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Courts, Church-State Relationships, Water and Timber Development, and Land Policies: Major Sources of Conflict in Utah's Territorial Years

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COURTS, CHURCH-STATE RELATIONSHIPS, WATER AND TIMBER DEVELOPMENT, AND LAND POLICIES: MAJOR SOURCES OF CONFLICT IN UTAH'S TERRITORIAL YEARS

by

James Wayne Mecham

A report submitted in partial fulfillment of the requirements for the degree of

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Plan B

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INTRODUCTION

In the settlement of the West, the Mormon response was unique. Since their methods, techniques, and institutions differed from other settlers of the West, the Mormons were repeatedly censured by outsiders. Although the institution of polygamy elicited considerable emotionalism and aroused determined opposition, there were other institutions which actually contributed just as much to the conflagration.

As the Utah War [1857-58] became an embarrassment to the United States government, Congress demanded of President Buchanan the grounds upon which the decision for war was based. President Buchanan thereupon presented several letters, the first of which was written on October 3, 1856, by William M. F. Magraw, a former U.S. government mail contractor. His letter pictured the territory in an imminent state of lawlessness in which murder, rapine, and terrorism would flourish—all of which had been imposed upon a helpless society by a vicious, despotic theocracy. He complained about the probate courts and also implied that he had suffered "personal annoyances" because of the Mormons.¹

¹ Magraw's letter is found in Orson F. Whitney, History of Utah, 1 (Salt Lake City: George Q. Cannon and Sons, Co., 1892), pp. 574-76).

David Lavender, in The American Heritage History of the Great West (New York: The American Heritage Publishing Co., 1965), p. 289, says that Magraw's Independence-Salt Lake City mail contract was cancelled because of excessive claims for losses to Indians in 1856. The contract was
Another document President Buchanan offered was a letter of resignation from William W. Drummond, former Supreme Court Justice of the Territory of Utah from July 9, 1855, to March 30, 1857, addressed to Honorable Jeremiah S. Black, U.S. Attorney General. In this letter, Mr. Drummond complained, among other things, about the ecclesiastical authority of the Church over the state and the extended powers of the probate courts. He recommended that a non-Mormon be appointed governor backed with military force.  

As early as 1852, federal judge Perry C. Brocchus complained in his official report to Washington about the Church's policy of "... disposing of the public lands, upon its own terms; ..." And Utah's first Surveyor General, David H. Burr (1955-57), wrote several letters that found their way into the portfolio of Buchanan's justifications of a military solution in Utah. His two major objections were "... that the Mormon legislature was granting exclusive canyon grants to favorites of the Mormon Church" and

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awarded to Mormon Hyrum Kimball, who had underbid all other competitors, including Magraw. This may have been one of the "personal annoyances" suffered by Magraw.


"... that the settlers were conveying their holdings by deed to Brigham Young as "trustee in trust" for the Mormon Church. 4

And most unsettling of all for the fears that it played upon was the 1855 letter of Utah's Indian Agent Garland Hurt. He voiced his suspicions of the motives behind the recent calling of missionaries to work with the Indians. He said that their purpose was to make the Indians well disposed toward Mormons and hostile to other Americans, that Brigham Young's loyalty to the United States was doubtful, and that "... I never saw any people in my life who were so completely under the influence of one man." 5

These were the major documents which were offered as justification for sending federal troops against the Utahns. 6 The issues which these

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4 Ibid., p. 679.

5 Ibid., pp. 438-39.


Two very important issues notably absent because they have little to do with the settlement of the country and are therefore outside the realm of this paper are polygamy and accusations of Mormon disloyalty to the United States. Nevertheless, a word or two ought to be said about their place in the events described.

In 1857 Stephan A. Douglas, chief promoter of Popular Sovereignty, was deftly led into a trap by Lincoln's question, "If the people of Utah shall peacefully form a State Constitution tolerating polygamy, will the Democracy admit them into the Union?" (Furniss, The Mormon Conflict, 1850-1859, p. 75.) Now if the territories were by popular vote to be sovereign to choose for themselves slavery or non-slavery, why were they not free to adopt or reject any other institution? Why should they not be free to keep or reject polygamy—or slavery—why should they be denied statehood for so doing?

Douglas replied in the negative, repudiating the Mormons and condemning polygamy—an expedient course to take in anti-Mormon Illinois. The Democratic Party, while upholding slavery in its policy of Popular Sovereignty, wished to divest itself of accepting the Mormon's right of
letters raise form the substance of this paper: Utah Territory's effort to control the courts; its water, timber, and public and private land policies; and running through them all, the influence of the Church. They belong together, for at the time of their inception Church and state were, in practice, one. These policies were framed as much by religious as by political concepts and were enforced more by religious sanction than by legal action.

The administration of public resources was the charge of the county court, and presiding over the county court was the probate judge (whose court also heard civil and criminal cases). This judge was usually the local bishop.

Polygamy. Indeed, Drummond implied the mutual embarrassment he and the Attorney General must have felt for their party's seeming acceptance of Mormonism. (Whitney, History of Utah, I, p. 582.)

Polygamy thus became a political issue linked with slavery in the 1850's and war was declared ostensibly because of each. Many citizens thought that the real reason for sending an army to Utah was to eliminate polygamy. It must have pleased many Democrats--North and South--to see their administration take steps to actively exorcise one of the "twin relics of barbarism."

Even more important as a cause of the Utah War were the accusations of rebellion and treason which Drummond and others leveled against the Saints. Certainly the public speeches by Brigham Young, Jedediah M. Grant, Heber C. Kimball and other Mormon leaders denouncing the U.S. government for permitting the mistreatment the Mormons had received from U.S. citizens in Missouri and Illinois offered ample evidence to support the charges of disloyalty. These men also criticized the U.S. courts where Joseph Smith was tried more than forty times and never proven guilty. Statements such as these, together with the ransacking of Judge Stile's office, the purported burning of his court records, and the obvious Mormon attempt to stake off a huge empire 1000 miles long and 800 miles wide were evidence to many that Brigham Young either wanted someday to include all of America in his domain or else to separate his empire from the Union.

In contrast to these evidences of disloyalty, however, were more public proclamations by those same leaders in support of the U.S. constitution and its government. And while the South was threatening secession and actively struggling to leave the Union, Utah (1849, 1856, 1862, 1872, 1882, 1887, 1894) was actively seeking to enter the Union. (Neff, History of Utah, p. 677.)
and in that role he administered the Church's policy regarding private land and water disputes as they arose. Bishop's courts were encouraged; litigation was discouraged. Group welfare pre-empted private welfare; co-operative, church-directed projects took preference over private enterprise. Many of these things increased the cohesion of the "Saints" and all of these increased the alienation of the "Gentiles."
Upon the United State's acquisition of the Mexican lands, all the existing political units thereon wanted to enter the Union as states. Accordingly, in 1850, California, New Mexico, and Deseret had delegates in Washington to present petitions for statehood. But in Congress the desires of the Far West were caught up in the ever-present animus between the North and the South. The smoldering issue of slavery demanded mollification. Thus Congress in the Compromise of 1850 made California a free state and Utah and New Mexico territories with their own choice of being free or slave.

On September 9, 1850, President Fillmore signed the bill creating Utah Territory. Mormons appointed to office were Brigham Young, Governor; Zerubbabel Snow, Associate Justice; Seth M. Blair, U.S. Attorney; and Joseph L. Haywood, U.S. Marshall. Non-Mormons appointed were B. D. Harris, Secretary; Lenuel B. Brandebury, Chief Justice; and Perry C. Brocchus, Associate Justice.¹ The Provisional Government of the State of Deseret was dissolved, and Governor Young issued a proclamation calling

for a territorial legislature and an enumeration of the inhabitants of the territory. ²

The people had asked for statehood, which would have permitted the local election of officials. Instead, the land was made a territory with federally appointed officials. During much of the time of their territorial status, the Mormons, like the people of other territories, were to experience conflict because of this system. Those appointed politicians could hardly have been expected to view without a certain disdain the Mormons' doctrinal exclusiveness, their strange institutions, their uncritical deference to church authority, and their reluctance to accept democratic institutions, philosophy, and authority.

