Constitutional Rights and the Mormon Appeals for National Redress of the Missouri Grievances

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CONSTITUTIONAL RIGHTS AND THE MORMON APPEALS

FOR NATIONAL REDRESS OF THE

MISSOURI GRIEVANCES

A Thesis

Presented to the

Department of Political Science

Brigham Young University

In Partial Fulfillment

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Master of Arts

by

Lynn D. Stewart

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PREFACE

In 1839, the members of the Church of Jesus Christ of Latter-day Saints (Mormons) were driven from the state of Missouri under orders of the governor. During the expulsion, property was taken, people were killed, and great hardships were suffered.

This study deals with the attempts of the Mormon people to obtain redress from the national government for the losses which they had suffered and the rights which they felt had been denied them. It considers the various appeals of the Mormons to the national government for assistance, as well as the Mormon views on the powers of the national government to protect individual liberties.

The major conclusion of this study is that the national government was limited by various factors from taking action to aid the Mormons.

In this work the members of the Church of Jesus Christ of Latter-day Saints are referred to as Mormons, Saints, or Latter-day Saints, while those residents of Missouri who are not members of this faith are called old settlers, gentiles, or Missourians.

Reference is made in the study to Joseph Smith receiving divine revelations and to his being a prophet of God. The thesis will not be concerned with the validity of these claims; both will be treated as beliefs of the Mormon people.
I am grateful to many individuals for their help in completing this thesis. I wish to express appreciation to Dr. J. Keith Melville, Dr. Jesse W. Reeder, Dr. Ted J. Warner, and Dr. Edwin B. Morrell for their guidance in the researching and writing of the thesis; to A. William Lund and the staff of the Church Historian's Office, and to the staffs of the Utah State Historical Society, the special collections room of the Brigham Young University Library, and the public documents section of the University of Utah Library for their assistance in obtaining research materials; and to my parents, my brother, my aunt and uncle, and Dianne for their support and encouragement.
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CHAPTER I

CONFLICT IN JACKSON COUNTY

Wherever the real power in a Government lies, there is the danger of oppression. In our Governments the real power lies in the majority of the community, and the invasion of private rights is chiefly to be apprehended, not from acts of Government contrary to the sense of its constituents, but from acts in which the Government is the mere instrument of the major number of the constituents.¹

--James Madison

The history of early America contains many accounts of unpopular minority groups being ill-treated by the majority. Such was the case of those who adopted the Mormon religion in the United States in the nineteenth century. These people suffered extreme hardships in Missouri during the 1830's and were driven from the state by 1839. During this period the Mormons claimed that they were denied such basic rights as life, liberty, and property ownership. To understand the basis of these claims it is necessary to examine the causes of the conflict between the Mormons and their neighbors. A brief consideration of this period of Mormon history will aid such an understanding.

The Mormon Church was established in 1830, in New York, under the direction of Joseph Smith. Early in 1831, the main body of the Mormons moved to Kirtland, Ohio, and founded the Church there. In June of that same year the

Saints held a conference in Kirtland and missionaries were called to go to the West and preach the gospel. These elders were to journey toward Jackson County, Missouri, preaching as they went, and were to assemble there for their next conference. Joseph Smith and other leading men of the Church left Kirtland on June 19 and began arriving in Missouri in mid-July. Soon after Smith arrived he received a revelation recorded in the Church's *Doctrine and Covenants*. In this revelation Smith was told that Missouri was to be the land of Zion, with Independence as its center place, and that the Mormon people were to gather to this land which had been consecrated for them by the Lord.

Smith, along with Sidney Rigdon and Oliver Cowdery, returned to Kirtland in August; the Mormons, however, were now established in Missouri through command of God, and their numbers quickly increased. By the spring of 1833, nearly a thousand Saints had gathered in Jackson County and conflict soon arose between the Mormons and the old settlers. As the Mormon population increased in the county, so did the fears of the old inhabitants that the

\[2\] Joseph Smith, History of the Church of Jesus Christ of Latter-day Saints, Period I (6 vols.; Salt Lake City: Deseret Book Co., 1964), I, 188. Hereafter cited as DHC.

\[3\] Doctrine and Covenants of the Church of Jesus Christ of Latter-day Saints (Salt Lake City: Church of Jesus Christ of Latter-day Saints, 1955), Section 57.

\[4\] DHC, I, 206.

Saints would soon outnumber them and thereby gain control of the political offices of the county.\textsuperscript{6} The Mormon numbers continued to grow until by July, 1833, they constituted one-third of the population of Jackson County.\textsuperscript{7} The growing political potentialities of the Mormons, based on their unity and their numbers as well as their belief that they were to inherit Jackson County, led the Missourians to take action to curb the growing Mormon power.

In mid-July, 1833, a document began circulating among the non-Mormons of Jackson County. This "constitution" or "manifesto" stated the grievances of the old settlers against the Mormons. One paragraph from the "manifesto" will illustrate their feeling toward the Saints:

They declare openly that their God hath given them this county of land, and that sooner or later they must and will have possession of our lands for an inheritance; and, in fine, they have conducted themselves on many other occasions, in such a manner, that we believe it a duty we owe to ourselves, our wives, and children, to the cause of public morals, to remove them from among us, as we are not prepared to give up our pleasant places and goodly possessions to them. . . .\textsuperscript{8}

The document further accused the Mormons of being fanatics, blasphemers, and knaves, and stated that while the civil law did not provide a means to remove these undesirable people the law of self-preservation did.

The "manifesto" also called for a meeting of all non-Mormons of Jackson

\textsuperscript{6} Ibid., p. 322.

\textsuperscript{7} Richard Bushman, "Mormon Persecution in Missouri in 1833," Brigham Young University Studies (Autumn, 1960), p. 15.

\textsuperscript{8} DHC, I, 376. The charges of the "manifesto" were answered in Parley P. Pratt's History of the Persecution of the Saints, pp. 26-29. Quoted in DHC, I, pp. 376-77.
County at Independence on July 20. On this date a group of from three to five hundred Missourians gathered and demanded that the Mormon printing establishment, which was located in the home of W. W. Phelps, cease its operation. When the Mormons refused to comply with this demand, the Missourians destroyed the press by tossing it from the second floor of the Phelps' home. They also destroyed many of the personal possessions of the Phelps family and they tarred and feathered Bishop Edward Partridge and Charles Allen. The mob also threatened to destroy the Mormon store at Independence, but it was spared when its keeper, Sidney Gilbert, promised to close it. 9

The citizens of Jackson County, already having made known their violent intentions toward the Mormons, held another meeting and drafted a paper making the following demands of the Latter-day Saints:

1. No more Mormons should move into the county.
2. Mormons already in the county were to agree to leave within a reasonable time; they would be given time to sell their property and would not be molested during this time.
3. The Mormon newspaper, Evening and Morning Star, would cease its operation as would all Mormon businesses.
4. Mormon leaders would discourage the emigration of any distant Church members into the county. 10

On July 23, the Missourians again assembled under a red flag and pressured the Mormon leaders, including Oliver Cowdery, W. W. Phelps, and Edward Partridge, into removing their families from Jackson County by January 1, 1839.


10 DHC, I, 398.
1834. Half of the Mormon population was also to be gone by that time, with the remaining Saints following them by the next April. 11

When the conflict had first broken out between the Mormons and the old settlers in Jackson, Oliver Cowdery had been sent to Kirtland to obtain counsel from Joseph Smith and the other Church leaders there concerning the Missouri problems. Smith soon dispatched Elders Orson Hyde and John Gould to Independence with advice for the Missouri Saints. Soon after they arrived at Independence, Hyde and W. W. Phelps journeyed to Jefferson City with a petition for Governor Daniel Dunklin. This petition, dated September 28, 1833, stated that the old settlers had harassed the Latter-day Saints since early spring, and further told how the Missourians had demanded that the Saints leave the county. The petition also told of the destruction of the printing press and appealed to Governor Dunklin to send troops to ensure that the rights of the Mormon people would be protected. 12

The governor replied to the petition in part as follows:

Not being willing to persuade myself that any portion of the citizens of the State of Missouri are so lost to the sense of these truths as to require the exercise of force in order to insure a respect for them, after advising with the Attorney General and exercising my best judgment, I would advise you to make a trial of the efficacy of the laws. . . .

With regard to the injuries you have sustained by destruction of property, etc., the law is open to redress; I cannot permit myself to doubt that the courts will be open to you, nor (believe) that you will find difficulty in procuring legal advocates to sue for damages therein. 13

11 History of Caldwell Co., p. 114.

12 DHC, I, 410-15.

13 Ibid., p. 424.
After receiving the above letter, the Saints decided to remain in their homes; they also made arrangements to engage four attorneys to represent them in their claims against the Missourians. Attorneys Wood, Reese, Doniphan, and Atchison agreed to act in behalf of the Mormons for the sum of one thousand dollars. The efforts however, were to bring little help for the Saints.

When the Missourians learned that the Mormons intended to appeal to the courts for redress, and when the Saints publicly stated on October 20 that they would defend their homes and families, violence again flared up. Groups of Missourians, during an eight-day period of intense conflict, attacked three Mormon settlements in the Independence area.

On the morning of November 5, the Mormon leaders received word that a large group of Missourians had gathered near Independence and were threatening to attack the Mormons there. Lyman Wight led over one hundred Mormons to the aid of the Saints at Independence, but before they arrived they found out that the town was not being attacked after all.

Colonel Thomas Pitcher, as an officer of the state militia, demanded that certain Mormons be delivered up to be tried for alleged murders, and that the Saints surrender their weapons to him. Not wishing to resist state troops, and having been assured by Lt. Governor Lilburn W. Boggs that

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14 Ibid., p. 425.
15 CHC, I, 342.
16 DHC, I, 433.
both Mormons and old settlers would be disarmed, the Saints reluctantly gave up their arms.\textsuperscript{17} This proved to be an unwise move by the Mormons, for as soon as the Missourians learned that the Saints were unarmed they intensified the violence against them without fear of reprisal.

By November 7, destitute men, women, and children crowded the banks of the Missouri River trying to escape from Jackson County. The comments of Parley P. Pratt, a Mormon apostle, describe the situation of the Saints at that time:

\begin{quote}
The struggle was now over, our liberties were gone, our homes to be deserted and possessed by a lawless banditti; and all of this in the United States of America.

All our goods were left behind; but I obtained some of them afterwards at the risk of my life. But all my provisions for the winter were destroyed or stolen, and my grain left growing on the ground for my enemies to harvest.\ldots\textsuperscript{18} In short, every member of the society was driven from the county and fields of corn were ravaged and destroyed; stacks of wheat burned, household goods plundered, and improvements and every kind of property destroyed.
\end{quote}

The Mormons now sought safety in adjacent counties, mainly Clay County, since they dared not return to their homes and lands in Jackson without protection. In an effort to obtain this protection some of the leading elders of the Church sent another petition to Governor Daniel Dunklin. The petition outlined the sufferings of the Mormon people at the hands of the mobs and then asked the governor to restore them to their property and to protect them by

\textsuperscript{17}Ibid., p. 434.

the use of state militia or a detachment of United States Rangers.\textsuperscript{19}

The governor made a sympathetic reply to the Mormon petition and advised them that it was their right to reclaim their lands, to organize themselves into militia companies and to apply to the state for arms to protect their property.\textsuperscript{20} The Missouri attorney general, Robert W. Wells, supported the governor in these views.\textsuperscript{21}

Governor Dunklin offered to supply a military escort to protect witnesses subpoenaed to testify concerning the acts of violence committed by the citizens of Jackson County against the Mormons. He also pledged that the Saints could return to their homes under the protection of this guard. The Mormons realized that although a military escort might protect them while they returned to their settlements, as soon as the troops left the mobs would resume their actions against them and the governor had stated that he did not have the power to keep a protective military body in Jackson for any period of time after the Saints had returned to their homes. Since there was no guarantee of safety after they returned to Jackson, the Mormons elected to remain in Clay County.

During the February term of the circuit court at Independence, several of the Mormon leaders were subpoenaed to appear and testify in behalf of the state against certain of the old settlers of Jackson County who had been charged

\textsuperscript{19}DHC, I, 451-52.

\textsuperscript{20}Ibid., pp. 476-77. The letter is dated February 4, 1834.

\textsuperscript{21}History of Caldwell Co., p.115.
with committing acts of violence against the Mormons. On February 23, 1834, the subpoenaed elders were escorted into Jackson County by a company of fifty militiamen under the command of Captain David Atchison, just as Governor Dunklin had promised. The witnesses settled in the Flowney Hotel and were placed under strong guard. Attorney General Wells soon visited the witnesses and informed them that there was no longer any hope of any criminal procedure against the old settlers. The boldness of the Jackson County citizens had apparently overawed the governmental authorities of the state to the point that they were afraid to take action against them. Soon after Wells had informed the Mormon leaders of the circumstances, Captain Atchison received an order from circuit judge John Ryland stating that his troops were no longer needed in Jackson County. The Mormons, fearing for their lives if left without military protection, marched out of Independence with Atchison's company. 22

The Saints continued to appeal to the state officers for aid in attempting to regain their lost property. The Mormons felt that they were commanded by God to continue to seek redress because of the following revelation which Joseph Smith had received from the Lord:

And again I say unto you, those who have been scattered by their enemies; it is my will that they should continue to importune for redress, and redemption, by the hands of those who are placed as rulers and are in authority over you. . . .

22DHC, I, 481-83. A letter from W. W. Phelps to the Church leaders in Kirtland describes these events.
Let them importune at the feet of the judge;  
And if he heed them not, let them importune at the feet of the governor;  
And if the governor heed them not, let them importune at the feet of the president; ... 23

Following this counsel another appeal was made to Governor Dunklin through a letter of June 5, 1834, signed by A. S. Gilbert, W. W. Phelps, and Edward Partridge. In this letter the Mormons informed the governor that they were now prepared to return to Jackson County under the protection of a military guard which the governor had previously promised would be supplied. 24

A letter from Governor Dunklin to a Colonel Thornton, dated June 6, 1834, shows that the governor at that time felt that the Mormons should be restored to their lands in Jackson County. Dunklin wrote the following:

A more clear and indisputable right does not exist, than that of the Mormon people, who were expelled from their homes in Jackson County, to return and live on their lands; ... The Constitution of the United States declares "that the citizens of each state shall be entitled to all privileges and immunities of citizens of the several states." Then we cannot interdict any people, who have a political franchise in the United States, from immigrating to this state, nor from choosing what part of the state they will settle in, provided they do not trespass on the property rights of others. 25

The governor then appointed Colonel Thornton a special aid and requested that he keep him informed as to the movements of the Mormons and the old


24 DHC, II, 84. The Saints during 1833 and 1834 also appealed to President Andrew Jackson for redress. These appeals will be considered later.

