorded:

...Governor Cumming said he had letters from several persons in
Carson, and they all agreed that their best man was "Lucky Bill",
whom they hung. One man there said he believed every man, self ex-
cepted, deserved to be hung. They are a desperate set. One hundred
and eleven of them are entitled to vote.

Before officials arrived from Eastern Utah in the fall of 1859,
the "desperate set" in Carson County had taken positive steps to secure
their separation from the parent territory. On July 2, an election was
held where at least one faction believed that Indian Agent Frederick
Dodge of the Carson Valley Agency was elected as the "Representative of
our wishes to form a new Territory out of Western Utah." He received
instructions to proceed to Washington and to "forward our views". At
the same election, delegates were chosen to attend a convention to be
held at Genoa, Carson County, on the 18th of July for the purpose of con-
sidering the "public safety". This committee on "public safety" drew

102 Letter of Secretary Hartnett to John Taylor, January 5, 1859,
"Secretary's Correspondence, 1859," ibid.

103 Journal History, entry of December 23, 1858.

104 See letter from the Walker River miners protesting the action
of a Convention at Genoa. Herein it appears that this faction favored
Indian Agent Dodge as a messenger to Congress and that by some twist of
political fortune, Dodge had been rejected by the Convention in Genoa.
The protest states "that we believe that Major F. Dodge was elected
honestly by a large majority of the legitimate voters of Western Utah,
and therefore, we will not abide by the decision of the said convention..."
Mountaineer, October 8, 1859.

105 ibid. 106 ibid.
up a Declaration charging the Mormons with a long list of wrongs and pledged themselves:

"...To erect for ourselves a Territorial Government founded upon the republican principles of the Constitution of the United States. And that we will maintain and defend it to the best of our ability, and we look to the support and protection of the Federal Government and our fellow citizens in every part of the Union."

A few months earlier, the last of President Buchanan's originally appointed Federal Judges, John Cradlebaugh of Ohio, arrived in Utah. He was assigned almost immediately to the Second Judicial District of which Carson County was a part. For a variety of reasons, Cradlebaugh did not reach his district until August 2, 1859, at which time he announced his intent to hold court beginning on the 5th of October. About this same time, Judge John Childs, who as Probate Judge was legally authorized to establish a county organization, arrived in Carson County and began to perform his official duties. With a Federal and a Probate Judge both present in the county, Governor Cumming seemed to be confident for a time that matters would proceed more smoothly in that region.

If he expected John Cradlebaugh to exert any positive effort in behalf of avoiding a separation of Nevada and Utah, the Governor had grossly misjudged his man. Cradlebaugh was both vindictive and politically ambitious and nothing could better serve his motives than the creation of a new territory which would, of course, need a delegate to Congress.

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107 *Mountaineer*, September 10, 1859.

108 *Journal History*, entry of November 4, 1858.


110 *Mountaineer*, September 24, 1860.

111 Ibid.

112 Letter of Cumming to Frederick Dodge, October 23, 1860, Cumming's Papers.
from part of the area claimed by the Mormons. In less than a month after Cumming had expressed his confidence that affairs would take a turn for the better, Frederick Dodge, the newly elected "Representative" to bear Nevada's plea to Washington, wrote:

I desired Judge Childs to forward to your Excellency the returns of the late election. The whole affair is so complicated that it is almost impossible to ascertain the result. It appears however that the "Lynch Law" party have consummated their desire in repudiating the organization of the County. The same party have now addressed a letter to the President, and from which I have obtained the enclosed complication of falsehoods, and which I cannot permit to go to the President, unknown to your Excellency.

In January of 1860, Nevada further widened the breach between herself and the parent government in Utah by electing Isaac Roop as the first Territorial Governor. The first intimation that the federal government was aware of Nevada's efforts to gain independence came shortly thereafter in the form of a bill authorizing the appointment of a separate attorney and marshal for Nevada. It is difficult to say just what was the immediate significance of this legislation, but it appears that it constituted the first national step toward enabling Nevada to become a territory. At a later date, Marshal Grice, the newly appointed Federal Marshal for Utah passed right through Salt Lake City enroute to the rich minefields of Nevada where litigation and legal fees abounded.

Another and final phase of Carson Valley's history as part of Utah

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113 See article on the Utah Judiciary quoted from the Sacramento Union in the Mountaineer, November 24, 1860.

114 Letter of Dodge to Cumming, November 10, 1858, "Governor's Correspondence, 1859," Territorial Executive Records.

115 "Another Governor in Utah," Mountaineer, January 15, 1860.

116 Senate Bill No. 305, Territorial Papers of the United States Senate.

117 Mountaineer, September 26, 1860.
revolved around the appointment of the new federal judges for the territory. In the spring of 1860, Governor Cumming had finally been successful in securing the removal of Judge Eckels and his two associates, Sinclair and Cradlebaugh. Evidently Eckels and Sinclair accepted their removal with some relief, but not so with Cradlebaugh. Pointing to The Organic Act which declared the power of the President to appoint judges but not to remove them, Cradlebaugh refused to relinquish his seat on the bench of the promising Nevada region. Although past Presidents had successfully removed a number of territorial judges, it appears that Cradlebaugh was intent on enjoying the immunity of Presidential removal that the federal judges of the District, Circuit, and Supreme Courts had traditionally claimed. If the President was aware of Cradlebaugh’s intent to hide behind this precedent, he gave no indication of it, as he proceeded to appoint Chief Justice John F. Kinney and Associates R. P. Flenniken and Henry R. Crosby to the Utah bench.

By what appears to have been a preconceived agreement, Judge Flenniken laid claim to the Second Judicial District, and, immediately upon his arrival in Salt Lake City which was prior to that of either of his fellows, he announced that he had come as successor to Judge Cradle-

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119“Utah Judiciary,” Sacramento Union, as quoted in the Mountaineer, November 24, 1860.

120 This precedent began as early as 1803 in Jefferson’s unsuccessful assault on the Supreme Court through his effort to remove Associate Justice Samuel Chase by impeachment. See Andrew McLaughlin, A Constitutional History of the United States (N. Y.: Appleton, Century-Crofts, Inc., 1935), pp. 320-325.
baugh. 121 Flenniken waited until Judge Crosby arrived late in September, then the two of them met, and, in keeping with the precedent established by their predecessors, assigned themselves and the yet unarrived Chief Justice to the several districts. 122 Flenniken left at once for Nevada to begin his fight for control of the coveted district. 123 The attractions that the Second Judicial District held for Cradlebaugh were threefold: it promised unusual financial reward, unusual political opportunity, and a chance to vent his ire upon Utah. While Flenniken was likely without serious prejudice against the Mormons, the first two attractions were of a type to be as inviting to him as to Cradlebaugh. Unfortunately, a detailed account of the controversy and its outcome is not available, but there is no doubt that Cradlebaugh maintained his position as Judge until Nevada became a territory, after which he was elected as her first territorial delegate to Congress. 124

121 "Mountaineer, August 29, 1860.

122 "Utah Judiciary," Sacramento Union, as quoted in the Mountaineer, November 24, 1860.

123 Flenniken made a family affair of his trip to Utah and Nevada as he brought two sons with him, one of whom intended to be the clerk of Flenniken's court. For an account of their departure for Nevada see the Mountaineer, August 26, 1860.

124 William M. Cradlebaugh, "Biographic Sketch of John Cradlebaugh," found in Bancroft Collection, University of California, Berkeley. Microfilm in Brigham Young University Library.
CHAPTER VI

THE COURSE OF JUSTICE IN UTAH TERRITORY 1858-1861

Establishment of the Judiciary

The act which organized Utah Territory provided for a territorial court system consisting of a Supreme Court, a District Court, a Probate Court, and Justices of the Peace.  

1 By federal law, the Supreme Court consisted of a Chief Justice and two Associate Justices who met annually at the territorial seat of government.  

2 The law also required and authorized the territorial legislature to create three judicial districts and to assign to each district one of the Supreme Court Justices.  

3 By the terms of the law, the justices could choose the time and place of holding court within the respective districts; however, this prerogative could be exercised only while they were met as Justices of the Supreme Court.  

4 The judicial difficulties involving Judges Styles and Drummond that took place immediately prior to the dispatching of Johnston's Army cleared the Utah Bench and Buchanan was obliged to refill all three positions.  

5 After considering a number of candidates, Buchanan appointed

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1 The Organic Act, Section IX.
2 Ibid.  
3 Ibid.  
4 The Organic Act had assigned the function of specifying the time and place of holding court to the Legislative Assembly, but by an Act of 1856, this responsibility was removed from legislative hands and given to the justices. See House Executive Documents, No. 78, 36th. Cong., 1st Sess., p. 14.
5 Roberts, IV, pp. 198-199.
Delano R. Eckels of Indiana as Chief Justice and Charles B. Sinclair of Virginia and John Cradlebaugh of Ohio as the two Associate Justices. Judge Eckels wasted no time before repairing to the scene of his appointment and was present in the territory when the Mormon guerrilla troops engaged Colonel Alexander's forces on Henry's Fork in the autumn of 1857. The Associate Justices showed no such ardor; in fact, it was nearly a year after Eckels' arrival at Fort Bridger before either of them entered the territory, and one judge did not arrive until more than a year had elapsed.

The Supreme Court could be held only at the seat of government, and at least two of the Justices must be in attendance in order to conduct business. In the light of this fact, it becomes obvious that the legality of any judicial proceeding that Eckels might initiate at Camp Scott in the absence of his two Associate Justices was of the most questionable nature. Although the Associate Justices' absence and Eckels' remoteness from what had hitherto been considered the seat of government hindered his progress, they were by no means unsurmountable obstacles to the fervent Eckels, and he moved with assurance of purpose to bring the offending Mormons to justice. The position of Eckels and Governor Cumming during this winter was anomalous to say the least. They had been sent specifically to restore as quickly as possible the "supremacy of the law", and when they arrived in the territory, they found that conditions were such that strict adherence

6 Supra, p. 4.

7 See report of Cradlebaugh's November arrival in Journal History, entry of November 4, 1858.

8 The Organic Act, Section IX.

9 "Diary of John W. Phelps," entry of December 9, 1857, p. 189. Phelps was a Captain with Johnston's Command.
to the stipulations of the Organic Law would tie their hands and thwart their purpose. In consequence, Eckels moved without strict support of the law, feeling no doubt that under such disrupted conditions the ends justified the means.

As previously stated, the legislative branch was empowered to create districts and to assign judges to them, while a quorum of judges meeting at the seat of government were authorized to name the time and place District Courts were to be held. By holding a term of the District Court at Camp Scott, Eckels ignored and by-passed the law relating to the creation of districts and assignment of judges thereto. Although Governor Cumming had established a seat of government in Camp Scott thus giving the Judge's procedure some claim to conventionality, it had been found necessary to ignore the letter of the law in each of the other instances. From the standpoint of the usefulness of the federal judiciary in the immediate future of Utah Territory, this whole approach was unfortunate. Because of Eckels' isolation from the Mormons, he could accomplish no more than the gathering of depositions against Brigham Young and other prominent Mormons during the winter of 1857-58. Since these depositions were negated by Buchanan's pardon, the chief result of the Judge's winter activity was increased Mormon bitterness and a conviction in Utah that the federal judiciary cared little for the law. Furthermore, Eckels sowed the seeds of additional difficulty by alienating himself and the other judges from Governor Cumming. While at Camp Scott, Eckels also established himself as somewhat of a social leader and became so fond of his military friends

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10 See letter of instructions from Cass to Cumming, July 30, 1857, "Governor's Correspondence File, 1857," State Department Territorial Papers.
that he later made Camp Floyd his permanent residence.\textsuperscript{11}

In the spring, Buchanan’s Proclamation pardoned the Mormons of most of the offenses that Eckels had laboriously investigated during the winter.\textsuperscript{12} However, the pardon did not succeed in altering Eckels’ outlook on the situation, and, during the rest of his stay in Utah, he harbored a conviction that Buchanan’s action was a mistake.\textsuperscript{13} His dismay that the quarry had been taken from his reach just as the prospect of a judicial kill was best is apparent in two letters he wrote Secretary of State Cass during the early summer of 1858.\textsuperscript{14} In addition to hurling in-

\textsuperscript{11}The Diary of John W. Phelps\textsuperscript{7} records several incidents that show something of Eckels’ social attachment, two of which seem worthy of quotation because they are told by a non-Mormon observer:

"There was a considerable gathering at Judge Eckel’s last night, a good many officers, both civil and military were present, from the Governor and Commanding Officer down; and all the civil functionaries of the United States appointments for the government of Utah, and who are with the army, are in camp with us...." Entry of April 2, 1858, p. 52

"Several drunken soldiers of the 49th Infantry got into a row against Judge Eckels at his quarters to-day. One of them struck him, and the clerk of the court several times. The Judge has some womenfolk at his establishment who are probably at the bottom of the affair." Entry of June 12, 1858, p. 93.


\textsuperscript{13}Writing to Secretary Cass in 1849, Judge Eckels clearly indicates that he regarded the Proclamation of pardon issued by the President to have been a mistake:

"It would be a small matter if every offender in Utah was pardoned, if the evil would only stop there. Alas, sir! this cannot be until there is a radical change. Things are sadly out of fix in Utah. Early in June, 1858, and before the peace commissioners reached Great Salt Lake City, I ventured to give you an opinion [See Eckels to Cass, June 4, 1858, State Department Territorial Papers] as to what would be the result of their mission, and I deeply regret now, sir, to know that what I then saw as an effect of causes is now history...." House Executive Documents, No. 78, p. 35.

\textsuperscript{14}Letter of Judge Eckels to Secretary Cass, June 4 and July 9, 1858, State Department Territorial Papers.
vectives at the Mormons, these letters tell of Eckels' reasons for feeling that the lenient program espoused by Cumming and Buchanan could not hope to succeed:

I have spent my leisure time since I came here trying to understand the Mormon System, and now believe that I have not studied it entirely without profit.