One of the major sources of discord was the court system evolved by the territorial legislature. It came about in this way. Judge Brocchus, the non-Mormon Associate Justice, was a disappointed man upon his arrival in Salt Lake City, since his avowed reason for accepting the appointment was to be the Utah delegate to Congress and thus return to Washington that fall.³ But Dr. John M. Bernhisel, a Mormon, had already been elected to that office. Mr. Brocchus complained about his salary, and a petition was immediately dispatched to Washington requesting that the salaries of federal

² Journals of the First Annual Session of the Legislative Assembly, 1852-59 (Salt Lake City: Brigham Young, Printer, 1852), p. 175. The census showed that in all counties males outnumbered females.

³ Neff, History of Utah, pp. 170-75.
judges be increased. The name of Brigham Young headed the list of petition signers. Still, the non-Mormon officials were not satisfied, and Brocchus was intent upon leaving the territory in the latter part of September, 1851. He had persuaded Judge Brandebury and Secretary Harris to accompany him. Harris took back to Washington with him the $24,000 of federal funds that had been designated to meet the expenses of the Territorial Legislature. 4

Only one federal judge, Zerubbabel Snow, was left in the territory. Instead of waiting for the President to reappoint judges for the two vacant districts, the territorial legislature seized the opportunity to mitigate federal power, and, in "An Act Relating to the Judiciary" approved February 4, 1852, authorized Snow to hold court with appellate jurisdiction in all three of these districts and extended original jurisdiction to the probate courts in all criminal and civil cases as well as in common law and chancery. Regulations governing the procedures of the district court were applied to the probate courts. Each of the nine counties was to have such a court, and the judge's term of office was to be four years. 5

This act gave the probate courts concomitant powers with the district court and practically relegated the latter to a court of appeals. Its real effect

4 Ibid., p. 173. For the full text of the conference speeches of Judge Brocchus and Brigham Young and their subsequent correspondence, see Whitney, History of Utah, I, pp. 462-69.

5 Acts, Resolutions and Memorials, Passed by the Several Annual Sessions of the Legislative Assembly of the Territory of Utah (Salt Lake City: Joseph Cain, Printer, 1855), pp. 123-24. (Microfilm, U.S.U.)
diminished federal control over the Mormons and increased their autonomy. This deviation from the standard judicial pattern and practice was excused as necessary to fill the need occasioned by the abdication of Judges Brocchus and Brandebury. Though the extension of the powers of the probate courts may have been within the constitutional prerogative of the legislature as granted by the Organic Act, it was to be the chief cause of Judge Drummond's frustration and contention five years later.

Against the principle of separation of powers was the granting of unusual legislative and executive powers to the probate judges in the counties. The probate judge and the selectmen not only functioned as the county court but also were invested with the executive powers of the county commission. This court was required to manage all the county affairs and was given care of all property belonging to the county. It was to hold quarterly sessions and to assess and collect county and territorial taxes. It was to divide its county into school and road districts and precincts, determine sites for and erect civic buildings, and appoint grand and petit jurors. The county courts was also charged with the control and regulation of the water and timber in the county. 6

Since in the county court the probate judge presided, all the power of government on a county level--the executive, legislative, and judicial--

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6 Ibid., pp. 126-27.
were centered in him. 7 Here, then, were the extended and extensive powers vested in the probate judge. 8

The legislature, anticipating future problems (and possible future vacancies) with non-Mormon, non-resident, federally-appointed judges, was loathe to relinquish the extended probate system that insulated Utahns from the federal government. 9 Therefore, it did not withdraw those powers, and

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7 Ibid.
One of the first cases heard by the Utah County Court indicates the proclivity of the courts to subordinate the interests of the individual to the welfare of the community. In this case, a petition was presented to N. Haws and others for the removal of a certain dam across Peteeteet Creek, and an appeal of James Pace and others was entered against the above petition. The court record reads, "It was deemed expedient for the general good of the community that said dam be removed as a nuisance." Utah County "A" County Court Record Book, p. 15, in the care of County Clerk, Provo, Utah.

8 Sec. 27 of Chapter I of Acts, Resolutions and Memorials, p. 124, reads:
"The Judge of Probate has jurisdiction of the Probate of wills, the administration of the estates, of deceased persons, and of the guardianship of minors, idiots and insane persons."

9 But as Tullidge said, "It is a perversion of the history to affirm that this [extending the powers of the probate court] was done either to set aside the U.S. District Courts or to institute a conflict with them." (Edward W. Tullidge, Tullidge's Histories, II, [Salt Lake City: Juvenile Instructor Press, 1889], p. 325.)

Within a year after the passage of the act granting the extended powers the Mormons had cause to withdraw those powers of the probate courts, for after the opening of the Salt Lake-California road connection many of the California-bound emigrants passed through Utah instead of staying with the Oregon Trail to Ft. Hall and Raft River. Altercations arising among these emigrants themselves and between them and the Mormons were taken to the probate courts for settlement. The Mormons reasoned that since the expense was caused from the proximity of these non-territorial residents, the court costs should be born by the federal government instead
the powers themselves became an issue of contention. 10

of by territorial taxes. But the federal government declined, and the costs of probate courts had to be born by the citizens of the territory. Whereupon Judge Snow said that he had recommended to the territorial legislature

"... that the laws of Utah be so amended as to take away the jurisdiction of the probate courts at common law, civil and criminal, and in chancery, and abolish the office of Territorial Marshal, attorney-general and district attorneys, so that the United States, by her judges, attorneys and marshals, may execute the laws of the Territory."

But the recommendation came too late in the session for consideration and was neglected in subsequent sessions. (Ibid., pp. 325-26.)

Speaking of the repeal of territorial taxes on January 18, 1858, as recorded in On the Mormon Frontier: The Diary of Hosea Stout, 1844-1961, II (Salt Lake City: University of Utah Press, 1964), p. 651, Juanita Brooks says in a footnote:

"The abolition of territorial taxes has some interesting implications. The members of the legislature evidently felt that Gentile appointees should depend on federal appropriations with which to carry on their programs. They were unwilling that local funds go to support these officers. Public works would be supported by tithing."

Public works as welfare had its beginning in 1850 in Utah. The superintendent of the public works was one of the presiding authorities of the Church and was the biggest employer in the whole territory. Each welfare laborer was assigned tasks commensurate with his skills, given credit for work performed, and drew his pay from the tithing office. (Leonard J. Arrington, Great Basin Kingdom: An Economic History of the Latter-day Saints, 1830-1900 [Lincoln, Nebraska: University of Nebraska Press, 1958], pp. 109-10.)

10 At least three other territories granted extensive powers to their probate courts. In New Mexico

"... the Americans created what was first called a 'perfectship' but which rapidly evolved into the office of judge of probate. By default this office, usually held by a patron soon controlled elections, land disputes, crimes, and many other duties reserved to the federal district courts, besides its regular estate and probate duties."

Since the judge had "control of election machinery for delegate, assembly, and local elections, it was no wonder that it was the most sought after of all local political positions." (Howard R. Lamar, "Political Patterns in New
It was said that non-Mormons could not get a fair trial in Utah. In response to this criticism, during the debate on the Poland Bill in 1874, Utah's representative, George Q. Cannon, cited statistics from Salt Lake Probate Court proceedings in an attempt to prove their fairness. He said that of eighty-four law suits wherein Mormons opposed non-Mormons, fifty-nine were determined in the non-Mormons' favor. 11

Mexico and Utah Territories, 1850-1900" (Utah Historical Quarterly, XXVIII, No. 4 (1960), 370-71.