25 *ibid.*, p. 85.
settlers in order that measures might be taken to insure that the character of the state, which had already "been injured" by the Mormon affair, would not be "disgraced by it in the end."

In addition to appealing to the governor, the Saints in June, 1834, partially through the efforts of Judge John Ryland, entered into direct negotiations with the citizens of Jackson County for the purpose of regaining their properties. The propositions of the old settlers, however, were not acceptable to the Mormons. 26

Also in June a body of about two hundred Mormons arrived in Missouri from Kirtland. This group, known as Zion's Camp, was under the leadership of Joseph Smith and had come to give assistance to the Missouri Saints. Soon after the arrival of the camp, Smith dispatched Orson Hyde and Parley P. Pratt to Jefferson City to confer with the governor and to see if he was ready to re-establish the Mormons on their Jackson County lands and to leave them there to defend themselves. Pratt and Hyde returned to the camp on July 15, with the reply from the governor that it was not now practicable to help the Mormons to return to their lands. 27

26 Ibid., pp. 96-99. The Missourians made two propositions. The first provided that they would purchase all of the Mormon lands in Jackson County at a reasonable price if the Saints would agree never to settle there again; the second proposal would allow the Mormons to purchase all of the old settlers' lands. The Saints felt that they could not agree to the first proposal because they believed that the Lord had commanded them to settle in Jackson County, and they did not have sufficient funds to conform to the second proposal.

27 Ibid., p. 94.
The news of Dunklin's refusal was a sudden setback to the Saints since his earlier statements, especially his letter to Colonel Thornton, had been in favor of restoring them to their lands in Jackson. Ten days after the governor's refusal Zion's Camp was disbanded. This was done partly because of the hopelessness of the Saints returning to Jackson County in the near future, partly because cholera had broken out in the camp, and partly because the continued existence of the Mormon army would tend to increase the tension between the Saints and the old settlers. Joseph Smith, realizing that there was presently no hope of re-establishing his people in Jackson County, organized the Mormons in Clay County into a stake and shortly thereafter returned to Kirtland. 28

Governor Dunklin, in spite of his promises to the Mormons, had given only token assistance. He later even withdrew most of his sympathy toward the Mormon situation, as shown by the following letter to W. W. Phelps dated July 13, 1836:

Public sentiment may become paramount law; and when one man or society of men become so obnoxious to that sentiment as to determine the people to be rid of him or them, it is useless to rein counter to it. 29

The Mormons had thus been driven from Jackson County and the state authorities were to make no further efforts to aid them in returning to their homes.

28 Ibid., p. 135.

29 Ibid., p. 462.
CHAPTER II

EXPULSION FROM MISSOURI

And that mob that comes on us to disturb us, it shall be between us and them a war of extermination; for we shall follow them until the last drop of their blood is spilled; or else they will have to exterminate us, for we will carry the seat of the war to their houses and their own families, and one party or the other shall be utterly destroyed.  

---Sidney Rigdon

After their removal from Jackson County, the Mormons settled mainly in Clay County. The old settlers of the county understood that the Mormons would remain there only until they could regain their lands in Jackson. However, by June of 1836 the Saints had been in Clay County for two years, and it began to appear to the Clay citizens that they were going to become permanent residents. On June 29, the old settlers held a meeting at Liberty and drew up a series of resolutions asking the Mormons to withdraw from the county as they had formerly promised to do. The Clay citizens objected to the Saints because of their religious beliefs, because they were easterners, and because they were opposed to slavery. The Mormons agreed to move as soon as possible. In October, 1836, with the help of the people of Clay County, the Saints began to settle on Shoal Creek northeast of Liberty. They petitioned

1CHC, I, 441.

2Ibid., p. 414.
the legislature to organize a new county and this was accomplished in December with the formation of Caldwell County. The Mormons now had a county of their own and they agreed with the Missourians not to settle in any other county without first obtaining the permission of two-thirds of the people residing in the county. After making such arrangements with the citizens of Carroll and Daviess counties, some Mormons settled there. This new arrangement was not to bring a lasting solution to the Mormon conflict, however.

Far West soon became the principal Mormon settlement in Caldwell County. By the spring of 1838, Far West had become a sizeable town and Caldwell County had a population in excess of five thousand. With the arrival of Joseph Smith and many of the Kirtland Saints on March 14, 1838, the Mormon Church was once again united in a single area.

Ill feelings between the Mormons and the Missourians soon again became apparent. These bad feelings were perhaps stirred up by a Fourth of July speech which was delivered by Sidney Rigdon, one of the Mormon leaders, at Far West. In the speech Rigdon stated that any attempts at mob violence would result in a war of extermination which would be carried to the homes of the mobbers.

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3 History of Caldwell Co., p. 117.

4 CHC, I, 424-25. President George A. Smith, Mormon Church Historian, estimated that by the autumn of 1838, the Mormons in the neighborhood of Caldwell County had established two thousand farms and had paid the general government $318,000 for land. DHC, III, XLIII.

5 CHC, I, 428.
Language such as this naturally did not contribute to an amiable relationship. Violence erupted on August 6, at the election polls at Gallatin, Daviess County, when W. P. Peniston, a candidate for the state legislature and a strong opponent of the Latter-day Saints, spoke out against the Mormons who had come to vote. He stated that, if the Mormons were allowed to vote, the old settlers would soon lose their suffrage. The Missourians attempted to prevent the Mormons from voting and a fight broke out.  

Exaggerated accounts of this event soon spread throughout the surrounding area and bands of Mormons and Missourians gathered and began to rove the countryside. Peniston, Judge Adam Black, and others made affidavits stating that the Mormons were arming and were making threats against certain of the old settlers. Warrants were sworn out for Joseph Smith and Lyman Wight for being leaders of the insurrection, and they volunteered to be tried before Judge Austin A. King in Daviess County.

Old settlers in Daviess County sent communications to Governor Lilburn W. Boggs charging the Mormons with lawlessness and with making preparations for war.  

Fifty of the Mormons at DeWitt also petitioned the governor reporting the threats of mob violence and asking Boggs for state protection. The governor responded by ordering seven major generals of the state militia to each raise

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6Ibid., p. 447.

7Boggs was elected governor in the 1836 election.

8CHC, I, 452.
and equip four hundred men and to have them remain in readiness.

In the meantime minor clashes occurred between the roving bands of Mormons and Missourians, and burning and pillaging were carried on by both sides. Generals David Atchison and Alexander Doniphan prevented a more serious skirmish between Mormon troops and a large group of Missourians at Adam-ondi-Ahman.

After Atchison had dispersed the Missourians at Adam-ondi-Ahman, they again gathered and marched toward the Mormon settlement at DeWitt. General Parks, the commander of the militia in the area of DeWitt, reported that he was unable to control the mobs because many of his troops were in sympathy with them. Joseph Smith, upon hearing of the dangerous situation at DeWitt, hurried there by back roads to offer his assistance. Smith obtained affidavits from non-Mormons in the area testifying of the mob's treatment of the Mormons. A Mr. Caldwell carried these affidavits to the governor, but he reported that the governor replied that "the quarrel was between the Mormons and the mob" and that they must 'fight it out.'

Battles continued between the Mormons and the old settlers throughout Caldwell and Daviess counties. One of the more noteworthy of these skirmishes was known as the Battle of Crooked River. It took place when a body of sixty Mormons attacked a group of Missourians who had taken three Mormons prisoner.

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9 History of Caldwell Co., p.127.

In the exchange of fire which took place one of the Missourians was killed and several were wounded while the Mormons suffered three killed, including their leader, David W. Patton, who was one of the twelve apostles of the Church. The Missourians, however, were routed and the prisoners recovered.\(^{11}\)

The Mormons had evidently fired first at Crooked River, and this increased the desire of the Missourians to see that they were punished for their actions.\(^{12}\)

Rumors and lies fanned the flame of hate between the Mormons and the old settlers. Word was circulated by Judge E. M. Ryland, Saskill Woods, and others that the Mormons had killed or captured fifty militiamen under Captain Bogart at Crooked River and that they were now marching toward Richmond to sack and burn the town.\(^{13}\) Other reports accused the Saints of burning the towns of Gallatin and Millport.

Much of the reported burning and pillaging by the Mormons was attributed to a Mormon organization known as the Danites, whose alleged purpose was to destroy the enemies of the Church. The actions of this group, both actual and rumored, further intensified the hatred of the Missourians for the Mormons.\(^{14}\)

\(^{11}\)Ibid., pp. 170-71.

\(^{12}\)History of Caldwell Co., p. 131.

\(^{13}\)DHC, III, 169, 172.

\(^{14}\)The Danites were never officially sanctioned by the Church leaders. Sampson Avard, their leader, was excommunicated.
Rumors and actions, as those previously mentioned, influenced Governor Boggs to issue his so-called exterminating order on October 27, 1838. This order was in the form of a letter from Boggs to General John Clark in which the governor stated that in view of the reports which he had received concerning the lawlessness of the Mormons, he had decided that the Saints "must be treated as enemies, and must be exterminated or driven from the State if necessary for the public peace." Official sanction had now been given by the chief officer of the state to drive the Mormons from Missouri.

Just a few days before the extermination order was issued, General Atchison in a letter to Governor Boggs had decried giving any governmental sanction to the driving of the Mormons from the state. He pointedly stated:

I do not feel disposed to disgrace myself, or permit the troops under my command to disgrace the state or themselves by acting the part of a mob. If the Mormons are to be driven from their homes, let it be done without any color of law, and in open defiance thereof; let it be done by volunteers acting upon their own responsibilities.16

Violence now increased against the Mormons. In the outlying settlements the mobs burned houses, destroyed livestock and crops, and took prisoners. General Clark was put in command of the militia and he began marching toward Richmond with a thousand men and the extermination order.

Meanwhile at Haun's Mill on Shoal Creek on October 28, the bloodiest

15 Missouri, General Assembly, Document containing Correspondence, Orders & C., in Relation to the Disturbances with the Mormons, 1841, p. 61.

16 Ibid., pp. 46-47.
incident of the entire conflict took place. John P. Greene, in writing of the af-

fair in 1839, recalls how a mob of from two to three hundred

came upon our people there whose number in men was about forty, at a
time when they little expected any such thing and without any ceremony,
not withstanding they begged for quarter, shot them down as they would
tigers or panthers. Some few made their escape by fleeing. Eighteen
were killed and a number more severely wounded.17

Back at Far West a large body of militia under the command of General
Samuel Lucas arrived and camped just outside of the city. Colonel George
Hinkle, the Mormon who was in charge of the state militia company that was
defending Far West, left the city under a flag of truce and conferred with
General Lucas and his staff. Hinkle deceived some of the Mormon leaders,
including Joseph Smith, Hyrum Smith, Sidney Rigdon, Lyman Wight, and
Parley P. Pratt, into going to Lucas's camp for the supposed purpose of negoti-
tiating with him. When the Mormons entered the camp they were immediately
seized and held as prisoners. The militia officers called a council and it was
decided that the Mormon leaders would be shot the next morning. Only strong
opposition from General Alexander Doniphan and a few others prevented the
sentence from being carried out.18

Colonel Hinkle agreed in behalf of the Mormons to the following condi-
tions proposed by General Lucas:

17 John P. Greene, Facts Relative to the Expulsion of the Mormons from
Jackson County under the Exterminating Order (Cincinnati: R. P. Brooks,

1. To give up the Church leaders to be tried and punished.
2. To make an appropriation of their property, all who have taken up arms, to the payment of their debts, and indemnity for damages done by them.
3. That the balance should leave the state, and be protected by the militia, but to be permitted to remain under protection until further orders were received from the commander-in-chief.
4. To give up arms of every description, to be receipted for. ¹⁹

The next day General Lucas ordered the Mormon militia disarmed and then the militia-mob was turned loose on the defenseless town. ²⁰ The Mormons were subjected to all manner of abuse. The Church leaders were, in the meantime, marched toward Independence by General Robert Wilson.

General Clark arrived at Far West on November 4, with sixteen hundred men. The following day he took fifty-six more of the leading Mormons as prisoners. This group of prisoners plus the other group at Independence, which included Joseph Smith, were taken to Richmond where they were to be tried for treason, murder, burglary, arson, robbery, and larceny. The trial began on November 13, with Judge Austin King presiding. Many witnesses were called to give testimony; however, when witnesses who were favorable to the Mormons appeared they were put in jail. Finally the lawyers for the Mormons, Alexander Doniphan and Amos Reese, advised the Church leaders not to call any more witnesses. As a result of the trial many of the Mormons

¹⁹ DHC, III., 197 and History of Caldwell Co., pp. 135-36. This second account defends the actions of Hinkle in dealing with Lucas. It concludes that he was acting in the best interests of the Mormons by avoiding a battle when his troops were outnumbered five to one. Also see John Corril's Brief History of the Church of Jesus Christ of Latter-day Saints (St. Louis; 1839), p. 41.

²⁰ History of Caldwell Co., p. 139.
were released or admitted to bail, but Lyman Wight, Caleb Baldwin, Hyrum Smith, Alexander McRae, Sidney Rigdon, and Joseph Smith were sent to Liberty, Clay County, to await trial for murder and treason. Parley P. Pratt, Morris Phelps, Luman Gibbs, Darwin Chase, Norman Shearer and King Follett were incarcerated at Richmond for the same charges. Most of these men remained in prison for several months in spite of appeals to the Missouri supreme court for writs of habeas corpus. Joseph Smith and his companions were finally permitted to escape in April, 1839, but Pratt and Phelps remained in prison until they obtained their freedom through a daring escape on the Fourth of July.