"The Chief Corner Stone" of this system is, that all "power, civil as well as ecclesiastical, in Heaven, on Earth and in Hell is in Brigham" and his successor in office, and that the people, whether men women or children are in all things to do as he commanded. That any other government than this, is sinful, wicked and illegitimate, and the only mode of saving the soul of apostates, is to shed their blood with violence. To desire to leave Utah, or support the Federal Government is conclusive evidence of apostacy in most cases.\textsuperscript{15}

During the summer, Charles Sinclair, one of the long awaited Associate Justices, arrived in the territory.\textsuperscript{16} Sinclair proved to be amenable to Eckels' anti-Mormon proclivities and soon the two decided that the territorial seat of government was still in Fillmore because the joint resolution by which the change to Salt Lake City had been effected was illegal.\textsuperscript{17} Governor Cumming gave his support to this contention, and the judges had the satisfaction of seeing the Legislative Assembly defer to the Governor's wishes and meet at Fillmore.\textsuperscript{18}

Although the controversy between Cumming and the Mormon legislature may have been a pleasant side attraction for Eckels and Sinclair, the main reason for declaring Fillmore to be the seat of government was probably judicial. Hosea Stout records the reason behind this decision and his

\textsuperscript{15}Ibid., letter of June 4.

\textsuperscript{16}Sinclair's exact date of arrival is obscure, but a number of references are made of his activities during the summer of 1858. See Hosea Stout Journal, entry of August 23, 1858, pp. 461-464, and the Journal History, entry of September 11, 1858.

\textsuperscript{17}Ibid.

\textsuperscript{18}Supra, pp. 103-107. Also see Journals of the Council, 1858-1870, pp. 1-5.
own reaction to it:

Judge Eckels and Sinclair left for Fillmore to meet at the seat of Government to appoint the "Times and places of holding the District Courts" as provided by law of Congress, that is they have saw [sic] proper in the abundance of their wisdom to decide that the seat of government is at Fillmore and not at Great Salt Lake City notwithstanding the act of the Legislature removing the seat of government to this place. These Judges have set aside our law without cause being brought before them or any one objecting to the Legislature being held here except those whose business it is to find fault everything pertaining to ourselves.¹⁹

The times and locations of the courts were accordingly set, with Judge Eckels and Sinclair assigning themselves to the first and third districts, respectively, in which courts were to be held beginning on the first Monday in September at Farmington for the first district and the first Monday in October at Salt Lake City for the third district. They also provided for their absent colleague, who was to hold court for the second district in Fillmore on the first Monday in November.

In spite of his oft-repeated assertions that the Mormons should be brought to justice, Eckels failed to hold court in Farmington.²⁰ Instead, he departed for the States, leaving Utah on September 15, 1858.²¹ It is entirely possible that the Judge was already planning to go east when he and Sinclair had made up the court schedule during the previous month and purposely called for court to be held in his district at the earliest moment in a rather obscure town in order to limit, if not totally restrict, the litigation brought before it. Whatever the plan, court was not held.

Prior to his departure, a number of the Judge's admirers held a dinner in his honor at which a testimonial signed by most of the federal

¹⁹Hosea Stout Journal, entry of August 23, 1858, p. 461.

²⁰Ibid., entry of September 4, 1858, p. 464.

²¹Ibid., entry of September 15, 1858, p. 466.
officers in Utah was presented. Judge Eckels friends said:

...While they the federal officers who affixed their names to the testimonial envy you the satisfaction which you will feel re-joining your family and friends in a moral and civilized community, they regret that your services will be withdrawn from the Territory during the coming winter...22

Later, a copy of this letter found its way into the Salt Lake press and the plain implication that the Mormons were neither moral nor civilized elicited increased bad feeling toward the Judge and his friends. Mormon resentment at the federal judiciary had hardly subsided from the insult of the letter quoted above before Judge Sinclair, whose District Court began in Salt Lake City on October 4, gave them further reason to regard the judiciary with distaste. Indeed, it seems that had Sinclair had in mind no other objective than creating ill feelings, he could hardly have found a course more productive of his purpose than the one he followed. His first action was an unsuccessful attempt to reopen the charges of treason worked up by Eckels against the Mormons during the preceding winter.23 This failing, a motion was made by David A. Burr to disbar James Ferguson, Hosea Stout, and J. S. Little, a trio of popular Mormon lawyers, on the grounds that they had used abusive language in addressing Judge George P. Stiles during the February term of court in Salt Lake City in 1857.24 Later, charges were dropped against the latter two, but, much to the disgust of the populace,25 the court busied itself until the end of its term

22 The Deseret News, October 27, 1858, referred to the farewell dinner given for Judge Eckels; it then quoted the letter in question which had appeared in the San Francisco Bulletin, September 20, 1858.

23 Journal History, entry of December 23, 1858.

24 Senate Executive Documents, No. 32, 36th Cong., 1st Sess., p. 22.

25 Journal History, entry of December 23, 1858.
with the Ferguson case, at which time Ferguson was found not guilty by a jury composed of both Mormons and Gentiles. 26

On November 25, a question of jurisdiction was raised between the Territorial Attorney, Hosea Stout, and the recently arrived United States Attorney for the Territory, Alexander Wilson. 27 By territorial law, Stout was given exclusive right to present bills of indictment and prosecute offenses against the laws of the territory. 28 However, Wilson claimed the right to present all bills and prosecute all offenses in the District Court regardless of whether they fell under territorial or federal law. 29

The final result of this question was a decision by Judge Sinclair that the Territorial Attorney, the Marshal, and their deputies had no authority to perform any of their functions in the District Court. Hosea Stout records the Judge's reasons for finding the territorial officers unauthorized to act:

...The Court decided the Legislature could not create an officer to execute the laws passed by the Legislature but that the Attorney and Marshal appointed by the President for the United States were the officers designed by the Organic Act to execute the Laws of Utah... 30

The effect of this ruling to which the judges tenaciously held for the next two years was a sharply limited business in the District Courts because of...

26 Senate Executive Documents, No. 32, p. 38.
27 Ibid., p. 22.
28 Ibid.
29 Ibid.
30 Ibid., p. 23. Also see Hosea Stout Journal, entry of November 26, 1858, p. 473. In passing, one wonders if this decision on Sinclair's part was not influenced by a desire to woo the United States Attorney. It seems likely that the legislation making the territorial officers the only ones authorized to function where territorial offenses were concerned was also preferential in nature, though the legislators had likely been more mindful of keeping power in local hands than of the added fees that would fall to the local officers.
the resentment felt by the Mormons. At the time of this ruling, George A. Smith wrote to President Asa Calkin of the British Mission:

"...The judge has ruled that the U. S. Marshal and his deputies are the officers of the courts in all territorial cases, thereby setting aside the sheriffs of all the counties, the territorial attorneys, and other officers. This ruling is in direct violation of the law and of all precedents in any of the territories of the United States for the last sixty years, or since the days of John Adams, at which time the territory of Kentucky, in the face of similar ruling, was about to rebel against the United States government, and join the Spaniards, but was prevented by the government conceding the point.... 31"

Sinclair adjourned his court on January 13, without having heard any of the number of criminal cases that were awaiting. 32 In adjourning the court prior to hearing these cases, the judge declared that since these were all offenses against the territory and the territory had provided no funds with which to defray court expenses, he had no other course than to adjourn without hearing them. 33 This was done in spite of the fact that the Legislative Assembly was at that time passing a fee bill for the express purpose of caring for court expenses. 34

The Federal Attorney General, Alexander Wilson, who had been present during the latter part of the session, exerted every effort to facilitate the trial of these territorial criminal cases before court adjourned but, in spite of his efforts, was afforded no opportunity of so doing, being informed that the criminal cases were not going to be heard. 35 On being

31 Journal History, entry of December 24, 1858. Also see Hosea Stout Journal, entry of December 22, 1858, p. 477, from which the following is extracted: "Court [sic] decided Legislation could not create an office to execute the laws passed by the Legislature...."

32 Senate Executive Documents, No. 32, p. 24. 33 Ibid.

34 Ibid., also see report of Cummaing to Cass, January 28, 1858, Cumming's Papers.

35 Wilson and his wife arrived in the territory on November 4, and took residence with the William C. Staines where they lived the full time of their short stay in Utah. Hosea Stout Journal, entry of November 4, 1858, p. 470; Journal History, entry of November 10, 1858.
informed that immediate trial was not pending, the Probate Judge of Salt Lake County released the prisoners from the county jail where they had been held. At this action, Wilson again tried to bring about their trial by suggesting the holding of a special session, but he was once more ignored by Judge Sinclair. 36 In trying to get these cases into court, Wilson may have been motivated not only by devotion to duty and justice but by financial interest as well, for his income was largely dependent on the legal fees he received in connection with court proceedings. The battle between the Mormons and the judges sharply curtailed the litigation coming before the District Courts and, by so doing, limited Wilson's income. In an effort to supplement his scanty receipts, Attorney General Wilson entered a private practice; he seems not to have been successful in this aspect either, for in September of 1859 after less than eleven months in the territory, he took leave of Utah. 37

Notwithstanding certain disagreements, Wilson was well received by the Mormons. In fact, his relations with them were so cordial that the federal judges immediately took offense. 38 In July of 1859, following the

36 Senate Executive Documents, No. 32, pp. 24-25.

37 The following business advertisement appeared in the Deseret News during the spring and summer of 1859:

"Alexander Wilson, U. S. Attorney for Utah Territory, Will attend promptly to professional business intrusted to him.
OFFICE— with Dr. Forney, Superintendent of Indian Affairs, Great Salt Lake City."

Speaking to Brigham Young after he had been in the territory about six months, Wilson said:

"that he was discouraged about living in this country as the Government did not allow him enough to pay nothing [sic] about board and other expenses which are very high in this country and which have to be paid out of his private funds and that he could not stay long unless the Government would give him an office the emoluments of which would pay his expenses." Journal History, entry of April 14, 1859.

38 Senate Executive Documents, No. 32, pp. 11-22.
difficulties at the Provo trial of that year (see below) and a severe reprimand from the Attorney General in Washington, Judges Sinclair and Cradlebaugh wrote the President in what appears to have been an effort to clear themselves, charging Attorney Wilson with a serious neglect of duty:

His whole course of conduct has been marked by culpable timidity and neglect, and his relations with the Mormons have been so objectionably manifested by his acts, that he has lost our confidence in his willingness and ability to discharge properly and firmly the duties of a public prosecutor in this Territory. 39

By the time this matter came to Wilson's attention, he had already returned to Washington and relinquished his position. However, he felt that the charges made by the judges merited a reply and answered them with a long and detailed report of his activities in Utah, which indicted the judges for the break down of justice in the territory. 40 Of his own relations with the Mormons, he said:

...they were those only which a man living in their midst, and conducting himself as a gentleman, was obliged to have. I boarded from necessity, as well as choice, with a Mormon family, where I was always kindly treated...My relations, both personal and official, with the Mormons were at no time nor under any circumstances, manifested by any acts, motives, or feelings, otherwise than perfectly proper; and any charge or insinuation to the contrary I pronounce an unqualified falsehood. 41

Prior to leaving the territory, Wilson had asked Stephen DeWolfe, a Gentile lawyer who had substituted for Wilson during his frequent illnesses, to fill the duties of United States Attorney General for the territory until Wilson returned or a new Attorney came to Utah. DeWolfe declined, whereupon Hosea Stout, who was already serving as the Territorial Attorney, was engaged for this purpose by Wilson. 42

39 Ibid., p. 19.
40 See letters and documents sent to Attorney General Jeremiah Black by Wilson on November 15, 1859, ibid., pp. 21-54.
41 Ibid., p. 39
42 Ibid., p. 64.
The United States Attorney's entry into the territory on November 4, 1858, had been accompanied by the third member of the judiciary, Judge John Cradlebaugh. As they approached Salt Lake City, Cradlebaugh parted company with Wilson and made a rather unusual entry into the town. He purposely avoided former Surveyor General David A. Burr, who had come out to meet him, and actually rode into the city on a load of wood, declaring that "I do not want any of their airs, I have come here to do my duty." As previously mention, Cradlebaugh had been assigned to the Second Judicial District and scheduled to hold court in Fillmore on the first Monday in November. It was evidently considered that his tardy entrance to the territory precluded holding court as scheduled, and he spent the next month or so in Salt Lake City and Camp Floyd.

By the end of 1858, the federal judges had all arrived in Utah and had taken a position counter to Governor Cumming's policy of leniency. They had alienated the affection of the Mormons by a series of poorly chosen and ill-timed maneuvers that could hardly have accomplished the purpose of exerting the "supremacy of the law" and actually served to warn the citizens of Utah of an impending conflict. If the situation was, as the judges claimed, one of continued treason and lawlessness, it seems they could hardly have acted more unwisely than they had done. During the judiciary's time in the territory, it had first initiated proceedings against the Mormons at Camp Scott, then declared the legislative action removing the territorial seat of government from Fillmore to Salt Lake City illegal, and finally held a term of the District Court which decided that Mormon law enforcement officers were not qualified to act in the District Courts.

43 Journal History, entry of November 4, 1858. 45 Ibid.
Their course was not in accord with the President's proclamation of clemency, and it should have been manifest that, in the face of the administration's position, their efforts to punish the Mormons would be unsupported and, in the main, productive of one thing—Mormon determination to thwart their efforts.

The District Court at Provo, March 1859

In September of 1858, Judge D. R. Eckels cautiously suggested to Secretary Cass that a mode of action already tried by one of his subordinates be used as the solution to problems that beset the federal judiciary in Utah. After enumerating the difficulties encountered by the judiciary in operating on inadequate finances and among a people that was controlled by leaders who allegedly were themselves the perpetrators of the worst crimes, the Judge suggested:

Temporary relief could be afforded us by the use of the army as a civil posse. The prisoners might be fed from the commissary stores of the army, and kept in the military prison here [Camp Floyd].... One thing must be evident to all; if crime is to be punished in Utah, the courts must be sustained....

An effort to secure such sustenance for the courts had been made during Eckels' absence from the territory during the previous spring. This attempt had occurred in Provo during the March term of the District Court and had constituted one of the more sharply fought encounters that took place between Cumming and the Judicial-Army clique.