The probate courts of Colorado and Montana were "authorized to hear and determine civil cases" involving less than $500 and criminal cases not requiring grand jury interdiction. In 1874 Representative Luke P. Poland introduced H.R. Bill 3089 which eliminated the criminal and civil powers of jurisdiction of Utah's provate courts. The bill passed both houses and the President signed it on June 22, 1874. The Edmunds Act of 1882 sought to punish polygamists and to prevent polygamists from holding office. Attack on the probate judge continued until the Edmunds-Tucker Act of 1888 gave the office into the hands of Presidential appointees. From this time hence, divorces were only to be granted by district courts. The probate court and the probate judge were abolished when Utah was granted statehood. (James B. Allen, "The Unusual Jurisdiction of the County Probate Courts in Territorial Utah," Utah Historical Quarterly, XXXVI [Spring, 1968], 132-142.) 11

Jay E. Powell, "Fairness in the Salt Lake County Probate Court," Utah Historical Quarterly, XXXVIII, No. 3 (1970), 256-262. Powell correctly identifies the issue as being "power politics" and not justice and fairness. He acknowledges that Mr. Cannon's statistics didn't prove their fairness. Powell refines and expands the statistics and shows that in a three-year period from 1852 to 1855 the Salt Lake probate court rendered eighty-nine per cent of its civil case decisions in favor of plaintiffs and only eleven per cent in favor of defendants, and the ratios were consistent when they involved non-Mormons against Mormons or Mormons against non-Mormons. Therefore, the advantage rested with being a plaintiff rather than being a Mormon. Criminal cases during the same period before the same court resulted in an eighty-two per cent conviction rate for Mormons with only a forty per cent conviction rate for non-Mormons.
Another objection was that probate judges were usually the presiding authorities of the Church of the area. To this George Q. Cannon answered:

Sir, there is probably no officer in the Utah Territory, if he belongs to the Mormon people, who does not hold some position in the Church... so that if you say that a man must not exercise political functions in Utah because he is an officer in the Church, you exclude from all offices in Utah Territory every respected Mormon.12

Those Church authorities, vested also with civil authority, were well endowed to implement and perpetuate the philosophy and goals of Mormonism—a factor that raised understandable objections from the Gentile segment of society. The Church of Jesus Christ of Latter-day Saints has been called a democratic theocracy; i.e., its officers are not elected by the people but are appointed by superiors and subsequently are only ratified by an open vote by those officers' constituents. An indication that their church training may have influenced some judges in their methods is indicated by this excerpt from the Deseret News:

St. Charles--the County Seat--in accordance with the provisions of the act passed during the last sessions of the Legislative Assembly, providing for the organization of Richland County Judge Thomas has divided the county into precincts, viz. St. Charles, Bloomington, Paris, North Creek, Clover Creek, Fish Haven and Lake. David Savage was appointed Prosecuting Attorney Franklin W. Young, County Clerk and Recorder. The Selectmen are John A. Hunt, David B. Dille, and Evan M. Green. Samuel A.B. Smith, is Sheriff, and Joseph C. Rich, County Surveyor. [Then by way of apology to the electorate the News

continued.] It was understood when our informants left that all these appointments would be made permanent by Monday's election. 13

Brigham Young not only preferred the Church's appointment system to the public election system, but his attitude toward the role of courts in Mormon life also created Mormon-non-Mormon conflict. He encouraged the people to go to the bishop when the interdiction of a third party was desired and discouraged the use of civil courts. 14 (For the first two years bishops' courts were the only courts of original jurisdiction available, and their decisions were usually confirmed when they were appealed to the First Presidency, a condition described by outsiders as "the lawless oppression of the Mormons."). 15

13 Deseret News (Salt Lake City), Wednesday, Aug. 3, 1864, 13:352.


Further reason for the charge that the territory's legal system was "lawless" is the fact that many Church leaders held offices that combined concurrently the executive, judicial, and legislative functions. A good example is Hosea Stout, who was simultaneously legislator, attorney general, and prosecuting attorney for the Nauvoo Legion. Albert Carrington and Elias Smith held similar positions. There was lacking in Utah a separation not only of church and state but also of the powers of government with its attending "checks and balances" as conceived by the founding fathers. (Lamar, "Political Patterns in New Mexico and Utah Territories, 1850-1900," p. 378.)

Some outsiders viewed the leadership of the Church under Brigham Young as a tyranny that freedom-loving American Mormons surely wanted to be relieved of. In this they misunderstood the Mormons who believed that their leaders were called of God and that to disregard the directions of their leaders was tantamount to rejecting the will of the Lord. On their part, the Mormons probably misimputed the motives of the federal judges who were, for the most part, honest men honestly trying to curtail those practices, mainly polygamy, that they felt to be unworthy and were later made unlawful.
President Young expressed his strong negative feelings about litigation when he said, "... our people ... have learned that it is condescension far beneath them, and that it opens a wide door, when indulged in, for the admission of every unclean spirit." Furthermore, the courts were required by law to discourage litigation. And Utah law (1854) precluded a great deal of court argument, time needed to prepare cases, and court costs by not allowing common law to be instituted:

... no laws or parts of laws shall be read, argued, cited, or adopted in any court, during any trial, except those enacted by the Governor and Legislative Assembly of this Territory, and those passed by the Congress of the United States when applicable, and no report, decision, or doings of any Court shall be read, argued, cited or adopted as precedent in any other trial.

The act also showed the unwillingness of the Mormons to live by any other law than their own.

16 History of Brigham Young, M.S. 1852, cited in Neff, History of Utah, p. 192.

17 Acts, Resolutions, and Memorials, Sec. 24, p. 128, states: "The Judges of the district and Probate Courts shall be conservators of the peace ... and it is their duty to use all diligence and influence in their power to prevent litigation."

Delegate to Congress William H. Hooper in a speech of February 25, 1869, alluding to the charge that the people of Utah did not sufficiently honor the courts of justice, said that the misunderstanding was probably due to the fact that Mormons preferred to settle problems through arbitration rather than litigation because that was "... cheaper and quicker;" but courts were always available for those preferring law suits, and court decisions were honored and enforced. (Neff, History of Utah, p. 703.)

Indian Agent Garland Hurt averred that the probate courts were "tools of Brigham Young." Certainly they were amenable to his leadership. And even in the federal courts Young often obstructed the opposition by advising jurors as to which verdict to reach. Bancroft's writers acknowledged that Utah's code of justice was founded on the doctrines of the Book of Mormon rather than on common law, especially in matters of chastity and marriage. All of these things were offensive and obnoxious to the non-Mormons.

For their part, the Mormons thought that civil courts were unnecessary before non-Mormons came to Utah; that bishops' and high councils' courts were sufficient. The Church had always taught that its people should maintain high standards of conduct because of a higher principle than that they were merely forced to do so by law. It was the positive principle of faith in their leaders, in their religion, and in the transcending significance of their labors plus the negative impetus of social pressure, not a secret


band of assassins with their purported threats of violence at midnight, that accounted for the peace among the Mormons. 23

Of all aspects of Mormon government, none raised so much opposition as did the judicial branch, and in judicial practice no issue raised so much furor as did the extended powers of the probate courts. Perhaps the idea was a carry-over from the age of Jackson—that a common man without extensive legal training or recourse to previous decisions could with common sense render a fair and just decision in an infraction between two parties or in criminal cases. But the common man in a professional legal sense was no common man in the religious order. The judges drew their prestige from the favor they enjoyed in their office in the priesthood, and priesthood position bestowed a social power and status in Mormon communities as pervasive as did political office in other communities.

Perhaps it was natural that the judiciary should become the center of opposition to Mormon government, for though the non-Mormons objected to the ingenuous Mormons nearly always electing those candidates endorsed

23 Taylor, "Early Mormon Loyalty to the Church and the Leadership of Brigham," p. 117, says:

"... [contemporary] writers insisted that the primary effort made was less propaganda than intimidation: the widespread threat and use of violence. Had these critics troubled to make the comparison, they might have admitted that there was less not more, violence in Utah than elsewhere in the far West."

In these violent days, all expected trouble and since nearly all Mormon men were officers in the Mormon Church, outsiders surmised that any murders must surely have been planned by the Church leadership. Ibid., p. 118.
by their church leaders, still the Mormons were a vast majority, and the Gentiles were reared with the concept of majority rule.  

The court, however, is the intimate and culminate application of law, and here they expected an impartial consideration of their problems without regard to their religious or "majority" affiliation. And though the decisions of those courts may have been as fair and equitable as humanly possible, it was hard for the gentiles to think so because of the close association between the probate judge and his religious affiliation with the Church hierarchy.

24 "Political voting, in short, was regarded, as the equivalent of the Church practice of 'sustaining' the authorities. Brigham Young summed up this view in 1847 by saying: "It is the right of the Twelve to nominate the officers and the people to receive them.'" (Ibid., p. 115.)