With many of the Church leaders in prison and others in apostasy, Brigham Young assumed the responsibility for removing the Mormons from Missouri. He organized the Saints and immediately began to make preparations for them to leave the state. Before leaving, however, the Saints again attempted to obtain redress from the state. This time the appeal was in the form of a memorial to the state legislature. The memorial reviewed the wrongs which the Mormons felt had been committed against them and then it asked that a law be passed rescinding the extermination order and appropriating funds to compensate those

21DHC, III, 212.

22Journal of History (Lamoni, Iowa: Board of Publishers, Reorganized Church, 1909), IX, 200-01.

23Pratt, op. cit., p. 250.
whose possessions had been stolen or destroyed.\textsuperscript{24} David Redfield carried the memorial to the legislature and had an interview with Governor Boggs. Boggs appeared interested in the Mormon plight and stated that he would write to Judge King and Colonel Price and order them to Far West to put down any hostilities. Evidently this was never carried out.

In the Missouri legislature the Mormon question was hotly debated and a bill was introduced to set up a joint committee to investigate the Mormon disturbances. The bill, however, was tabled. The only other actions by the legislature concerning the Mormons were appropriations of $2,000 to aid the suffering peoples of Daviess and Caldwell counties and the sum of $200,000 for the payment of the state troops who were involved in the Mormon hostilities.\textsuperscript{25}

At a public meeting on January 29, 1839, at Far West, the Mormons pledged to assist each other in moving out of the state in accordance with Boggs' order and the provisions of the agreement which they had made with Generals Clark and Lucas. The Saints made arrangements to purchase twenty thousand acres of land near Quincy, Illinois. By May of 1839 most of the Mormons had left Missouri and had taken up residence at a small settlement near Quincy called Commerce. Commerce would soon become the Mormon city of Nauvoo.

\textsuperscript{24}\textsuperscript{24}DHC, III, 217-24; Corrill, op. cit., p. 44.

\textsuperscript{25}\textsuperscript{25}Ibid., pp. 243-44. For a good account of the Mormon conflict in the Missouri Legislature see Leland H. Gentry, "A Study of the Latter-day Saints in Northern Missouri from 1836-1839" (unpublished Doctoral dissertation, Brigham Young University, 1965).
The expulsion was now completed. Militia-mobs had driven between twelve and fifteen thousand American citizens from the state. The Mormons had been forced to abandon over $300,000 worth of property, and fifty of their number had been killed outright, while others were to later die from wounds or exposure.\textsuperscript{26}

It should be stated again, however, that the Mormons were also guilty of committing crimes during the conflict. John D. Lee stated that as a Mormon Danite he rode on several occasions with Mormon troops who took large amounts of non-Mormon property.\textsuperscript{27} He further stated that he was told by other Mormons that they had participated in burning houses and doing other damage. However, no matter what crimes the Mormons may have been guilty of, as the historian of Caldwell County stated, there was no sort of authority for requiring them to leave the State. It was monstrously illegal and unjust to attempt to punish them for offenses for which they had not been tried and of which they had not been convicted. It would be a reasonable conclusion that in making his so-called "treaty" Gen. Lucas was guilty of illegal extortion, unwarranted assumption of power, usurpation of authority, and flagrant violation of the natural rights of man.\textsuperscript{28}

This, then, is a brief account of the expulsion of the Mormon people from Missouri and the failure of their attempts to obtain redress from the state government for their sufferings and their loss of property and life.

\textsuperscript{26}Brigham Young, et al., \textit{Journal of Discourses} (26 vols.; London: Carrington, 1875), XVII, 60.

\textsuperscript{27}John D. Lee, \textit{Mormonism Unveiled} (Lewisburg, Pa.: S. T. Buck and Son Co., 1882), pp. 72, 89.

\textsuperscript{28}\textit{History of Caldwell Co.}, p. 143.
CHAPTER III

APPEALS FOR NATIONAL REDRESS, 1833-1840

By revelation, Joseph Smith had been instructed to seek redress from the least in authority even to the greatest. In Missouri they had begun their petitions with the Justice of the Peace, and then ascended in regular graduation till they reached the Chief Executive of the State. They had finished their task for the time being, when they had memorialized Congress and then laid their petition before the President of the United States. 1

--T. B. H. Stenhouse

As Stenhouse states, after the Mormons had appealed for help to all branches of the state government of Missouri they next turned to the national government for assistance. Although most of the appeals for national aid were made after the Saints had fled Missouri, they made at least two requests while they were still in the state.

These early pleas for redress were in the form of petitions, and were addressed to the President of the United States. Sir William Blackstone, the English authority on law, refers to the "petition for redress" as one of those checks and safeguards of basic rights. Blackstone further states that the petition is used in "cases of uncommon injury or infringement" of basic rights when the "ordinary course of justice" does not provide a remedy.

When these circumstances arise, he concludes, anyone has the right to petition
the king or either house of parliament for a redress of grievances. 2

With this basis and the guarantee of the First Amendment concerning
petitions, the Saints were justified when in 1833 and 1834 they forwarded two
such petitions to President Andrew Jackson. Records show only a reference to
the first petition, which was apparently sent in October, 1833. There is a copy
of the second one which was written from Liberty, Clay County, on April 10,
1834. The second petition was signed by 114 Mormons, including Edward Par-
tridge, John Whitmer, W. W. Phelps, and A. S. Gilbert, and stated in part
that

( the Federal Constitution has given to Congress the power to provide for
calling forth the militia to execute the laws of the Union, suppress ins-
surrections, or repel invasions; and for these purposes the President
of the United States is authorized to make the call upon the executives
of the respective states; therefore, we your petitioners, in behalf of
our society which is so scattered and suffering, most humbly pray
that we may be restored to our lands, houses and property in Jackson
County, and be protected in them until peace can be restored. . . . 3

Also at this time Gilbert, Phelps, and Partridge sent a letter to the Presi-
dent along with the petition. 4 The letter asked President Jackson that if he were
disposed to grant aid to the Mormons that it be given early to relieve quickly
the suffering Mormon families. Letters were also written to Governor Dunklin
requesting him to write the President and to ask for presidential aid for the

3 DHC, I, 485.
4 Ibid., pp. 485-86.
Mormons, and to Senator Thomas Hart Benton explaining the plight of the Mormons to him.\(^5\)

President Jackson referred the petition to the War Department and on May 2, 1834, Secretary of War Lewis Cass sent a reply to the Mormon leaders. Secretary Cass informed the Saints that the offenses of which they complained were

violations of the laws of the state of Missouri, and not of the United States. The powers of the President under the constitution and laws, to direct the employment of a military force, in cases where the ordinary civil authority is found insufficient, extend only to proceedings under the United States.

Where an insurrection in a state exists against the government thereof, the President is required on the application of such state, or of the executive (when the legislature cannot be convened), to call forth such number of the militia, as he may judge sufficient to suppress such insurrection.

But this state of things does not exist in Missouri, or if it does, the fact is not shown in the mode pointed out by law. The President cannot call out a military force to aid in the execution of state laws, until the proper requisition is made upon him by the constituted authorities.\(^6\)

These first appeals of the Mormons to the national executive were refused, therefore, because neither the executive nor the legislature of the state of Missouri had requested national intervention.

Shortly after the Mormon people arrived in Illinois and began to build their city of Nauvoo, they renewed their efforts to obtain redress from the national government for their losses and sufferings in Missouri.

\(^5\)Ibid., pp. 487-88.

\(^6\)Ibid., p. 493. Appendix D at the end of this thesis illustrates some of the parts of the Missouri Constitution which had been violated during the Mormon conflict.
On April 10, 1839, while Joseph Smith was still in prison in Liberty, Missouri, Sidney Rigdon sent him a letter outlining a plan to impeach the state of Missouri. The grounds for impeachment, according to Rigdon, were found in Article IV, Section 4, of the Constitution of the United States, which provides in part that "the United States shall guarantee to every state in this Union a Republican Form of Government." Rigdon contended that such a form of government did not exist in the state of Missouri and he set about to prove his claim. He planned to have Mormon representatives, armed with affidavits stating their claims against Missouri, contact all of the state governors and influence them to include the question of republican government in Missouri in their next messages to their state legislatures. Mormon elders were to be assigned to each state capital, as well as to Washington, to present the Mormon case and to encourage the legislators to take some kind of action against Missouri.7

Joseph Smith and other of the Mormon leaders were apparently not impressed with the practicality of this plan, for at a conference on May 5, 1839, the Church adopted a substitute plan. This new plan provided for a delegate to go to Washington and to present the Mormon cause before the national government. Sidney Rigdon was chosen to be the delegate.8

Rigdon, however, proved to be slow in fulfilling his assignment. This prompted the High Council of Nauvoo the following October to appoint a committee to go to Washington and "importune the President and Congress of the

7 DHC, III, 310-11.
8 Ibid., p. 346.
United States for redress of grievances.\footnote{DHC, IV, 18.} The committee selected was composed of Rigdon, the Prophet Joseph Smith, and Judge Elias Higbee. These three men, accompanied by Porter Rockwell, the Prophet’s bodyguard, left for Washington on October 29. Rigdon became ill along the way and was left in the care of Rockwell and a Dr. Foster near Columbus, Ohio, while Smith and Higbee hurried on to Washington by stage.

During the remainder of the journey to Washington an interesting event occurred which helps to show the public attitude toward the Mormons. The stage had stopped at a public house, and while the driver was inside refreshing the horses became frightened and bolted. Joseph Smith climbed from the inside of the speeding coach to the driver’s seat and brought the horses under control. The passengers, who included some congressmen, were lavish in their praise of this heroic act until they found out that their rescuer was Joseph Smith, the Mormon Prophet, then no more was said.\footnote{Ibid., pp. 23-24.}

Smith and Higbee arrived in Washington on November 28, and immediately began to meet with officials of the national government in an effort to obtain redress for their people. The morning following their arrival in Washington they obtained an interview with President Martin Van Buren. After reading their letters of introduction Smith reported that the President remarked, "What can I do? I can do nothing for you. If I do anything, I shall come in contact with
the whole state of Missouri." Before they left the President's office, however, Van Buren promised to reconsider the problem; he also stated that he sympathized with them because of their sufferings.\(^{11}\)

Having apparently failed in their efforts to obtain redress from the President, Smith and Judge Higbee turned their attention to Congress. They arranged a meeting with the Illinois congressional delegation in order to determine how to bring the Mormon case before Congress. At this meeting Senator John M. Robinson spoke against giving the Mormons national aid. He felt that the courts of Missouri were the proper place to present the Mormon claims. Senator Richard Young defended the Mormons, and after some debate it was decided that a petition and memorial should be drafted and presented to the Senate by Senator Young so that they could be referred to the proper committee along with all supporting documents.\(^ {12}\) Joseph Smith in the meantime had written to the Saints in Illinois asking them to contact all of the influential men in that part of the country, urging them to write to their congressmen requesting aid for the Mormons.\(^ {13}\)

While in Washington Smith also had an interview with John C. Calhoun, whose conduct, he reports, "very ill became his station." The Prophet soon lost patience with the national lawmakers and on December 21, he left Washington

\(^{11}\)Ibid., p. 40. An account of this interview is contained in a letter to Hyrum Smith, the Prophet's brother.

\(^{12}\)Ibid., pp. 43-44.

\(^{13}\)Ibid., p. 41.

\(^{14}\)Ibid., p. 47.
to preach in Philadelphia.\textsuperscript{14} He remained in the East a few more weeks and
then returned to Nauvoo in March. Judge Higbee, however, stayed in Washing-
ton and worked diligently to see that the Mormon claims received a proper
hearing before Congress.

The Mormon petition was presented in the Senate and referred to the
Senate Judiciary Committee for consideration. Judge Higbee appeared before
members of the committee, as well as Senator Lewis Linn and Representative
John Jameson of Missouri on February 20, 1840, and presented the Mormon
case against Missouri. He told of the sufferings of the Saints at such places
as Haun's Mill, and related how they had endured all manner of persecution
because of their religious beliefs. Higbee also produced letters from Gover-
nor Robert Lucas of the Iowa territory and from Senator Young of Illinois
vouching for the industriousness and good character of the Mormons. Judge
Higbee admitted that he did not know how far the jurisdiction of Congress went
in the Mormon problem, but he stated that there was nowhere else for the
Latter-day Saints to turn, and he therefore demanded of Congress restitution
of the rights and privileges of the Mormons as United States citizens.\textsuperscript{15}

Higbee appeared before the Judiciary Committee again on February 22.
Senator Linn and Representative Jameson were again present, and this time
they spoke out against the Mormons.\textsuperscript{16} Jameson accused the Saints of stealing,

\textsuperscript{15}\textit{Ibid.}, pp. 81-82.

\textsuperscript{16}\textit{Journal History of the Church}, February 21 and 22, 1840. This manu-
script history, compiled by Andrew Jensen, is located in the Church Historian's
Office. Hereafter referred to as \textit{JHC}. 
breaking out of jail, and of burning houses, but he remarked to Higbee that evening that if the Mormons could make it appear that they had been wronged he would use his influence to see that the Saints were redressed, so that the "shame should not fall on the whole state, but on those which had been guilty."\textsuperscript{17}

On February 26, Judge Higbee sent a report of his efforts to the Church leaders in Nauvoo. He stated that he had recently received word from the chairman of the Senate Judiciary Committee, General Garret D. Wall, that the committee's decision would be unfavorable to the Mormons. A week later the committee submitted the following report which confirmed Higbee's previous statement:

The committee have examined the case presented by the petition; and heard the views urged by the agent, ... and after full examination and consideration, unanimously concur in the opinion--that the case presented for their investigation is not such a one as will justify or authorize any interposition by this government.

The wrongs complained of are not alleged to be committed by any of the officers of the United States, or under the authority of this government in any manner whatever. ...

The grievances complained of in the petition are alleged to have been done within the territory of the state of Missouri ... the petitioners must seek relief in the courts of judicature of the state of Missouri, or of the United States, which has the appropriate jurisdiction to administer full and adequate redress for the wrongs complained of. ...

It can never be presumed that a state either wants the power or lacks the disposition to redress the wrongs of its own citizens ... whether they proceed from the lawless acts of her officers or any other persons.\textsuperscript{18}

The committee had said in substance exactly what Secretary of War Cass had said six years earlier; since the laws and the officers of the United States

\textsuperscript{17} \textit{DH\textsc{C}}, IV, 87.

had not been involved in the causes of the persecutions the government of the United States could not be involved in the remedy (unless they were requested to act by the state of Missouri).