During the spring of 1858, Brigham Young had been extremely reluc-

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45 House Executive Documents, No. 78, p. 34.
46 Ibid.
47 See report of the affair that was made to the United States, ibid., pp. 6-28.
tant to stop the southward flight of the members of the church, because he professed to fear what the army would do once it was established among the Utah communities.\footnote{48} This fear had lessened as the well disciplined army stayed to itself in Cedar Valley and the lives of the citizens proceeded much the same as usual. The actions of Governor Cumming in insuring that there was no contact between the army and the citizenry had also had a tranquilizing effect, but, these encouraging developments notwithstanding, Brigham did not completely abandon his reservations at the situation that confronted Utah.\footnote{49}

Brigham Young often praised Governor Cumming for the course he was following and occasionally advised him of Mormon misgivings. As the antagonism of the judiciary was progressively manifest by the proceedings of the autumn (1858) term of the District Court in Salt Lake City, the church president foresaw a possible collaboration of the judiciary and the army.\footnote{50} He strongly urged the Governor to make doubly sure that his instructions be complied with in the respect that any requisition by the judiciary for a military posse be made through the Governor.\footnote{51}

At first, Young's apprehensions seemed poorly founded, as in December the Governor received a requisition for troops from the Federal Marshal P. K. Dotson.\footnote{52} Dotson, evidently remembering an earlier occasion when the Governor had refused to comply with the Marshal's request for a posse

\footnote{48}{Letter from Cumming to Cass, May 2, 1858, Cumming's Papers.}

\footnote{49}{Letter from Brigham Young to Alfred Cumming, November 24, 1858, ibid.}

\footnote{50}{Ibid.}

\footnote{51}{Ibid.}

\footnote{52}{Supra, p. 67. Also see requisition from Dotson to Cumming, December 24, 1858.}
because he had not been resisted,\textsuperscript{53} enclosed a statement made before John Cradlebaugh declaring that he had reason to anticipate resistance to any effort he might make to arrest certain residents of Springville who were suspected of complicity in the Parrish murder which had occurred in that town.\textsuperscript{54} Evidently pleased that the proper channels had been observed, the Governor complied, at first, with Dotson's request and a body of soldiers was made available to the Marshal.\textsuperscript{55} However, before Dotson availed himself of their services, the soldiers received counter orders, as a result of a change of heart on the part of the Governor.\textsuperscript{56} The Marshal and Judge were temporarily thwarted but continued to lay plans for the eventual use of the army in taking the alleged Springville malefactors prisoner.

During the winter, the judges announced that a term of the Second District Court would be held in Provo during March since the court scheduled for Fillmore in November had not been held.\textsuperscript{57} The legality of this scheduled court was highly dubious, Provo appears to have been within the confines of the First Judicial District and, according to law, the judge assigned to that district, in this case Judge Eckels, was the only one authorized to hold court there. Furthermore, the time and place of holding courts within the respective districts could be set only while the judges

\textsuperscript{53}Supra, p. 67. Also see note from Cumming to Dotson refusing to comply with the latter's request for troops to assist him, May 25, 1858, Cumming's Papers.

\textsuperscript{54}Letter of Adjutant General F. J. Porter of Camp Floyd to Judge Cradlebaugh, December 20, 1858, War Department Letters.

\textsuperscript{55}Requisition from Cumming to General Johnston, December 24, 1858, Cumming's Papers.

\textsuperscript{56}Senate Executive Documents, No. 32, p. 6.

\textsuperscript{57}Federal Attorney General Wilson states that he was informed of when and where the term would commence only when it was announced in the newspapers, \textit{ibid.}, p. 25.
sat in their capacity as Judges of the Supreme Court at the territorial seat of government. Nevertheless, all parties involved, including the Mormons, seemed to acquiesce in the proposed plan, and, in due time, court did convene in Provo with the Judge of the Second District presiding.

In preparation for the trial, Judge Cradlebaugh placed a request with General Johnston for troops to aid in transporting certain prisoners from Camp Floyd and in holding them once they arrived in Provo. While the Governor was unaware that a requisition had been made, Cradlebaugh felt that it was legalized under sanction of General Johnston's instructions from the War Department which read, in part:

Should the governor, the judges, or marshal of the Territory find it necessary directly to summon a part of your troops to aid either in the performance of his duties, you will take care that the summons be promptly obeyed...

Judge Cradlebaugh declared that the presence of a posse comitatus composed of federal troops was made necessary by the lack of territorial provisions. He was doubtless cognizant of the Legislative Assembly's act of January of the same year which had established a fee system to defray the expenses of territorial litigation in the District Courts, but the bill was prospective in nature and did not take effect until the first of May. Consequently, the Judge was at least partially justified in his assertion that no financial provisions existed to cover the expense of court proceedings. He also contended that there were no facilities for holding prisoners in Provo and no officers to whom this important function could

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58 The Organic Act, Section IX.
59 Senate Executive Documents, No. 32, p. 6.
60 Ibid.
61 Senate Executive Documents, No. 32, p. 24.
be entrusted; hence, it was important that a detachment of soldiers accompany him to Provo, as it would not only guard and hold prisoners but would feed them from army stores.62

In keeping with the custom of the period, the people of Provo had furnished a building in which court was to be held, known as the Seminary Building, which was located on a large lot that was otherwise vacant.63 According to plan, the court convened on March 8, and a company of troops moved into Provo and encamped on the Seminary lot, while the officers of the company actually took housing in part of the temporary courthouse.64 The residents of the city immediately remonstrated with the Judge, claiming that the presence of the troops was not only unnecessary but would inhibit the course of justice, as witnesses and others involved in the proceeding would be intimidated by the "circle of bayonets".65

Notwithstanding Mormon anxiety and assertions that the city had adequate facilities for holding and maintaining the prisoners, the Judge made no move to dispose of the troops, who in actually occupying Provo had exceeded General Johnston's order to remain outside the city.66 Once in Provo, the troops behaved relatively well but a few incidents did occur and tension and resentment mounted. This was aggravated by the fact that after empanelling a Grand Jury to hear evidence and testimony, the Judge assumed some of the functions of the Federal Attorney and issued subpoenas.

62Ibid., p. 6.
63Letter of Silas Smith, Probate Judge of Utah County, to Governor Cumming, March 8, 1858, Journal History, entry of March 8, 1858.
64Whitney, I, p. 711. Also see House Executive Documents, No. 78, p. 15.
65Ibid., p. 13.
66Orders of Captain Henry Heth issued March 7, 1859, War Department Letters.
for a number of leading Mormons, including Mayor B. E. Bullock of Provo
and Bishop Aaron Johnson of Springville, who were then brought in and ques-
tioned about the Parrish murder as well as the Mountain Meadows Massacre. 67
A number of these men were held on suspicion for further questioning, though
the Mormon dominated Grand Jury brought no charges against them.

Feelings ran so high in the city after the arrest of the Mayor and
others of the city fathers that Sheriff Wall, the chief local peace officer,
doubled his police force in an effort to maintain quiet and avoid conflict
with the soldiery. 68 Captain Heth, the commanding officer of the Provo
ddetachment, feeling the pressure of the mounting public irritation and dis-
trusting Wall's motives in swearing in additional peace officers, sent to
Camp Floyd for reinforcements. 69 This request was immediately acted upon
and in a grand manner, as, on March 19, a Major Paul of the Seventh Infan-
try was ordered out with a total of almost eight hundred troops and the
following information and instructions: 70

67 The Journal History, entry of March 18, 1859, records the names
of a number of prominent church men for whom, L. Scovil, the Mormon clerk
of the District Court, had issued at the order of Judge Cradlebaugh. This
conversation of George A. Smith with the Federal Attorney is recorded:
"...Smith called on Mr. Wilson, United States Attorney, and asked
him if the subpoenas were made out at his request. He said he had not
been notified in relation to the arrests at all, and if the Judge thought
..., to cause him to resign, he was mistaken and he considered that it was
wrong for the Judge to subpoena men and then arrest and detain them as
prisoners under the false color of calling on them as witnesses."

68 Orders issued to Major G. R. Paul at Camp Floyd, March 19, 1859,
War Department Letters.

69 Letter of Johnston to Cradlebaugh, March 19, 1859, ibid.

70 Letter of Cushing to Cass, March 20, 1859, Cushing's Papers.
Also see House Executive Documents, No. 78, p. 18.
The presence of the troops produced considerable excitement among evil disposed persons at Provo and its vicinity, which has been materially heightened by the arrest by the U. S. authorities of the Mayor of Provo and other leading members of the Mormon community engaged in one or more atrocious murders in this Territory. A large police force has been called out by the city authorities to maintain order but there is reason to apprehend, in the present excited state of the public mind, that they may assist in an attempt to rescue these prisoners in case the court adjourns and they are confined to Captain Heth to be brought to this Camp. To guard against such an outbreak, and to be in a position to assist the U. S. authorities in the security of these prisoners, your command is detached from this post....

...You will move to and camp in the vicinity of the settlement on Battle Creek where a camp ground will be hired for you.71

In spite of the order to proceed only to Battle Creek, which was the early name for the present community of Pleasant Grove, Major Paul proceeded to the Provo Bench where he encamped on a hill near the small gentile community of Brown City.72 The presence of this imposing array and the policy followed by Cradlebaugh of subpoenaing individuals to testify, then arresting them and placing them in the custody of Captain Heth caused those of Provo's leading men that remained large to flee the city and take refuge in the hills.73

Early in the proceedings at Provo, Governor Cumming had been notified of the army's presence.74 On March 14, he went to Provo where he spent the next ten days in an effort to maintain peace and in an unsuccessful attempt to get the Judge or General Johnston to withdraw the troops. Cumming contended that the Judge and the General had exceeded their authority in requisitioning and furnishing the troops without the Governor's

71 Orders issued to Major G. R. Paul at Camp Floyd, March 19, 1859, War Department Letters.


73 House Executive Documents, No. 78, p. 22.

74 Letter from Marshal Kay /The Mormon Territorial Marshal/, March 9, 1859, Journal History, entry of March 9, 1859.
knowledge and stated his opinion that justice would receive no check from
the citizens of Provo were the troops removed. As his requests to have
the troops removed continued to be ignored, the Governor finally returned
to Salt Lake City where he issued a proclamation to the citizens of Utah,
publishing:

...My solemn protest against the present military movement, and
also against all movements of troops incompatible with the letter and
spirit of the...instructions received by me from the government for
my guidance while governor of Utah....

To his proclamation he appended the following extract from the
instructions Secretary of State Cass had given him early in his term as
governor which explain Cumming's position:

It is your duty...to support by your power and authority the civil
officers in the performance of their duties; if these officers when
thus engaged are forcibly opposed, or have just reason to expect op-
position, they have a right to call such portions of the posse comi-
tatus to their aid as they may deem necessary; if circumstances should
lead you to believe that the ordinary force at the disposal of such
officers will be insufficient to overcome any resistance that may be
reasonably anticipated, then you are authorized to call for such num-
ber of troops as the occasion may require, who will act as a posse
comitatus, and while thus employed they will be under the direction of
the proper civil officer, and act in conformity with the instructions
you may give as the chief executive magistrate of the territory.

About this same time, Cumming wrote a complete report of the af-
fair to Secretary Cass requesting that the seeming discrepancy between
General Johnston's instructions and his own be removed so that a similar
question of authority would not recur.

75See report of Cumming to Cass from Salt Lake City, March 25, 1859,
Cumming's Papers; also see House Executive Documents, No. 78, p. 22.

76"Proclamation of the Governor," March 27, 1859, Executive Record
Book B, 1852-71.

77Ibid.

78See report of Cumming to Cass from Salt Lake City, March 25,
1859, Cumming's Papers; also see House Executive Documents, No. 78, p. 22.
In the meantime, proceedings at the converted Seminary building had not moved precisely as the Judge had hoped. In conformity with territorial statutes, the Judge had issued a venire to the county officers, who had then selected an all-Mormon Grand Jury which had no sympathy for the object which the Judge sought to achieve. 79 He later wrote of his relations with and his regard for the Grand Jury:

...The Grand Jury occupied two weeks time, finally showing themselves unwilling to investigate and report upon the varied and numerous crimes referred to in the Parrish murder, the Mountain Meadows Massacre, and other murders that were said to be "blood atonement" killings. 80 The Judge was compelled to adjourn them. Afterwards, it was discovered that a large proportion of the grand jury were implicated in many of the most atrocious murders...

After conducting limited additional criminal investigation and naturalizing a few citizens, which was extremely tedious work as all the prospective citizens were closely questioned regarding their activities during the Mormon clash with the Utah Army, Cradlebaugh adjourned his court and departed for Camp Floyd. The efforts of the Federal Judge, the Marshal, a number of deputies, and some nine hundred troops were thus rewarded with a limited amount of litigation and the arrest of a small body of prisoners which were transferred to Camp Floyd ostensibly to await trial at a later date. 81 Actually, these prisoners were released during the summer because of orders received by General Johnston informing him that

79 Senate Executive Documents, No. 32, p. 7. 80 Ibid.

81 Ibid. See also the Deseret News, April 6, 1859, which tells of the show of force that was made by the army as they conducted the prisoners out of town. Sixteen platoons under Major Paul's command, totalling four hundred men marched into town. They marched to a point three blocks south of the Seminary building to the strains of "Doo Dah", where they wheeled and marched back to the tune of "The Girl I Left Behind Me". As eight platoons passed the Seminary Building, they halted and Captain Heth's company fell into the center of Major Paul's command, and they marched out of the city.
he had exceeded his authority in complying with the orders of the Judge; hence, the arrest and imprisonment of the Mormons were illegal.\textsuperscript{82}

When news of this affair reached Washington, a number of directives were issued which sustained the Governor in his contention that only he was authorized to call out the army for use in controlling the Mormons. Attorney General Jeremiah S. Black wrote an especially biting letter to Judges Cradlebaugh and Sinclair reminding them that a marshal and attorney for the territory had been appointed and suggesting that thereafter those officers should be allowed to perform their duties while the judges heard patiently the cases brought before them.\textsuperscript{83} Black then pointed out that the portion of Johnston's orders from which Cradlebaugh had drawn authority to request troops authorized certain officers to, when necessary, "summon directly a part of the troops" but not to make formal requisitions. He then explains:

A direct summons and a requisition are not convertible terms. The former signifies a mere verbal call, upon either civilians or military men, for force enough to put down present opposition to a certain officer in the performance of a particular duty, and the call is to be always made by the officer who is himself opposed, upon those persons who are, with their hands to furnish the aid. A requisition, on the other hand, is a solemn demand, in writing, made by the supreme

\textsuperscript{82}House Executive Documents, No. 78, p. 31. See also the record of Captain Albert Tracy concerning the release of the prisoners:

"The prisoners John D. Lee (Dailey) the identity of this man is unknown but it was not the John D. Lee of Harmony, Utah\textsuperscript{7}, McDonald, Cairns and others, brought up from Provo, under charges for the murder at Mountain Meadows \textit{sic}, Springville, and elsewhere, were, for reasons by no means explained to us but under orders from the proper civil authorities, this day set free. A party of Dragoons escorted them a mile or so out from Camp, and then and there took off their irons, and left them to go their ways! As an excuse at camp headquarters, it is understood that General Johnston refuses any longer to retain the prisoners, owing to the absence of any proper legal form or warrant to that end...." "The Utah War—Journal of Captain Albert Tracy, with Johnston's Army, 1853-1860," J. Cecil Alter, ed., Utah Historical Quarterly, XIII (1945), p. 71.