25 A footnote in Bancroft, History of Utah, p. 447, says: "Lieut. Gunnison and Capt. Stansbury, who may be considered impartial observers, both state that this was the case. The former says: 'There was every appearance of impartiality and strict justice done to all parties.' The Mormons, 65. The latter remarks: 'Justice was equitably administered alike to saint and gentile.' Expedition to Valley of G.S. Lake, 130."
CHAPTER II
DEVELOPMENT OF RESOURCES

One of the things that made the Mormon mode of settlement different was their incorporation of the religious philosophy of stewardship—the idea that the land and all things thereon belong to no man or government; that the earth is the Lord's and men are only tenants thereon with the responsibility in the exercise of that tenancy to the Lord, to their contemporaries, and to their posterity: that those who are given most must serve their fellows most.

On July 25, 1947, Brigham Young set down this principle concerning timber and water:

There shall be no private ownership of the streams that come out of the canyons, nor of the timber that grows on the hills. These belong to the people; all the people.¹

Yet four and a half years later the Utah Territorial Legislature enacted the following:

The County Court has the control of all timber; water privileges, or any water course or creek; to grant mill sites, and exercise such powers as in their judgment shall best preserve the timber, and subserve the interest of the settlements, in the distribution of water for irrigation, or other purposes.²

¹ Avery Craven, "Utah and the West," Western Humanities Review, III (Oct., 1949), 282.

² Acts, Resolutions and Memorials, Passed by the Several Annual Sessions of the Legislative Assembly of the Territory of Utah (Salt Lake City: Joseph Cain, Printer, 1855), Sec. 38, p. 127.
The county courts in a seeming contradiction to Brigham Young's pronouncement granted control of these resources to individuals. In the legislative records there are accounts of Ezra T. Benson being granted the control of "... the waters in Tooele Valley, Tooele County, known as the Twin Springs, also ... Rock Springs, ... for mills and irrigating purposes"; of Brigham Young being granted "... the sole control of City Creek and Cañon; and that he pay the public treasury the sum of five hundred dollars thereof"; of Heber C. Kimball being given "... the waters of North Mill Creek Cañon and ... the Cañon next north, ... " for running "... a saw mill, grist mill and other machinery" with the provision that this would not hinder irrigation; of George A. Smith being granted "... the exclusive control of the timber in the cañons on the east side of the ... mountains west of Jordan ..."; of Wilard Richards being given "the exclusive right of working a road or roads into or through the North Cottonwood Cañon, and control of the same."3

Those grants to individuals, though they were a departure from Brigham Young's earlier proclamation that canyon waters and timber should belong to everyone, were a form of trust. They were given in an effort to promote the building of roads for the removal of timber and building stone from the mountains, the development of water projects, and also to provide

3 Acts, Resolutions, and Memorials Passed at the Several Annual Sessions of the Legislative Assembly of the Territory of Utah (Salt Lake City: Henry McEwan, Public Printer, 1866), pp. 173–74.
for the supervision of these. Leonard J. Arrington lists three alternative solutions to accomplish these things. First, public officials could ignore the problem and let those who needed the resources deal with it. This would create ill will between the early timber users who had to build the roads and later users who spent no funds or energy in the road making. Granting private property rights in the canyons would remove public regulations of mountain resources, allow wasteful practices, and result in an inaccessible road system—the same abuses that characterized the development of other parts of the mountain west.

A second alternative was to use funds from the public treasury to build roads. But this meant taxing everyone for the advantage of the wood users. This plan, of course, was adopted later when public money was more plentiful.

A third method was to grant control of mountain resources to trusted men who were to supervise the grazing, timber-cutting, and ditch building, and who were required to build and maintain canyon roads for public use. They were authorized to charge a toll for the use of the roads, and, as with public utilities today, the fees charged were regulated by the authorities. This solution forced resource users to pay the cost of resource extraction and relieved public authorities of the expense of supervising the taking of those resources.
This managerial system was accepted by the Mormons in their semi-annual conference and was also made a territorial law in 1852.  

Church leaders adopted this plan as the best answer to the peculiar needs of the era. However, it gave rise to numerous objections: the favoritism inherent in the very grants themselves; the possible exploitation of these monopolistic privileges; the legislature's giving away of federal property; the demanding of tolls from settlers, emigrants, and army suppliers; and the very disparity between it and President Young's idealistic, though simplistic, first plan concerning canyon ownership. It was disapproved by many Mormons as well as by critics of the territory.

Bancroft admitted that, "Perhaps the most remarkable feature . . . of the assembly is the liberality with which valuable timber and pasture land and water privileges were granted to favored individuals."  

Surveyor General Burr wrote in a report to Washington that by 1858

The exclusive right to every considerable canyon has been granted by the legislature to favorites of the Mormon Church who compel the settlers to pay high prices for the privilege of getting their wood from them. They have erected sawmills in many of them and the timber is fast disappearing.


All of the grantees enumerated above were members of the Quorum of the Twelve Apostles, except Heber C. Kimball, who was Brigham Young's First Councilor. Other apostles, scattered among the various settlements were also beneficiaries of such grants, thus supporting the gentiles' charge of favoritism: that the grants were a reward for the special cohorts of Brigham Young.

This became a calculated design, according to Lamar. He says:

In a frenzy of last minute legislation [before the coming of Johnston's Army] the assembly granted nearly every water course, grazing tract, timber stand, and townsite in the territory to Mormon leaders so that not much usable public domain was left.7

When the army representing the U.S., in which legal possession rested, arrived in the territory, there were few good places to locate a camp without trammeling on some Mormon's rights.8 As Colonel Albert S. Johnston wrote, "I was desirous to avoid proximity to any settlements, if possible; but this was not practicable, for every suitable position where there is water is occupied."9

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7 Lamar, "Political Patterns in New Mexico and Utah Territories," p. 379.

8 Ibid., pp. 378-79. Furniss, The Mormon Conflict, p. 206, quotes an observation of a visitor to Camp Floyd that the camp was "a hot purgatorial spot where winter was long and rigorous, summer hot and uncomfortable, a place where alkaline water curdled soap, and dust storms proved almost unendurable."

9 Bancroft, History of Utah, p. 537.
California-bound immigrants grumbled about paying road tolls to descend Mormon canyons. And later when Johnston's Army was admitted through the mountain defiles, the troops were not charged but the army's suppliers were. The freight wagons of the firm of Russel, Majors, and Waddell of Pony Express fame were charged tolls amounting to thousands of dollars a year. To their teamsters it was ridiculous anomaly:

Here a saintly keeper, slate in hand, kept tally of our wagons as they lumbered past, the toll being one dollar per ton, or $1,250 for our train. The road belonged to the Mormon Church--otherwise Brigham Young. Paying an enemy toll to enter his conquered territory was the height of absurdity. 10

The audacity of the Mormon assembly in parcelling out the public domain of the U.S. --of giving away that which was not theirs to give--was repugnant to other Americans. The Mormons wanted a nearly autonomous sociological, economical, and political situation built upon a definite geographic claim, but the role of steward in the Mormon land system was somewhat more altruistic than most non-Mormons believed. Stewardship was fraught with responsibility: its concern was that of overseership rather than that of proprietorship. There was no such thing as absentee ownership. And idle land or water was just that; hence, it was subject to the appropriation of the next party who had use for it. Those canyons were not given to individuals, nor was any other land given to be held by the receiver or his posterity in

10 Kenderdine, A California Tramp, quoted in Arrington, Great Basin Kingdom, p. 198.
perpetuity except upon the fulfillment of obligations concerning that property.

If the grant was monopolistic, it was in the nature of a public utility franchise, for it was controlled and limited by strong religious group pressures and subject to regulation of religious authorities.\(^{11}\)

A letter from Brigham Young to James Brown illustrates this religious regulation:

Dear Brother, From various sources I learn that you abuse the privileges granted you by the Legislature in taking toll for the repair and construction of certain bridges and a road therein specified. I regret to say to you, that you are ruining yourself for the sake of a paltry dollar.

Cease your operations forthwith, and when men ford the stream, never mouth toll; be reasonable in all your intercourse with travelers.

