

Crusade of the Blue Banner in Colorado

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The extension of the Presbyterian church from a well-established stronghold in the eastern United States into a western frontier environment caused concern and apprehension among leaders of the church. Dread of emancipation from traditional regulation invoked visions of schismatic revolt caused by the democratic influence of frontier conditions. This fear of splintering was exaggerated and cannot be supported by a realistic appraisal of the frontier situation. For example, although early Colorado Presbyterians did grasp initially at temporary expedients to satisfy limitations of physical surroundings and migratory leadership, their customary regard for church authority and ritual was only lying dormant, ready to be reawakened by the introduction of old associations. The Presbyterian church became a symbol of conservative stability among many community efforts to emulate eastern prototypes. Following a brief review of early historical background of this church in Colorado and the Rocky Mountains, the interests and goals of Presbyterian pioneers in the area will be examined to provide evidence of this desire for continuity of traditional customs.¹

On June 11, 1859, the Reverend Lewis Hamilton arrived in Denver and preached in an unfinished building on the following Sabbath. Because of his health his congregation at Lima, Indiana, had given him a six months' vacation with full pay to convalesce in the mountains. Hamilton, who is regarded as the pioneer minister of the Presbyterian church in Colorado, also preached in the mining camps adjacent to Denver but made no effort to organize a church.²

¹ The term "frontier," when used alone in this paper, refers to the region broadly defined as the Rocky Mountain West. Cities and towns cited are in Colorado unless otherwise identified, and all church officials mentioned are Presbyterian unless specifically noted as affiliated with some other denomination.

² Wilbur Fisk Stone, *History of Colorado* (4 vols.; Chicago: The S. J. Clarke Publishing Co., 1918), I, 669. For a detailed history of the first decade of Presbyterianism in the Rocky Mountains, see *Rocky Mountain Presbyterian* (Denver), May 1872, pp. 1, 4-6.

A feminine observer of frontier life in Denver later recalled: "In those days [1860] religious services were held at any place at which it was possible to find a room big enough to hold a crowd. . . . At one time the Presbyterians were forced to take a hall over a saloon. The minister's name was Rankin. . . ."³ Rankin was the Reverend A. T. Rankin, sent by the Presbyterian Board of Home Missions from his mission station in eastern Kansas to the goldfields of Colorado. He recorded in his diary, July 31, 1860:

Arrived at Denver this A.M. at 4 o'clock, seven days hard staging . . . made arrangements [for] preaching next Sabbath. Went to the printing office to get my appointment announced in the paper, while there man rushed in, caught the editor by the collar, drew a pistol, and threatened to murder him on the spot. . . . A pretty ruff [sic] introduction to Denver.⁴

Rankin survived this initial shock and on September 8, 1860, met with other Denver Presbyterians to organize a congregation and to elect officers. Trustees were directed to rent a house for worship, to take collection every Sabbath morning to meet current expenses, and to provide ten dollars per week to Rankin for his board.⁵ However, his reconnoitering was not intended as a permanent assignment, and on October 27, 1860, he noted the anticipated arrival of a Reverend Amos A. Billingsley to take his place. With an almost audible sigh of relief, Rankin wrote in his diary on December 7, 1860: "I am now ready to be off to America."⁶

Billingsley arrived at his post in Denver on April 26, 1861, and began by organizing the First Presbyterian Church of Denver with eighteen members on December 15, 1861. The church was eventually listed officially in Presbyterian General Assembly minutes of 1864 as affiliated with the Presbytery of Leavenworth in the newly constituted Synod of Kansas.⁷ Billingsley also soon departed for "America," leaving in December 1862.

He was followed by other missionaries to Colorado. Without detailing all of these efforts in the 1860s, it may suffice to note

³ Indiana Sopris Cushman, as quoted in Thomas F. Dawson, "Colorado's First Woman School Teacher," *The Colorado Magazine*, VI (July 1929), pp. 130-31.

⁴ A. T. Rankin, Diary, entry for July 31, 1860, MS XXIII-38d, State Historical Society of Colorado Library, copied from original in possession of Helen C. Hines, Denver.

⁵ *Ibid.*, entry for September 10, 1860. Rankin's abortive attempt at organization was not sanctioned officially by his presbytery as no elders were properly ordained and installed. See also Arthur B. Cooper, *The Story of Our Presbytery of Denver* (Denver: Privately printed, 1950), p. 9.

⁶ Rankin, Diary, entries for October 27, 1860, and December 7, 1860.

⁷ Cooper, *Story of Our Presbytery*, pp. 9-10. Presbyterian church administration at this time was divided into the local church level, governed by ruling elders constituted as a session; a larger presbytery, consisting of several churches in the same region; and a synod, comprising several presbyteries in a still larger geographical area. The actions of these organizations were reviewed and were subject to approval annually at the meeting of a national general assembly.



Central City's church occupied the garden beside the Opera House.

that in Colorado by 1869 there were five organized Presbyterian churches—two in Denver and one each in Central City, Black Hawk, and Boulder Valley, with a combined membership probably of not more than 150.⁸

There is no denying the chaotic atmosphere discernible during the birth pangs of the first Rocky Mountain settlements, but the rapid quest for organized stability can be illustrated by an action of Colorado Presbyterians in 1866. On January 20 a Denver newspaper carried a report of a meeting of "The Presbytery of Colorado." Pastors, elders, and members of Presbyterian churches in Colorado had met on January 15 at the First Presbyterian Church of Denver to approve a resolution:

Whereas, Our distance from any existing Presbyterian body . . . renders any regular or stated communication with, or dependence upon such bodies for such benefits as the Presbytery is fitted to confer, not only impracticable but virtually impossible, therefore, Resolved: That this convention do now organize itself into a Presbytery, to be called the Presbytery of Colorado.⁹

⁸ Stone, *History of Colorado*, I, 672; also Cooper, *Story of Our Presbytery*, p. 78. There were three church buildings—at Denver, Black Hawk, and Boulder Valley—with Black Hawk dedicating the first on August 29, 1863.

⁹ *Rocky Mountain News* (Denver), January 20, 1866, p. 1.

Intimations that this statement reflected a rebellious attitude or a dangerously independent spirit were tempered by subsequent "Resolves" that pledged loyalty to existing relations with other presbyterial bodies. The self-styled presbytery then proceeded to appoint numerous committees, including one to examine the records of the churches of the presbytery. Although the outpost probably was eager to obtain attention and support, the first Presbytery of Colorado was not officially recognized at subsequent general assemblies.¹⁰

The first decade of Presbyterianism in Colorado was hardly a great success. As the Reverend R. L. Stewart later noted: "With no common bond of union and sympathy, and wholly dependent on transient supplies [pastors]; in a shifting population, it is not strange that these organizations barely maintained their existence."¹¹ The missing link in this desire for a "common bond of union and sympathy" was evidently the lack of a guiding hand, but a brighter future was in store. In the fall

Jackson's
biographer,
the Reverend
R. L. Stewart.



of 1868 the Synod of Iowa applied to the Board of Home Missions to commission the Reverend Sheldon Jackson to superintend a westward missionary movement. The request was not granted at that time, but Jackson was anxious to extend the labors he had already begun in Oklahoma and Minnesota into new and fertile fields,¹² which would be opened in the spring of 1869 among the new settlements stimulated by the completion of the Union Pacific Railroad.

When on April 29, 1869, the Presbytery of Missouri River met at Sioux City, Iowa, Sheldon Jackson attended the meeting and, with two other companions, climbed a high bluff to the northwest of the city to scan the horizon to the west. Jackson's biographer recorded this event: "Their spirits stirred within them by the thought that for two thousand miles onward there was not a single Presbyterian church. Before they left that spot, earnest prayer was made for these destitute regions beyond."¹³

At the meeting Jackson was appointed "Superintendent of Missions for Western Iowa, Nebraska, Dakota, Idaho, Montana, Wyoming, and Utah, or as far as our jurisdiction extends." The neighboring presbyteries of Des Moines and Fort Dodge joined in sponsoring this appointment; but there was no provision for financial support, and he was expected to sustain himself in the field.¹⁴ Here again is a glimpse of frontier initiative responding to a situation requiring immediate action, although apparently contrary to the intent of far-removed authority. However, Jackson quickly dispatched a letter of explanation to a superior at the Board of Home Missions:

I sought and received the unanimous appointment of the Presbyteries because I did not wish to enter the field without their sanction. If the Board is ready to undertake the work, the action of these bodies is their endorsement of your appointment. If not, I am instructed by them to cooperate with and labour for the interests of the Board as if commissioned

¹⁰ Stone, *History of Colorado*, I, 672, saw this group as a "so-called prehistoric Presbytery."