Judge Higbee, in a final report from Washington dated March 24, stated that he felt that Senator Young had acted with poor judgment when he had not insisted on a motion to have the papers printed which the Mormons had presented. If the papers had been printed, Higbee concluded, at least all of the congressmen would have had access to the Mormon claims against Missouri and Missouri would have been shamed.\[^{19}\] Shortly after writing this last report Elias Higbee returned to Nauvoo.

At the October conference of the Church in 1840, Judge Higbee was again selected to petition Congress for a redress of grievances suffered by the Mormons in Missouri. Robert B. Thompson was appointed to assist him, and together they drew up a petition very similar to the one which Higbee had presented in the Senate the previous winter. The latest petition, dated November 28, 1840, was presented to the House of Representatives, referred to the Judiciary Committee and ordered to be printed.\[^{20}\] There is no further mention of what became of it.

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\[^{19}\] DHC, IV, 99.

\[^{20}\] JHC, December 21, 1840; U. S., Executive Documents, 26th Cong., 2nd Sess., document no. 22. Representative John T. Stuart of Illinois presented a petition in behalf of the Mormons on December 21, 1840. This is evidently the petition which Higbee and Thompson wrote. Congressional Globe, 26th Cong., 2nd Sess., IX, #3, 43.
Thus, by 1840 several attempts had been made by the Mormon people to obtain redress from the national government for their sufferings in Missouri. Although appeals to both houses of Congress and to the President had brought no redress, the petitions of the Saints ceased only temporarily, as the next chapter will show.
CHAPTER IV

FURTHER APPEALS FOR NATIONAL REDRESS, 1843-1844

If we want Congress to do anything for us in drawing up our memorial, we must not ask what is right in the matter, but we must ask what kind of thing will Congress pass?¹
--Orson Hyde

The Mormons evidently made no appeals to Washington during 1841-1842; however, in November of 1843 another attempt was begun to obtain redress from the national government. Brigham Young records that at a meeting of the citizens of Nauvoo on November 29, he was appointed chairman of a committee whose purpose was to petition Congress for a redress of grievances.²

The committee drafted a memorial stating the persecutions suffered by the Saints in Missouri and the fruitless appeals which had been made to the state authorities for aid. The memorial then appealed to the national government for assistance; it was signed by the mayor, alderman, and councilors of the city of Nauvoo.³

Joseph Smith, while speaking about the petition during a meeting of

¹JHC, April 26, 1844.
²JHC, November 29, 1843.
³DHC, VI, 125-30.
the Nauvoo city council, declared that the group should call upon the national
government for the protection of federal troops, for this would not be uncon-
stitutional, but within the powers of Congress.4

On December 4, 1843, the citizens of Nauvoo met in the Assembly room
for the purpose of further discussing the memorial to Congress. During the
meeting Smith spoke for two and a half hours and related many of the instances
of the Missouri conflict which had not been included in the memorial. He stated
that he had been involved in thirty-eight law suits and had paid the state of Mis-
souri $150,000 for land which was taken from him by the mobs. He also re-
ported that he had had to borrow $500 from Judge Young, the Illinois senator,
as well as from others, to pay the expenses of the Mormon party which went
to Washington in 1839 to ask for redress. At the meeting Smith's clerk, Willard
Richards, read the memorial, and those present unanimously voted their ap-
proval of it.5

In addition to the memorial, an ordinance was also drafted to be sent to
Congress. In the ordinance the Saints asked Congress to ratify the following
provisions of a charter in order that the Mormons might be protected from "vio-
lence and shielded in their rights":

Section 1 . . . that all of the rights, powers, privileges, and immunities
belonging to the Territories, and not repugnant to the Constitution of the
United States, are hereby granted and secured to the inhabitants of the
city of Nauvoo . . . .

4 JHC, December 16, 1843.
5 JHC, December 4, 1843.
Section 2 . . . that the mayor of Nauvoo be, and is hereby empowered by this consent of the President of the United States; whenever the actual necessity of the case and the public safety shall require it, to call to his aid a sufficient number of United States forces, in connection with the Nauvoo Legion, to repel the invasion of mobs, keep the public peace, and protect the innocent from the unhallowed ravages of the lawless banditti that escape justice on the western frontier; and also to preserve the power and dignity of the Union.

Section 3 . . . the officers of the United States army are hereby required to obey the requisitions of this ordinance.

Section 4 . . . for all services rendered in quelling mobs and preserving the public peace the said Nauvoo Legion shall be under the same regulations, rules, and laws of pay as the troops of the United States. 6

It is obvious that through this ordinance the Mormon leaders were attempting to secure from the national government sufficient authority and support that they would never again have to rely upon the state officers for protection. The Mormons were also attempting to have the federal government pay for the services of the Nauvoo Legion (the Mormon troops) against mob violence. This was perhaps to make up for the state of Missouri paying the wages of the militia-mobs in 1838. If this ordinance had been adopted by Congress, Nauvoo would have become a type of federal city-state. The records show no congressional reaction to the petition, but judging from the demands that it made and the fate of other Mormon petitions, it can be assumed that it was assigned to a committee and never reported out.

The problems of obtaining redress for rights lost in the past and securing protection against future infringement of liberties seemed to be always

6DHC, VI, 131-32.
before the Mormon leaders during this period. On March 11, 1844, a special council of Mormon leaders met to determine the best policy for the Church to adopt "to obtain their rights from the nation and to secure protection for themselves and children." They also discussed the possibility of moving to some uninhabited region of the continent where they could "enjoy the liberty of conscience guaranteed to us by the constitution of our country . . . and denied to us by the present authorities, who have smuggled themselves into power in the State and Nation." 7

The following day Orson Pratt was authorized by a letter from Joseph Smith, acting in his capacity as mayor of Nauvoo, to represent the city at Congress and to present a petition to the national legislature. 8 Prior to his departure for Washington, Elder Pratt was carefully instructed by Smith concerning how most effectively to fulfill his duties in the capital. Smith counseled Pratt to first call the Illinois congressional delegation together and to tell them that the Mormon sufferings had been so great that the petition which he carried to Washington must be acted upon. The Prophet then advised Elder Pratt to call upon John Quincy Adams and to ask him to assemble the Massachusetts delegation in order that Pratt might appear before them and present the Mormon case. Smith further told Pratt to visit Henry Clay and other prominent men and to hold public meetings and invite members of Congress to attend, and at

7 Ibid., p. 261.
8 JHC, March 12, 1844.
these meetings to present the facts of the Mormon claims.  

A letter from John E. Page, who had been in Washington since the previous November preaching for the Church, relates how closely Orson Pratt followed the Prophet's counsel. Page states that Pratt arrived in Washington on March 31. Soon after his arrival he called on Representative Hoge, the congressman who represented the district in which Nauvoo was located, and requested that he assemble the Illinois delegation. When the congressmen from Illinois had gathered Elder Pratt read the Mormon memorial to them.

In the memorial the officials of Nauvoo appealed to Congress for aid from "unparalleled persecutions and cruelties inflicted upon us and our constituents by the constituted authorities of the state of Missouri." The petition further told of the actions of state troops in Missouri who, unrestrained by fear of law, had laid waste to fields, shot animals, burned houses, butchered citizens, and ravaged women. It also related how, after moving to Illinois, Mormons had been kidnapped and taken back to Missouri and tortured, and how three times Missouri had attempted to extradite Joseph Smith from Illinois.

After appearing before the Illinois delegation, Pratt contacted John Quincy Adams and requested that he call a meeting of the Massachusetts congressmen. This was done, and Pratt appeared before them and again read the Mormon

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9. DHC, VI, 212.
10. Ibid., p. 82; JHC, April 12, 1844.
memorial. The Massachusetts delegation advised that the petition should be referred to the committee on judiciary. Elder Pratt next visited other representatives of the various states, especially those who were members of the Judiciary Committee. The general opinion which Pratt received from those whom he contacted was that Congress did not have the authority to act in the Mormon case. Elder Page reported that one member of the Judiciary Committee told Pratt and him that "our cause was just and our sufferings were great no doubt, but still our constitution was such and the State of Missouri being a sovereign state he could not see any possible redress for us short of heaven."12

Elder Pratt, after making the previously mentioned visits, delivered the memorial and its supporting documents to Senator James Semple of Illinois, who presented it to the Senate. In the Senate the petition was assigned to the Judiciary Committee as predicted.

Some congressmen had advised Orson Pratt to appeal for redress through the courts of Missouri. In a letter to Senator John M. Berrien, the chairman of the Judiciary Committee, Elder Pratt pointed out the hopelessness of such attempts, since the Mormon people were not even safe within the boundaries of Missouri. He further told Senator Berrien that "Congress is our only hope."13

Meanwhile, back at Nauvoo on March 26, Joseph Smith wrote another memorial and ordinance to Congress. These documents asked Congress to

12 JHC, April 12, 1844. Contained in a letter from John E. Page to Brigham Young.
13 Orson Pratt, op. cit., pp. 18-19.
grant him the authority to raise 100,000 troops for the purpose of protecting those who wished to settle in the Oregon area and in remote parts of the territory of the United States.\textsuperscript{14} Orson Hyde was sent to Washington with credentials signed by Mayor Joseph Smith to present this petition to Congress.\textsuperscript{15} The reason for the petition was that the Saints were contemplating moving to the Oregon country, and many of the settlers already in Oregon were from Missouri;\textsuperscript{16} the Mormons were expecting a conflict and were taking steps to secure federal protection before they left.

On March 30, Smith sent a petition, similar to the one which he had given to Hyde to present to Congress, to President John Tyler. The Prophet in the petition again asked for the privilege of raising an army of 100,000 men to protect migrating settlers to Oregon, and to protect the people of Texas.\textsuperscript{17}

Orson Hyde immediately went to Washington and there worked with Elder Pratt to get Congress to take favorable action on the Mormon petitions.\textsuperscript{18} He wrote a report from the capital on April 25, 1844, telling of their efforts. Hyde stated that the petition which Pratt had presented to Senator Semple asking for redress of the Missouri persecutions was still in the Judiciary

\begin{itemize}
  \item \textsuperscript{14}DHC, VI, 275-77.
  \item \textsuperscript{15}Ibid., p. 283.
  \item \textsuperscript{16}Hubert Howe Bancroft, The Works of Hubert Howe Bancroft (San Francisco: History Co., 1886), XXIX, 449.
  \item \textsuperscript{17}DHC, VI, 282.
  \item \textsuperscript{18}Elder John E. Page, who had been assisting Pratt, had gone to Pittsburgh to be with his sick wife. DHC, VI, 369.
\end{itemize}
Committee of the Senate, and that the committee had not yet made a report concerning the petition. Elder Hyde also said that he and Pratt had conferred with members of the Illinois delegation, including Representatives Hoge, Hardin, Douglas, and Wentworth, and Senator Semple. Hoge warned Hyde and Pratt that a bill introduced to fulfill the provisions of the Mormon petition concerning Oregon would not pass Congress because of the treaty of joint occupation which the United States had entered into with England. Representative Hoge felt that if the United States authorized an armed force to enter Oregon, England would consider such action a breach of the treaty, and would commence hostilities against the United States. Wentworth assured the Saints of his support in their Oregon venture, but Senator Semple cautioned the elders that he did not think that anything would be done about Oregon or Texas in the present congressional session because of the effect such actions might have on the outcome of the approaching presidential elections.

The Illinois congressmen advised the Mormon agents that a more effective method of presenting their petition to Congress would be to have it read on the floor of one of the houses and then have its sponsor move to have the rules of the house suspended, to enable the bill which would fulfill the provisions of the petition to be printed. The congressmen felt that if this approach were used there would be a better chance of the petition being acted upon than if it were simply introduced and referred to a standing committee, where it
would be placed with many other petitions and probably forgotten. The great number of petitions which are presented at each session of Congress help explain why it was difficult for the Mormon agents to get their petitions acted upon. For example, the House Journal for the first session of the 27th Congress shows that approximately 450 petitions were introduced during that one session. The Mormons followed this new approach for introducing a petition in the House of Representatives.

Elder Hyde, when confronted with opposition to the Mormon petition for federal protection in Oregon, simply explained: "Our government professes to have no power to help us, or to redress the wrongs which we have suffered; and we now ask for the government to protect us while raising our volunteers." Other congressmen had told Hyde and Pratt that it would do no good to pass another law to protect the Saints in Oregon, for another law would not prevent the Saints from being shot down as they had been in Missouri.

Mormon agents once again importuned "at the feet of the president" when on April 25, 1844, Senator Semple introduced Elders Hyde and Pratt to President John Tyler at the White House. They spent an hour with the President and related to him the sufferings of the Mormon people in Missouri. Tyler spoke sympathetically of their ill treatment and inquired as to their

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19 Ibid., pp. 369-70.


21 DHC, VI, 371.
present situation in Illinois. Elder Hyde told him that they were having a difficult time because of the great losses which they had suffered in Missouri. Although the President expressed regret for their difficulties, he evidently made no offers of federal help.  

The next day the Mormon elders conversed with Judge Stephen A. Douglas, another of the Illinois congressmen. Judge Douglas spoke enthusiastically of the Saints going to Oregon, and stated that he thought they would do as well without an act of Congress backing them up as with one. He felt that within five years the Mormon population in Oregon would be sufficient to form a state, and if the federal government did not accept them into the union they could form a government of their own. Douglas also gave Hyde a map of Oregon and promised to send Joseph Smith a copy of Lt. John C. Fremont's report on his exploration of the territory between the Missouri River and the Rocky Mountains.  

Hyde and Pratt drafted a bill on April 26, asking Congress to appropriate two million dollars for the relief of Mormons who had suffered during the Missouri persecutions of 1838-1839. The money, according to the provisions of the bill, was to be deposited with the City Council of Nauvoo and distributed among the Mormons in proportion to their losses. Elder Hyde gave the bill to the Senate Judiciary Committee, and remarked that he intended to tease the committee until he provoked them or got them to do something for the Mormon

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22 Ibid., p. 373.