They complain bitterly, and justly to ... Remember that privileges are given to use and not abuse and that you not only injure yourself, but discredit the community in which you live ... \(^{12}\)

The securing of roads for the fair use of all was no less important than the securing of water for equitable distribution to all. If the widely-spread pockets of arable and irrigable land were to support the numbers of converts which they envisioned would come to the 'Great Basin Kingdom', Mormon leaders had to devise some way of preventing the first arrived or


Arrington, Great Basin Kingdom, p. 54.

the most energetic from establishing prior rights that would prevent the full utilization that those streams would otherwise permit. Water is such a precious and perishable commodity that it easily becomes the object of bitter feud. The system of grants, supervision, and public ownership of water established by the Mormons was designed to direct energy from the struggle among men FOR that treasure to the effort for maximum USE thereof. Just the task of water use was formidable. Horace Greeley wrote of the expensive and demanding nature of irrigated farms after a visit to Utah in 1859.

I estimate that one hundred and fifty days' faithful labor in Kansas will produce as large an aggregate of the necessaries of life—food, clothing, fuel—as three hundred just such days' work in Utah. 14

David Lavender's statement that despite the Territory's desolate appearance there was "ample water for irrigation" would probably have been received with scepticism by those early water users. 15 Water, another economic scarcity, was strictly rationed: a factor which, along with the land, severely

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13 Neff, History of Utah, p. 255.
15 Lavender, The Great West, p. 247.
limited the numbers of people who could be placed at the various settlements.  

The increase in population necessitated the building of canals to carry water farther from the mountains to enable more and more of the desert to produce crops. In the insatiable demand for water, the Utahns had to immediately cope with the full range of water problems:

... , the supply and the demand, the feasibility of the project, cooperation in endeavor, distribution and apportionment, division of stream flow, diversion ditches, head-gates, water masters, the drudgery of irrigation, dam breaking, seepage, water-logging of land, drainage, etc.

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At first it was decided not to farm the alluvial bench along the Wasatch Front, since the gravel contained therein necessitated much greater amounts of water to be used for irrigation. (Neff, *History of Utah*, p. 260.)


There are two basic types of water law: riparian and appropriative. Riparian right is established by the ownership of the land through which a stream flows and entails the use of the water for whatever purpose desired, provided that the use thereof does not diminish the amount of water. This system in the East was not at all suitable in the West, where the major need for water was irrigation. Since one cannot irrigate crops and return the water to the stream undiminished, and since the proximity of the stream bed bears little relation to the proximity of the land to be watered, a new concept of water right had to be devised. Needed was a system of rights based on a man’s productive use of the water, a system that recognized some priorities over others; e.g., culinary needs are precedent to irrigational needs, irrigation to hydroelectric, etc. The new system is called appropriative water rights. So long as water was community owned and distributed, there was no problem with riparian rights; but with the adoption of private ownership, appropriative rights became the legal water system. *Times News* (Twin Falls, Idaho), Dec. 7, 1971, p. 15.
A simple water diversion system was instituted in the 1850’s. In 1852, $2,000 was appropriated for the Cottonwood irrigation project. In 1853, the legislature proffered a grant of $200 to aid John Bennion’s group "... provided they expended $2,000 of their own money ..." to divert Jordan River water for the irrigation of land. In 1854 an enactment authorized Ira Eldredge, Jesse W. Fox, and Robert Winner to build an irrigation canal from Utah Lake to Salt Lake.

By the mid 1860’s the above projects had permitted maximum cultivation in the Salt Lake Valley bottom-lands. The expansion of farming occasioned by the favorable prices of farm commodities and the continuous influx of new immigrants prompted the building of canals to carry Weber River water southward and water from Utah Lake northward on the farless desirable benchlands of the Valley.

New communities had been established in outlying areas, all of them necessitating the construction of irrigation systems. The north frontier in 1860 was Franklin (now Idaho) where Preston Thomas, the town’s first bishop, was granted control of the resources of Maple Creek Canyon by the Cache County Court. He built the traditional toll road for access to the timber and planned,

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18 Neff, History of Utah, p. 258.
19 Ibid.
20 Ibid., pp. 754-55.
surveyed, and supervised the irrigation system that the Cub River from the
canyon provided. This forty-nine-long canal served the countryside from
Preston southward between Cub River and Bear River. All who had interest
in the canal helped to build it; each man donated labor in proportion to the
amount of land he was to irrigate.  

There were controversies and problems arising from the canyon-
grant plan. At times church leaders and laymen were in contest for the same
water. Sometimes the privileges of the original grant were divided and some-
times they were not. In the "A" County Book of the County of Cache there
appears several interesting entries relating to the stewardship given to Ezra
T. Benson, the apostle who presided over Cache Valley. On December 3,
1861 he and Peter Maughn petitioned for "... control [of] all the water,
timber, wood, poles, minerals, and grass in Logan canyon, ..." The
petition was granted. That same day William Hyde asked for "... one-
fourth of the water running in the north fork of Logan River ..." to in-
crease the irrigation water available at Hyde Park. The court decided to
not decide "... until a more perfect understanding can be had in the matter."  
Richard J. Livingstone asked for and received water from Logan River to
turn certain machinery with the provision that he contribute $250 of labor to

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22 "Preston Thomas: His Life and Travels" (unpublished compilation of the journals of Preston Thomas copied verbatim by his son, Daniel H. Thomas, 1942, in possession of Hadland P. Thomas, Salt Lake City), p. 441.
the public water works over a two year period. D. B. Dille et al., sought a mill site that would utilize Brother Benson's water. They later withdrew the request. And, finally, John Nelson received permission to operate a saw and shingle mill on the Logan River on December 5, 1864.

But the entry on p. 52 plaintively illustrates the issue between Brigham Young's original statement that canyon resources belonged to all of the people and the later-adopted canyon grant system: Ezra T. Benson petitioned to be granted a fork in Green Kanyon in which to build a log slide, whereupon "A Remonstrance to said petition was presented by Hugh Adams and forty others, claiming that said branch Kanyon ought to belong to the public alone."

Though stewardship underlay both Brigham Young's statement and the territorial assembly's act, the favoritism implicit in the control of canyons, timber, and water by individuals, however efficient in the saving of public revenue, chafed many Mormons and led to "widespread dissatisfaction." This aspect of the program was changed and finally dropped. The county

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24 Ibid., p. 20.
25 Ibid., p. 51.
26 Ibid., p. 57.
27 Neff, History of Utah, p. 255.
28 Ibid., pp. 757, 255-56.
courts were authorized by a legislative act in 1865 to create irrigation
districts. In 1866 the districts' jurisdiction was extended to include existing reservoirs, dams, and canals. This efficient control was continued until 1880 when the act giving the county court control of water, timber, etc. was repealed.

In this initial period the idea of private title to water was non-existent. The water as well as the timber was owned by the community, and the main goal was to secure maximum use through co-operative action and close supervision by the county court and by those who were granted control of the canyons and the resources in them. Though this religious and political delegation of responsibility brought a good deal of criticism and though the policy of public ownership was not retained, it was in force during the crucial years of settlement. And that policy, together with the small size of Utah farms,

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29 The system evolved by the saints in southern Idaho was not wasted upon the state, but was rather largely adopted in the Idaho Irrigation Code. After disappointing experience with private capitalists developing canals and marketing water to farmers, "... in 1895 the State Legislature, ..., passed the Irrigation District law, which provided that the owners of land susceptible of irrigation from the same source might organize themselves into an irrigation district and construct or acquire by purchase or otherwise the necessary works and facilities to irrigate their lands and, through a board of directors elected by the land owners, supervise and direct the distribution and use of water and the conduct of the business of the district. The Irrigation District Law, ..., remains in effect and has, in the main, operated satisfactorily." (G. C. Hobson, Ed., The Idaho Digest and Blue Book [Caldwell, Idaho: Caxton Printers, 1935], p. 312.)

30 Neff, History of Utah, p. 757.
enabled a much fuller and broader utilization of the existing land and water than would have been the case had canyon resources--the very lifeblood of the valleys--been up for grabs by individual entrepreneurs.
CHAPTER III
THE LAND

The words "pioneer" and "entrepreneur" in some intellectual circles are execrations that cannot be exploitation, wanton disregard, spoilation, and abandonment. The implication was not without justification. Admittedly, a great deal of the pioneering and entrepreneurship was of a sort that skimmed off the exterior abundance and moved on to repeat the process in a new area.