¹¹ *Rocky Mountain Presbyterian*, May 1877, p. 3.

¹² It was suggested that the refusal was because of "some misunderstanding between the Secretary of the Board and the Synod"; depleted finances of the board also were a contributing factor. *Rocky Mountain Presbyterian*, June 1877, p. 2. See also Cooper, *Story of Our Presbytery*, p. 17. Sheldon Jackson, born in Minaville, New York, on May 18, 1834, was physically small but endowed with incredible vitality and insatiable curiosity; on his death in 1909, he was described as a "modern Zaccheaeus, in the double sense that he was short of stature and had a desire to see." *Denver Republican*, May 9, 1909, p. 2.

¹³ *Rocky Mountain Presbyterian*, June 1877, p. 2. This is not a precise statement. There were five Presbyterian churches in Colorado and one in Santa Fe, New Mexico, at that time.

¹⁴ Robert L. Stewart, *Sheldon Jackson* (New York: Fleming H. Revell Co., 1908,) pp. 100-01.

by it. The Presbyteries will rejoice when the funds of the Board will enable them to commission me to this or kindred work.¹⁵

The board was not long in confirming the appointment, and this maneuver of Jackson's to obtain tactfully after-the-fact approval of his actions was noticeable throughout his career.¹⁶

Trying to determine precisely what territories were placed into his trust proved to be perplexing. He reflected that "the territory of Wyoming could not even be found upon the maps of the country as a separate political division."¹⁷ During his tenure in the Rockies the delineation of his boundaries fluctuated, and his precise title did not always agree with the board's concept of his mission field.¹⁸ The question of financial support was solved temporarily by Jackson's solicitation directly to private donors; and from May 1, 1869, to December 31, 1870, he received from private sources a total of \$10,037.79.¹⁹ Jackson was finally placed on regular salary by the board, and support for his other expenses trickled down through customary channels. He had no qualms, however, about continued acceptance of direct donations to supplement his meager resources. Once again this initiative was not approved with great enthusiasm by his board, but one gathers that his means were covertly accepted as righteous as long as they could be translated into a desirable end.

Within one week of his appointment Jackson had recruited and posted three ministers in areas along the Union Pacific Railroad. In July and August of 1869 he toured Wyoming, Montana, and Utah, organizing churches at Cheyenne, Rawlins, and Laramie in Wyoming and at Helena, Montana. In November he attended the meeting of the General Assembly at Pittsburgh, where he obtained authority for churches in the territories of Colorado, Utah, Montana, and Wyoming, to be joined into a Presbytery of Colorado, attached to the Synod of Southern Iowa. The first meeting of the Colorado Presbytery was held

¹⁵ Letter from Jackson to Dr. G. W. Musgrave, May 7, 1869, as quoted in Stewart, *Sheldon Jackson*, p. 105.

¹⁶ Jackson later recalled that about August 1, 1869, to his great surprise, he received, unasked for, a commission from the Board of Domestic Missions. Sheldon Jackson, original MSS, published as "Sheldon Jackson Invades the Rocky Mountains, 1869-1876," *Journal of the Presbyterian Historical Society*, XXXVII (June 1959), p. 124.

¹⁷ *Ibid.*, p. 123.

¹⁸ On his calling cards Jackson used the title "Superintendent of Presbyterian Missions for Colorado, New Mexico, Montana, Wyoming, and Utah." Lewis S. Mudge, "Sheldon Jackson, the Christian Statesman," *Journal of the Department of History of the Presbyterian Church in the U.S.A.*, XVI (June 1934) p. 64.

¹⁹ Stewart, *Sheldon Jackson*, p. 103. These contributions were designated by Jackson as his "Raven Fund" with an apparent reference to the story of Elijah fed in the wilderness by ravens.

on February 18, 1870, in Denver with Jackson presiding. In May 1871 at the General Assembly meeting in Chicago, Jackson was authorized to establish the Synod of Colorado comprised of the reorganized presbyteries of Colorado, Santa Fe, and Wyoming.²⁰

On July 8, 1870, a Denver newspaper announced: "Rev. Sheldon Jackson, superintendent of Presbyterian Missions for Colorado, and other western territories, arrived here yesterday, and will take up his residence in our city."²¹ Residence in Denver provided a home for his family and a place to hang his hat, but the restless Jackson was not one to operate his far-flung empire behind a desk. From February 1870 through August 1872, he established fourteen new churches in Colorado, and in one remarkable sixteen-day period in May and June, 1872, he found time to organize seven more churches in Montana.²²

Jackson's energies seem to have been limitless. On March 7, 1872, the *Rocky Mountain News* proclaimed: "The latest thing in the religious periodical line for Denver is the *Rocky Moun-*



tain Presbyterian edited by the Rev. Sheldon Jackson."²³ The first issue of this new publication informed its readers:

To the Presbyterians scattered throughout New Mexico, Colorado, Wyoming, Utah, Montana, and Idaho, Greeting: This little sheet has its origin in a strong desire to bring the Presbyterians of the Territories, with their common interests and experiences into closer sympathy with one another, and with their church. Many of them have been so long separated from the ordinances and privileges of the church, that they have become cold and indifferent.²⁴

²⁰ *Ibid.*, p. 102. See also Cooper, *Story of Our Presbytery*, p. 18, and *Rocky Mountain Presbyterian*, May 1872, pp. 1, 4-5.

²¹ *Rocky Mountain News*, July 8, 1870, p. 4.

²² Cooper, *Story of Our Presbytery*, p. 78. See also George Edwards, "Presbyterian Church History," *Contributions to the Historical Society of Montana*, VI (1907), p. 301. Jackson, who roamed the mountain mining regions in any form of conveyance available, was described in the diary of a Colorado pioneer. "We met Sheldon Jackson and his party starting for Twin Lakes in four large covered wagons and thought it a rather stupid looking set." Annie B. Schenck, "Camping Vacation, 1871," ed. by Jack D. Filipiak, *The Colorado Magazine*, LXII (Summer 1965), p. 204.

²³ *Rocky Mountain News*, March 7, 1872, p. 1.

²⁴ *Rocky Mountain Presbyterian*, March 1872, p. 1. To cure this cold indifference, it was recommended that readers write at once to the editor, Jack-

Interspersed with his other work were trips back East to attend meetings, raise funds, recruit at seminaries, and make speeches in behalf of the home mission work of the church. In 1874 he received an honorary Doctor of Divinity degree from Hanover College in Indiana.²⁵

With official recognition from the national church, the fledgling congregations in the West had become eligible for financial support for ministerial salaries and church erection. Early in 1872 Jackson announced that in the coming season church buildings would be erected at Salt Lake City, Utah; Evans, Longmont, Central City, Georgetown, Caribou, Colorado Springs, Colorado City, and Pueblo, all in Colorado; and Las Vegas, New Mexico.²⁶ With formally established channels of authority and communications now operative, the Colorado Presbytery in March 1873 recommended the churches of Central City, Greeley, Longmont, Fort Collins, Boulder Valley, and Idaho Springs to the Board of Home Missions for assistance in supporting their ministers. It also recommended the churches of Fort Collins, Boulder, and Caribou to the Board of Church Erection for assistance in building houses of worship.²⁷ To insure that the interests of the Rocky Mountain churches were not neglected in high places, commissioners from the Synod of Colorado were elected to the annual meetings of the General Assembly.²⁸

With an unstable membership and widely fluctuating attendance, it was not surprising that the frontier churches appealed for financial aid. A nationally depressed economy in the mid-1870s offered a reason for reduced assistance from the Board of Home Missions, but Jackson's newspaper reminded the holders of the purse strings in the East that new mission fields were far more expensive than older and nearer fields, and, besides, "Satan does not stop work in hard times."²⁹ Ma-

son, and obtain ministerial assistance, Sabbath school books, and aid in the erection of a church building.

²⁵ Ibid., July 8, 1874, p. 1.

²⁶ Ibid., April 1872, p. 4. The tiny church at "Caribou" (Caribou) was advertised as the highest Presbyterian church in the world, at an altitude of approximately 10,000 feet. The church was organized by Jackson on July 28, 1872, and immediately a building committee was appointed so that before winter set in a Presbyterian church "would crown the summit of the Rocky Mountains." Ibid., September 1872, p. 1.

²⁷ Ibid., April 1873, p. 2.