23 Ibid., pp. 374-75.
people.

Hyde made some interesting comments concerning what he had learned about getting results from Congress. He concluded that in order to get Congress to act on a memorial the memorialist must consider the following:

Will it suit the politics of the majority? Will it be popular or unpopular? For you might as well drive a musket ball through a cotton bag, or the gospel of Christ through the heart of a priest . . . or a camel through the eye of a needle as to drive anything through Congress that will operate against the popularity of politicians.\textsuperscript{24}

The elders were rapidly learning the realities of politics.

Elder Hyde again reported to the brethren in Nauvoo in a letter of April 30. He stated that Senator Semple would read one of the Mormon memorials in the Senate that day and that Representative Wentworth would read the other in the House the following Monday. Hyde had been informed that following the reading of the memorial in the Senate it would be referred to the committee on Oregon. He felt that the bill would not be reported out favorably because all of the members of the committee were from the southwest (that section of the country opposed to expansion in Oregon), and the chairman of the committee, David Atchison of Missouri,\textsuperscript{25} had already introduced a bill on Oregon.

At the end of his letter Hyde stated that Elder Pratt had just returned from the Senate and reported that Semple had not read the memorial after all; instead, General Atchison had moved to make his bill concerning Oregon a

\textsuperscript{24}JHC, April 26, 1844.

\textsuperscript{25}This was the same David Atchison who had been a militia commander during the Missouri conflict.
special order of business for the following Monday.\footnote{JHC, April 30, 1844.} This evidently ended the Senate action on the Mormon petition; however, on May 25, the Mormon memorial on Oregon was presented in the House by Representative John Wentworth. Wentworth asked for permission to present a memorial from General Joseph Smith, the Mormon leader, and requested that it be read by the clerk (this was the approach that the Illinois delegation had suggested earlier to Hyde and Pratt). The clerk began to read the memorial, but before he had read very far several of the House members rose in opposition to such a petition being read. Wentworth replied that he would move for a suspension of the rules in order to have the petition read and proceeded to so move for the purpose of going into a committee of the whole on the Oregon petition. The motion to suspend the rules was defeated by a vote of 79 yeas to 86 nays; this apparently had the effect of killing the petition.\footnote{U. S., \textit{Congressional Globe}, 28th Cong., 1st Sess., XIII, #39, 664. All of the Missouri and Illinois representatives voted to go into a committee of the whole except Hughes of Missouri.}

The efforts of Orson Pratt and Orson Hyde to obtain national redress for the Mormons had proved to be as fruitless as Elias Higbee's attempt had been in 1840.

During the time that Hyde and Pratt were in Washington, the citizens in the area around Nauvoo became increasingly hostile toward the Mormons. Stenhouse makes the following comments on the situation in Illinois:
The people of Illinois were now becoming better acquainted with their fellow-citizens and comprehending the inevitable political issue between a community voting as a unit and the divisional voting of promiscuous citizens. Their immediate neighbors were now as dissatisfied with their presence as were the Missourians formerly.28

The actions of apostate Mormons created further friction. An anti-Mormon press was established and operated in Nauvoo under the name of the *Expositor* by William and Wilson Law, Robert and Charles Foster, Francis and Chauncey Higbee, and Charles Ivins. After only one number of the paper was printed, the Nauvoo City Council declared it a public nuisance and ordered it destroyed. The order was carried out and this greatly added to the anti-Mormon feeling in the area.29

These increasingly violent circumstances caused Joseph Smith to make his final appeal for national redress for his people. This last request of the Prophet was written June 20, 1844, and was addressed to President John Tyler. The short but powerful plea follows:

I am sorry to say that the State of Missouri, not contented with robbing, driving and murdering the Latter-day Saints, are now joining the mob of this state for the purpose of the "utter extermination" of the Mormons, as they have resolved. And now, sir, as President of the United States, will you render that protection which the Constitution guarantees in case of "insurrection and rebellion," and save the innocent and oppressed from such horrid persecution?30

This plea, too, went unheeded. Repeated appeals to the national government would not save the Mormons from a fate similar to the one which they had

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28 Stenhouse, *op. cit.*, p. 139.

29 DHC, VI, 488.

30 Ibid., p. 508. Governor Thomas Ford states that he also about this time
endured several years earlier in Missouri. In the spring of 1844, the Prophet attempted to call the attention of the nation to the sufferings of his people and to bring them redress through another method; Joseph Smith became a candidate for the office of President of the United States. The next chapter will tell the story of his candidacy.

appealed to the national government for five hundred troops to be stationed in Hancock County for a time. Ford's request was "subsequently refused." Thomas Ford, History of Illinois (Chicago: S. C. Griggs and Co., 1854), p. 351.
CHAPTER V

JOSEPH SMITH: PRESIDENTIAL CANDIDATE

Tell the people we have had Whig and Democratic Presidents long enough; we want a President of the United States.¹

--Joseph Smith

Joseph Smith, continuing his efforts to secure redress for the Mormon people, in November, 1843, wrote letters to the five men whom he considered the leading candidates for the American presidency at the next general election. These letters, addressed to Lewis Cass, Richard M. Johnson, Henry Clay, Martin Van Buren and John C. Calhoun, explained the sufferings of the Mormons in Missouri, their repeated attempts at obtaining redress, and then asked the question: "What will be your action relative to us as a people, should fortune favor your ascension to the chief magistry?"²

Replies to most of these letters would soon arrive, but in the meantime Colonel John Frierson, a United States Surveyor and a political representative of Calhoun, visited Nauvoo. Frierson remained in Nauvoo four days, and during this stay he met with the Prophet and other leading Mormons concerning petitioning Congress for a redress of grievances. After discussing the

¹DHC, VI, 188.
²Ibid., pp. 64-65.
Mormon problem, Frierson drafted a memorial in behalf of the Saints and told them it was his intention to have Representative R. B. Rhett of South Carolina present the petition in Congress.\(^3\) This action by Calhoun's men was no doubt an attempt to gain Mormon support for the coming election. This is confirmed by a letter of October 23, 1843, from Joseph Heywood of Quincy to Joseph Smith explaining the desires of Rhett and Frierson to obtain redress for the Mormons and expressing Heywood's support of Calhoun for President.\(^4\) These efforts on behalf of Calhoun to obtain the Mormon vote were highly unsuccessful.

John C. Calhoun answered the Prophet's letter of inquiry on December 2, 1843. In response to Smith's question concerning his actions toward the Mormons should he be elected President, Calhoun states, "I would strive to administer the government according to the Constitution and the laws of the union; and that as they make no distinction between citizens of different religious creeds I should make none." Calhoun, however, in referring to the Mormon conflict in Missouri, stated that he still held the same opinion which he had expressed to Smith four years earlier in Washington that "the case does not come within the jurisdiction of the Federal Government, which is one of limited and specific powers."\(^5\)

When Smith answered Calhoun's letter the following January, he wrote

\(^3\)Ibid., pp. 81-83.
\(^4\)Ibid., pp. 62-63.
\(^5\)Ibid., pp. 155-56.
a stinging reply which removed all doubt of the Mormons giving Calhoun any
support in his presidential aspirations. 6

Henry Clay replied to the Prophet's letter on November 15, 1843. Clay
responded to the question which Smith had asked the candidates in the following
way:

I can enter into no engagements, make no promises, give no pledge to
any particular portions of the people of the United States. If I ever
enter into that high office I must go to it free and unfettered, with no
guarantees but such as are drawn from my whole life, character, and
conduct.

Clay went on to say that he had followed with interest the progress of the Latter-
day Saints, and that he sympathized with them for their sufferings and felt that
they, as all religions, should enjoy the "protection of the Constitution and the
laws." 7

Joseph Smith was not pleased with Clay's attitude either, and on May 13,
wrote a reply as biting as the one which he had addressed to Calhoun. 8

Lewis Cass was the only other potential candidate to reply. He expressed
the same constitutional views as Calhoun, but stated that he did not consider
himself a candidate for the presidency. Richard Johnson proved not to be a
serious candidate, and Van Buren was already despised by Smith as is shown

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6 Correspondence between Joseph Smith, the Prophet, and Col. John Went-
worth, Gen. James Arlington Bennet and the Honorable John C. Calhoun (New
York: John E. Page and L. R. Foster, 1844), pp. 11-14. This is contained on
microfilm in the BYU Library and is taken from the Berrian collection in the
New York Public Library.

7 DHC, VI, 376.

8 JHC, May 13, 1844.
the following postscript which Smith added to Van Buren's letter:

Also whether your view or feelings have changed since the subject matter of this communication was presented to you in your official capacity in Washington, in the year 1841 [should be 1839], and by you treated with coldness, indifference and neglect, bordering on contempt.9

Since none of the five candidates to whom Smith had written were acceptable to the Mormon leaders, they called a meeting on January 12, 1844, at the mayor's office, for the purpose of discussing what action the Mormon people should take in relation to the coming presidential election. The Mormon officials briefly discussed the two leading candidates, Clay and Van Buren, and quickly decided that they could not support either of them. After further discussion, Willard Richards made a motion, which was unanimously adopted, to form an independent ticket and run Joseph Smith as the candidate for President.10 At the close of the meeting Smith made the following statement concerning his nomination:

> If I ever get into the presidential chair, I will protect the people in their liberties. I will not electioneer for myself, Hyrum, Brigham, Parley and Taylor must go... The Whigs are striving for a king under the garb of Democracy. There is oratory enough in the Church to carry me into the presidential chair the first slide.11

As this statement shows, Smith's first concern if he were elected President would be to protect the people's liberties. He had reluctantly entered into national politics. Only a year before the meeting at which he declared his candidacy, the editor of the Wasp quotes Smith as saying: "I think it would be well

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9 DHC, VI, 65.
10 Ibid., p. 188.
11 Ibid.
for politicians to regulate their own affairs. I wish to be let alone, that I may
attend strictly to the spiritual welfare of the church." Smith had evidently
become a candidate for the presidency to attempt to obtain the redress for his
people which they had been unable to obtain from the national administration
then in power. He confessed at a political meeting on February 8, 1844:

I would not have suffered my name to have been used by my friends on
any wise as President of the United States, or candidate for that office,
if I or my friends could have had the privilege of enjoying our religious
or civil rights as American citizens, even those rights which the Con-
stitution guarantees unto all her citizens alike... I feel it to be my
right and privilege to obtain what influence and power I can, lawfully,
in the United States, for the protection of injured innocence; and if I
lose my life in a good cause I am willing to be sacrificed on the altar
of virtue,... in maintaining the laws and Constitution of the United
States...

Again the Prophet reveals that his chief concern if he were elected would be
to insure that the liberties of individuals were protected.

In order to more effectively carry out his campaign Joseph Smith pro-
posed to hold a series of conferences throughout the nation. He planned to
attend as many of the meetings as possible and state his views, but those
meetings which he was not able to attend the other Mormon leaders would
campaign for him. In February Smith wrote his Views on the Powers and
Policy of the Government of the United States. This pamphlet contained his
political platform and was to be distributed by those who campaigned for him.

The Mormon press naturally strongly supported Smith's candidacy. An

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12 DHC, V, 259.

13 DHC, VI, 210-11.
article in the Times and Seasons of February 15, declared that formerly politicians had made political targets of the Saints, but now they had a candidate of their own, "a man of sterling worth and integrity and of enlarged views--General Joseph Smith."14

On February 27, the Prophet intensified his campaign by mailing copies of his Views on the Powers and Policy of the Government of the United States to the President, the cabinet, the Supreme Court justices, senators, representatives, and to the major newspapers of the country, including all of the German newspapers. In this pamphlet Smith proposed such things as a two-thirds reduction of the membership of Congress, a reformation of penitentiaries into places of learning, the abolition of slavery by 1850, with a fair price being paid to all slave owners, greater economy in government, the expansion of the United States to include Texas and Oregon, the establishment of a national bank, and presidential enforcement of constitutional freedoms.15

During a general meeting of the citizens of Nauvoo on March 7, the Prophet spoke further on his candidacy and on the right of the Mormon people to form a political party. Smith stated:

We have as good a right to make a political party to gain power to defend ourselves, as for demagogues to make use of our religion to get power to destroy us. In other words, as the world has used the power of government to oppress and persecute us, it is right for us

14 "Who Shall Be Our Next President?" Times and Seasons, V, #14, February 15, 1844.

to use it for the protection of our rights. We will whip the mob by getting up a candidate for President. 16

In April the Church held a general conference and during one of the sessions Hyrum Smith spoke out in behalf of his brother's candidacy. Hyrum decried political parties as the system which divides the country into factions. He called for a President of the whole people, not a party president, and urged all present to use all of their power and influence to get the Mormon candidate elected. At the conclusion of this speech the assembled crowd voted unanimously to accept Joseph Smith as their candidate for President. 17

Shortly after the conference the Church leaders sent out elders to the various states to preach and to hold conferences. In addition to preaching the gospel, the elders were to declare the principles contained in Smith's Views on Government and to seek out electors "who will go for him for the Presidency." 18

The next month a political convention was held in Nauvoo for the purpose of formally nominating a candidate for President. Under the chairmanship of General Uriah Brown the convention nominated Joseph Smith of Illinois for President and Sidney Rigdon of Pennsylvania for Vice-president by acclamation. The convention also passed a series of thirteen resolutions, some of the most important of which follow:

16 DHC, VI, 243.
18 Ibid., p. 340.
1. Resolved, that from all of the facts and appearances that are now visible in the United States, we believe that much imbecility and fraud is practiced by the officers of Government; and that to remedy their evils it is highly necessary that a virtuous people should arise and ... correct these abuses by electing wise and honorable men to fill the various offices of Government.

2. Resolved, that as union is power, the permanency and continuance of our political institutions depend upon the correction of abuses.

4. Resolved, that to redress all wrongs the government of the United States, with the President at its head, is as powerful in its sphere as Jehovah is in his.

5. Resolved, that the better to carry out the principles of liberty and equal rights, Jeffersonian democracy ... and the protection of person and property, we support General Joseph Smith of Illinois for the President of the United States at the ensuing election.19

These resolutions further illustrate the desire of the Mormon people to have the national government endowed with sufficient power to stop any abuses of the rights of individuals.

The convention also resolved to hold a national convention at Baltimore on July 13, and requested that honest men in all states send delegates. Orson Pratt, Heber C. Kimball, David Hollister, Orson Hyde, and Lyman Wight were selected as the Illinois delegates to the national convention. The Nauvoo convention also requested that the editors of all newspapers publish the convention's resolutions.20

It is claimed that at the convention in Nauvoo there were delegates from

19 ibid., pp. 390-91
20 ibid., pp. 391-92.
twenty-seven of the states. A close examination of the records, however, shows that while most of the delegates to the convention had formerly lived in other states, in May of 1844 they were all residents of Illinois.