Consider the cotton planters who successively planted, depleted the soil, and moved west; the miners who moved from one prospecting endeavor to another, leaving the land scarred in their wake, followed by the hydraulic operators who denuded the banks and polluted the streams; the lumbermen of the Mississippi who "built a hundred cities and a thousand towns" and left the hills naked and exposed to the eroding rains, compounded in the valley by farmers until contour plowing checked the loss of topsoil to the mighty Mississippi.

On the upper Great Plains the buffalo, once numbering in the millions and staple of the Indians, succumbed to the wanton slaughter of white hunters. Their bones bleached awhile and then were gathered to make fertilizer. The standard homestead of 160 acres was insufficient in this drier climate. The broken sod exposed to the prodigal wind, too little precipitation, and the private ownership of streams that precluded irrigation brought ruin to the
farmers and made dust bowls of thousands of acres.\footnote{Avery Craven, "Utah and the West," p. 280.} Suffering, defeat, and eventual abandonment was a common experience.\footnote{Fred A. Shannon, The Farmer's Last Frontier: Agriculture, 1860-1897, The Economic History of the United States, No. 5 (New York: Farrar \& Rinehart, 1945), pp. 51, 54, 61, says in speaking of homesteads that only about one sixth of the new acreage acquired by settlers from 1862-1900 were acquired as a result of the various homestead acts. Of these, "two thirds of all homestead claimants before 1890 failed at the venture, and the great majority of all these were persons who had spent all their earlier lives on the land." (Cited from Shannon, "Homestead Act and Labor Surplus.") Of the efforts at settlement under the Desert Land Act of 1877 Shannon said, "About three out of four entrants really tried to make good and failed. The rest were merely the pawns of land monopolists. It was conservatively estimated that at least 95 percent of the final proofs were fraudulent."} Colorado, Idaho, Nevada, Montana, Arizona, and Wyoming suffered sizable highly-specialized, absentee-financed exploitation. Their resources were siphoned off for maximum profit with minimum investment. Much of the wealth left the West, and the West was left with labor strife and lawless times.\footnote{Leonard J. Arrington, The Changing Economic Structure of the Mountain West, 1850-1950. The Bobbs–Merrill Reprint Series in History No. H-345 (Logan, Utah: Utah State University Press, 1963), pp. 19-21.}

The Great Basin was spared much of that kind of activity. It was deemed worthless by successive owners. The Spanish made no effort to settle it; in spite of that, their claim was undisputed. Mexico, having seized
the former Spanish lands, regarded that possession with contempt, like a farmer who owns a poor cow he is ashamed for anyone to see. With the signing of the Treaty of Guadalupe-Hidalgo in 1848, the Great Basin passed into the ownership of the United States, whose citizens considered it a curse separating the desirable lands of the west coast from those east of the 1000th meridian. ⁴

The Great Basin that Bancroft said had been virtually "... ceded to them as worthless" was not so lightly regarded by the Mormons. ⁵ Even though the country was vast and barren compared to their former habitations, the immigrants would not generally scatter haphazardly over the land to exploit it and leave it. They were often assigned by groups to colonize the various areas. Since their object was to build permanent settlements, they were to plan according to the possibilities. There was to be system and orderly use, but not exhaustion, of the resources. For example, Brigham Young urged the people to conserve the timber--to refrain from burning any that was usable for lumber, to build homes or adobe, to split or saw rails for fences because that took less lumber, and to saw lumber for houses rather than use whole logs. ⁶

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⁴ Neff, History of Utah, pp. 678-79.

⁵ Bancroft, History of Utah, p. 485.

But if conservation was the ideal, abuse was oftentimes the practice. The closer timber was harvested too heavily and the closer mountain ranges and canyons were over-grazed, which resulted in floods during the run-off season. Too many animals on the semi-arid desert ate the forage too close. Since the root system of grass is of approximately the same quantity as the foliage, the short-cropped grasses could only support a greatly-reduced root system which was insufficient to tap the moisture necessary to sustain the plant through the dry summer. The livestock then turned to the less-desirable forage. The process continued until the plants remaining bore little similarity to the former vegetation. Having recently immigrated from Illinois, Missouri, and other areas where rainfall was much more abundant and much better distributed through the growing season—where grass continued to grow even in the summer, these stockmen were probably not aware that a plant cropped too close in the spring dies in the dryness of summer. They had no way of knowing the reasonable limit of grazing the range could stand, until the damage was done.  

The basic land policy which was to be followed in the State of Deseret was outlined by Brigham Young in a short speech on the day following his arrival in Salt Lake Valley. He said that no one could purchase land because no land would be for sale, but each man would have land surveyed and measured off for him "... which he must cultivate in order to keep."  

8Craven, "Utah and the West," p. 282.
Presiding church authorities were to have their respective settlements surveyed and were to assign (usually by drawings) lots and farms to settle as they moved in. The settlers usually worked on the local water supply system as the only cost for their land.  

An additional requirement for owning the land was the obligation of fencing it. An act approved February 12, 1851, required surveying the land and fencing it within one year with a fence four and a half feet high. If these things were not accomplished, title to the land would be nullified and such parcels would revert to common pasturage. The requirements of cultivation and fencing, as well as the pressure of the increasing population, imposed limits on the size of farms. The average farm in the U.S. in 1850 was four times that of the average farm in Utah.

Thus the Mormons established an orderly system of cooperative land and water use and distribution that facilitated the reasonable population disbursement and size. They were spared many of the tragedies of failure that other Western settlements suffered. Their leaders reasoned that to

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9 Arrington, *Great Basin Kingdom*, p. 90 says that presiding church authorities were to have their respective settlements surveyed "... by an appointed church engineer ..."

10 *Acts, Resolution and Memorials, Passed by the Several Annual Sessions of the Legislative Assembly of the Territory of Utah* (Salt Lake City: Joseph Cain, Printer, 1855), p. 107.


succeed they would have to achieve a high degree of self-sufficiency which would allow accumulated wealth to be kept at home.

Despite the usual effort to care for and conserve the resources, and despite the fact that others had not wanted it, the Mormons were denied claim to their land, though the U.S. government seemed to be in the business of giving away lands to other recipients. In 1850 the Illinois Central Railroad had been given two and one half million acres of alternating sections on each side of the road. Missouri in 1852 was granted over one and one half million acres of land to encourage the building of two railroad lines. In 1856 and 1857 Southern and Western states were given twenty million acres to aid forty five railroads, some of which were simply speculations.

By 1870 one hundred thirty million acres had been given outright to corporations. Still the price to settlers was $1.25 per acre. Now if corporations could be given public land, why couldn't individuals be given public land? Men arose who advocated that very practice: George Henry Evans, Galusha Grow, and Horace Greeley.

The Oregon Donation Law granted three hundred twenty acres to men who would farm it for four seasons and another three hundred twenty acres were given to the wives if they were married before April 1, 1851. Before the expiration of the law in 1855, 8,455 people had been given nearly 3,000,000 acres in Washington and Oregon territories. The desire for land apparently
exceeded the desire for gold, for in 1851 the number of wagons going to Oregon exceeded the number going to California. 13

Thus there was some indication that the lands of the Great Basin should pass to the Mormons free of charge. Mormons reasoned, hadn't three governments and all travelers asserted the worthlessness of the Basin? Hadn't Miles Goodyear experienced crop failures year after year on the bank of the Weber River? And wasn't Jim Bridger so skeptical of successful farming in the Salt Lake Valley that he offered to pay a thousand dollars for the first bushel of corn to be grown there? In that day of abundant and better lands, wasn't the only value in Mormon holdings that which they created by their own improvements? And hadn't the Mormons helped to procure the Mexican lands by sending, at great sacrifice, the Mormon Battalion in the hour of greatest need? Yet they were denied for decades the land that Virginia's senator Sneddon said 'had been abandoned to [them] for its worthlessness.' 14

Meanwhile, Congress used the withholding of land titles and statehood as two of the few measures available to force the Mormons to abandon practices so objectionable to other Americans: polygamy, consecration of property, attempts to influence Indians against other whites, and authoritarian

14 Bancroft, History of Utah, p. 453.
Church control over territorial affairs. The Mormons felt insecure even on a land which nobody else wanted, for in the East former federal officials, W. W. Drummond, Perry C. Brocchus, and others had so successfully stirred the nation against them that American writers and editorialists were demanding that the national government use force to settle the problem. Without title to the land they could be legally evicted at any time.