²⁸ Delegates from Colorado attended the assembly meeting in Baltimore in May 1873. Ibid., May 1873, p. 2. The Reverend J. G. Lowrie, a new delegate, identified himself as coming from "the dry and thirsty land, Colorado, where no water is." Ibid., July 1873, p. 2. It is possible that on his return Lowrie may have been cautioned by Jackson, an ardent boomer of Colorado's natural wonders, to reserve his remarks on the aridity of the Great American Desert to less public occasions.

²⁹ Ibid., April 1875, p. 4. At the same time Jackson called for contributions to support a project to erect a statue in Centennial Grounds, Philadelphia, to John Witherspoon, famous Presbyterian of the Revolutionary War period.



A fence enclosed the tidiness of Idaho Springs' church.

terial contributions, as well as monetary gifts, were appreciated. For example, the church in Idaho Springs received a handsome set of lamps from donors in St. Louis³⁰ and a full set of curtains, "a present from tourist friends."³¹ In 1872 members of the "highest Presbyterian Church in the world [Caribou]" acknowledged receipt of a communion service from the Presbyterian church of Marcellus, New York.³² Missionary boxes and barrels with assorted gifts were always welcome, but the motto "God helps those who help themselves" was adopted also by many churches. The ladies of the church at Golden obtained funds to purchase stoves for their church by giving a New England dinner,³³ and the Ladies' Society of the Valmont church was able to supplement its church building fund with revenues obtained from an oyster festival.³⁴

The problem of paying the minister had been crucial in all financial planning, and many were the lamentations on the plight of the poor pastor expected to exist by casting his eyes heavenward with the hope that God would provide.

Our churches have no conscience in respect to their obligations to the minister. The salary is first fixed at the lowest possible figure, . . . and the rest the minister must make up in economy. In the second place, no one can tell where this church will

Jackson proclaimed that other statuary was planned for "eminent Catholic worthies of the revolutionary period. . . . Can we do less for the memory of the illustrious Witherspoon?" Ibid., p. 4. Even with the financial distress in the Rockies, a challenge from Rome back East received high priority. See also *ibid.*, February 1873, p. 1.

³⁰ Ibid., October 1872, p. 4.

³¹ Ibid., September 9, 1874, p. 3.

³² Ibid., December 1872, p. 4.

³³ Ibid.

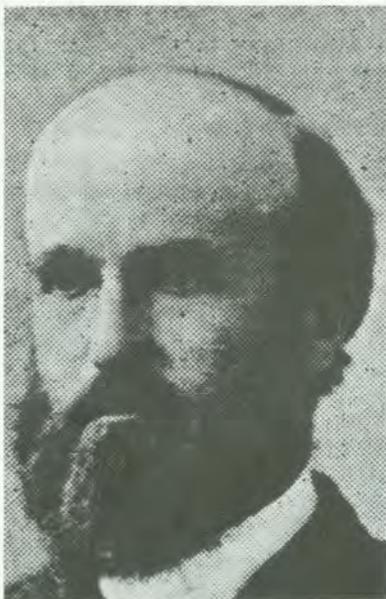
³⁴ Minutes of the Congregation, Valmont Presbyterian Church, May 28, 1881, p. 17. Minutes of the Valmont (Boulder Valley) church were divided into Session, Sunday School, and Congregation.

be in a week hence. They may be in the states, or at the new mines. . . . We depend on nothing but uncertainty.³⁵

This bitter observation by a representative of the American Home Missionary Society was echoed, in less vehement tones, by Colorado's Presbyterian ministers. The Reverend E. F. Robb, pastor of the Trinidad church, pleaded: "It is said that he gives twice who gives promptly; and many a man in the home field would actually feel almost paid double if he could receive his pay when due."³⁶ A vigorous article in the *Rocky Mountain Presbyterian* was devoted to "Paying the Minister," and it concluded that "more ministers are made wretched by want of prompt payment than by short salaries. The great majority of ministers are paid in dribbles."³⁷ Publicity about this monetary problem did not help stimulate recruitment of ministers for frontier assignments.

By 1875 Jackson was no longer able to make personal contacts among all of the new communities in his vast domain. He began to delegate his responsibilities among other district missionaries commissioned to work in his area. For example, in the spring of 1875, the Reverend Alexander M. Darley was sent to Del Norte with instructions "to itinerate in all the accessible regions round about. . . ."³⁸ This area of southwestern Colorado was experiencing a mining boom, and Darley was

Alexander M. Darley,
an indefatigable
missionary.



Through the San Juans on skis,
George M. Darley carried the gospel.

joined by his younger brother George to assist him in his "itinerating." The organization of the first church on the Western Slope in Colorado was at Lake City on July 19, 1876, and Alexander Darley's report on how he organized that church probably can be accepted as exemplifying the experiences of many missionary pastors endeavoring to plant a church in a new mining community:

At 3 p.m. had a petition circulating for church organization. I visited every house in town, as well as tents, etc. Also rode down the Gunnison river six miles and up three. Got one name at a tent, a Mrs. G., of Seventeenth Street Church, Denver, and another, a Scotch Presbyterian, under a tree by the road side. I got fifteen names; one Baptist, one Methodist-Episcopal, one Episcopal; rest Presbyterian and Congregational; mostly former, and all the Congregationalists except S., of Denver, had been Presbyterian. We chose three elders and three deacons, as you see. I had our Del Norte "Constitution of the Board of Trustees," and "Rules of Finance and Beneficence" adopted at the organization service. . . . After evening service session met, adopted Del Norte "Constitution of Bible School," and appointed one to meet the following Sabbath. I ordered on Monday a full set of Board of Publication Sunday-school papers, Lesson Leaves, etc. I also wrote history of organization, drew up subscription papers, and rested the best I could.³⁹

Some efforts were less successful, however. George Darley admitted failure to organize a church in Silverton in 1877 be-

³⁵ Letter from William Crawford, a Congregational minister, to the American Home Missionary Society, November 12, 1863, as quoted in Colin B. Goodykoontz, *Home Missions on the American Frontier* (Caldwell, Idaho: The Caxton Printers, Ltd., 1939), p. 316.

³⁶ *Rocky Mountain Presbyterian*, January 28, 1874, p. 3.

³⁷ *Ibid.*, July 1872, p. 6.

³⁸ Stewart, *Sheldon Jackson*, p. 155.

³⁹ *Rocky Mountain Presbyterian*, December 1876, p. 2.

cause he found only one Presbyterian and he was not willing to be organized.⁴⁰

It was impossible to fill every pulpit continually with pastors properly ordained through the prescribed training and ritual. The presbytery permitted improvisation on these occasions but only in accordance with accepted policy regarding temporary appointments. Supplying the pulpit in the early years of the Lake City church illustrated this policy of "going by the book." In November 1876 George Darley was confirmed by the Lake City session to the office of Ruling Elder, "so as to preach the gospel to our church until a pastor was supplied." When it became apparent that a regular pastor would not be available for some time, Darley's temporary assignment was formalized by the Board of Home Missions with an eight-month commission as "Missionary Preacher" of the Lake City church.⁴¹ With still no regular pastor in sight, Darley decided to follow a career in the ministry himself, and at the presbytery's meeting in May 1878, it was recorded: "Mr. George Darley, a candidate for ordination was examined . . . and ordained formally at the evening session."⁴²

George Darley found
good Christians "walking
hand in hand
with the devil."



Graduates of theological seminaries were challenged to accept a post in the Far West. In 1879 an item announced: "There are several good vacancies in Colorado for ministers of some ability that can live on small salaries. . . ." ⁴³ One student, concerned with the practicalities of dollars and cents, had observed earlier:

Students, after spending their all for a number of years in preparing for the ministry, ought not to be expected to go West without some definite knowledge as to what they are doing. If you pay the necessary expenses and warrant a comfortable income—without want or beggary—you will have little lack of men. . . . For my part, I am prepared to go anywhere for the Master, but I do not intend to crush my usefulness by incurring debt. . . .⁴⁴

Reverend Josiah Welch, pastor of the Salt Lake City, Utah, church, replied:

Why, bless you my brother, if you read the papers you know that in the whole history of the Presbyterian Church a Home Missionary has never died of starvation. . . . Now, as far as my observation goes, ministers of the gospel are paid better, fare better, and live better, out on the frontier, as a class, than men of any calling or profession.⁴⁵

Combating the eastern view of the Wild West as a land only one step removed from Hades itself was a task accepted enthusiastically by some contributors to the *Rocky Mountain Presbyterian*. The vigorous mountain environment was credited with giving Colorado the justly deserved title of "consumptive's home of America" and "the great American sanitarium."⁴⁶ A glowing commentary on mountain scenery concluded that the greatest of America's leaders were "men who have lived and breathed in the pure air of the hillside, and whose stock has become vigorous in thought and action by more or less respiration of mountain air and inspiration of mountain scenery."⁴⁷

⁴⁰ Interview with Marshall Darley, son of George M. Darley, in Monte Vista, May 16, 1969.