\textsuperscript{83}House Executive Documents, No. 78, p. 31; see also Senate Executive Documents, No. 32, pp. 3-4.
civil magistrate upon the commander-in-chief of the military forces for the whole or a part of the army to be used in a specified service. In a Territory like Utah, the person who exercises this last-mentioned power can make war and peace when he pleases, and holds in his hands the issues of life and death for thousands. Surely it was not intended to clothe each one of the judges, as well as the marshal, and all his deputies, with this tremendous authority.

The Attorney General concluded his letter by stating that the President was of the following opinion:

1. That the governor of the Territory alone has power to issue a requisition upon the commanding general for the whole or a part of the army.

2. That there was no apparent occasion for the presence of troops at Provo.

3. That if a rescue of the prisoners in custody had been attempted, it was the duty of the marshal, and not of the judges, to summon the force which might be necessary to prevent it.

4. That the troops ought not to have been sent to Provo without the concurrence of the Governor, nor kept there against his remonstrance.

5. That the disregard of these principles and rules of action has been, in many ways, extremely unfortunate.

With this stern rebuke climaxing his efforts coupled with the notably scanty accomplishments of court while it was in term in Provo, it is

it is obvious that Cradlebaugh and his judicial colleagues had again failed to either humiliate the Mormons or further the cause of justice in the territory. The ruts of controversy between the judiciary and the Mormon-Administrative clique had been deepened. At the same time, the judges had suffered a serious loss of face in Washington that undoubtedly contributed

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84 Ibid. Attorney General Black's letter was addressed to both Cradlebaugh and Sinclair, but it appears that this was done more in reply to a joint letter they had written the President on April 7, than in an effort to involve Sinclair in the actual proceedings at Provo. Sinclair was present in the city but played no public or official part; however, the letter of April 7 shows that he fully concurred in the action taken by Cradlebaugh.

85 Ibid.
to their removal the following year.

Probate Courts and the Federal Judiciary

An interesting aspect of judicial developments during the Cumming administration was the relation of the Probate Courts to the Governor and of these two to the District Courts and the Federal Justices. By the time of the "Utah Rebellion" in 1857, the Probate Court and its officer the Judge of Probate had established themselves among the most fundamental and important of the territory's political institutions. Although basically designated as a judicial officer, the Judge of the Probate Court was in practice expected to perform a number of other functions. As each county was established, a Probate Judge was appointed whose duty it was to choose the first officers of the county.86 Once the county was established, the Probate Judge remained as not only the Judge of the Probate Court but as one of the most important county officials.87

The Probate Judge, unlike most officers in the county, held a non-elective position, being appointed annually by the Legislative Assembly and the Governor.88 In some respects, his position in the county paralleled that of the Governor in the territory. However, because of his judicial functions and the fact that he was not thrown into opposition,

86 His position in the county is best seen in the functions of Probate Judge Childs in Carson County, "Governor's Correspondence File, 1859," Territorial Executive Records.

87 See the activities of Judge Snow at the contested Election at Fairfield in 1859 in "Secretary's Correspondence File, 1859" and "General Election File, 1859," ibid.

88 For mode of appointment and appointees for the various years, see "Elections and Commissions," Executive Proceedings, 1850-54, in Utah State Historical Society, Archives Division, Salt Lake City, as are all the Executive Proceedings cited in this work.
as was the Governor, with a legislature dedicated only to advancement of home interests, the Probate Judge's powers in the county seem more extensive than were those of the Governor in the territory.

In another respect, the Probate Judge's position can be likened to the federal commissioner of this day, who is basically an administrative officer but who, because of the detailed and technical nature of his specialty, is performe called upon to serve in a quasi-judicial capacity, as he sits in judgment on cases involving policy he helped create. The Probate Judge was most often, but not necessarily, the County Judge and, as such, the chief member of the County Court which performed many legislative functions such as does the County Commission of our day. In this capacity, the Judge helped in the development of policy, and later, when disputes arose and litigation entered the Probate Court, he heard cases involving policy he had often assisted in creating himself. At times, this situation extended beyond the county, as occasionally the Probate Judge was sent to the Legislative Assembly as a representative for the district. As a territorial legislator, his policy creating powers were broadened and the possibility of hearing as judge cases involving laws which he helped create was increased.

However, it is not the intent nor is it within the scope of this

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89 The Probate Judge and his clerk often assumed the functions of assessing and collecting taxes and of road construction and maintenance; see "Auditors Papers, 1859-1861," Territorial Executive Records.

90 See correspondence of Secretary Hartnett with Bullock concerning Green River Probate Court, "Secretary's Correspondence File, 1858," Ibid.

91 Isaac Bullock, who was Probate Judge in Green River County in 1857, also sat in the House of Representatives in the Session of 1857-1858, "Journal of the Seventh Session," January 1856, p. 117.
study to consider all the ramifications of the Probate Judge's duties. The purpose is rather to point to a few factors of probate practice and discuss them as they affected the Utah judicial scene. It is well, however, to bear in mind that the Probate Court was a local institution and that the Probate Judges were among the most prominent men in each county. Utahns generally were convinced that these courts were capable of handling all litigation arising under territorial law.

The Organic Law had given Utah considerable freedom in establishing courts by allowing the Legislative Assembly to fix the jurisdiction of the Probate Courts and, within certain limitations, that of the Justices of Peace. 92 This open invitation to grant power and authority to the local courts was too much for the Legislative Assembly and, in 1855, an "Act in Relation to the Judiciary" was passed stating:

...The several Probate Courts in their respective counties have power to exercise original jurisdiction both civil and criminal, and as well as chancery as at common law, when not prohibited by legislative enactments, and they shall be governed in all respects by the same general rules and regulations as regards practice as the District Courts. 93

In this manner, each county had a court within its bounds with original jurisdiction in territorial matters equivalent to the power of the District Court. The first question of the Probate Court's power during the period here under consideration was raised by the United States Attorney Alexander Wilson after the closing of Judge Sinclair's term of the District Court in Salt Lake City in January of 1859. Sinclair had adjourned court on the pretext that no appropriations had been made to defray the expense of trying a group of criminals who had committed offenses

92 The Organic Act, Section IX.
against territorial statutes and who were, at the time, being held in the Salt Lake County Jail. On seeing that they were not to be tried, the Probate Judge Elias Smith evidently tired of maintaining the prisoners, issued writs of habeas corpus, and the whole group was released. Attorney General Wilson challenged this move and issued warrants to the federal marshal to rearrest the offenders. Since the prisoners had departed for safer climes, no action developed.94

Sinclair's action in adjourning the court because no funds had been provided by the territory to defray court expenses was the first of a continuing complaint made by the federal judges.95 At the time Sinclair adjourned his Salt Lake City court on January 21, the Legislative Assembly was enacting a bill to provide for fees and expenses, but, when it was finished, the judges felt that it was little better than no appropriation at all because of its parsimony. Speaking of the relation of the territorial appropriations to the cost of living, Eckels said later:

...At no place could boarding be had for less than one dollar and fifty cents per day. Two dollars was the general price, and in most cases lodging was found in mule pens. Keeping a horse was not less than a dollar per day. These are customary prices all over the Territory....By the laws of Utah jurors receive seventy five cents and wit-

94 Senate Executive Documents, No. 32, pp. 24-25.
95 Ibid., pp. 4-20; see also House Executive Documents, No. 78, pp. 32-50.

Shortly before leaving the territory for the last time, Judge Eckels announced a special term of the First District Court to convene at Fairfield on April 30. Along with the usual announcements, the posted notice made it requisite that previous to cases being docketed, $20.00 must be deposited with the clerk of the court to "secure jurors' and witnesses' fees". The legality of this procedure appears to be somewhat questionable; however, it can be safely assumed that Eckels was making a political move in asking that the litigants defray jury and witness fees. He was soon to depart for Washington /On May 18, 1860, Journal History, entry of May 18, 1860/, which allowed little time for holding court and this seems to have been nothing more than an effort to dramatize the difficulty of the Federal Judges in Utah.
nesses fifty cents. These fees will at no time defray a man's expenses in Utah, and it is a shame to ask a man's services for less than will pay his board.

Speaking further in this pessimistic vein, Eckels' says:

The Territory never has, and, as I believe, never will provide any means to support the district courts. They want none of them. They do not do the will of the theocracy, but follow the statute books rather than the new revelations.

Whatever else is said for Eckels, it seems that he had accurately evaluated the feeling of the Mormons toward the District Courts. As a move in the "sift war" between the local residents of Utah and the federal judges, the Legislative Assembly seems to have purposely passed a bill that would restrict and hamper the federal judiciary. As Eckels pointed out in the quotation above, the cost-price relationship was such that strangers could come into the communities for judicial purposes only at personal sacrifice. On the other hand, the Probate Courts were held in and for the various counties by county officers. The judge, clerk, peace officers, witnesses, and jurors most often lived at home, and the court was usually called during convenient times of the year so that court service became an attractive rather than an odious and financially burdening task. Likewise, when circumstances required the service of some individual in a neighboring county, they lived with some former missionary companion or friend of other circumstance, so that here again the limited pay worked no hardship.

It is not to be wondered that self-respecting men who felt some pride in their appointment to the Utah bench in a federal court were resentful. First, they encountered a demotion of sorts when they arrived

96House Executive Documents, No. 78, p. 34.
in the territory and found that each county and each part-time Judge of
Probate held a power commensurate to their own. After suffering this
setback, their jurisdiction was further reduced by the restrictive fee bill
discussed previously. In the light of these irritating factors and the
conviction of Mormon guilt entertained by the judges, their continued ef-
forts to judicially subjugate the Mormons comes as no surprise.

An early opportunity to strike back at the Mormons came during
the summer of 1860. On July 23, the Salt Lake Probate Court had tried one
Deloss Gibson for murder and found him guilty. He had, accordingly, been
sentenced and was beginning to serve his time in the penitentiary when the
District Court for the Third Judicial District convened. One of the first
acts of United States Attorney Wilson during this session was to issue a
writ of habeas corpus for Gibson, thereafter he filed for an argument
of the question of the Probate Court's jurisdiction in criminal cases.
This argument was heard on August 2 and the District Court decided that the
Probate Courts had no criminal jurisdiction; consequently, the Gibson trial
was held to be invalid.

97 "An Act in Relation to the Judiciary," Acts, Resolutions, and
Memorials, pp. 29-32.

98 Senate Executive Documents, No. 32, pp. 29-30. A short time be-
fore the Gibson case came to the attention of the United States Attorney,
one Thomas Ivey of Manti was tried for murder, found guilty, and sentenced
to death. The following account of the Federal Judge's reaction is found
in the Journal History, entry of June 25, 1869:

"...George Peacock came in and stated that he had presented Gover-
nor Cumming with a copy of the proceedings of the Probate Court at Manti,
in the case of the people versus Thomas Ivey, for murder. The Gover-
nor sent for Judges Beekls and Cradlebaugh, and the proceedings of the
court were read. The Judges said they were got up in excellent style,
everything was right, but they thought the court could not exercise
criminal jurisdiction, though the Legislature had given it to them in
good faith. Mr. Peacock also said that he had heard after leaving the
Governor's office that the Judges had concluded to let them execute the
law on Ivey and then arraign the Judge, Jurors and Sheriff for murder...."
The result of this decision was a condition bordering on judicial prostration in Utah. The Probate Court decisions convicting criminal offenders were immediately negated by federal writs of habeas corpus freeing the prisoners, while the District Courts were themselves unable to do business because of the insufficiency of funds with which to operate. This development came at an extremely unfortunate time for the administrators of the territory, as a great number of crimes were being committed. The Governor and the Mormons maintained that they were committed by discharged teamsters and other camp-followers; the judges were equally sure that most of these crimes were the result of evil combinations in the leadership of the church. Both parties argued that the situation encouraged lawlessness but, again, for different reasons. The federal judges maintained that since their hands were financially bound, the Church leaders acted with complete impunity in committing and encouraging lawlessness as they knew the Probate Courts would never convict them. The Governor and the Mormons maintained that certainty of release from a conviction by the Probate Courts encouraged the transient element of the community to ignore all restrictive laws.99

Out of this situation grew the final controversy between the federal judges and Governor Cumming. Cumming's attitude at this time was highly unfavorable toward the judges and was likely motivated by private as well as official circumstances. An animosity had developed between the Governor and Judge Hickels during the final months of their stay at Camp Scott which had been climaxed by an effort on the Governor's part to have Hickels removed.100 Hickels had responded by seeking Cumming's removal, and

99*House Executive Documents, No. 78, pp. 33-40 and 41-50.*
100*Deseret News, June 20, 1858.*
their relation thereafter was never much more than an armed neutrality. 101

The Governor's actions in connection with Judge Cradlebaugh's activities in Provo during the spring of 1859 had also earned him the whole hearted enmity of that officer. While in Washington during the winter of 1860, Cradlebaugh wrote the following letter to Chief Comptroller Medill which indicates a desire on the Judge's part to at least disconcert and inconvenience the Governor and, perhaps, to secure his removal:

Incidentally learning that His Excellency Alfred Cumming, Governor of the Territory of Utah, had transmitted to the Treasury Department for settlement his account showing the manner in which he had disbursed the contingent $500 fund placed at his disposal as such Allegible Governor; and hearing that he claims to have paid a large portion of said fund to one E. W. Cumming as his Secretary or private Secretary, during the last two years; no Sir, I was in Great Salt Lake City for several months since the first of November, 1858, was frequently in the Governor's office during that time; boarded and lodged close by the Governor's office during that time, and received several official communications from the Governor and can, with assurance, say that no person was employed in or about the office by the name of E. W. Cumming, had there been I should have known it. There is no person in or about Great Salt Lake City by the name of E. W. Cumming, to my knowledge, unless it is the wife of His Excellency, who may be called by that name. 102

The Governor was greatly inconvenience, as the Comptroller held up payment of the contingent fund until Cumming had explained that the need for secrecy under the unusual circumstances in Utah demanded that he engage his wife as his official secretary. 103 Consequently, this letter added to the personal antipathy of Cumming for Cradlebaugh and may have contributed to the campaign he waged to secure the removal of the judges.