During the hotly-debated bill before Congress in 1855 providing for the survey of Utah and the granting of lands to the original settlers, Mister Packham, Democrat of New York, asked, "Would not the bill encourage polygamy?" Representative Bernhisel of Utah answered with a note of humor, "The more wives a man has, the more need he has for homesteads." Seeing the opposition to the bill, Utah's delegate asked that if the land was not to be given to Mormons, then at least they be allowed to buy it. The bill did not pass in its original form, for neither the granting nor selling of land to Utah settlers was approved; but, strangely, the provision for surveying remained intact.

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15 Arrington, Great Basin Kingdom, p. 249.
16 Furniss, The Mormon Conflict, pp. 59, 77, 94.
17 Ibid., pp. 59-60.
18 St. Louis Luminary, Feb. 10, 1855, p. 46.
19 Though it increased their apprehension of being dispossessed, the postponement of acquiring title and the necessity "... of payments was immediately advantageous to the Saints, provided the arid country was not to be given to them," for it allowed the settlers to use the money that would have otherwise been lost to them for other investments. (Neff, History of
The Mormons became uneasy and suspicious, for since the beginning, qualified surveys had been the basis of all their land allotments; so perhaps they assumed that title to the property, when it came, would simply confirm the allocations already made. 20° For what end, then, did Congress want a survey when it had shown no intention of following through with the logical purpose of a survey; viz., the availing of land already settled to the settlers thereon? Or did Congress have something else in mind?

A Surveyor General, Mr. David H. Burr, was appointed for the Utah Territory. He arrived there in July of 1855 and the work commenced. From the first the Mormons were dubious that Burr's mission would accrue to their specific benefit. Those suspicions were soon vindicated, for in 1856 Mr. Burr wrote the usual letter of complaint to Washington sounding the alarm about a new Mormon grievance. Besides criticizing the granting of canyon rights to preferred members of the Church, he also warned that Mormons were deeding their lands and effects to the trustee in trust of the Church, Brigham Young, adding, "This proceeding in the Territory is incompatible with our system, and suggests the propriety of congressional intervention.” 21

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20° Ibid., p. 90.

21 Neff, History of Utah, p. 679.
Indeed, in 1854, Brigham Young had reinstated the law of consecration in spite of its dismal success for the Mormons in Ohio and Missouri. Burr's report promoted a storm of protest in the States. Fifty or even twenty-five years earlier the program may have drawn praise as a worthy attempt to achieve social and economic equality modeled on the ideal described in the Bible's fourth and fifth chapters of Acts. But most Americans by the 1850's were far removed from the co-operative experimentation of the Jacksonian days. A new spirit drawn from Social Darwinism had seized men's hearts and sent them scurrying over the country seeking wealth and prestige in the assertion of their individual superiority by their aggressive competitiveness and their right to survive by their superior individual mental and physical prowess. In the West only the Mormons had pursued co-operative forms of endeavor. And in the East where Mormonism was born in the midst of communal social experimentation, the movement, except for a few adherents, had now passed. East and West, in the territory and out, to non-Mormons consecration was one more example of Mormon peculiarity. Worse, it was regarded as a devious design of Brigham Young against members of his own church as well as against gentiles in the territory. 22

Writers published their objections. First, the plan would greatly increase the power of the Church leadership and reduce the rest of the Church membership to "... complete economic dependence;" secondly,

22 Arrington, Great Basin Kingdom, pp. 62-63.
all such consecrated properties would be exempt from taxation; thirdly, it would "... prevent Gentiles from purchasing ... property in Utah ..."; fourth, it would "... keep departing gentiles and apostates from taking any property with them, ...". Finally, since Mormons owned none of the land in Utah territory, it amounted to an illegal usurpation of public land that must be abolished. And Congress, now much further alienated, was even more determined not to sell or bequeath land to settlers only to have it pass into the hand of the Church.  

Angry and smarting from the flagellation of the gentile press and painfully anxious for the security of their lands, since they supposed the survey was a preliminary move to being evicted by the government, the Mormons resorted to desperate means to obstruct the survey. They were reported to have beaten one surveyor, threatened another with his life, stolen horses and stoned houses belonging to surveyors, and turned the Indians against them by

23 Neff, History of Utah, pp. 538, 540.

24 Letter of William H. Hooper to George A. Smith cited in Neff, History of Utah, pp. 683-84. Arrington, Great Basin Kingdom, makes these comments about the consecration movement:

"During ... 1855-56 about forty per cent of the 7,000 heads of families in the territory deeded all their property to the church ..." (p. 146, citing "The Consecration Movement of the Early Fifties" by Fox.)

"... the consecration movement never culminated in the assumption of control by the church over any of the properties consecrated nor in the assignment of any inheritances." (p. 147).

"In 1862, ... Congress specifically prohibited the church from owning more than $50,000 worth of property." (p. 147.)
saying that the surveyors were out to take their lands.25 And, as Garland Hurt observed of Mormon crimes, not one of those offenses would be satisfactorily prosecuted in the territory’s church-dominated courts.26

By the spring of 1857, Burr, having fled for his life, was back in Washington along with Judge Drummond spreading the word of his abuses from the Mormons. The Mormon behavior toward federal officials and their assignments, raged Burr, was insurrection.27 A military solution was gaining favor. The Mormons denied the reports, assailed the character of the surveyors, and declared their work to be fraudulent.28

Two million acres of Utah Territory were surveyed by 1857 and charged to the U.S. Government at $148,500; yet not one acre of it was for sale to Mormons.29 Of these efforts Brigham Young said,

The surveying is a great humbug, they have got their own party and surveyors imported for this purpose; and I am told that the surveyors have no trouble in making about one thousands dollars per month, and that all they do is of no earthly benefit, they stick down little stakes that winds could almost blow over, neither

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28 Ibid., pp. 45-47.

29 Neff, History of Utah, pp. 681, 679. Owing to the investigation prompted by the Mormons, the federal government only had to pay out $90,000 for the Burr survey.
plant charcoals, nor raise mounds. Not a vestige of all they do will be left to mark where they have been in five years ....

The Utah War halted surveying efforts. In 1860 Surveyor General Stambaugh affirmed upon investigation that the allegations of profligacy in the survey of Burr was true but suggested that the surveys be suspended "until a different policy may be devised by Congress to induce other than Mormon emigration to the Territory." Mr. Stambaugh apparently had his way, for there was no surveying in Utah for ten years, and by 1867, when it was resumed, the transcontinental railroad and mining interests had indeed brought to the area a more heterogenous populace.

The Homestead Act was passed in 1862 and was applied everywhere else in the West, but delays and objections again prevented land from being released to Utahns. It was argued that the Indian claims hadn't been settled. But that was the government's own neglect. Funds had been appropriated in 1854 to pay the Indians for lands they would be asked to give up to white settlers and to establish reservations for them; however, it was ten years before the money was extended to Utah's Indians.

31 Neff, History of Utah, p. 681.
32 Ibid., p. 682.
33 Ibid., pp. 439, 393-94.
Part of the reason for the delay was the issue of influencing Indians. Mormons and non-Mormons each accused the other of "tampering with the Indians" for their own exclusive advantage.\textsuperscript{34} Jim Bridger had sold guns to the Indians during the Walker War, insisted the Mormons who had purchased his fort in 1853 and forced him to leave the territory.\textsuperscript{35} Garland Hurt, Mormons were convinced, had used his influence on the territory's Indian farms to turn the Indians against them.\textsuperscript{36} On the other hand, Indian Agent Hurt warned his superiors in Washington that the church was sending missionaries among the Indians. These missionaries, he maintained, were sent not so much to teach the gospel as to ingratiate Mormondom with the Indians: to draw a "distinction between Mormons and Americans, which was calculated to operate to the prejudice of the interests and policy of the government toward them."\textsuperscript{37}

The Mormon's attitude toward the Indians was incomprehensible to other Americans. Their Book of Mormon declared the Indians, however fallen, to be fellow Israelites whose ancestors emigrated from Jerusalem 600 years B.C.; and that however scornful their condition, they could become

\textsuperscript{34} Ibid., pp. 438-41.
\textsuperscript{35} Ibid., pp. 232-33.
\textsuperscript{36} Ibid., pp. 47-51.
\textsuperscript{37} Letter of Hurt to Maypenny cited in Furniss, pp. 50-51.
"white and delightsome" if they would but cease their shiftless way and accept the gospel of Jesus Christ. 38 But non-Mormons were loathe to believe that the missionary efforts toward the Indians were so altruistically committed. 39 And the federal government, giving credence to Hurt's charges, could hardly be blamed for not paying to Indians for their lands money that might be converted to arms which could be turned against other Americans: from first to last, making Mormons the ultimate beneficiaries.