⁴¹ Minutes, Lake City Presbyterian Church, November 18, 1876, p. 16, and February 4, 1877, p. 19.

⁴² *Rocky Mountain News*, May 10, 1878, p. 4.

⁴³ *Rocky Mountain Presbyterian*, October 1879, p. 2.

⁴⁴ *Ibid.*, November 1875, p. 1.

⁴⁵ *Ibid.* Methodists in Colorado were more outspoken in their pastoral expectations: "The church in this part of the country is not a wet nurse to its preachers; . . . it could not be expected to sanction a man who is unwilling to identify himself with the country and with the people." Quarterly Conference Papers, September 18, 1880, p. 51, S. W. DeBusk Collection, Western History Collection, Norlin Library, University of Colorado, Boulder.

⁴⁶ *Rocky Mountain Presbyterian*, January 1876, p. 3.

⁴⁷ *Ibid.*, January 1873, p. 4. George M. Darley observed in his memoirs: "History teaches that Christianity generally prospers in mountainous regions. The length, breadth, and grandeur of our great mountain ranges are in perfect harmony with the rugged, grand, and sublime evangelical doctrines presented by ministers of the gospel." *Pioneering in the San Juan* (New York: Fleming H. Revell, 1899), pp. 15-16.

A rather snobbish news item acknowledged: "We have noticed of late the death of two or three ministers from asthma. They should have come to the Rocky Mountains where that disease is greatly relieved, if not cured."⁴⁸

In 1874 Jackson promoted an excursion to Colorado at the conclusion of the General Assembly meeting in St. Louis. This sight-seeing trip, attended by seventy-five to one hundred delegates, was a great success, and many of the participants applauded the ease and efficiency of western railroad travel, the glories of Colorado scenery, and the unexpected appearance of all the accouterments of civilization. One member found it necessary to give up preconceived notions about universally high prices and poor food west of Kansas City. He found that meals at all points were excellent and prices reasonable. He had anticipated dust in the Great Desert, but admitted that he had "suffered twofold more from dust on the Erie road than on the Kansas Pacific."⁴⁹ It may be assumed that these tourists were carefully shepherded by Jackson and received privileges not usually available to the casual traveler, but perhaps this impression of gentility conveyed "back East" had some impact on ministers contemplating mission work in the "destitute regions beyond."

The real incentive, however, for mission work in the Rocky Mountains was a militant zeal in individuals inspired to conquer new territory for the Blue Banner. The Presbyterian Church referred to a distinctive blue flag as an emblem of the denomination, and it may be this symbol which brought forth a continued reference in military terms to strategy for conquest. R. L. Stewart, writing about Jackson's exploits, declared:

When the line was wavering and halting in the face of great opportunity, this veteran of the ranks seized the standard of the Cross, beneath which was a fluttering pennant of blue, advanced it swiftly to the front, and planting it far in advance of the line, called upon the Presbyterian hosts to bring their men up to it.⁵⁰

There were many references to occupation of strategic points, advancing the picket lines, and sustaining far-flung outposts. Jackson viewed the West from his headquarters in Denver like a general surveying the field of battle. One minister saw

home missionary work "like that of an army of occupation. We send a few men to the frontier; . . . they take possession of the most eligible points, fortify themselves, and send back for reinforcements. . . ." ⁵¹ A report to the General Assembly in 1878 revealed that "the past year has seen an advance along the whole line. Many a battle has been fought and won above the clouds in the Rocky Mountains. . . ." ⁵²

The enemy must have been terrible indeed to inspire such fervor. One brave pioneer pastor, manning a frontier outpost, called out: "The Great West wants men, brave men, for the enemy's works are strong, and the pirate flag of sin has waved already too long in many of our villages and mining camps."⁵³ Actually sin in the Great West was quite similar to sin in the Great East. The battle against demon rum was never-ending and was seen by some missionaries as the greatest evil in the mining region. One minister saw the urgent need for the church to arrive early in the community: "The saloonist is, in one sense, if in no other, in the advance of our civilization in the West. He has time to ruin scores of men before the advance guards of the Church arrive."⁵⁴

Other rather traditional sins appeared in the West. The pastor of the Animas City church discovered that "the object of many seemed to be just to get a church building here as an addition in building up a town," but when it came to active attendance and support "many do not wish to give up dancing."⁵⁵ Another observer professed to have seen Presbyterians "at the billiard table, taking downward steps; some at the bar, and some at low dance houses."⁵⁶ The minister of the Longmont church was disappointed to see little boys playing ball on the Sabbath,⁵⁷ and George Darley recalled backsliding as particularly deplorable among Christians who were "walking hand in hand with the devil, going straight to hell . . . and with their names enrolled in church books 'back East.'"⁵⁸

⁴⁸ *Rocky Mountain Presbyterian*, August 1878, p. 2.

⁴⁹ *Ibid.*, June 24, 1874, p. 2. The Reverend William Crawford of the American Home Missionary Society offered a more pessimistic appraisal of the Colorado environment by citing a hymn: "Lord, what a wretched land is this, which yields us no supply, no cheering fruits, no wholesome trees, no streams of living joy," as quoted in Colin B. Goodykoontz, "Colorado as Seen by a Home Missionary, 1863-1868," *The Colorado Magazine*, XII (March 1935), p. 2.

⁵⁰ Stewart, *Sheldon Jackson*, p. 104.

⁵¹ *Rocky Mountain Presbyterian*, May 1876, p. 2.
⁵² *Ibid.*, July 1878, p. 3. See also Goodykoontz, *Home Missions on the American Frontier*, p. 320. The Reverend William Crawford called for support from his Congregational brethren to combat the growing Presbyterian preponderance in the field, saying: "I cannot too strongly urge you to obtain some more ministers for us at once. . . . Give us four new ministers and we will secure Colorado for New England, but omit this opportunity and we can make no promises." Quoted in Goodykoontz, "Colorado as Seen by a Home Missionary," pp. 68-69.

⁵³ Darley, *Pioneering in the San Juan*, pp. 145-46. See also *ibid.*, p. 54.

⁵⁴ *Rocky Mountain Presbyterian*, July 22, 1874, p. 2.

⁵⁵ *Ibid.*, September 1878, p. 1.

⁵⁶ *Ibid.*, May 27, 1874, p. 2.

⁵⁷ *Ibid.*, July 1875, p. 2.

⁵⁸ Darley, *Pioneering in the San Juan*, p. 149.

Presbyterian ministers were exhorted to occupy the land between the Mississippi and the Pacific, with the admonition: "Rome has already entered with sagacious plans for large possessions."⁵⁹ An observer in New Mexico charged that the Catholic clergy was not really concerned with the welfare of the people or the salvation of souls, "but the aggrandizement of *El Padre* is the single aim,"⁶⁰ and another writer cautioned against sending children to Catholic schools, as the teachers were "in America to proselyte for Romanism and nothing else."⁶¹ This virulent form of hate-mongering appeared on many occasions in the *Rocky Mountain Presbyterian*. An article entitled "The Inquisition in the United States" proclaimed: "Last year an old grey-haired citizen of the United States was taken from his home and publicly flogged in the streets of an American village [apparently in New Mexico] for the great crime in this so-called Christian land of attending Protestant worship."⁶² Jackson himself was very vocal in his condemnation of the evils of Romanism. At the General Assembly meeting in 1875 he was reported to have chilled the blood of his listeners with tales of horrors existing in the West among the Mexican population blinded by their priests.⁶³

Another particular enemy of Presbyterians was the Mormon Church. When a Mormon temple was planned at Logan, Utah, an article in Jackson's newspaper showed a comparison with the request for Presbyterian contributions to build a church in the same city:

One hundred and twenty-two thousand dollars toward the building for the consummation of beastly and soul-destroying religious rites. The Presbyterian Church is only asked for about three thousand, or one-fortieth as much, for a church and school to leaven the foul mass of Mormonism in that place.⁶⁴

An earlier article described Brigham Young as a "cunning, designing, selfish man, influenced by lust for women, gold, and power. In his business relations with the poor he is cruel and all his schemes seem based on supreme selfishness."⁶⁵ In weigh-

⁵⁹ *Rocky Mountain Presbyterian*, March 1873, p. 2. See also *ibid.*, January 28, 1874, pp. 1, 2.