Other factors making the winter of 1860 a particularly propitious time to

101 Whitney, p. 718.


103 Desert News, April 4, 1860.
seek the removal of the judges were the attack made on them by former
United States Attorney Wilson and the fact that officials in Washington
had not forgotten the conduct of the judiciary at the District Court in
Provo during the previous March. 104

However, it remained for a letter from Judge Eckels to Secretary
Cass on September 27, 1859 to impel Cumming's final anti-judiciary move.
Eckels wrote a powerful condemnation of the Mormons, concluding with these
remarks:

...These combined causes have for years kept up here bands of
murders and robbers...The longer immunity which these people have
enjoyed from punishment for crime, the more daring they have become;
and the ineffectual efforts of the judges to enforce the laws only in-
crease their contempt for it. Things here grow worse and worse. What
shall be done? Marshal Dotson has resigned. Judge Sinclair and At-
torney Wilson have gone to the States...Judge Cradlebaugh will likely
go during the fall, and I expect to leave in the spring...I cannot
hope again, hope much longer. I have faith in our friends, but they
are deceived and misled. They have not believed our report. Time will
prove all this to the incredulous. A peace with traitors, begun by
concessions, must end in disgrace. I do not allude to our friends in
Washington... 105

Plainly, Eckels felt that a showdown was necessary and invited it
in this letter; this invitation was taken by Secretary of State Cass,
who wrote Cumming:

...The statements contained in it Eckels' letter of September 217
are deemed by the President worthy of investigation...The President
desires you to furnish the department, ...with an official report upon
the present condition of the Territory, stating causes, if any, which
operate to retard the due administration of the laws, and to prevent

104Wilson replied to the attack of Judges Cradlebaugh and Sin-
clar by sending a very complete report of his activities while in Utah.
In a number of instances, he detailed data that was almost immutable
evidence that the course followed by the Judges had actually impeded his
duties and thwarted justice. See Senate Executive Documents, No. 32,
p. 21-64.

105House Executive Documents, No. 78, p. 38.
the maintenance of peace and order; by what means, in your judgement, those causes can be most promptly and advantageously removed; to what extent any troubles that may now exist have been produced by a failure of the territorial legislature to provide suitable measures for their prevention, and how far they are owing to an unwillingness on the part of the people of the Territory to aid in the execution of the laws.\(^\text{106}\)

The Governor's reply was to the point; it exonerated the Mormons generally and placed a large share of the responsibility for the unfortunate state of affairs on the shoulders of the judges. Cumming enumerated the "causes which operated to retard the due administration of the laws" as follows:

First, The infrequency of and distance between the sessions of the United States Courts....

Second, The United States Marshal has declined making arrests of offenders against territorial laws, because...the legislature have not made such provisions for the payment of necessary expenses of arrest.

Third, Continued immunity from punishment has emboldened bands of outlaws....

Fourth, The refusal of the Judges of the United States courts to recognize the authority of the territorial marshal in the United States district courts and the authority of the probate courts in their respective counties....

Fifth, ...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.\(^\text{107}\)

The Governor made a number of recommendations for dealing with the problem, among which were the authorization of the Probate Court to function as Utah law had intended and the recognition of the territorial marshal as the proper officer to conduct territorial business in the courts.

Subsequent to the writing of this letter, the Probate Court tried certain lawless individuals and imprisoned them in the state penitentiary. Immediately upon hearing of their imprisonment, Judge Eckels issued writs

\(^{106}\)\textit{Ibid.}, p. 41.  \(^{107}\)\textit{Ibid.}, pp. 42-44.
for their release and the Mormon warden of the penitentiary was forced
to transfer these criminals to Camp Scott where Judge Eckels released
them. This release of such criminals so disturbed Cumming that he fol-
lowed his earlier letter with several more decrying the situation in Utah
and demanding relief of some kind. Each time he pled the case of the
Probate Court and once went so far as to suggest that, since the federal
judges found duty in Utah extremely odious, the President might consider
the appointment of local men as justices. He then presented Elias Smith,
the judge of the Probate Court in Salt Lake County as a man of fitting
learning and quality to fill the position.

Early in the summer of 1860, Judges Eckels, Sinclair, and Cradle-
baugh either resigned or were removed by the President. Newspaper re-
ports of the period conflict and there is no official announcement of their
removal. In either event, Governor Cumming had won a controversy of long

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108 Letter of Cumming to Cass, April 5, 1860, "Governor's Corres-
pondence File, 1860," State Department Territorial Papers.
109 House Executive Documents, No. 78, pp. 46-49.
110 Letter from Cumming to Cass, March 1, 1860, ibid., p. 48.
This particular letter also appears in Cumming's Papers. However, the para-
graph suggesting the appointment of a man from Salt Lake City as a member
of the federal judiciary is deleted from the text of the letter as it ap-
ppears in the former source. Cumming later wrote of the Probate Courts:

...If Congress will sanction the action of the probate court in
the exercise of the power claimed by it, I entertain little doubt that
the community will, ere long, be relieved from the bands of desperados
who have, by their presence, rendered the tenure of life and property
so unsafe here for the last twelve months.

"The action of the probate court now in session is marked by a
calmness, justice, and decision, and I believe that, under present cir-
cumstances, it is the only remedy for the existing evils," Letter of
Cumming to Cass, March 22, 1860, State Department Territorial Papers.

111 Sacramento Union, October 18, 1860, as quoted in the Mountaineer,
November 24, 1860.
duration. The legality of the Probate Court and its original jurisdiction in criminal matters involving territorial statutes was upheld, and the citizens of Utah had the prospect of a new group of judges who were more favorably inclined toward them.

During the spring and early summer, reports of official action concerning the appointments were received in the territory. William H. Hooper, the Utah delegate to the House of Representatives, wrote early in June that he had been virtually assured that Alexander Wilson, the former United States Attorney for Utah, would be appointed Chief Justice. At the same time, he announced the appointments of a Mr. Harding of Georgia and R. P. Flemmiken of Pittsburg, Pennsylvania as the two Associate Justices. However, toward the end of June, it became apparent that John F. Kinney, a former Chief Justice in Utah, had been asked to accept that position again. Kinney, who was then living in Nebraska, had not solicited the position and delayed his decision until August before finally accepting it. In the meantime, Harding of Georgia had changed his mind and a Henry R. Crosby of Washington Territory had been chosen in his stead. The two Associate Justices arrived in the territory before Chief

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112 Journal History, entry of June 1, 1860.

113 Ibid., July 11, 1860. Also see quotation from the Nebraskan, July 4, 1860, quoted in the Mountaineer, August 11, 1860.

114 Deseret News, September 26, 1860. Neff, p. 647, erroneously credits President Lincoln with appointing John F. Kinney, J. R. Crosby, and R. P. Flemmiken to the Utah bench, and uses the fact of their appointment to establish that Lincoln pursued a policy of clemency toward the Mormons. While it is true that the appointment of Kinney et al. represented clemency on the part of the administration, it was the Buchanan administration that chose these officials, as they had not only been appointed by Buchanan but had all arrived in Utah prior to Lincoln's election on November 6, 1860 and had been in the territory for five or six months when he was inaugurated.
Justice Kinney, and, as related in an earlier chapter, followed the illegal precedent set by their predecessors in assigning themselves to the judicial districts of their choice. Upon his arrival, Kinney showed both good judgement and a desire to cooperate with the Mormons within the limits of the law by ruling that Plenniken and Crosby, as well as their predecessors, had acted without authority in assigning themselves to the several judicial districts. He held their actions to be illegal on the following counts: 1) The assignment to districts was to be done only by the Legislative Assembly; 2) Judges were only authorized to name the time and place within their respective districts (after assignment by the Legislative Assembly) at the annual session of the Supreme Court; 3) Judges, even in choosing the time and place, were restricted to providing for the federal courts, and courts for holding territorial business were to be located only by legislative enactment.\(^{115}\) Kinney thus repudiated the policy followed by Eckels and his associates and placed the authority to create districts and assign justices to them back into the hands of the territorial legislature.

In March of 1861, a case in which James Graham had been tried for larceny and found guilty by the Probate Court was appealed to Judge Kinney. In this case, the Judge again reversed the holding of the previous judges. The legislative grants of authority to the Probate Court as made under sanction of the Organic Act were pronounced valid, and it was held that the criminal was properly tried and convicted before the Probate Court.\(^{116}\)

The ruling of Judge Kinney marked the change from a judiciary that was determined to force a stern and antagonistic kind of justice on

\(^{115}\) Mountaineer, October 13, 1860. \(^{116}\) Deseret News, March 20, 1861.
the Mormons to one that sought, in keeping with the law, to administer justice in somewhat the same moderate tone that Governor Cumming administered his gubernatorial duties. Attorney General Black, who had been at his post during the whole of the troubled period just past, was likely instrumental in choosing Kinney and his associates; however, the choice of this type of man was a tribute to Governor Cumming's efforts to bring about a condition of law abiding tranquility in the territory. The whole affair, removing the preceding judges, the choice of Kinney, Crosby and Flenniken, and the support of the Probate Courts marks a most devoted and successful portion of Cumming's administration.
CHAPTER VII

THE UTAH DEPARTMENT OF THE UNITED STATES ARMY

The Utah Expedition

As the Utah Expedition took up its march from Camp Scott to Salt Lake City on June 15, 1858, it was confronted with a situation vastly different from that existing the previous fall when the weather and the determined Mormons had driven the army into winter quarters. During the intervening period, Governor Cumming had made his unescorted entry into Salt Lake City and had worked out an equitable mode of installing himself and his fellow officers which relieved the army of that responsibility. Conditions in Washington had also changed. The public had soured on the expense and moral issues involved in the Utah affair, and the President, in response to this public reaction, had issued a pardon to the Mormons. In June the army and its commanding officer, the newly breveted General Albert Sidney Johnston, were faced with occupying the territory and, at the same time, with the almost impossible responsibility of not imposing upon its pardoned citizens.

1Gardner, p. 408.

2Regarding Johnston's commission as a Brigadier General, an officer of his command recorded the following: "Our Colonel Commanding has been appointed a Brigadier General by brevet, and it has given him a considerable increase of dignity--rendering his speech and bearing both more deliberate." "Diary of John W. Phelps," Vol. 6-8, pp. 46-47.

For the army's feeling concerning the expedition, consult letter of Peace Commissioner Powell to Johnston, June 11, 1858, Cumming's Papers.
The expedition had never been popular among its men and officers. Many of them had come to regard the prospects of a fight with its accompanying advancements and citations as the only bright spot of the whole affair and were keenly disappointed with the turn of events. In its only encounter with the Mormons, the army had been severely humiliated. Now, as it advanced on Salt Lake City, it was asked to forget all aspirations of glory and desire to save face and to docilely take a post in the Mormon territory. In June of 1858, the army was faced with the prospect of extended garrison duty on a sagebrush flat fifteen hundred miles from "civilization". The army's performance under these circumstances and the moves taken by its leaders are of importance because of their direct effect upon Utah's government as well as the indirect influence of the military reflected through the citizens of Utah.

It will be recalled that in June of 1857 Governor Cumming had insisted that in entering the settled portion of the territory the army refrain from encroaching on the Utah communities. The Governor's strong feelings on this issue are well illustrated in a letter written immediately after Johnston had violated Cumming's desire that the army remain in Camp Scott until the Peace Commissioners completed their negotiations with Brigham Young. On June 13, 1857, while Young and the commissioners were in conference, Mormon spies informed the church leader of Johnston's plans to take up his march to Salt Lake City on June 15. In an effort to avoid

3Gardner, p. 408.

4Letter of Cumming to Johnston, June 17, 1858, Cumming's Papers.

5Hamilton Gardner, p. 411, writes of the Mormon ability to keep accurately informed as to army activities and says: "No evidence of record has been unearthed to indicate that a single Mormon spy ever penetrated through the Militia lines into
further unannounced changes in the General's plans, the deeply chagrined Governor wrote Johnston in the following tone:

The present excited condition of the public mind demands the utmost caution on your part....It is my duty to protest against your occupancy of positions in the immediate vicinity of this city [Salt Lake City] or other dense settlements of the population.

Should you resolve to act in opposition to my solemn protest, you may rest assured that it will result in disastrous consequences, such as cannot be approved by our Government.6

Whether as a direct consequence to the Governor's letter or by personal inclination, Johnston closely controlled his troops as they entered and passed through Salt Lake City on June 26, 1858.7 Once through the city, Johnston took a temporary position on the west side of the Jordan River, concerning which one of the army officers wrote:

In Camp by the "other side of the Jordan" yesterday and today—it being understood that parties are out, seeking a more permanent location. It is furthermore on condition that we pay for the privilege of camping on this present ground, one hundred and fifty dollars. This is to the Mormon "church", which claims the ground above the Great Salt Lake City, although it is incredible that such was not accomplished. On the other hand, General Wells was promptly advised of every move the Army made. In addition to information picked up by...cavalry scouts, many useful facts were secured from Army deserters and disgruntled teamsters who had been apprehended. Disguised members of the Militia, passing themselves off as trappers or mountaineers, frequently entered the Federal lines and engaged in conversation with the soldiers and civilians around their campfires...."8

6Ibid.

7After the Army had been in Utah a sufficient period to give Utah's citizens some assurance its mode of action could be trusted, the Deseret News, October 18, 1858, wrote:

"...Yet would we be guilty of neglect of plain duty to withhold the credit we consider fairly due General Johnston for the discipline he has maintained in his Army not only during his march through our city but as far as we can learn since his halt at Camp Floyd."
United States. Thus, we will soon become habituated to the ways hereabouts.  

At Camp Floyd

The stay on the banks of the Jordan River was short, as the scouting parties located the site they sought and the army set forth to establish its home for the next three years. The permanent site was located in what was then, as now, known as Cedar Valley. The site was recommended because of its accessibility to areas of Utah's population and its location on the southern route to California, which was one of the major arteries of the East-West traffic. In requesting that Cedar Valley be established as a military reserve, General Johnston made the following description of the area in which further reasons for choosing Camp Floyd as the site for a post are obvious:

...The valley is about twenty five miles in length from north to south and eight or nine in width from east to west. There are three fine springs furnishing abundant supplies of pure water,...They comprehend the whole supply of water of this valley. In consequence of destitution of other portions of the valley of water, a vast quantity of grass is unavailable. The survey for purposes of a permanent description and mapping should comprehend the mountains to their crests, as the fuel and timber will then only be brought into the reserve.

Preparations were immediately begun to give the new camp a degree of permanency. A great number of the soldiers continued to live in their tents, but by banking the sides against drafts and improvising fireplaces, they made them much more habitable. The more permanent buildings were constructed for...