Utahns wanted to things--statehood and title to the land. Both seemed to be contingent upon a larger population. Congress steadfastly refused to grant statehood until exacting population requirements were met. 40 Stambaugh wanted

38 The Book of Mormon, translated by Joseph Smith. (Salt Lake City, Utah: The Church of Jesus Christ of Latter-day Saints, 1830), II Nephi 30: 5-6, p. 102.

39 Brigham Young's general policy regarding Indians included the following instructions to the pioneers:

"... give the natives no cause of offense. The whites were enjoined not to kill the game nor take the fish which the Indians claimed as theirs, but to buy what they needed of them. This would give the natives means of subsistence without begging or stealing from the whites. The settlers also must always treat the natives kindly, they were to be treated firmly, and kept at arm's length--not to be allowed to trample on the rights of the settlers. President Brigham Young always maintained that it was 'cheaper' financially--'to feed the Indians than to fight them,' and the history of Utah fully substantiates the assertion." (Cited in Edward W. Tullidge, Tullidge's Histories, p. 362.

40 Bancroft, History of Utah, p. 484 says, "If their population was not yet large enough to entitle them to admission, it was larger than that of several of the younger states when first admitted."
a larger non-Mormon population as a condition to extending title to the land. Yet, as mines opened in the eastern and western extremities of the territory with their attending influx of non-Mormon miners, merchants, etc., and the two conditions of statehood and title to the land required by Congress and the Land Office seemed to be in danger of being realized, five successive portions of Utah were pared off for forming and adding to new territories. 41

Thus Utahns continued to be squatters on the public domain until 1869 when the Homestead Act and the townsite laws were made applicable to the territory. 42 Then the change was occasioned not so much by a change of


One of the provisions regarding the territories created in the Compromise of 1850 was that "Congress reserved the right to divide the territory, or to attach any portion of it to any other territory or state." (Hubert Howe Bancroft, History of Arizona and New Mexico, 1530-1888 (San Francisco: The History Company, Publishers, 1889), p. 458.)

42 Neff, History of Utah, p. 687-88. The Townsite Act passed "for the Relief of the Inhabitants of Cities and Towns upon the Public Lands," in 1867-68 provided that the [probate] judge

"... enter at the proper land office, and at the minimum price, the land so settled and occupied, in trust for the several and benefit of the occupants thereof, according to their respective interests; ..."

and dispose of such trusts as the people were able to buy them.

"Communities of 200 or less population might receive not more than 320 acres; those of 1,000 or less inhabitants were entitled to 640 acres; those of 1,000 or over might acquire 1,280 acres, and 320 acres extra for each additional thousand up to 5,000 population."
attitude on the part of Congress as by the completion of the transcontinental railroad. Since railroads were granted every other section along the tracks barring individuals' prior claim to the land, the establishment of a land office to resolve the conflicts between the railroad and the settlers paved the way for the application of the Townsite and Homestead Acts to the remainder of the territory. 43

It seemed to Mormons that the treatment they received from the federal government was wholly undeserved discrimination. On their part, however, the government officials felt that the Mormons were pursuing policies which were wholly incongruous with standard democratic forms. Therefore, to grant the land titles that the Mormons desired would serve to perpetuate those objectionable practices.

43 Arrington, Great Basin Kingdom, p. 249.
In the first six months of the offering of lands to Utahns "... titles to 148,403 acres were confirmed. Thus there was a genuine rush for the land which many had occupied for twenty-one years. Of the total acreage thus disposed of, 51,638 acres were sold for cash, amounting to $64,598.65 at the minimum price of $1.25 per acre; and 96,765 acres were taken under the Homestead Acts of May 20, 1862, and June 21, 1866, with aggregate payments of $11,931.33. (Neff, History of Utah, p. 688.)
The Utah War ended, Furniss said, in "... a capitulation in which the Mormons gained all their demands."\(^1\) But if the Mormons won the war, they lost the battle, for they were obliged to yield to every objection. Polygamy was dropped in 1890. Brigham Young was indicted for treason.\(^2\) One by one the fingers of the grips of the Church over political and economical affairs were pried loose. The probate court's jurisdiction in civil and criminal cases was revoked by the Poland Act of 1874. Under the Edmunds-Tucker Act of 1888 divorce cases were removed from the probate court and the office of judge was made appointive by the President. The Edmunds and Edmunds-Tucker Acts were designed to remove Mormons from public office. The canyon grants to "favorite of the Church" and the control of water and timber by the county court were together revoked by the repeal in 1880 of the act concerning the county court's jurisdiction of those resources. And the consecration movement that required the possible sacrifice of all one's goods and that was rewarded with the scorn of the whole nation lived and died in three years. In 1862 Congress limited the Church's holdings to $50,000.

2 Ibid., p. 167.

Delana R. Eckels, chief justice, indicated Brigham Young for treason but a presidential pardon had already "... removed the charge of treason against Brigham Young and his followers."
The passing of Brigham Young in 1877 heralded the closing of an era. The frontier was gone and so was agricultural opportunity for the penniless immigrant. "Water supply gave out first. Land shortage came next." Gone was the lure of free new land with water to make it produce. "The expansion movement had spent itself," and immigration to Utah decreased. The Mormon land and water policy had fulfilled the measure of its creation; except for the vestige of irrigation districts, it gave way to later American practices of laissez-faire.\(^3\)

Gone too was the authoritarianism of Brigham Young that had organized a kingdom and set it on the path to prosperity. David M. Potter wrote that real freedom and democracy can be attained only by a society with a wealthy economy.\(^4\) And a strong defense can be made for the command system Brigham Young imposed in those times of continual adversity and in a land of plagues and poverty. That authoritarianism was acceptable to those immigrants then, for they had found through the trials they had endured before reaching the Far West that homely obedience, order, and discipline were more important to survival than the luxuries of discussion, discord, and dissent.\(^5\)

\(^3\) Neff, History of Utah, pp. 754-55.
Arrington, Great Basin Kingdom, p. 53.

\(^4\) The thesis of Mr. Potter's book, People of Plenty; Economic Abundance and the American Character, is cited by Lamar, "Political Patterns in New Mexico and Utah Territories, 1850-1900", p. 375.

\(^5\) Furniss, The Mormon Conflict, p. 15.
The federal government had used three ways of dealing with the territory's undemocratic practices: the use of force, the legislation of special laws relating to the territory, and the withholding of things the inhabitants needed—money, land titles, and statehood. That force was the least effective of these was due as much to its clumsy application as to the resistance of the Mormons. 6 Had there been no conflict, no outside pressure, would the autocracy have been perpetuated to produce an ingrown, backward society in its mountain retreat while the rest of the world rolled on to the material progress of the twentieth century? Or would the favorable American ways and institutions have been adopted as they were discerned to be needed? For Brigham Young seemed unalterably opposed to lawyers, mining, free education, and, in general, the unhindered and uninterpreted flow of information and knowledge from the outside. 7 The if's of history, though interesting to contemplate, refuse to lend themselves to the drawing of conclusions. But maybe it is safe to say that for some individuals, at least, the changes brought by pressures from without were less painful than the consequences of initiating them from within.

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6 Ibid., pp. 95-118.

7 Lamar, "Political Patterns in New Mexico and Utah Territories, 1850-1900", pp. 381-82.

One function of the Deseret alphabet was the control it enabled through the requirements of the translation of information from the standard alphabet.
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