⁶⁰ *Ibid.*, October 1875, p. 2.

⁶¹ *Ibid.*, September 1873, p. 2.

⁶² *Ibid.*, April 1878, p. 2.

⁶³ *Ibid.*, July 1875, p. 1. Because of his diligence in opposing Catholicism, Jackson was elected an honorary member of the National Anti-Papal League; letter from G. P. Edgar, Acting Secretary of the League, to Jackson, April 7, 1879, as cited in Andrew E. Murray, "A History of Presbyterianism in Colorado" (unpublished Th.D. dissertation, Princeton Theological Seminary, 1947), p. 112.

⁶⁴ *Rocky Mountain Presbyterian*, July 1878, p. 2.

⁶⁵ *Ibid.*, April 1877, p. 2.

ing the outpouring of rhetoric against sin in the Rockies, it is probably safe to say that Catholics and Mormons ranked well ahead of little boys playing ball on Sunday.

Christianizing social work among Mexicans and Indians appealed particularly to Alexander Darley. He organized several Mexican Presbyterian churches, occasionally calling down upon himself the irritation of his superiors for his dangerous association with the evils of Romanism.⁶⁶ In 1880 Jackson obtained from the federal government a contract for the Board of Home Missions to build a boarding and industrial school among the Moqui Indians of Arizona, and he also secured permission from Secretary of the Interior Carl Schurz to escort personally to the Indian Training School at Carlisle, Pennsylvania, fifteen Navajo, ten Pueblo, and five Moqui children.⁶⁷ Although the primary motivation in this social work was undoubtedly the saving of souls from damnation, the alleviation of poverty and ignorance by the Presbyterian men and women working in this field was by no means a negligible contribution to community welfare.

During this period of the extension of mission work, a notice appeared in the *Rocky Mountain Presbyterian* warning that "correspondents need not be surprised if their letters do not receive an immediate reply, as Mr. Jackson is away from home much of the time in his mission work."⁶⁸ The new extent of Jackson's horizon was revealed in September 1877 with the abrupt announcement: "Rev. Sheldon Jackson is at Ft. Wrangle, Alaska, establishing a Home Mission Station among the whites



Sheldon Jackson's small frame was clad warmly for his Alaskan ventures.

and Indians at that place."⁶⁹ By 1880 it became necessary to proclaim: "For the present all letters for Sheldon Jackson should be addressed to him at Galesburg, Knox Co., Illinois, and will then be forwarded to whatever portion of the mission field he may be in at the time."⁷⁰

This renewed wanderlust in Jackson caused growing concern among his Rocky Mountain constituents, and the Board of Home Missions was petitioned by the Presbyteries of Utah and Santa Fe to subdivide the Rocky Mountain mission field into additional superintendencies.⁷¹ In 1881 Jackson asked to be relieved from his assignment in Colorado and Wyoming, hoping to have more time for his growing interests among the Indians of the Southwest and Alaska.⁷² He gave his newspaper outright to the Board of Home Missions,⁷³ and for a brief period he resided in New York, editing the publication under the name *Presbyterian Home Missions*; but his overwhelming drive for challenging field work precluded any lengthy stay under the watchful scrutiny of his superiors. In the spring of 1884 he received an appointment as "Missionary to the Church and Congregation of Sitka, Alaska." His biographer noted he had "no official authority to act for the country [Alaska] as a whole, but this did not hinder him from labouring zealously as before. . . ."⁷⁴ The "destitute regions beyond" had beckoned, and Jackson left the infant Rocky Mountain Presbyterian churches to be reared to maturity in the capable hands of his followers.

This brief outline of Presbyterian missionary activity in the Rocky Mountains in general, and Colorado in particular, provides a framework for examining the evidences of an authoritarian Protestant church in a frontier environment. Jackson and his co-workers strove mightily to plant seeds for future growth, often sowing broadcast in soil far from fertile. But their efforts were always predicated on the assumption that the tried and proven ways of church administration would sustain the new

⁶⁶ Darley was censured in a letter to Jackson from the board in 1877: "Dear Jackson: What on earth is A. M. Darley doing with the Mexican people? In other words, who are these men that he employs to interpret and help him carry on meetings? I am more distressed than I can describe at his heedless career. He is all right, but who are these men? He is wholly at their mercy and they can impose on him to the last degree." Letter from Dr. Henry Kendall, Secretary of the Board of Home Missions, to Jackson, June 22, 1877, as quoted in Murray, "History of Presbyterianism in Colorado," p. 85.

⁶⁷ *Rocky Mountain Presbyterian*, May 1880, p. 72.

⁶⁸ *Ibid.*, April 1877, p. 2.

⁶⁹ *Ibid.*, September 1877, p. 2.

⁷⁰ *Ibid.*, October 1880, p. 146.

⁷¹ *Ibid.*, p. 147.

⁷² *Presbyterian Home Missions* (New York), July 1881, p. 323.

⁷³ *Ibid.*, January 1882, p. 2.

⁷⁴ Stewart, *Sheldon Jackson*, p. 340. See also *ibid.*, pp. 335-36.

congregations. An examination of session records from Presbyterian churches organized in this pioneer period reveals the extent of this striving to conform to traditional regulation.⁷⁵

Without exception, for example, the clerks of these sessions utilized a standard book, printed by the Presbyterian Board of Publications, to record their minutes of session meetings. Printed instructions inside the front cover contained extracts from "The Form of Government" of the Presbyterian Church regarding uniform procedures to be followed in keeping minutes. It was required that the minutes be approved annually by the presbytery, and this formality generally was followed. In the instances where approval was not obtained each year, a reprimand was recorded by the approving committee when next the minutes were submitted for examination. Each book of records began with a brief historical sketch of the founding of the church, and names of charter members were recorded, along with those of elders, deacons, and trustees.⁷⁶

Commentary on matters discussed at these meetings was usually brief and devoted to routine reception or dismissal of members. Occasionally, however, more unpleasant problems needed to be resolved. The session of the Valmont church regretfully noted in 1866 that a member "having run away from the neighborhood leaving debts unpaid, and being accused by Common Fame of much unchristian conduct, it was resolved by the Session that he be expelled by the church."⁷⁷ In 1873 the session of the Idaho Springs church recorded: "Thare [sic] being grave charges perferd [sic] against _____ he was this day suspended."⁷⁸

Without a regular pastor and with only one active elder in 1880, the Idaho Springs session, anticipating a sudden collapse of the church due to lack of interest, granted letters of dismissal to each member to take effect if and when the church organization should be dissolved.⁷⁹ The presbytery could not condone this unusual policy and took exception to the action of the "one and only Elder" in issuing dismissals before the fact. Lest it appear that a condition of anarchy had descended

⁷⁵ The session was the governing board of the individual congregation. The records cited are from the churches at Valmont, Idaho Springs, Longmont, and Lake City.

⁷⁶ Sometimes these historical sketches contained tidbits of history pertinent to other local issues. This history of the Idaho Springs church included the comment: "In 1861 . . . the first service held in town was by Rev. _____ a Baptist from Arkansas. . . . He was notified to leave town on account of preaching sesession [sic] doctrine." Minutes of the Session, Idaho Springs Presbyterian Church, Introduction, n.d.

⁷⁷ Minutes of the Session, Valmont Presbyterian Church, April 2, 1866.

⁷⁸ Minutes, Idaho Springs Presbyterian Church, September 20, 1873, p. 2. (The name, included in the minutes, was deleted for this paper.)

⁷⁹ *Ibid.*, January 31, 1880, p. 9.

upon the Idaho Springs church, the following explanation was inscribed beneath the reprimand from Presbytery:

The letters of dismissal there recorded were *not* to take effect unless the ch. organization *should* be dissolved, or they leave town. No idea or intention of dissolving the ch. is expressed or implied. Justice is simply desired by the "one and only Elder." Very respectfully. . . .⁸⁰

Fortunately the Idaho Springs church survived its time of distress. Often other struggling churches had to weather similar periods of discontent and neglect. In April 1879 the session of the Lake City church apologized for "this being the first meeting since Oct. 6, 1878, during the winter the Elders have been engaged in mining."⁸¹ Two years later another apology appeared in the Lake City records: "As we had no minister for a year, and some of our time of office had expired, we acted as near Regular as we knew."⁸² This final comment illustrates the attitude of all the leaders in these frontier churches—they acted "as near Regular" as they knew. They followed the rules, and acted as local judicatories to discipline members who broke those rules. When expediency called for questionable action, this action was justified as being within the spirit if not the precise letter of the law.