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9 Neff, p. 513.
structured of adobe and a slab siding lumber purchased from the Mormons at what Johnston considered to be extortionate prices.11

At the crest of its fortunes, Camp Floyd's population consisted of about thirty-five thousand rank and file.12 Thousands of animals were owned and used by the army in maintaining this number of men.13 The Second Dragoons under Colonel Phillip St. George Cooke were, of course, mounted, while the Infantry and the Artillery maintained a vast herd of mules; to these riding and draft animals were added the herds of cattle which furnished the army with beef. One of General Johnston's earliest problems grew out of the maintenance of the government livestock. During the entirety of his stay in Utah, the General was successful in imposing a virtual non-fraternization policy upon the troops; however, contact with the Mormons over right to grazing grounds was inevitable, and even the best intent could not entirely avoid some unpleasant situations.14

Certain residents of Salt Lake City for whom one Daniel Spencer seems to have been spokesman claimed a large portion of the Cedar and Rush Valley grazing grounds reserved by Johnston for the army's animals. The interest of Spencer and his associates in retaining the grazing grounds which had been theirs by virtue of legislative grants was sharpened by the fact that the freighting company of Russell, Majors, and Waddell had

11Letter of Johnston to Adjutant General, February 9, 1859, War Department Letters.


13Letter of Johnston to Cumming, October 9, 1859, Cumming's Papers.

14Considerable correspondence concerning the grazing rights of the citizens of Utah appears in both the Cumming's Papers and War Department Letters. The bulk of this grazing rights correspondence will be found in the period from August 1, 1859 to March, 1860.
thirty thousand head of draft stock in the territory as the winter of 1858 approached. In an effort to enjoy some of the profits of pasturing these animals, Spencer took his claims to the Governor who forwarded them to Johnston. In a firm and rather sympathetic refusal, Johnston stated the army's position:

The claim is founded upon an act of the territorial legislature, which has made similar grants of large bodies of lands for grazing purposes, embracing a great portion of the grazing lands of the territory. These grants having been made without the authority of the General Government, which has reserved to itself the primary disposition of the lands of the territories, cannot, I conceive, convey no title, and I presume it was not so intended by the legislative body, but simply as a domestic arrangement for public convenience... In this view, the land should revert to the government whenever needed and called for...

The government has large herds consisting of thousands of animals to be subsisted and demands for the time being, the use of a portion of her own grazing lands... which the people here have by mutual agreement among themselves appropriated to the use of individuals, To give them up, under the circumstances, especially as actual settlers will not be disturbed in their claims, should be esteemed no hardship, but only the restoration of a right.

Spencer and others like him felt keenly the loss of ranges previously used freely. However, they had no legal recourse, as national practice as well as the Organic Act asserted that only the federal government could rightfully dispose of the public domain; hence, the land granted by territorial enactment still belonged to the public and, as such, was open to army use. Johnston was not in all cases so unyielding, for he distinguished between the large rancher and the struggling settlers of the area who generally claimed no more than enough land to maintain their small herds. Upon losing land that had traditionally been used for haying and grazing, a number of the small communities of central Utah, including Goshen and Nephi, petitioned the General and Governor for redress and re-

15 Letter of Johnston to Cumming, October 9, 1859, Cumming's Papers.

16 Ibid.
Concerning such cases, the General said:

...I have designated no more ground than I estimated as absolutely necessary for the use of the public herds, at the same time protecting actual settlers from encroachment upon grazing grounds intended for their own herds.

In certain instances, Johnston shifted army livestock to afford the relief sued for by the petitioners; in other cases, after investigating the validity of the claims, he refused to make any concessions.

In October of 1858, General Johnston found that, in spite of earlier assertions to the contrary, it would be possible to let Daniel Spencer and his brothers range their cattle on the north end of what the General had designated as the Rush Valley reserve. Consequently, the Spencers wintered their cattle in an area contiguous to the army grazing grounds at the southern end of Rush Valley. This arrangement worked well during the early part of the winter, but, according to army allegations, as spring approached Spencer's cowboys began to dispense liquor to the soldiers that were in the area guarding the army's livestock. The distribution point used by Spencer's employees was a small shack located near the southern limits of the grazing grounds used by the Spencers. In an at-

17 See petition of the citizens of Goshen, May 28, 1859, Cumming's Papers. The citizens of Manti and Nephi likewise entered petition that the government livestock be withdrawn from their community grazing grounds. See November and December 1858 correspondence pertaining to this, in War Department Letters.

18 Letter of Johnston to Adjutant General, February 9, 1859, ibid.

19 Letter of Johnston to F. B. Foot of Nephi, November 28, 1858. Also see his two letters of November 28 and December 12, 1858 to Captain Henry Little who commanded a detachment herding cattle near Nephi, War Department Letters.

20 Letter of Captain H. F. Clark to General Johnston, October 10, 1859. Also see statement of F. J. Porter to Johnston, August 15, 1859, ibid.

tempt to reduce the unrest caused by the sale of liquor, the civilians were ordered to abandon this shack and move to some spot more remote from the federal troops. However, the Spencers also had a feed yard and haystacks at this point; consequently, they found it necessary to leave one man at the shack to feed the livestock that ranged that particular area.  

On March 25, a Sergeant Pike and a small body of soldiers approached the tenant of the shack who at that time was Howard Spencer, a young nephew of Daniel, and ordered him to leave. An argument ensued during which the Sergeant struck young Spencer such a severe blow on the head that he nearly lost his life. After Spencer recovered, he and his family charged Pike with assault with intent to kill, and, in August of 1859, the Sergeant was called before the United States District Court in Salt Lake City. On August 12, as Pike was returning from a recess to the courthouse, a man, said by the army to be Howard Spencer, stepped from a crowd on a street corner and fatally shot the Sergeant, after which the assailant escaped to his saddled horse and fled.

Indignation among the soldiers at the murder of their comrade and the apparent escape of his murderer resulted in a midnight attack on the small community of Cedar Fort which lay some five miles to the northeast of Camp Floyd. Haystacks were burned and livestock driven off, but the citizens of the village were not molested. Nevertheless, they were fully terrorized and immediately sought General Johnston's protection which the General gladly gave, and a body of troops patrolled the town for several nights although no further disturbance occurred.

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23 Ibid.  
24 Ibid.  
25 "The Utah War--Journal of Albert Tracy," Utah Historical Quarterly, XIII (1945), p. 72  
26 Ibid.
Another related incident concerns the livestock that was taken from the army during the period of Mormon resistance in 1857. Because Buchanan's proclamation of the spring of 1858 had pardoned the Mormons for all of their hostile and treasonous acts, they could not legally be held responsible for the loss of animals that the United States Army and the freight contractors had suffered at the hands of the Nauvoo Legion. However, within a week of the army's entry into the territory, Brigham Young had the remaining livestock rounded up and prepared to restore it to the army. On July 1, in a show of complete and unconvincing guilelessness, Brigham Young wrote the Governor:

In arresting the progress into our settlements of certain armed forces, (subsequently ascertained to be a detachment of the U. S. Army), a considerable amount of stock was taken by the citizens of this Territory. The object of this was simply to compel the halt of such forces until the purpose of their advance into the Territory was ascertained. Past difficulties, real or alleged having been amicably adjusted, the earliest opportunity is now improved to return as fast as possible, the property so taken. This offer is freely and voluntarily made through you [Governor Cumming] to General Johnston, who will please to designate the time and place for its reception..."

In accordance with this, forty-three horses and mules and one hundred and ninety-nine cattle were turned over to Captain John W. Dickenson of the United States Quartermaster on July 5, 1858. While this restitution was made to the army, the Mormons seemingly failed to recognize the claims of civilian companies to similar losses. In November of 1858, General Johnston, writing in reply to an inquiry from a freighting concern,

26Both Hosea Stout and Henry Ballard write of cattle being driven from the attacking force by the foregoing Mormon guerrillas. Neither writer makes any reference to cattle being taken from civilian freight trains, but likely cattle were taken from both sources. See Hosea Stout Journal, p. 430, and "Private Journal of Henry Ballard," p. 8.
28Letter of Brigham Young to Cumming, July 1, 1858, Cumming's Papers.
29Letter of Cumming to Cass, July 16, 1858, ibid. Also, Stout re-
told Cabot Radford and Company:

...If the fact of the driving off of your cattle by any portion of the Mormon population and the subsequent appropriation of any part of your animals to their use can be proved and properly presented in a legal form I do not doubt Congress will grant you full indemnity. 30

During the first year in the territory, the army had been conducting a number of geographic surveys. A Captain Simpson of the Topographic Engineers was the expedition's geographic expert and cartographer, and he received the responsibility of first laying out and completely mapping the military reserve at Camp Floyd. He was afterward dispatched on a major exploratory expedition and mapped a new route to California which was said to eliminate three hundred miles from the northern or Humboldt route. 31 Simpson spent most of the summer of 1859 on the trail and returned to Camp Floyd from the Fort Bridger area over the Uintah Mountains and down Provo Canyon. He recognized the route's possibility and made a favorable report of it to General Johnston who visualized it as a major national route and as a means of bypassing Salt Lake City. 32 At an earlier date, the Mormons had constructed a road through the Provo Canyon part of the route and, during Johnston's time in the territory,


31 Letter of Johnston to Adjutant General Samuel Cooper, February 9, 1859, ibid.

32 Letter of Johnston to Adjutant General Samuel Cooper, August 26, 1859.
charged a toll for the use of the road. Writing to the Adjutant General Samuel Cooper on August 26, 1859, Johnston explained the situation and made the following recommendations:

Whether the great National route in this region of the Rocky Mountains passes by Fort Bridger or the Uintah pass it must pass down the Timpanogos [sic]

The Mormons now charge a heavy toll on the graded road down the Canyon and across the bridge. This road should be free from charge to travelers.

The emigrants should not be subject to the exactions which are made of them at this and several other places on the route. The Mormons and others who charge tolls should be repaid their outlay, and travelers relieved from a tax which many are ill able to pay.34

Johnston and the Mormons

Johnston's conviction that the Mormons should be dealt with sternly has been referred to in a number of connections throughout this work. In the reports of developments in Utah during the early days at Camp Scott, his name was always linked with that of Judge Eckels as favoring a forceful manner of dealing with the rebellious territory. In spite of the commendable manner in which he controlled his command and avoided the Latter-day Saints, Johnston was, as has been related in the chapter on the judiciary, ready and willing to assist the judges in their efforts to punish the citizens of Utah.35 The chief evidence of Johnston's grasp of his

33Journal History, entry of September 17, 1858, records a conversation between General Johnston and William M. Wall in which the latter asserts that he thought the cost of Mormon construction on the Timpanogos Road in Provo Canyon was about $20,000.00. At this time, Johnston expressed the opinion that the road should be broadened and the Mormons paid for their investment in it.

34Letter of Johnston to the Adjutant General, August 26, 1859, War Department Letters.

35See Valley-Tan, November 8, 1858, which records: "The Army officers side with Judge Eckels, but, at the request of Governor Cumming, General Johnston has enforced the most rigid discipline and not a soldier is permitted to approach within eighteen miles of Salt Lake City."

Supra, pp. 131-166.
purposes for being in Utah and his attitude toward the Mormons was displayed
by his support of Judge Cradlebaugh’s District Court in Provo in March of
1859. Judge Cradlebaugh issued the original requisition for federal troops
to be used in connection with the court at Provo, but the controversy that
arose over the use of the army took place mainly between General Johnston
and Governor Cumming. The latter had arrived in Provo one week after
the court convened on March 8 and sought first to convince Cradlebaugh of
the folly of his course; failing in this, Cumming turned to General
Johnston as his next recourse. On March 20, 1859, after spending nearly
a week in Provo and fully informing himself of the circumstances existing
there, the Governor wrote Johnston that the civil officers of the town of
Provo were prepared to "securely and safely keep all prisoners arrested
for trial at this Court" and made the following requests of the General:

I, therefore, respectfully request that you will promptly order
the officer in command of the detachment now encamped at the court-
house to occupy a position outside of the wall of the village; also,
to relieve the inhabitants from the influence of a military encamp-
ment in their vicinity.

General Johnston considered Cumming’s request to be an attempt on
the Governor’s part to usurp power on two fronts. In the first place, the
General felt that Cumming was trying to interfere with the functioning of
the judiciary which, as one of the separate branches of the government,
was constitutionally in possession of a power concurrent with that of the
executive branch and with which the latter could not meddle. Johnston felt,
furthermore, that by making suggestions as to the disposition of troops,
the Governor was assuming the military powers that he did not have.

36 See correspondence pertaining to the Provo affair in the House
Executive Documents, No. 78, pp. 18-24, and in letters of Johnston to the
Assistant General dating from March 10, 1859, War Department Letters.
37 House Executive Documents, No. 78, pp. 18-19.
38 Letter of Johnston to the Assistant Adjutant General, March 24,
1859, War Department Letters.
Johnston informed Governor Cumming of his position as follows:

To prevent any misunderstanding hereafter, I desire to say to your excellency that I am under no obligation whatever to conform to your suggestion, with regard to the Military dispositions of troops of this department.39

Shortly after receiving Johnston's letter refusing to comply with his requests, the Governor, evidently feeling keenly the need to thwart such practices, turned to the public for support by issuing a proclamation stating that Johnston had refused to withdraw the troops from the Provo area and laying the responsibility for the use of soldiers in connection with judicial functioning squarely on Johnston and Cradlebaugh.

General Johnston had never been happy in his service in Utah, for he had found his social isolation and separation from his family to be very irksome. As early as the summer of 1858, he had expressed his reservations by letter to his son and biographer, William Preston Johnston:

I shall be obliged to remain here another winter at least. We cannot avoid our destiny; so I will try to be contented, and hope always. This is the most sterile country I have ever imagined.

And during the fall of 1858:

...I bear my exile here badly. My philosophy sometimes gives way. I try to be content and hope for better times.41

After the disagreement over the affair in Provo, Johnston felt even less contented with his position in Utah. Johnston's son, William Preston, wrote of the General's desire to leave and of his continued duty in Utah:

It would seem proper, in view of the want of harmony in sentiment and personal relations between the Governor and the military commander, that the Government should have removed one of them [Johnston or Cumming].