Thus, by May, 1844, Joseph Smith had been nominated by his Church and by a political party for the presidency. It is difficult to estimate how much support Smith actually had outside of the Church in his candidacy. Fawn Brodie states that when the Prophet's campaign literature was printed in the East it created much editorial jesting. Other facts indicate that he was popular in some areas of the country. For instance, mock elections on the river boat Osprey during May show that twice Smith bested Clay and Van Buren. The results:

<table>
<thead>
<tr>
<th>Date</th>
<th>Smith</th>
<th>Clay</th>
<th>Van Buren</th>
</tr>
</thead>
<tbody>
<tr>
<td>May 8, 1844</td>
<td>29 gents</td>
<td>16 gents</td>
<td>7 gents</td>
</tr>
<tr>
<td></td>
<td>5 ladies</td>
<td>4 ladies</td>
<td>0 ladies</td>
</tr>
<tr>
<td>Late May, 1844</td>
<td>65 gents</td>
<td>27 gents</td>
<td>12 gents</td>
</tr>
<tr>
<td></td>
<td>6 ladies</td>
<td>3 ladies</td>
<td>0 ladies</td>
</tr>
</tbody>
</table>

These voters may have been predominantly Mormon, however.

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22 DHC, VI, 390.

23 The Reform, Jeffersonian Democracy, Free Trade and Sailors Rights Party was the title of the party. CHC, II, 207-08.


25 JHC, May 8, 1844.

26 DHC, VI, 423.
Smith also received some favorable publicity from a few non-Mormon newspapers in the area around Nauvoo. The Iowa Democrat, for instance, stated the following concerning Smith's qualifications for the presidency:

If superior talent, genius, and intelligence, combined with virtue, integrity, and enlarged views, are any guarantee to Gen. Smith's being elected, we think that he will be a "full team of himself."  

The Illinois Springfield Register also favorably commented on the Prophet's candidacy. In comparing Smith with Henry Clay the Register concluded:

He comes right out in favor of a bank and a tariff, taking the true Whig ground and ought to be regarded as the real Whig candidate for President, until Mr. Clay can so recover from his shuffling and dodging as to declare his sentiments like a man.

Joseph Smith, then, did have support in some areas of Illinois and Iowa; other newspapers in the area, however, were strongly opposed to him.

Had the Prophet lived and fully carried out his campaign plans he might have had a significant effect on the outcome of the election due to the closeness of the balloting in 1844. Although Smith had no chance of being elected President due to the unpopularity of the Mormons, as C. Homer Durham points out, the campaigning of Mormon elders in behalf of Smith's expansionist policies may have swung enough support to expansionist Polk to enable Polk to win

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27 Ibid., p. 268.
28 Ibid.
30 The results of the election show the Democrat James K. Polk defeated Whig Henry Clay by only 38,000 votes out of the 2,500,000 which were cast.
the presidency by the narrow margin which he did.31

Joseph Smith was murdered in the midst of his campaign on June 27, 1844. Even if he had lived, it is highly unlikely that he would have achieved the main purpose of his entering into the presidential race--that of securing redress for the sufferings of his people and assuring that their liberties would be protected in the future. His campaign proved as unsuccessful as the appeals to the national government had been in obtaining these guarantees.

CHAPTER VI

MORMON THOUGHT CONCERNING FEDERAL PROTECTION OF INDIVIDUAL RIGHTS

We believe that rulers, states and governments have a right and are bound to enact laws for the protection of all citizens in the exercise of their religious belief; but we do not believe that they have a right in justice of this privilege, to prescribe them in their opinions, so long as a regard and reverence are shown to the laws and such religious opinions do not justify sedition nor conspiracy.¹

--Oliver Cowdery

Several statements have already been quoted from petitions and the writings of Church leaders concerning the Mormon view of the responsibility of the national government to protect the rights of individuals. In this chapter these quotations, as well as others from Mormon speeches and writings, will be analyzed to determine just what powers the Mormons felt that the national government had to protect the individual liberties of their people. Section 134 of the Doctrine and Covenants is a good example of Mormon views concerning the powers of government. Verse seven of this section, quoted above, states the Mormon belief of the government's responsibility for the protection of the religious liberties of its citizens.

¹Doctrine and Covenants, Section 134:7. This section was not a revelation, but a statement of belief written by Oliver Cowdery and accepted by the body of the Church. DHC, II, 246-47.
Mormons felt that all governments were obligated to protect individuals in the enjoyment of their rights. They believed that they, as all men, had an equal claim to certain natural rights. Joseph Smith, while still in Liberty Jail in Missouri, wrote a letter to the Saints in Illinois in March, 1839, which expresses this Mormon concept of natural rights:

Here is a principle also, which we are bound to be exercised with, that is in common with all men, such as governments, and laws, and regulations in the civil concerns of life. This principle guarantees to all parties, sects and denominations, and classes of religion, equal, coherent, and indefeasible rights.2

In his Views on Government Joseph Smith wrote more concerning the rights of man. He felt that these rights should be enjoyed equally by all men and that government should regard these rights as sacred. Smith wrote the following:

Our common country presents to all men the same advantages, the same facilities, the same prospects, the same honors, the same rewards; and without hypocrisy, the Constitution when it says (quotes preamble) meant just what it said without reference to color or condition, . . .

The aspirations and expectations of a virtuous people, environed with so wise, so liberal, so deep, . . . a character of equal rights as appears in said Constitution, ought to be treated by those to whom the administration of the laws is entreated with as much sanctity as the prayers of the Saints are treated in heaven.3

At the time that Smith made this last statement, the "equal protection of the laws" clause of the Fourteenth Amendment had not yet been added to the Constitution; the Constitution, therefore, was silent concerning equal

2DHC, III, 304.

rights. The Prophet was giving the Constitution an interpretation which, according to G. Homer Durham, was popular in the West at this time. He was applying to the Constitution the definition of equality as it is stated in the Declaration of Independence.

The Saints felt that the rights that God had granted to all could not be limited by the governments of men. Concerning one of these rights, freedom of worship, Joseph Smith stated the following: "Where it (the Constitution) provides that no one shall be hindered from worshiping God according to his own conscience is a law. No legislature can enact a law to prohibit it."  

Here again the Prophet was giving the Constitution a liberal interpretation, for the First Amendment restricts only Congress from passing legislation infringing upon the freedom of religion. Joseph Smith was also limiting state legislatures.

Some of the strongest of the Mormon statements concerning individual rights and the obligation of government to protect those rights are found in the Mormon petitions to Congress and in Smith's replies to the presidential candidates. The petition of November 28, 1839, is a good example. It states in part:

Your constitution guarantees to every citizen even the humblest, the enjoyment of life, liberty and property. It promises to all, religious freedom. . . . It guarantees to all the citizens of the several states the right to become citizens of any one of the states, and to enjoy

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the rights and immunities of the citizens of the state of his adoption: Yet of these rights have the Mormons been deprived... It is the theory of our laws, that for the protection of every legal right, there is provided a legal remedy. What, then, we ask, is the remedy for the Mormons?5

In his reply to John C. Calhoun's letter, which stated what would be his attitude toward the Mormons if he were elected president, Joseph Smith sets forth other Mormon views relating to the power of government to protect individuals in the enjoyment of their rights. Smith declares that the people possess the power not specifically granted to the United States or to the states and that the Congress, as representatives of the people, may exercise this power.6 He further stated that the Mormons who had had over $200,000 worth of property taken from them should have restored to them "their portion of power that belongs to them according to the constitution."7 This is an interesting view of the "reserved powers" doctrine. The Tenth Amendment states that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." According to the general interpretation of the Constitution, the people exercise the "reserved powers" through the state governments, not through Congress.

Calhoun during this period was the leading spokesman of the states' rights advocates. He believed that the national government had power to act

5DHC, IV, 37-38.
6Smith, Correspondence between Joseph Smith etc., p. 13.
7Ibid.
only when specifically authorized by the Constitution; its authority was restricted in all other instances. The Prophet strongly rebuked Calhoun for his views on the limited powers of the national government. Smith remarked:

All men who say that Congress has no power to restore and defend the rights of her citizens have not the love of truth in them. Congress had the power to protect the nation against foreign invasion and internal broil; and whenever that body passed an act to maintain with any power or to restore right to any portion of her citizens, it is the supreme law of the land; and should a state refuse submission, that state is guilty of insurrection or rebellion and the President has as much power to repel it as Washington had to march against the "whiskey boys" at Pittsburgh or General Jackson had to suppress the rebellion of South Carolina. 8

Article I, Section 8, clause 15 of the Constitution empowers Congress "to provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions." As will be discussed in the next chapter, in order for the national government to act in cases of "internal broil," a request must first be made by the government of the state which was involved. 9 Joseph Smith was again giving the Constitution a "loose" interpretation.

The Mormons were not without supporters in their views of the powers of the national government to protect the rights of individuals. The abolitionists of the time, through spokesmen such as Elijah Lovejoy, Joel Tiffany, and George Mellen, stated beliefs very similar to those of the Mormons. For instance, this statement by Mellen shows their idea of the right of the national power.

9 See Appendix B, Article IV, Section 4.
government to protect individual liberties:

It was found necessary in the Constitution for the states to surrender, in the last resort, the liberty of the individual to the care of the general government, that when the states could not or would not protect him, then the general government, with its ample abilities could step in and do it; . . . every individual in the country could, and can, look to the general government of the United States for the preservation of his inalienable rights, instead of . . . to the state governments.¹⁰

The Mormons would have enthusiastically endorsed this interpretation of the Constitution. Joseph Smith showed his disgust for Calhoun and all others who opposed this kind of interpretation and who considered the powers of the federal government to be limited and specific with these words:

But remember a "sovereign State" is so much more powerful than the United States--the parent government--that it can exile you at pleasure, mob you with impunity, confiscate your lands and property, have the legislature sanction it--yea, even murder you as by edict of an emperor, and it does no wrong for the noble Senator of South Carolina says the power of the Federal Government is so limited and specific that it has no jurisdiction in the case.¹¹

The Saints felt that, although they were guaranteed liberties and rights by the Constitution, they had been denied these rights because the Constitution did not provide a means of fulfilling its guarantees. Joseph Smith declared this belief in a sermon delivered near the Nauvoo Temple in October, 1843. The Prophet remarked:

I am the greatest advocate of the Constitution of the United States there is on the earth. In my feelings I am always ready to die for the protection of the weak and oppressed in their just rights. The only fault I


¹¹ DHC, VI, 157.
find with the Constitution is, it is not broad enough to cover the whole ground.

Although it provides that all men shall enjoy religious freedom, yet it does not provide the manner by which that freedom can be preserved, nor for the punishment of Government officers who refuse to protect the people in their religious rights, or punish those mobs, states or communities who interfere with the rights of the people on account of their religion. Its sentiments are good, but it provides no means of enforcing them. It has but this one fault. Under its provision, a man or a people who are able to protect themselves can get along well enough; but those who have the misfortune to be weak or unpopular are left to the merciless rage of popular fury.¹²

Smith further stated that a provision should be added to the Constitution which would provide that any government official who refused to give the protection guaranteed by the Constitution would "be subject to capital punishment."¹³

It should be recalled that in December, 1843, the Saints through an ordinance to Congress had attempted to obtain authority for the mayor of Nauvoo to use federal troops to put down mob violence. This was evidently an attempt to provide a means for enforcing rights which the Mormons felt the Constitution had guaranteed to them.

On June 30, 1843, after having just escaped from the sheriff of Jackson County who had attempted to kidnap him, Joseph Smith gave a speech on rights and governmental power to the citizens of Nauvoo. He first spoke in defense of the Nauvoo charter which the Illinois legislature had granted to the Mormon city in 1840. The charter had given Nauvoo special powers, including the authority to organize its own military force, its own court system, and a

¹²DHC, VI, 57.

¹³Ibid.
As the Mormons had become more unpopular in Illinois, opposition to the charter had increased. Smith defended the charter with the following words:

If there is no power in our charter and courts, then there is not power in the state of Illinois nor in the Congress, or the Constitution of the United States: for the United States gave unto Illinois her constitution or charter and Illinois gave unto Nauvoo her charters, ceding unto us our vested rights, which she has no right or power to take from us; all the power there was in Illinois she gave to Nauvoo, and any man who says to the contrary is a fool.  

The Prophet went on to speak of constitutional privileges and the Mormon people became aroused as they pledged their lives to preserve the freedoms which had been granted them. Smith stated:

The benefits of the Constitution and Laws are alike for all: and the great Eloheim has given me the privilege of having the benefits of the Constitution and writ of Habeas Corpus: and I am bold to ask for this privilege . . . . May I have your lives and all your energies to carry out the freedom which is chartered to us? (unanimous response)  

A year later in June, 1844, Lt. General Joseph Smith, in a speech to the Nauvoo Legion, made what were probably his last remarks concerning the protection of individual liberties. Smith declared to the Mormon troops:

We are Americans. We live upon a soil for the liberties of which our fathers periled their lives and spilt their blood upon the battlefield. Those rights so dearly purchased, shall not be disgracefully trodden

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14 The Nauvoo charter was another attempt by the Saints to obtain sufficient power to protect their rights.

15 Discourses Delivered by Presidents Joseph Smith and Brigham Young on the Relation of the Mormons to the Government of the United States (Great Salt Lake City: Deseret News, 1855), p. 3. Copy in Church Historian's Office.

16 Ibid.
under foot by lawless marauders without at least a noble effort on our part to sustain our liberties.

Come, all ye lovers of liberty, break the oppressor's rod, loose the iron grasp of mobocracy and bring to condign punishment all those who trample under foot the glorious Constitution and peoples’ rights. (Drawing his sword and presenting it to heaven, he said) I call God and angels to witness that I have unsheathed my sword with a firm and unalterable determination that this people shall have their legal rights, and be protected from mob violence, or my blood shall be spilt upon the ground like water and my body consigned to the tomb.  