The physical appearance of a frontier mountain church did not differ considerably from that of a small rural church in the East. Construction of a church building, usually of a standardized frame design, was given high priority, and meeting above saloons or in the back rooms of grocery stores was satisfactory only while the community was in its earliest formative years.⁸³ The Fort Collins church was erected at a cost of \$1,700, but much barter entered into the actual financing. Much of the heavier, less skilled work was contributed by members of the congregation. Church socials, donation parties, chicken suppers, and other efforts by the women of the church supplied funds for "the organ, the red upholstered high Gothic type pulpit chairs, and the brand new carpet."⁸⁴ An organ was almost a



necessity. News of the church at Idaho Springs in 1874 included the comment: "They have recently procured a new organ, and the congregation is improving in numbers."⁸⁵ The following year a "church organ was heard in the San Juan country. The Presbyterians have the credit of introducing the first one."⁸⁶ This may have been the organ used to celebrate the founding of the Lake City church in 1876. Session records of the church



The Lake City church and parsonage, above, were the hub of early Presbyterian activities in the San Juans. Left, the church as it appears today.

⁸⁰ *Ibid.*, May 13, 1880, pp. 9-10.

⁸¹ Minutes of the Session, Lake City Presbyterian Church, April 27, 1879, p. 27.

⁸² *Ibid.*, June 21, 1881, p. 30. Presbyterians were not the only ones plagued by absenteeism. A Methodist assembly in 1879 also noted discouragement because "one family has moved away and the cowboys have gone out on the regular roundup." Quarterly Conference Records, Trinidad Circuit, Denver Conference, Methodist Episcopal Church, South, May 4, 1879, S. W. DeBusk Collection.

⁸³ Jackson contracted with a Chicago firm in 1869 for seven prefabricated churches to be shipped to congregations along the Union Pacific Railroad. Alvin K. Bailey, "Sheldon Jackson, Planter of Churches," pt. 3, *Journal of the Presbyterian Historical Society*, XXVII (March 1949), p. 32.

⁸⁴ Clyde McIntyre, "Start and Development of the Presbyterian Church, Ft. Collins, Colorado," undated reminiscences, Writers' Program, Colorado, Religious Structures, p. 4, State Historical Society of Colorado Library.

indicate: "At the evening service the first church collection in Lake City was taken up for contingent expenses of the day—\$2.00 being for use of Mrs. Wade's organ—the first organ and church choir used in the city—and \$2.00 for hauling it half a mile and back again."⁸⁷

Singing in the choir and congregation was "a matter of no difficulty in a miners' or mountaineers' camp,"⁸⁸ although even this aspect of church ritual had to be regulated occasionally. The Lake City session was obliged to record: "It was unanimously decided to keep the choir under the control of the Session and in the future no person can be admitted in the choir without the unanimous recommendation of said choir to the Session who is then to decide upon his or her admission [sic]."⁸⁹ A church bell also was required to complete an accepted image. The Fairplay church reported, even before its church building was started: "A bell has already been donated, and awaits its tower. This will be the first church bell in South Park."⁹⁰ In the same year the church at Idaho Springs announced: "Mrs. Beebe, of New York City . . . has presented the Presbyterian Church with an eight hundred pound Troy bell."⁹¹ The desire for tradition found expression in many other ways. The church at Golden boasted: "The congregation have enclosed their church property with a neat picket fence. We believe this to be the first fence erected around a Presbyterian Church in this territory. What church will follow this good example?"⁹²

The importance of formal commitment to giving was urged upon the members, sometimes by an annual subscription paper circulated at a congregational meeting, with the assumption that the pledge would be paid by the end of the year as individual incomes permitted. As this vague assurance did not pro-

vide a reliable method for budget planning, it was usually necessary to authorize weekly collections to stimulate the regular giving of a prorated amount.⁹³ The Lake City session stipulated: "The rule of raising the minister's salary is that the minimum contribution receivable [per member] shall be three cents a day, twentyone cents a week, \$10.80 per annum."⁹⁴

Presbyterians joined with other churches to dispel the image of frontier backwardness.⁹⁵ In George Darley's many years of frontier preaching, he was able to recall about miners: "The majority are intelligent, enterprising, and plucky; many are cultured, travelled men."⁹⁶ John Dyer, a famous itinerant Methodist preacher, insisted: "In my experience of almost twenty-seven years, I do not remember an instance where a miner or prospector came to my preaching who did not behave himself. . . ."⁹⁷ A western delegate to the General Assembly meeting in 1877 declared: "Someone remarked to us . . . 'Why, I expected to have seen you clothed in buckskin,' giving an exaggerated expression to a very prevalent feeling in the East that far western people must necessarily be very tough and uncouth. . . ."⁹⁸

Many cultural activities endeavored to counter this misconception. Lecturers on almost any topic were publicized and endorsed as worthy of attention by good Presbyterians. In remote areas beyond the advantages of urban society, Presbyterians strove for culture by reading uplifting literature. Alexander Darley in Del Norte solicited papers, magazines, and

⁸⁵ *Rocky Mountain Presbyterian*, July 8, 1874, p. 3.

⁸⁶ *Rocky Mountain News*, October 16, 1875, p. 4.

⁸⁷ Minutes, Lake City Presbyterian Church, "Historical Sketch," n.d., p. 7. The *Rocky Mountain Presbyterian*, July 1875, p. 3, responded to an inquiry about how to obtain a first-class organ without paying high eastern prices, by announcing that an organ factory had been set up in Denver, where a fine instrument could be bought at a saving, and the enterprise was doing a good business.

⁸⁸ *Rocky Mountain Presbyterian*, July 22, 1874, p. 2.

⁸⁹ Minutes, Lake City Presbyterian Church, December 20, 1881, p. 32.

⁹⁰ *Rocky Mountain Presbyterian*, April 22, 1874, p. 3.

⁹¹ *Ibid.*, June 24, 1874, p. 2.

⁹² *Ibid.*, June 10, 1874, p. 3.

⁹³ Minutes of the Session, Valmont Presbyterian Church, June 10, 1877, p. 18, and Minutes of the Congregation, *ibid.*, February 12, 1879, p. 7.

⁹⁴ Minutes, Lake City Presbyterian Church, "Rules of Finance and Beneficences," n.d., p. 4.

⁹⁵ Levette J. Davidson, "Pioneer Preachers of the Rockies," *The Iliff Review*, I (Spring 1944), pp. 56, 58.

⁹⁶ Darley, *Pioneering in the San Juan*, p. 69.

⁹⁷ John L. Dyer, *The Snow-Shoe Itinerant* (Cincinnati: Cranston and Stowe, 1890), p. 325.

⁹⁸ *Rocky Mountain Presbyterian*, February 1877, p. 2.



Del Norte, which was to become the home of the College of the Southwest in 1883, was ambitious to provide social uplift through its church.

books to distribute among the thousands of miners in the San Juan Mountains,⁹⁹ and he was able to announce that his church was "holding a series of Literary Sociables which are proving very attractive and remunerative."¹⁰⁰ The Ladies' Society of the Georgetown church declared that it was making arrangements to supply the miners and others with religious reading.¹⁰¹ A member of the great excursion in 1874 confessed: "The miners are, as a class, intelligent. . . . There are graduates of Yale among them, and in their cabins one sees scientific and philosophical books. There is a rough element, but it is no longer in the ascendant. . . ."¹⁰²

Presbyterians also exhibited their concern for the merits of a good education both in and out of church.¹⁰³ A Sabbath school was operated in most churches, very often with greater interest and attendance than the church itself enjoyed. A Presbyterian Sunday School convention met in Denver in July 1876, at which "the influence and good of Sunday schools" was thoroughly discussed.¹⁰⁴ Sabbath schools were subjected to the same discipline as were other church activities. The Lake City session, adopting a formal constitution for the Bible school, included the stipulation: "No book, papers, or other publications shall be admitted to the school except by permission of the session. . . . The school shall use the publication of the Presbyterian Board of Publications in preference to all others."¹⁰⁵ Sabbath schools were tapped as sources of income, and Jackson informed the children that they could buy their own mission-

ary, as "any Sabbath school sending the Board of Home Missions \$250 a year, or \$21 a month, will be entitled to a missionary of their own, from whom they may receive quarterly reports."¹⁰⁶

Education outside the local church was encouraged in the establishment of Presbyterian colleges and academies, although the academy might be a primary or secondary school controlled by a local church. The articles of incorporation of the academy at Monument, Colorado, required: "The affairs and management of said academy shall be under the control of a board of trustees five (5) in number, three (3) of whom shall be members of the Monument Presbyterian Church."¹⁰⁷ In July 1874 Jackson, in behalf of the Presbytery of Colorado, signed articles of incorporation for a Presbyterian school to be known as Evans University.¹⁰⁸ This "university" in the small farming community of Evans was recommended to Easterners because "many who could not pursue a course of study in the East, without breaking down, will be able to grow stronger in body while prosecuting their studies in the pure, invigorating climate of Colorado."¹⁰⁹ Jackson reported to be much impressed in 1876 by the Gallatin, Montana, Female Seminary, noting: "It is a rare thing in these days to find a *log* female seminary."¹¹⁰ In 1883 the Presbyterian College of the Southwest was founded by George Darley in Del Norte with an observatory built on a nearby hilltop at a cost of nearly \$3,000.¹¹¹ However, only a few of these denominational

⁹⁹ *Ibid.*, October 1875, p. 2.