39House Executive Documents, No. 78, p. 31.
41Ibid.
The Administration thought otherwise; and although General Johnston requested to be relieved, he was obligated to retain his unpleasant post another year. The motive for adopting this sort of middle ground, so characteristic of Mr. Buchanan, was not an unkindness. To relieve General Johnston under the circumstances might have the semblance of condemning him for obedience to orders; to appoint another governor would look like an intent to pursue a policy instead of the laissez-faire course represented by Governor Cumming. So he left things drift.42

Regardless of the accuracy of William Preston Johnston's judgment that neither man was removed because of Buchanan's propensity for following a middle of the road course, Johnston was rather politely reprimanded by the Secretary of War in a letter which informed him that, because peace was now restored to the territory:

...The judicial administration of the laws will require no help from the army....If the services of the United States troops should be needed, under any circumstances, it could only be to assist the executive authority in executing the sentence of law or the judicial decrees of the court...You will therefore only order the troops under your command to assist as a posse comitatus in the execution of the laws upon the written application of the governor of the Territory, and not otherwise.43

During the summer following the controversy over the use of troops to support the judiciary, the Indians along the northern or Humboldt route to California committed certain depredations. Miscellaneous reports of these Indian hostilities were verified by a semi-official letter from Samuel Smith of Brigham City stating that at least one wagon train had been destroyed by the Shoshones.44 At this time, Cumming evidently sought to exercise some control on the army in its capacity as an Indian fighting agency. He forwarded reports of the Indian attacks along with a requisition...
tion for a force to repel them to General Johnston. Johnston replied in
an icily correct letter that he was sending the force out to confront the
Indians, but that he was not doing so because of the Governor's requisition
but only as a result of hearing from a reputable source that Indian troubles
existed. The Governor, feeling that the administration had required all
uses of the military to be cleared through him, resented the General's
brusque letter and, as he had done in the earlier case, turned to the
Secretary of State for support. In this instance, however, Cumming had
exceeded his authority and Secretary of State Cass wrote:

...The troops in Utah were not intended to be placed at your dis-
posal, so that you might employ them for any purpose connected with
the welfare of the Territory which you might deem expedient, but were
only intended to be employed as posses comitatus in aid of the civil
power, whenever resistance was manifested to the execution of legal
process....

With this additional explanation, the relation of the civil executive to
the army and vice-versa was sufficiently explicit to enable the army and
the Governor to operate without further friction.

Departure

Johnston had at intervals requested to be relieved of his command
and finally, early in 1860, he received permission, at such time as matters
in the Utah department would permit his absence, to proceed to Washington.

45 Cumming's requisition for a force to put down the hostile Indians
on the northern route as well as Samuel Smith's letter to Forney and Super-
intendent Forney's letter to the Governor are all found in the House Execu-
tive Documents, No. 78, pp. 29-30.

46 Ibid., pp. 30-31.

47 Ibid., pp. 32-33.

48 Ibid., pp. 32-33.

49 Cumming later inquired about the proposed military action against
the Indians but never seems to have intervened again. See letter of C. F.
Smith (in command at Camp Floyd after Johnston's departure in February of
1860), April 23, 1860, War Department Letters.
and await further orders. On February 20, 1860, Johnston took advantage of this opportunity and turned the command over to Brevet Colonel Charles F. Smith of the Tenth Infantry and departed for Washington via the West Coast. Writing of his departure, Edward W. Tullidge says:

...General Albert Sidney Johnston left Camp Floyd for Washington, via the southern route to California. He never visited Great Salt Lake City after he passed through it with his army. General Johnston and Brigham Young therefore never met.

Colonel Smith was in command of the Utah Department until August 20, 1860, at which time Colonel Cooke of the Second Dragoons returned to the post and, because he ranked Smith, assumed command. While Smith was in command, all of the force at Camp Floyd, except three companies of artillery, three of infantry, and four of dragoons, was withdrawn; the rest of the command was scattered over a wide area in Arizona and New Mexico.

Cooke's force of ten companies remained on garrison duty in Utah for another year, but, shortly after Cumming departed in May of 1861, the detachment likewise took its leave and marched off to the Civil War. During the final year of Cumming's term, he had been the only member of Buchanan's original civil force left in the territory. Cooke's command remained until July 1, 1861, thus outlasting the Governor by a few weeks. Thus, just one week short of four years after Alfred Cumming had received his commission as Governor of Utah Territory, the entire force, military and civil, that had been sent to subdue Utah had departed.

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50 House Executive Documents, No. 78, p. 50.
51 Tullidge, History of Salt Lake City, pp. 247-248.
52 House Executive Documents, No. 78, p. 51. Also see letter of Colonel Cooke to Army Headquarters, August 21, 1860, War Department Letters.
53 See extract of orders for the removal of troops from Camp Floyd during the summer of 1860, Deseret News, April 11, 1860.
54 Neff, p. 516.
During its stay in Utah, the army had rendered valuable service in guarding the frontiers against the Indians while its explorations had opened new routes to and from the territory. Of greater importance was the effect the army's presence had on the political scene. It had served as a bulwark from behind which the federal judges waged their battle against the Mormons. Furthermore, army associations with the citizenry had complicated administrative functions in the territory as friction arose. Thousands of teamsters and other camp-followers who had accompanied the army to Utah greatly strengthened the territory's Gentile element. These transients were generally difficult to control and criminal activities rose sharply. These factors notwithstanding, the army functioned well and, in most cases, exhibited a marked degree of restraint in its relation with the residents of Utah.
SUMMARY

While similar in many respects to both the earlier government of Brigham Young and the gentile administrations that succeeded it, the Cumming administration was different from either. Actually, it was a transition from virtual home government to domination from the national capital. The Cumming administration differed from its successors not only in its function in Utah but also in the policy prescribed for it by President Buchanan and his cabinet. In spite of Buchanan's dispatching an army to quell the Mormon "rebellion," his administration dealt moderately with the citizens of Utah and consistently sustained Cumming in the latter's effort to let the Mormons lead a political life somewhat akin to that led in other territories. Buchanan's cabinet also showed its clemency in the manner in which it kept the obedient, if rather hostile, Albert Sydney Johnston at the head of the army until 1860, and then replaced him with the regular army officer most apt to know and respect the Mormons, Colonel Phillip St. George Cooke, who had commanded the Mormon Battalion at the time of the Mexican War. Buchanan furthermore removed a vindictive judiciary and installed a set of more favorably inclined judges headed by Chief Justice John P. Kinney, who during an earlier term on the Utah bench had demonstrated a marked sympathy for the residents of the territory. By these acts as well as a great many of lesser significance, the Buchanan administration displayed what in the light of developments during subsequent administrations was true moderation.
Cumming's grasp of affairs in Utah was in close harmony with the administration in Washington. Throughout his term in office, Cumming demonstrated a sincere regard for the basic laws that guarantee the rights of citizens. His consistent respect for the orders of his superiors and the mandates of the Constitution and the Organic Act was possibly Cumming's strongest characteristic, and it featured strongly in the peaceful settlement of the Utah "rebellion" and the period of relative peace that existed while he was in Utah. He was fair and just in his dealings with the Mormons but was directed by a conviction that what he did was right rather than by subserviance to the Mormon leaders. His administrative record shows a great number of occasions when he co-operated with the Mormons but, at the same time, shows that he was not only able to oppose them but, in certain cases, successfully imposed his will upon them.

In a day when rather frequent trips east typified his fellow officers, Cumming was faithful to the responsibilities of his office. He remained in the territory until a few weeks before his four year term ended, and when he did leave, he did so only with the knowledge and consent of the administration in Washington. His dedication to and constancy in his job were the marks of a good administrator. By persistency that at time bordered on bull-headedness, he won most political duels which he entered. With one or two exceptions, the Governor's decisions seem to have been wisely made and their execution resulted in better conditions in the territory.

In final judgment of Cumming and his actions, the writer can do no less than conclude that Buchanan's original choice in sending Cumming
to Utah was wisely made and that the Mormons could hardly have hoped for any more just treatment than they received at the hands of Alfred Cumming.

While Buchanan made a wise choice for Governor, he failed to do as well in his selection of the original slate of judges for the Utah bench. The judges demonstrated a vindictive spirit toward the people upon whom they were called to dispense justice. Although Chief Justice Delano R. Eckels may have exerted great influence on the Associate Justices John Cradlebaugh and Charles Sinclair, each of them left adequate proof of their conviction that the Mormons were guilty of treason and that they should be punished. By forming and openly voicing their opinions they ignored their judicial responsibility to listen impartially to evidence as it was presented in court and then, on the basis of the law, make a decision.

Not only did the policy of sternness and bitterness chosen by the judges deviate from the American ideal of justice and the policy outlined by President Buchanan, but they also displayed little ability in waging their offensive against Governor Cumming and the Mormons. At times, it appeared that, rather than hoping to win eventual supremacy for their cause, all they sought was to annoy and harass the Mormons. There is little doubt that Judges Eckels, Cradlebaugh, and Sinclair were either asked to resign or were removed by the President, for he sought to fill their positions with men that would be more amenable to the policy outlined in Washington and pursued by Governor Cumming. Judges John Kinney, Henry R. Crosby, and R. P. Fliemiken, who replaced the earlier judges in 1860, quickly revoked many of the decisions that the Mormons had consid-
 ered offensive and unjust and set the judiciary on a course more in keeping with Cumming's policy.

During the Cumming administration, the Mormons found their chief strength in the Legislative Assembly and in the Probate Courts of the territory. The church members used these two strongholds to good advantage in opposing Judge Eckels and his associates. The refusal of the legislature to grant sufficient funds to defray the expenses of court proceedings sharply curtailed the jurisdiction of the District Courts, while the Probate Courts were able to operate in their county communities without restriction. Even after the antagonistic judges had been replaced by more favorably disposed men, the Mormons were loath to relinquish the control over the judiciary that the limited provisions for legal fees gave them and refused to pass legislation of a more liberal nature.

The legislature was ably led and almost without exception exhibited a united front in matters that pertained to territorial interest. Due to its close unity, it seemed occasionally to be hyper-sensitive and somewhat combative. Perhaps this can be excused in the light of Mormon background, but it nonetheless complicated the administration of government.

The Probate Court system, although designed, to a degree, to keep control in the hands of the Mormons and hence somewhat suspect from the ideal point of view, did operate efficiently and apparently in a reasonably fair manner. The Probate Court also seems to have been developed as a means of handling judicial matters in an isolated territory whose federally appointed judges were often absent.

The military with its anti-Mormon attitude served as a screen from behind which the first group of judges launched their attack on the
Mormons and their institutions. The army furnished not only moral support but at certain times physical enforcement for the so-called legal activities of the judges. Although the presence of a large body of men with the livestock necessary to sustain them caused some friction as the army and the local residents competed for grass and water, the army also provided a welcome market for horse, grain products which stimulated the territorial economy. The demands of restraining the territory and guarding the frontier from Indian attack seem hardly to have justified the presence of so strong a force, but, in this case, Utah's necessities were amply supplemented by the demands of eastern politics.

Regarded as a whole, the four year period of the Cumming administration was at no time as bad as any of the parties involved seemed at the outset to have feared it would be. A peaceful settlement was made and affairs adjusted rather rapidly. The last year of Cumming's term was marked by unusually favorable circumstances; not only did the territorial governor and the citizens work well together, but the federal judiciary gave promise of a new and more effective beginning, and the Utah army was commanded by the friendly Cooke and decreased to a size in keeping with the job of guarding the frontiers against Indian hostilities, while the executive chair was no longer in the hands of a local man, and the federal judiciary and the United States Army were still in the territory. Cumming left it in a condition of political tranquility that, had official policy in Washington remained unchanged, would likely have produced a happy and peaceful territorial future for Utah.
APPENDIX I

AN ACT TO ESTABLISH A TERRITORIAL GOVERNMENT FOR UTAH

Sec. I. Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That all that part of the territory of the United States included within the following limits, to wit; bounded on the west by the state of California, on the north by the territory of Oregon, and on the east by the summit of the Rocky Mountains, and on the south by the thirty-seventh parallel of north latitude, be, and the same is hereby, created into a temporary government, by the name of the Territory of Utah; and when admitted as a state, the said territory, or any portion of the same shall be, received into the Union, with, or without slavery, as their constitution may prescribe at the time of their admission; Provided, That nothing in this act contained shall be construed to inhibit the government of the United States from dividing said territory into two or more territories, in such manner, and at such times, as congress shall deem convenient and proper, or from attaching any portion of said territory to any other state or territory of the United States.

Sec. II. And be it further enacted, That the executive power and authority in and over said territory of Utah shall be vested in a governor, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the president of the United States. The governor shall reside within said territory, shall be commander-in-chief of the militia thereof, shall perform the duties and receive the emoluments of superintendent of Indian affairs, and shall approve all laws passed by the legislative assembly before they shall take effect; he may grant pardons for offences against the laws of the U.S. until the decision of the president can be made known thereon; he shall commission all officers who shall be appointed to office under the laws of the said territory, and shall take care that the laws be faithfully executed.

Sec. III. And be it further enacted, That there shall be a secretary of said territory, who shall reside therein, and hold his office for four years, unless sooner removed by the president of the United States; he shall record and preserve all the laws and proceedings of the legislative assembly hereinafter constituted, and all the acts and proceedings of the governor in his executive department; he shall transmit one copy of the laws, and one copy of the executive proceedings, on or before the first day of December in each year, to the president of the United States, and at the same time, two copies of the laws to the speaker of the house of representatives, and the president of the senate, for the
use of congress. And in case of the death, removal, resignation, or other necessary absence of the governor from the territory, the secretary shall have, and he is hereby authorized and required to execute and perform all the powers and duties of the governor during such vacancy or necessary absence, or until another governor shall be duly appointed to fill such vacancy.

Sec. IV. And be it further enacted, That the legislative power and authority of said territory, shall be vested in the governor and a legislative assembly. The legislative assembly shall consist of a council and house of representatives. The council shall consist of thirteen members, having the qualifications of voters as hereinafter prescribed, whose term of service shall continue two years. The house of representatives shall consist of twenty-six members, possessing the same qualifications as prescribed for members of the council, and whose term of service shall continue one year. An apportionment shall be made, as nearly equal as practicable, among the several counties or districts, for the election of the council and house of representatives, giving to each section of the territory representation in the ratio of its population, Indians excepted, as nearly as may be. And the members of the council and of the house of representatives shall reside in, and be inhabitants of, the district for which they may be elected respectively. Previous to the first election, the governor shall cause a census or enumeration of the inhabitants of the several counties and districts of the territory to be taken, and the first election shall be held at such time and places, and to be conducted in such manner as the governor shall appoint and direct; and he shall, at the same time, declare the number of members of the council and house of representatives to which each of the counties or districts shall be entitled under this act. The number of persons authorized to be elected having the highest number of votes in each of said council districts for members of the council, shall be declared by the Governor to be duly elected to the council; and the person or persons authorized to be elected having the highest number of votes for the House of Representatives, equal to the number to which each county or district shall be entitled, shall be declared by the Governor to be duly elected members of the House of Representatives; Provided, That in case of a tie between two or more persons voted for, the governor shall order a new election to supply the vacancy made by such a tie. And the person thus elected to the legislative assembly shall meet at such place, and on such day, as the governor shall appoint; but, thereafter, the time, place, and manner of holding and conducting all elections by the people, and the apportioning the representation in the several counties or districts to the council and house of representatives, according to population, shall be prescribed by law, as well as the day of the commencement of the regular sessions of the legislative assembly: Provided, That no one session shall exceed the term of forty days.