Within ten days Smith's words were fulfilled, his blood had been "spilt upon the ground like water" by a mob at a jail in Carthage, Illinois. But even his death did not bring to his people the protection which he desired for them, for within two years the Mormons were forced to leave Illinois and travel to the Rocky Mountains, where they would once again have to contend for their rights, this time with the national government.

In summary, the Mormons believed that:

1. Men have certain equal, indefeasible rights. Among these rights are life, liberty, the right to own property, and the right to worship as one chooses.

2. No government, state or national, has the right to infringe upon these rights. Rather governments have an obligation to protect these liberties.

3. These rights are guaranteed by the Constitution, but it does not spell out how they can be protected.

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17 DHC, VI, 499. Thomas Ford, the Governor of Illinois, had this to say about the Mormon attitude toward government: "All action of the government which bore hard on them, however legal, they looked on as wantonly oppressive; and when the law was administered in their favor, they attributed it to partiality and kindness. If the stern duty of a public officer required him to bear hard on them, they attributed it to malice." Ford, op. cit., p. 314.
4. However, the Congress acting in behalf of the people has all power, therefore, Congress could take steps to insure the preservation of individual liberties. Also the President has the authority to put down rebellions and insurrections against the laws passed by Congress.

The following chapter will discuss why the officers of the national government did not agree with all of these Mormon views of the powers and obligations of government and why the national government did not give the Mormon people redress in response to their many pleas.
CHAPTER VII

LIMITATIONS ON THE NATIONAL GOVERNMENT

LEGAL AND POLITICAL

Jacksonianism thus assisted the growing secularization of society. Its substantial effect was to divert the church toward what many in the country believe to be its true function: to lead the individual soul to salvation, not to interfere in politics. Religion, the Jacksonians felt, could best serve itself by ending its entangling alliances with political reaction.

--Arthur M. Schlesinger, Jr.

The Mormon people claimed that they had been denied the basic rights of American citizens by the people and government of the state of Missouri. They further claimed that the United States government had the authority to intervene to restore these rights and to give redress for the sufferings which the Saints had endured. The federal government, however, did not intervene.

Judge Elias Higbee, when he presented the Mormon case before the Senate Judiciary Committee in 1840, admitted that he did not know if the case would come under the jurisdiction of Congress. In order to determine the validity of the Mormon claims and the reasons why the national government did not help the Saints, we must ascertain the authority of the United States to act in situations such as the Mormon conflict in Missouri.

Secretary Lewis Cass, in replying to the Mormon appeal to President Jackson in 1834, stated that the federal government could not become involved in domestic violence within a state unless the state government requested federal assistance. The Senate Judiciary Committee told Judge Higbee that the federal government could not help the Saints because the alleged wrongs were not committed by officials of the United States. These men were applying a strict interpretation to the Constitution. They felt that the national government could act only when the Constitution gave it specific authority to act; all other power the Tenth Amendment reserved to the states.

The parts of the Constitution which grant power to the national government to control violence are Article I, Section 8, clause 15, which states that Congress shall have power "to provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel invasions"; and Article IV, Section 4, which reads, "the United States shall guarantee to every state in the Union a Republican Form of Government, and shall protect each of them against Invasion; and on the Application of the Legislature, or of the executive (when the Legislature cannot be convened) against domestic violence."

When the founding fathers drafted these sections of the Constitution in 1787, a heated debate developed concerning whether the national government could intervene to help put down an insurrection or other domestic violence in a state without that state first requesting such involvement. James Madison recorded some of the exchange which took place. According to his record Gouverneur Morris, George Mason, and John Dickinson all wanted the national government
free to put down insurrections in the states without the consent of the states. Morris pointed out that "the executive may be at the head of the rebellion" and that "the general government should enforce obedience in all cases where it may be necessary."\(^2\) At one point during the convention Dickinson moved to strike out "on the application of the Legislature" from the section, because he felt that such domestic violence could start with the state legislature itself.\(^3\) Mason felt that if the national government had no authority to suppress rebellions in the states that "it would be in a bad situation indeed."\(^4\) Madison also stated in his journal that one of the chief weaknesses of the Articles of Confederation was the lack of a guarantee of internal tranquility in the states.

Luther Martin and Elbridge Gerry, however, voiced strong opposition to giving such powers to the national government. Gerry declared that the states themselves were the best judges as to whether or not federal assistance was needed,\(^5\) and Martin felt that the consent of the state should be obtained before any federal intervention occurred.\(^6\) The majority of the convention delegates supported the reasoning of Gerry and Martin, therefore, Article IV, Section 4, as the founding fathers wrote it into the Constitution, required that a


\(^3\)Ibid., p. 639.

\(^4\)Ibid., p. 380.

\(^5\)Ibid., p. 546.

\(^6\)Ibid.
state make a request before the national government could take any action to put down any sort of domestic violence in that state. However, as we have seen in the Mormon conflict in Missouri, some of the fears of Morris, Dickinson, and Madison concerning this section were realized. While the governor and the legislature in Missouri did not actively direct the violence against the Mormons, some of the actions of Boggs (his exterminating order) and the legislature (appropriating $200,000 to pay the mob-militia) certainly added to the suffering of the Saints.

Madison gave some additional wisdom which is applicable to the Mormon conflict in "Federalist Forty-three." He stated:

Among the advantages of a confederate republic enumerated by Montesquieu, an important one is "that should a popular insurrection happen in one of the States, the others are able to quell it. Should abuses creep into one part, they are reformed by those that remained sound."

In spite of the fears and warnings of these statesmen, Article IV, Section 4 during the 1830's and 1840's remained a strong legal barrier to any federal intervention involving domestic violence in a state without a request from that state.

Joseph Smith knew well the limitations which this section imposed on the national government. In his Views on the Powers of Government, the Prophet spoke out strongly for the repeal of the last phrase of Article IV, Section 4. Smith advocated giving the President full power to send an army to suppress mobs, and the states authority to repeal and impugn that relic of folly which makes it necessary for the Governor of a state to make the demand of the President for troops, in case of invasion or rebellion.
The Governor himself may be a mobber, and instead of being punished, as he should be, for murder or treason, he may destroy the very lives, rights, and property he should protect.

The Congress had enacted laws in 1792, 1795, and 1807 which gave the President authority to act in certain cases of violence. The law of 1807 provided that

in all cases of insurrection, or obstruction to the laws, either of the United States, or any individual state or territory, where it is lawful for the President of the United States to call forth the militia for the purpose of suppressing such insurrections, or of causing the laws to be duly executed, it shall be lawful for him to employ, for the same purposes, such part of the land or naval forces of the United States, as shall be judged necessary, having first observed all of the pre-requisites of the law in that respect.  

It should be noted that this law gives the President authority only where it is lawful for him to call forth the militia. When is it lawful for the President to call out the militia? The law of 1795 gives the president such authority whenever the obstructors of the law are too powerful to be controlled by "the ordinary cause of judicial proceedings, or by the powers vested in the marshalls" by the act. This law only raises other questions: When are the obstructors of the law too powerful to be controlled by ordinary judicial proceedings and by whom shall that decision be made?

The Supreme Court in the case of Martin v Mott had given the president

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8 United States Statutes at Large, ed.: Richard Peters (Boston: Charles C. Little and James Brown, 1848), II, 443.

9 Ibid., I, 424.
the authority to determine when to use national troops in cases of threat of invasion, but there was still no clear authority for the national government to act in cases of domestic violence in the states without a state requisition for such action. If any of the presidents to whom the Mormons appealed for redress (Jackson, Van Buren, or Tyler) had interpreted the law of 1807 or the decision of Martin v Mott as giving them authority to aid the Mormons in Missouri, they would have undoubtedly been accused of violating the Constitution. The limitations placed upon the national government by Article IV, Section 4 are difficult to ignore.

Another factor which prevented the national officials from aiding the Mormons was that decisions of the Supreme Court had refuted some of the Mormon views concerning the powers of government. The Saints claimed that they were denied the rights of life, liberty, property, and freedom of religion in violation of the Constitution of the United States. The Court, however, had ruled in 1833, in the case of Barron v Baltimore that the Bill of Rights which guarantees these liberties restricts only the national government from infringing on them; it offers no protection from state infringement. Chief Justice Marshall, in delivering the opinion of the Court, stated with reference to the amendments to the Constitution:

These amendments contain no expression indicating an intention to apply them to the state governments. This court cannot so apply them.

We are of the opinion that the provisions of the fifth amendment to the constitution, declaring that private property shall not be taken for

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10 Martin v Mott, 12 Wheaton 28 (1827).
for public use without just compensation, is intended solely as a limitation on the exercise of power by the government of the United States and is not applicable to the legislation of the states.11

Since it was the state of Missouri and not the government of the United States which was denying the Mormons the liberties enumerated in the Bill of Rights, the Constitution, according to the Court, could offer the Saints no protection.

Sidney Rigdon, it will be remembered, claimed that the Mormons in Missouri were not living under a republican form of government as guaranteed by the Constitution. The Court, however, would soon rule in the case of Luther v. Borden that the question of republican government was a political, not a legal, question. This case was a result of the Dorr Rebellion in Rhode Island in 1841. Dorr, through a series of mass meetings, set up a new state constitution and a new state government. The Court was asked to decide which of the governments was the legal one and who had the authority to say which was legal.

Chief Justice Taney, speaking for an eight-man majority, stated that when the senators and congressmen from a state are admitted to their seats in the national legislature, "the authority of the (state) government under which they were appointed, as well as its republican character, is recognized by the proper constitutional authority. And its decision is binding on every other department of the government, and cannot be questioned in a judicial tribunal."12 Here

11Barron v Baltimore, 7 Peters 250 (1833).
again the Court’s ruling would probably have gone against the Mormons. Although this decision did not come until 1849, it is near enough the period of the Mormon conflict that the same ruling would most likely have been given had the Mormon case come before the Court.

The Mormons further claimed that they had been denied the privileges and immunities of the citizens of the United States in violation of Article IV, Section 2, clause 1, of the Constitution. While this doctrine was not clearly spelled out by the courts at this time, it was generally interpreted to mean that citizens of one state passing through another state could not be denied basic rights by the government of that state. These rights included: the right to travel through the state, the right to own property, access to the courts, etc.\(^\text{12}\) The state government did not have to make these protections available to its own citizens because of guarantees of the federal Constitution; any guarantees to the citizens of the state came through the state constitution. The Mormons were again denied the protection of the Constitution through the Court’s interpretations of constitutional law.

The federal officials were further limited in giving aid to the Mormons by a lack of precedent. The national government had never intervened to enforce state law and the Mormons were never able to satisfy the President or the Congress

\(^{12}\) Luther v Borden, 7 Howard 42 (1849).

\(^{13}\) Corfield v Coryell, 4 Wash. C. C. 380 (1825); and Edward S. Corwin and Jack W. Peltason, Understanding the Constitution (New York: Dryden Press, 1955), p. 68. Had Mormons coming to Missouri from other states been denied entrance to the state, this would have been a violation of the privileges and immunities clause.
that national law had been violated.

Justice Joseph Story, in writing about the Constitution, pointed out that twice in the nation's history up to 1833, the United States government had called out the state militias for the purpose of "executing the laws of the union, suppressing insurrections, or repelling invasions." The first of these incidents involved the insurrection in Pennsylvania in 1794, commonly called the Whiskey Rebellion. This insurrection was against federal law and would, therefore, not serve as precedent for the Missouri situation. The other instance concerned a threatened invasion by the British during the War of 1812 and would also not be applicable to the Mormon conflict.

Professor Edward S. Corwin insists that now, as in 1807, the President determines when the national power will be used against obstructors of the law who are "too powerful to be dealt with in the ordinary course of judicial proceedings" and, therefore, he decides when such circumstances exist. Corwin, however, does not cite any examples of presidents who have used this power to enforce state law.

Since there was no precedent for its use, all three presidents would be reluctant to involve federal power in enforcing state laws.

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15 Edward S. Corwin, The President: Office and Powers, 1787-1957 (New York: NYU Press, 1957), p. 139. Presidents Hayes and Cleveland both used federal power in connection with the railway strikes in 1877 and 1894. Hayes issued federal arms upon informal requests of states involved and Cleveland sent federal troops to Chicago over the protest of Governor...
A final factor which may have had a great effect on the outcome of the Mormon appeals to the national government was the attitude of the times. As the quotation at the beginning of the chapter illustrates, the Jacksonians, who came to power in the national administration just prior to the conflict in Missouri, had proposed a policy of religious nonintervention in politics. This position was directly opposed to the Whig theory of a "national Religion," and the Democrats were sometimes criticized for being irreligious. They, however, continued to maintain that the church and the state should be totally separated. This strong conviction was due at least in part to the political sermons which conservative preachers delivered from many of the nation's pulpits. Conservative politicians had united with the clergy in an attempt to retain governmental rule by the privileged classes; the liberal Democrats naturally resented this.\(^\text{16}\)

While the Mormons certainly did not represent the privileged classes, still they may have avoided some conflict had they followed a policy of not intervening in politics. The Jacksonians, it will be remembered, controlled the national administration during all of the years that the Saints were in Missouri.

The attitude of the frontier people also tended to conflict with the Mormon philosophy of group cooperation and unity. The frontiersmen had expressed

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\(^\text{16}\)Schlesinger, *op. cit.*, p. 143.
their fear of authority by voting against the Constitution, and in the 1830's they still had strong feelings about individualism and personal liberty.\footnote{17} Other attitudes were apparent which perhaps further lessened the Mormon chances of receiving federal help. During this time Jackson was waging war against the national bank. His bold action of removing national funds from the Bank and placing them in the state banks caused Henry Clay to sarcastically pose the question of why the President did not assume the guardianship of religion as well.\footnote{18} Had Jackson given the Mormons redress for their Missouri sufferings Clay may have charged that the President had indeed become the guardian of religion as well.

Clay pushed the following resolution through the Senate chastizing Jackson for his usurpation of power:

Resolved, That the President, in the late executive proceedings in relation to the public revenue, has assumed upon himself authority and power not conferred by the constitution and laws, but in derogation of both ...\footnote{19}

Any actions by the President in behalf of the Saints most likely would have been branded as further usurpation of ungranted powers.