¹⁰⁰ *Ibid.*, January 1876, p. 3.

¹⁰¹ *Ibid.*, November 1873, p. 3.

¹⁰² *Ibid.*, June 24, 1874, p. 2. Lest it be assumed that the mountain communities were peopled entirely by Yale graduates, an opposite viewpoint is presented from the Reverend H. P. Roberts, "Frontier Experience," *The Home Missionary*, LI (April 1879), p. 289, who reported that on a preaching mission in Pagosa Springs his audience "was largely made up of gamblers and sporting men, waiting till the Indian Commission should pay the Indians, to cheat them out of their money. . . . There was a lady there from Texas, and she said: 'What denomination are you?' 'Congregationalist,' I replied, 'Hurrah for you,' she said, looking at me as she would a Hottentot; 'I never saw one before.'"

¹⁰³ James Burrell, "History of Gilpin County" in *History of Clear Creek and Boulder Valleys, Colorado* (Chicago: O. L. Baskin and Co., 1880), p. 242.

¹⁰⁴ *Rocky Mountain News*, July 19, 1876, p. 4.

¹⁰⁵ Minutes, Lake City Presbyterian Church, June 18, 1876, p. 10.

¹⁰⁶ *Rocky Mountain Presbyterian*, January 28, 1874, p. 4. A controversy arose in the Valmont Sunday School when "Mr. Andrews moved that we as a school contribute thirty dollars . . . for the support and education of a heathen person in India. Mr. Vasler then suggested that our money better be expended on the heathen of our country in this vicinity by the purchasing of books for their enlightenment." Minutes of the Sunday School, Valmont Presbyterian Church, January 25, 1880, p. 12.

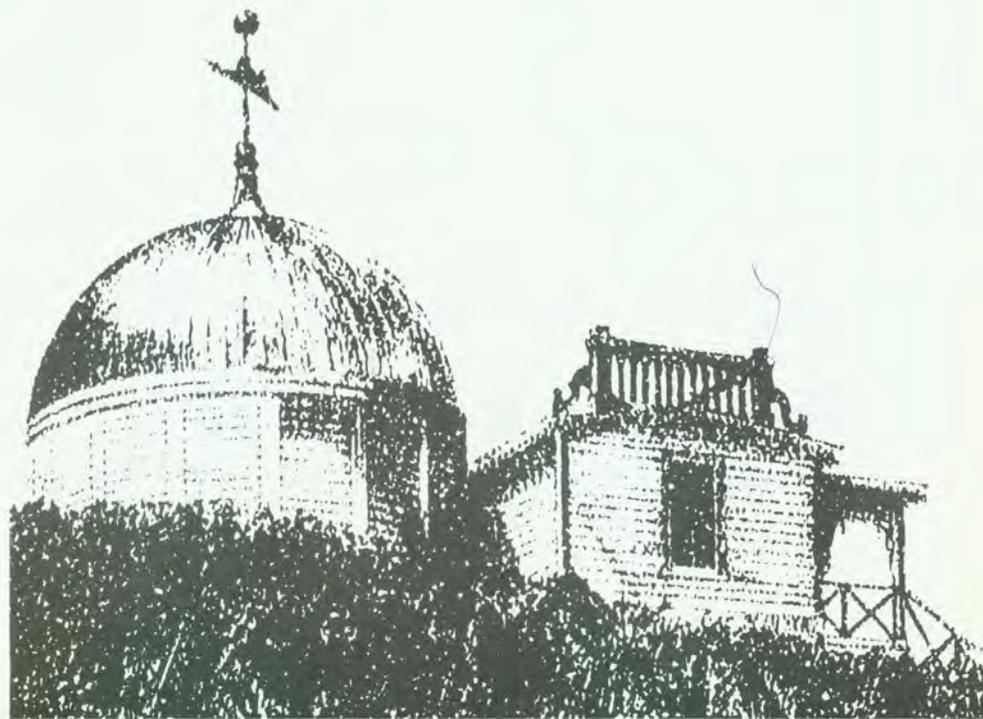
¹⁰⁷ Articles of Incorporation for the Monument Academy, Doc. A160, Colorado State Archives and Records Service.

¹⁰⁸ *Rocky Mountain Presbyterian*, July 29, 1874, p. 2.

¹⁰⁹ *Ibid.*, September 16, 1874, p. 1.

¹¹⁰ *Ibid.*, September 1876, p. 2.

¹¹¹ Fred Espinosa, "Del Norte—Its Past and Present," *The Colorado Magazine*, V (June 1928), p. 100.



ventures in the field of higher education survived more than briefly, their demises usually attributed to financial rather than academic deficiencies. This avid interest in the traditional forms of education illustrates again an imitation of well-remembered institutional practices in the East.

The spirit of comity, or ecumenical fraternity, was endorsed on at least one occasion as a solution to problems of unstable membership on the frontier. It was suggested that the great proliferation of tiny, struggling Protestant churches in the Far West divided the religious forces of a community to such an extent that no one of the denominations was able to stand alone without an unending demand for eastern money and personnel. In 1874 the Presbyterian Board of Home Missions and the Congregational American Home Missionary Society adopted a statement of cooperation, so that "there may be but one strong and harmonious church organization at first, whether it be Congregational or Presbyterian; to avoid the wicked waste of funds in the support of two feeble churches, both of which must be weak, and which might become involved in bitter, protracted, and unholy strife."¹¹² Nevertheless, Presbyterians in Colorado found it difficult to comply with this edict. For example, prolonged negotiations to unite the Presbyterian and Congregational churches of Longmont finally broke down completely, and Reverend Teitsworth of the Presbyterian church charged: "These Congregational members have not spirituality enough, nor sound faith enough, to live and work in the Presbyterian Church. They are unsound both in doctrine and law. . . ."¹¹³ St. Paul's Congregational Church of Denver petitioned to be received by the Presbytery of Colorado as St. Paul's Presbyterian Church, accepting all Presbyterian doctrines and authority, admitting that they could no longer support themselves because the Presbyterians had "fairly won the field."¹¹⁴ Calls for ecumenical efficiency and cooperation did not really appeal to frontier Presbyterians. Democratic virtues of all for one and one for all could not gain precedence over the appeal of unconditional surrender by the foes.

The Presbytery of Colorado operated effectively along judicial and disciplinary guidelines derived from traditional tenets

of procedure. When "certain irregularities of practice" were detected in the Black Hawk church, an investigating committee was appointed from the presbytery "in accordance with chapter 10, section 8 of Form of Government, . . . to visit particular churches for the purpose of inquiring into their state and redressing the evils. . . ."¹¹⁵ Not only were churches expected to contribute to benevolent projects of the General Assembly and to their own Presbyterianial expenses, but congregations applying for aid in construction of church buildings were also reminded: "No application for aid will be indorsed by Presbytery if the church applying is delinquent in Presbyterianial assessments."¹¹⁶

The policy of controlled improvisation illustrated the attitudes of Presbyterians in general and Sheldon Jackson in particular toward the requirements of the frontier churches. Jackson might have been classified in later years as a pragmatist. One historian decided: "What frequently appeared to be a disregard of orders actually amounted to a reinterpretation of them for adaptation to the problems as only one on the scene could understand them."¹¹⁷ An analogy can be drawn between events taking place at this time in the Rocky Mountains and in a European country thousands of miles away. Jackson was not unlike Garibaldi, causing trepidation among the Cavours left behind at the seat of authority, driving ahead courageously on his own initiative but always motivated by goals acceptable within the conservative mores of the time.