Sec. V. And be it further enacted, That every free white male inhabitant above the age of twenty-one years, who shall have been a resident of said territory at the time of the passage of this act, shall be entitled to vote at the first election, and shall be eligible to any office within the said territory; but the qualifications of voters and of
holding office, at all subsequent elections, shall be such as shall be
prescribed by the legislative assembly: Provided, That the right of suf-
frage and of holding office shall be exercised only by citizens of the
United States, including those recognized as citizens by the treaty with
the republic of Mexico, concluded February second eighteen hundred and
forty-eight.

Sec. VI. And be it further enacted, That the legislative power
of said territory shall extend to all rightful subjects of legislation,
consistent with the Constitution of the United States and the provisions
of this act; but no law shall be passed interfering with the primary
disposal of the soil; no tax shall be imposed upon the property of the
United States; nor shall the lands or other property of non-residents
be taxed higher than the lands or other property of residents. All the
laws passed by the legislative assembly and governor shall be submitted
to the Congress of the United States, and if disapproved shall be null
and of no effect.

Sec. VII. And be it further enacted, That all township, district,
and county officers, not herein otherwise provided for, shall be appoint-
ed or elected, as the case may be, in such manner as shall be provided
by the governor and legislative assembly of the Territory of Utah. The
governor shall nominate, and, by and with the advice and consent of the
legislative council, appoint all officers not herein otherwise provided
for; and in the first instance the Governor alone may appoint all said
officers, who shall hold their offices until the end of the first session
of the legislative assembly, and shall lay off the necessary districts
for members of the council and house of representatives, and all other
offices.

Sec. VIII. And be it further enacted, That no member of the
legislative assembly shall hold or be appointed to any office which shall
have been created, or the salary or emoluments of which shall have been
increased while he was a member, during the term for which he was elected,
and for one year after the expiration of such term; and no person holding
a commission or appointment under the United States, except postmasters,
shall be a member of the legislative assembly, or shall hold any office
under the government of said territory.

Sec. IX. And be it further enacted, That the judicial power of
said territory shall be vested in a Supreme Court, District Court,
Probate Courts, and in Justices of the Peace. The supreme court shall
consist of a chief justice and two associate justices, any two of whom
shall constitute a quorum, and who shall hold a term at the seat of
government of said territory annually, and they shall hold their offices
during the period of four years. The said territory shall be divided into
three judicial districts, and a district court shall be held in each of
said districts by one of the justices of the supreme court, at such time
and place as may be prescribed by law; and the said judges shall, after
their appointments, respectively, reside in the districts which shall be
assigned them. The jurisdiction of the several courts herein provided for,
both appellate and original, and that of the probate courts and of jus-
ices of the peace shall be as limited by law; Provided, That justices of the peace shall not have jurisdiction of any matter in controversy when the title or boundaries of land may be in dispute, or where the debt or sum claimed shall exceed one hundred dollars; and the said supreme and district courts respectively shall possess chancery as well as common law jurisdiction. Each district court, or the judge thereof, shall appoint its clerk, who shall also be the register in chancery, and shall keep his office at the place where the court may be held. Writs of error, bills of exception, and appeals, shall be allowed in all cases from the final decisions of said district courts to the supreme court, under such regulations as may be prescribed by law; but in no case removed to the supreme court shall trial by jury be allowed in said court. The supreme court, or the justices thereof, shall appoint its own clerk, and every clerk shall hold his office at the pleasure of the court for which he shall have been appointed. Writs of error and appeals from the final decision of said supreme court, shall be allowed, and may be taken to the Supreme Court of the United States, in the same manner and under the same regulations as from the circuit court of the United States, where the value of the property or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witness, shall exceed one thousand dollars, except only that, in all cases involving title of slaves, the said writs of error or appeals shall be allowed and decided by the said Supreme Court, without regard to the value of the matter, property, or title in controversy; and except, also, that a writ of error or appeal shall also be allowed to the Supreme Court of the United States, from the decisions of the said supreme court created by this act, or of any judge thereof, or of the district courts created by this act, or of any judge thereof, upon any writ of habeas corpus involving the question of personal freedom; and each of the said district courts shall have and exercise the same jurisdiction in all cases arising under the Constitution and laws of the United States as is vested in the circuit and district courts of the United States; and the said supreme and district courts of the said territory, and the respective judges thereof, shall and may grant writs of habeas corpus in all cases in which the same are granted by the judges of the United States in the District of Columbia; and the first six days of every term of said courts, or so much thereof as shall be necessary, shall be appropriated to the trial of causes arising under the said Constitution and laws; and writs of error and appeal, in all such cases, shall be made to the supreme court of said Territory, the same as in other cases. The said clerk shall receive in all such cases the same fees which the clerks of the district courts of Oregon Territory now receive for similar services.

Sec. X. And be it further enacted, That there shall be appointed an attorney for said Territory who shall continue in office for four years, unless sooner removed by the President, and who shall receive the same fees and salary as the attorney of the United States for the present Territory of Oregon. There shall also be a marshal for the Territory appointed, who shall hold his office for four years, unless sooner removed by the President, and who shall execute all processes issuing from the said courts, when exercising their jurisdiction as circuit and district courts of the United States, he shall perform the duties, be subject to
the same regulation and penalties, and be entitled to the same fees as the marshals of the district court of the United States for the present Territory of Oregon; and shall, in addition, be paid two hundred dollars annually as a compensation for extra services.

Sec. XII. And be it further enacted, That the governor, secretary, chief justice and associate justices, attorney, and marshal, shall be nominated, and, by and with the advice and consent of the Senate, appointed by the President of the United States. The governor and secretary to be appointed as aforesaid shall, before they act as such, respectively, take an oath or affirmation, before the district judge, or some justice of the peace in the limits of said Territory, duly authorized to administer oaths and affirmations by the laws now in force therein, or before the chief justice or some associate justice of the Supreme Court of the United States, to support the Constitution of the United States, and faithfully to discharge the duties of their respective offices, which said oaths, when so taken, shall be certified by the person by whom the same shall have been taken, and such certificates shall be received and recorded by the said secretary among the executive proceedings; and the chief justice and associate justices, and all other civil officers in said Territory, before they act as such, shall take a like oath or affirmation, before the said governor or secretary, or some judge or justice of the peace of the Territory who may be duly commissioned and qualified, which said oath or affirmation shall be certified and transmitted, by the person taking the same, to the secretary, to be by him recorded as aforesaid; and afterwards, the like oath or affirmation shall be taken, certified, and recorded, in such manner and form as may be prescribed by law. The Governor shall receive an annual salary of fifteen hundred dollars as governor, and one thousand dollars as Superintendent of Indian affairs. The Chief Justice and Associate Justices shall each receive an annual salary of eighteen hundred dollars. The Secretary shall receive an annual salary of eighteen hundred dollars. The said salaries shall be paid quarter-yearly, at the Treasury of the United States. The members of the Legislative Assembly shall be entitled to receive three dollars each per day during their attendance at the sessions thereof, and three dollars each for twenty miles travel, in going to and returning from the said sessions, estimated according to the nearest usually traveled route. There shall be appropriated annually the sum of one thousand dollars, to be expended by the Governor to defray the contingent expenses of the Territory. There shall also be appropriated annually, a sufficient sum, to be expended by the Secretary of the Territory, and upon an estimate to be made by the Secretary of the Treasury of the United States, to defray the expenses of the Legislative Assembly, the printing of the laws, and other incidental expenses; and the Secretary of the Territory shall annually account to the Secretary of the Treasury of the United States for the manner in which the aforesaid sum shall have been expended.

Sec. XII. And be it further enacted, That the Legislative assembly of the Territory of Utah shall hold its first session at such time and place in said Territory as the Governor thereof shall appoint and direct; and at said first session, or as soon thereafter as they shall
deem expedient, the Governor and Legislative Assembly shall proceed to locate and establish the seat of government for said Territory, at such place as they may deem eligible; which place, however, shall thereafter be subject to be changed by the said Governor and Legislative Assembly. And the sum of twenty thousand dollars, out of any money in the treasury not otherwise appropriated, is hereby appropriated and granted to said Territory of Utah to be applied by the Governor and Legislative Assembly to the erection of suitable public buildings at the seat of government.

Sec. XIII. And be it further enacted, That a Delegate to the House of Representatives of the United States, to serve during each Congress of the United States, may be elected by the voters qualified to elect members of the Legislative Assembly, who shall be entitled to the same rights and privileges as are exercised and enjoyed by the delegates from the several other Territories of the United States to the said House of Representatives. The first election shall be held at such time and places, and be conducted in such manner, as the Governor shall appoint and direct; and at all subsequent elections, the times, places, and manner of holding the elections shall be prescribed by law. The person having the greatest number of votes shall be declared by the Governor to be duly elected, and a certificate thereof shall be given accordingly; Provided, That said delegate shall receive no higher sum for mileage than is allowed by law to the delegate from Oregon.

Sec. XIV. And be it further enacted, That the sum of five thousand dollars be, and the same is hereby, appropriated out of any moneys in the treasury not otherwise appropriated, to be expended by and under the direction of the said Governor of the Territory of Utah, in the purchase of a library, to be kept at the seat of government for the use of the Governor, Legislative Assembly, judges of the supreme court, secretary, marshal, and attorney of said Territory, and such other persons, and under such regulations as shall be prescribed by law.

Sec. XV. And be it further enacted, That when the lands in the said Territory shall be surveyed under the direction of the Government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township in said Territory shall be, and the same are hereby, reserved for the purpose of being applied to schools in said Territory, and in the States and Territories hereafter to be erected out of the same.

Sec. XVI. And be it further enacted, That temporarily, and until otherwise provided by law, the Governor of said Territory may define the judicial districts of said Territory, and assign the judges who may be appointed for said Territory to the several districts, and also appoint the times and places for holding courts in the several counties or subdivisions in each of said judicial districts, by proclamation to be issued by him; but the Legislative Assembly, at their first or any subsequent session, may organize, alter, or modify such judicial districts, and assign the judges, and alter the times and places of holding the courts, as to them shall seem proper and convenient.
Sec. XVII. And be it further enacted, That the Constitution and laws of the United States are hereby extended over and declared to be in force in said Territory of Utah, so far as the same, or any provision thereof, may be applicable.

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A HISTORICAL ANALYSIS OF TERRITORIAL GOVERNMENT IN UTAH
UNDER ALFRED CUMMING, 1857-1861

An Abstract
of a Thesis Presented to
the Department of History
Brigham Young University
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In Partial Fulfillment
of the Requirements for the Degree
Master of Arts in History

by
Charles S. Peterson
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ABSTRACT

From earliest days, Utah Territory was the scene of violent disagreement between federal officers and Mormon citizens. By 1857 returning officers reported that a rebellion existed in Utah. On the strength of these reports, President Buchanan appointed Alfred Cumming as Governor and dispatched Albert S. Johnston's army to install the new executive. Johnston's army started late and had not arrived in Salt Lake City by autumn. The Mormons further delayed the expedition until winter snows forced Johnston to encamp at Fort Bridger.

During the summer, Buchanan also appointed Secretary of State John Hartnett, Chief Justice Delano R. Eckels, Associate Justices Charles Sinclair and John Cradlebaugh, Indian Superintendent Jacob Forney, Marshal P. E. Dotson, and later, Attorney Alexander Wilson.

Arriving in the fall of 1857, Judge Eckels observed Mormon resistance and formulated permanent and adverse opinions. Later, Cumming and other civil officers left Fort Leavenworth with Colonel Cooke's Second Dragoons and in November arrived at Johnston's encampment which had been renamed Camp Scott. During an uneasy winter, an abiding division of feelings developed between Cumming and Eckels. This was magnified by the arrival of Thomas L. Kane, who had travelled to Utah to aid in reconciliation. Cumming joined Kane in an unescorted trip to Salt Lake City where he was first received with reserve, although the Mormons shortly accepted him and gave grudging consent to the army's entry. While Cumming was in Salt Lake City, Buchanan pardoned the Mormons and dispatched a
Peace Commission to the territory.

In his administration, Cumming concurred with Buchanan's policy and made every effort to prevent its alteration. Cumming was firm in dealing with the Mormons and consistently refused to take action he considered to be contradictory to instruction or basic law. The Governor was closely associated with Hartnett and Forney, and he assumed the responsibilities of their offices during their extended absences.

While Cumming was in Camp Scott, the Mormons had passed legislation to hinder his assumption of power. They attached Green River County to Salt Lake County, declared that only Probate Judges were authorized to hear oaths of incoming appointees, and abolished territorial taxes.

The judiciary's course was marked with trouble, since each of the judges antagonized the citizens of the territory by fruitless attempts to prosecute them for offenses committed prior to Buchanan's pardon. In an effort to restrain the judiciary, the legislature withheld funds, thus forcing many cases into the Mormon dominated Probate Courts. The judges countered by declaring Probate decisions illegal; consequently, a condition bordering on anarchy developed. To relieve this situation, the judges were replaced in 1860 by men more amenable to Cumming's policy.

West of Lehi, the army established Camp Floyd, which at its peak numbered thirty-five hundred men. Although resentful toward the Mormons and disgruntled with its lonely vigil, the army was well controlled and caused little trouble. It remained in the territory during the entire Cumming administration and was withdrawn in July of 1861.

Cumming himself served a four year term which was in many respects a period of transition. Previously, Brigham Young had exerted great control, and, subsequently, the federal government intervened to force
the Mormons to accept a more conventional course. Cumming's appointment, too, was a move toward national intervention, but, unlike many later administrators, Alfred Cumming encouraged home rule and did not seek to alter Mormon institutions. His policy was popular with the citizens and prior to his departure he had directed the course of government through a series of trying situations to a condition of considerable stability.