Three years later, after Jackson had left the White House and Van Buren had come to power, the Senate passed another resolution which showed a


\footnote{19}Ibid., p. 68.
growing distrust of federal involvement, especially by the President, in areas where the national government was not given specific authority to act. Senator John C. Calhoun sponsored the resolution, which stated:

The states retained, severally, the sole power over their domestic institutions and police, and "any intermeddling of any one or more States, or a combination of their citizens, with the institutions and police of the others, on any ground, or under any pretext whatever, political, moral, or religious, with the view to their alteration or subversion, is an assumption of superiority not warranted by the Constitution." ... 20

Evidently a majority of the senators did not want the national government involved in state affairs.

These various attitudes of the Jacksonians, the Senate of the United States, and the frontiersmen were all opposed to the Mormon views of the powers of government.

In summary, the government of the United States did not take action to bring redress to the Mormon people in response to their many appeals because its officers were limited by: Article IV, Section 4 of the Constitution; certain decisions of the Supreme Court, including those of Luther v. Borden and Barron v. Baltimore; a lack of precedent for the intervention of federal power to enforce state law; and the attitudes of the times which opposed national involvement in state affairs and the involvement of religious groups in politics.

CHAPTER VIII

SUMMARY AND CONCLUSIONS

When an individual or a party is wronged in the United States, to whom can he apply for redress? If to public opinion, public opinion constitutes the majority; if to the legislature, it represents the majority, and implicitly obeys it; if to the executive power, it is appointed by the majority, and serves as a passive tool in its hands. The public force consists of the majority under arms; the jury is the majority invested with the right of hearing judicial cases; and in certain States, even the judges are elected by the majority. However iniquitous or absurd the measure of which you complain, you must submit to it as well as you can.1

--Alexis de Tocqueville

The Mormon people claimed that during the 1830's when they were living in the state of Missouri and especially in 1838-1839 when they were driven from the state they were denied the basic rights of American citizens, including the rights of life, liberty, property, and freedom of religion. Before the Saints left Missouri they appealed to the governor, the legislature, and the courts for redress, but they received no help other than a $2,000 appropriation from the legislature which provided little relief.

During 1833-1834, the Mormons began a series of appeals to the national government for redress for their sufferings and losses in Missouri. By 1844, they had appealed to three presidents and had introduced several petitions

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into both houses of Congress. Mormon agents met personally with Presidents Martin Van Buren and John Tyler, and with such influential congressmen as John C. Calhoun, Stephen A. Douglas, and John Quincy Adams. Between 1839 and 1844 Joseph Smith, Elias Higbee, John E. Page, Orson Pratt, and Orson Hyde all spent time in Washington presenting the Mormon claims to the national officials. In 1844, in an effort to call national attention to the Mormon sufferings and to obtain redress for his people, Joseph Smith became a candidate for the presidency. Mormon elders campaigned for him throughout the country, but he was murdered in June before the election was held. Smith's candidacy, like all of the Mormon appeals, failed to bring the Saints redress.

The Mormons believed that they had certain natural rights which they held in common with all men. They felt that no government could impose on these rights, but rather that it was the duty of all governments to insure these liberties to their citizens. The Saints also believed that while the Constitution guaranteed these rights, it did not specifically state how they would be protected. Nevertheless, they felt that the President and Congress had the authority to preserve these rights.

The national officers did not agree with these Mormon views, and did not give the Saints national redress because of the four following factors: limitations of the Constitution, limitations of constitutional law, the attitudes of the times, and a lack of precedent for federal action in state affairs.

One area of possible redress which the Saints did not place much emphasis on was the courts. Several members of Congress, including those on the Senate
Judiciary Committee of 1840, had advised the Mormon agents to seek redress through the state or federal courts of Missouri. The Mormons had no trust in the Missouri state courts because they felt that the judges with whom they had dealt in the past held ill feelings toward them. The Mormons also did not believe that it was safe for them to go to Missouri to seek redress in the courts. They never attempted to obtain relief in the federal courts of Missouri.\(^2\) The federal courts may have afforded them their best opportunity for redress had they been able to obtain standing.

In order for the federal courts to have had jurisdiction in the Mormon case, it would have had to meet the qualifications set forth in Article III, Section 2, clause 1, of the Constitution relating to party or subject matter. Concerning parties, the jurisdiction of the federal courts included controversies "between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States."

The Eleventh Amendment to the Constitution limited the Mormons in being able to sue the state of Missouri after they had become residents of Illinois since it stated that "the judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State." The attorneys for the Saints had evidently advised them that they could not sue under the

\(^2\)CHC, II, 35.
clause, "between citizens of different States," because at the time of the conflict they had been citizens of the same state as the people they would be suing.\(^3\) They also could not sue as citizens of the same state because they were not claiming lands under grants of different states.

The only hope that the Mormons had of getting their case before the federal courts was to have it qualify for federal jurisdiction because of subject matter.\(^4\) This meant that they would have to show that a federal law or some part of the federal Constitution had been violated. The Saints had never been able to convince congressional committees or the national executive that such a breach had occurred and it is highly unlikely that they would have convinced the federal courts either.

One final argument which the Saints might have used to gain congressional redress or federal court jurisdiction concerned lands in Missouri which they had purchased from the federal government. Since these lands had been bought from the federal government, and since the Mormons had been driven from them, they could contend that the national government had the responsibility to insure that the lands were not taken without just compensation.

The Mormons briefly stated this argument in a newspaper editorial in 1844: "We have paid hundreds of thousands of dollars into the coffers of Congress

\(^3\)DHC, IV, 37. The Mormons should have at least attempted to sue as citizens of different states, since their claims were in excess of the $10,000 minimum required for federal court jurisdiction.

\(^4\)Cohen's v. Virginia, 6 Wheaton 378.
for their lands, and they stand virtually pledged to defend us in our rights, but they have not done it." They also brought it up in their petition to Congress of December 21, 1840, which stated that they "had purchased lands from the General Government, lying in the State of Missouri; from which they had been driven by the constituted authorities of the State, and prevented from occupying the same; and have suffered wrongs, for which they pray Congress to provide a remedy." Had the Saints pursued this point more vigorously they might have embarrassed Congress into compensating them for these lands which they had lost. In order to make this claim the Saints would have had to keep the title to the lands. When the Mormons were driven from Missouri many sold their lands to Missourians at a fraction of their worth, while others did not have final title to the federal lands and the Missourians obtained the titles after the Mormons left simply by paying the taxes. This claim, would, therefore, depend on the Mormons retaining valid titles to their Missouri lands after they left the state.

The Mormons never really had a chance of obtaining redress because, in addition to the four limiting factors already stated, the Mormons were an unpopular minority group. As Tocqueville warned in the quote at the beginning of this chapter, if the majority wronged someone in the United States in the

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5 Times and Seasons, February 15, 1844.
6 U. S., Executive Documents, 26th Cong., 2nd Sess., Document #22 HR.
7 History of Caldwell Co., p. 142.
1830's, there was little hope of him obtaining redress since the majority controlled all avenues of relief.

Had the Mormon appeals come after the adoption of the Fourteenth Amendment, and especially after the Court in the 1920's began to include some of the Bill of Rights under the protection of the due process clause of that amendment, the Mormons would have had a sounder basis for obtaining federal assistance, especially through the courts. In the 1830's, however, they had little hope.

In closing, one cannot help but compare the Mormon views of the powers of the national government when they were in Missouri with those which they developed when they came to Utah. In Missouri and Illinois they felt that the federal government did not have sufficient power, in Utah they came to the conclusion that it had too much. Although the Mormons shifted their views concerning the powers of the national government, they continued to suffer persecution, only the source of it changed.

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APPENDIX A

OUTLINE OF THE ATTEMPTS OF THE MORMONS
TO OBTAIN NATIONAL AID

Appeals to the President

October, 1833 - A petition for redress is written to President Andrew Jackson.

April 10, 1834 - A second petition for redress is sent to President Jackson.

May 2, 1834 - Secretary of War, Lewis Cass, sends a negative reply to the April petition.

November 29, 1839 - Joseph Smith and Elias Higbee meet personally with President Martin Van Buren in Washington.

March 30, 1844 - Smith sends a petition to President John Tyler asking permission to raise an army of 100,000 men to protect settlers on their way to Oregon.

April 25, 1844 - Orson Hyde and Orson Pratt meet with President Tyler.

June 20, 1844 - Smith makes a final appeal to President Tyler for protection for his people.

Appeals to Congress

November 28, 1839 - Smith and Higbee meet with the Illinois congressional delegation; a Mormon petition was later introduced in the Senate.

February 20, 1840 - Higbee appears before the Senate Judiciary Committee to plea the Mormon case.

March 4, 1840 - The Senate Judiciary Committee issues a report rejecting the Mormon claims to national redress.

November 28, 1840 - Higbee and Robert Thompson draft a petition to Congress; it is referred to the House Judiciary Committee.
November 29, 1843 - Colonel John Frierson drafts a memorial to Congress in behalf of the Mormons.

December 21, 1843 - A memorial for redress is drafted by the Nauvoo City Council; an ordinance was also sent which asked the Congress to give the Mayor of Nauvoo the authority to call in federal troops to act with the Nauvoo Legion in suppressing mob violence.

March 12, 1844 - Orson Pratt is authorized to represent the city of Nauvoo at Congress.

March 26, 1844 - Joseph Smith drafts a memorial asking Congress for the authority to command 100,000 troops for the purpose of protecting those migrating to Oregon.

April 1844 - Orson Pratt contacts several congressional delegations trying to obtain support for the Mormon memorials. Orson Hyde soon arrives and works with Pratt to get the petitions presented in the House and Senate.

April 26, 1844 - Hyde and Pratt meet with Representative Stephen A. Douglas concerning the March petition. They also draft a bill asking Congress to appropriate funds to relieve the Mormons who had suffered in Missouri.

May 25, 1844 - Representative John Wentworth has part of the March petition read on the House floor; the House votes not to continue the reading.

This information was obtained from the History of the Church and the Journal History of the Church.
APPENDIX B

ARTICLES OF THE CONSTITUTION WHICH WERE INVOLVED
IN THE MORMON APPEALS FOR NATIONAL REDRESS

Article I, Section 8.15 - Powers of Congress
"To provide for calling forth the Militia, to execute the Laws of the Union, suppress Insurrections and repel Invasions."

Article III, Section 2.1 - "The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; ..."

Article IV, Section 2.1 - "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

Article IV, Section 4 - "The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and upon Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic violence."

Bill of Rights

Article I - "Congress shall make no law respecting an establishment of religion, or prohibiting the exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to peaceably assemble, and to petition the Government for a redress of grievances."

Article V - "No person shall be ... deprived of life, liberty, or property, without due process of law; ..."

Article X - "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."
APPENDIX C

CONGRESSMEN FROM MISSOURI AND ILLINOIS

DURING THE MORMON APPEALS

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<tr>
<th>Year</th>
<th>Missouri</th>
<th>Illinois</th>
<th>Senate</th>
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<tr>
<td>1839</td>
<td>John Miller</td>
<td>John Reynolds</td>
<td>Lewis F. Linn</td>
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<td>John Jameson</td>
<td>Zadok Casey</td>
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<td>John Stuart*</td>
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<td>1843</td>
<td>Reps. Hughes</td>
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<td>Bower</td>
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<td>Bowlin</td>
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<td>Jameson</td>
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Those marked with a (*) aided the Mormons in their legislative appeals. This information was obtained from the Congressional Globe for 1839 and 1843.
APPENDIX D

THE DECLARATION OF RIGHTS OF THE

MISSOURI CONSTITUTION

Article XIII

That the general, great, and essential principles of liberty and free
government may be recognized and established, we declare--

Sec. 3. That the people have the right peaceably to assemble for their
common good, . . . and that their right to bear arms in defence of themselves
and of the State cannot be questioned.

Sec. 4. That all men have a natural and indefeasible right to worship
Almighty God according to the dictates of their own consciences; . . . that
no person can ever be hurt, molested, or restrained in his religious profes-
sion or sentiments, if he does not disturb others in their religious worship.

Sec. 7. That courts of justice ought to be open to every person, and
certain remedy for every injury to person, property, or character; and that
right and justice ought to be administered without sale, denial, or delay; . . .

Sec. 9. That in all criminal prosecutions, . . . the accused cannot
be compelled to give evidence against himself, nor be deprived of life, liberty,
or property but by the judgment of his peers, or the law of the land.

Sec. 12. That excessive bail shall not be required, nor excessive fines
imposed, nor cruel and unusual punishments inflicted.

Sec. 13. That the people ought to be secure in their persons, papers,
houses, and effects from unreasonable searches and seizures; . . .

Sec. 16. That the free communication of thoughts and opinions is one of
the invaluable rights of man, and that every person may freely speak, write,
and print on any subject, being responsible for the abuse of that liberty. ¹

¹The Federal and State Constitutions, Colonial Charters, and Other Or-
ganic Laws of the States, Territories, and Colonies now or hereafter forming
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CONSTITUTIONAL RIGHTS AND THE MORMON APPEALS
FOR NATIONAL REDRESS OF THE
MISSOURI GRIEVANCES

An Abstract of a Thesis
Presented to the
Department of Political Science
Brigham Young University

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

by
Lynn D. Stewart
July 1967
ABSTRACT

This study attempts to trace the efforts of the Mormon people to obtain redress from the national government for the losses of life and property which they had suffered and the hardships which they had endured while residing in the state of Missouri during the 1830's. The Mormon appeals to Congress and the President are considered and an evaluation is made of the Mormon view of the national government's responsibility for the protection of individual rights.

The information for this study was obtained from the Church Historian's Office, the Brigham Young University Library, the University of Utah Library, the Utah State Historical Society, and the Salt Lake City Public Library. Although the major sources that were used were the records of the Mormon Church, particularly the Journal History of the Church and Joseph Smith's History of the Church, an effort was made to understand through studying government documents and the writings of historians of the times why the national government did not give redress to the Latter-day Saints in response to their appeals. Consideration is given to limitations which were placed on the federal government by the Constitution, by a lack of precedent for the use of national authority to enforce state law, by certain decisions of the Supreme Court, and by the attitudes of the times.

The study hopefully shows these obstacles which kept the national government from aiding the Mormon people, while at the same time presents the
Mormon view that the national government had the power and responsibility to insure the enjoyment of individual rights by American citizens.

APPROVED:

August 2, 1967

Date

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