Andrew Murray, writing on Presbyterianism in Colorado, decided: "The type of Presbyterianism which was produced in Colorado came from an encounter with the Colorado environment—physical and cultural."¹¹⁸ Arthur Wiederaenders, commenting on the frontier's divisive influence on religious institutions concluded: "It seems quite probable that frontier individualism and democracy helped cause more schisms and aided in the creation of many new sects and independent religious bodies in the United States than any other secular

¹¹⁵ *Rocky Mountain Presbyterian*, April 8, 1874, p. 2.

¹¹⁶ *Ibid.*, January 1877, p. 1.

¹¹⁷ Bailey, "Sheldon Jackson, Planter of Churches," pt. 3, p. 23. An incident of flexible "reinterpretation" to conform to the rules was recalled by George M. Darley. It was sometimes difficult to obtain delegates from each distant presbytery at synod meetings, but "after a meeting had been called, we were determined to hold it. . . . Sometimes a quorum was made by a brother joining a Presbytery merely to obtain its representation. [In 1877] Dr. Sheldon Jackson suggested that enough of the brethren . . . be given letters to other Presbyteries, that these Presbyteries might be represented. This suggestion being duly, orderly, and unanimously acted upon, we had a quorum. . . . Then at the close of the meeting [we] gave these brethren their letters back to their respective Presbyteries." George M. Darley, "Thirty-five Years of Presbyterianism in Colorado," Darley MSS, private collection of Dr. Ward Darley, grandson of George M. Darley, Denver.

¹¹⁸ Murray, "History of Presbyterianism in Colorado," p. 1.

¹¹² Goodykoontz, *Home Missions on the American Frontier*, p. 352, quoting an article from *The Home Missionary*, XLVII (1874).

¹¹³ Murray, "History of Presbyterianism in Colorado," p. 129, quoting the Reverend W. P. Teitsworth, *Historical Sermons (Synod of Colorado, 1876)*.

¹¹⁴ *Rocky Mountain Presbyterian*, p. 2. Congregationalists were not the only brethren to be watched closely. The Idaho Springs session of 1882 was willing to defer action on organizing a Sabbath school "unless the Baptist brethren should organize as a church in the meantime, in which case a Sabbath school should be started at once." Minutes, Idaho Springs Presbyterian Church, February 23, 1882, pp. 19-20.

factor. . . ."¹¹⁹ These writers followed the line established by historians at the end of the nineteenth century, who credited the environment of the frontier with a singular and uniquely transforming influence on traditional eastern institutions. A more recent interpretation suggested: "Conservatism, inheritance, and continuity, bulked at least as large in the history of the West as radicalism and environment. The Westerner has been fundamentally imitator rather than innovator. . . ."¹²⁰

The establishment of the blue banner of Presbyterianism on the Colorado and Rocky Mountain frontier supports the latter premise. When the first dust of pioneering ferment had settled, the type of Presbyterianism produced in Colorado was very similar to its progenitor on the eastern seaboard. There was never a suggestion that Rocky Mountain Presbyterians would raise the standard of revolt from the mother church to form a separate religious entity more amenable to their own radical individualism. It may be that other Protestant denominations can exhibit evidence of radical nonconformity, but Presbyterians acted "as near Regular" as they knew.

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¹¹⁹ Arthur G. Wiederaenders, "The American Frontier as a Factor in Protestant Denominationalism in the United States" (unpublished Ph.D. dissertation, University of Texas, 1942), p. 195.

¹²⁰ Earl Pomeroy, "Toward a Reorientation of Western History: Continuity and Environment," *Mississippi Valley Historical Review*, XLI (March 1955), p. 581.



The Lake County War, 1874-75

BY JOHN OPHUS

In 1874 an outbreak of mob violence in the southern end of Lake County threatened to destroy completely any semblance of an organized judicial system there. A personal feud between two men mushroomed into a war of factions which were determined to use the law to further their own personal gains. While events surrounding "The Lake County War," as it came to be called, were an example of the contemporary attitude toward frontier justice, the resulting publicity made the residents of Colorado Territory cognizant that a stronger judicial system was necessary.¹

The murder of George Harrington of Centerville, a few miles north of the present town of Salida, on June 17, 1874, was ostensibly the result of a feud, possibly over water rights,

¹ The first reference to "The Lake County War" is found in the *Daily Central City Register*, July 7, 1875, p. 3; the major source on the subject has been "Lake County Outrages," found in John L. Dyer, *The Snow-Shoe Itinerant* (Cincinnati: Cranston and Stowe, 1890), pp. 285-321.

with a neighbor, Elijah Gibbs, and Gibbs's hired man, Stewart McClish.² Following the crime, Gibbs and McClish, as suspects, were bound over to a justice court which declared them to be the murderers and ordered them to be held in confinement to await action of the district court, which was to be held in Granite during the month of August.³ However, when that tribunal met, lawyers for the defendants requested a change of venue on the grounds that feeling was running too high in the county for a fair trial to be held locally. The court agreed and the trial was moved to Denver.⁴

During the month of October over sixty subpoenas were issued throughout the territory to individuals who had been involved in the events in Lake County or who could testify as character witnesses in the trial of Gibbs and McClish.⁵ Considerable testimony was taken. There were many observers not only from Lake County but also from Denver, for the case aroused much more interest in the Denver area than generally has been realized.⁶ By the very nature of the charges, the pressure on the defendants was severe; and records indicate that in the heat of the trial Gibbs implicated McClish, although Judge E. T. Wells cautioned the jurors that they could not consider these implications made when the other defendant was not present. Furthermore, there seems to have been some doubt in the mind of Wells that Gibbs was telling the truth, as the judge charged the jurors that "you are not required to accept the testimony of the defendant Gibbs given in your hearing as absolutely true" and that they should bear in mind that he was under great pressure to secure his own acquittal.⁷ The chief defense attorney took nearly five hours to present his closing arguments (and never missed a point even though he had not taken a single note).⁸ After the jurors were sent out, it took them five days to reach a decision. Rumor had it that seven members of the jury stood for acquittal but five were against;

² One version of the murder is found in Richard Carroll's "Mary Nash Mear, Pioneer," *The Colorado Magazine*, XI (November 1934), p. 218, which states that Harrington's storeroom was set afire and that he was shot while attempting to extinguish the blaze. However, Mrs. Mear's reminiscence suffers from confusion here and elsewhere.

³ *Canon City Times*, June 25, 1874, p. 2; July 9, 1874, p. 2.

⁴ Minutes Book, District Court of the First Judicial District (1874), p. 138, Office of the Clerk of Chaffee County District Court, Salida.

⁵ *People v. Elijah Gibbs and Stewart McClish*, Docket 701, filed September 5, 1894, in Arapahoe County District Court (now Denver District Court), Criminal Records Series, Case Files, Colorado State Archives and Records Service.

⁶ *Denver Daily Times*, October 31, 1874, p. 1.

⁷ *People v. Elijah Gibbs and Stewart McClish*, Instructions to Jury, n.d.

⁸ The attorney was Thomas Macon of Canon City; E. T. Wells, "Address before the Denver Bar Association, May 24, 1917," in Wilbur Fisk Stone, *History of Colorado* (Chicago: The S. J. Clarke Publishing Co., 1918), I, 761.

finally on the fifth day the jury returned a verdict of acquittal for both men.⁹

Some accounts reported that Stewart McClish returned home for a short duration, but others said that he was not seen in Lake County again.¹⁰ Elijah Gibbs, however, decided to return to his home near Centerville and attempted to live as if nothing had happened. Many of the citizens of the county, dissatisfied with the verdict, were positive that Gibbs and McClish had committed the murder and that justice had been defeated.¹¹ An indication of the feeling of some of the citizens who remained in the area was expressed by one man who said that although a Denver jury acquitted Gibbs, nineteen out of every twenty of the citizens who remained in the county believed him to have been guilty of the murder. This man commented that Gibbs was "surrounded by a gang like himself, who no doubt, [helped] to put Harrington out of the way, and to conceal the conspiracy which resulted in his murder."¹²

During the following months, as individuals in the county began to take sides over the Gibbs-Harrington dispute, several men in the community who had been disgruntled over Gibbs's return to the valley formed themselves into a vigilance committee with the avowed purpose of driving Gibbs from the community. Some newspapers suggested that the people of Lake County were justified in forming vigilante groups for the purpose of correcting what they considered a miscarriage of justice. Typical of this reaction was the view expressed by Pueblo's *Colorado Chieftain* which commented: "This acquittal did not satisfy the honest portion of the community." The account noted that the people of the county were determined that Gibbs should receive just punishment.¹³

On the twenty-second of January some of these individuals persuaded the widow of George Harrington to appear before a local justice court to have a warrant sworn for Gibbs's arrest. The charge was assault upon George Harrington "with intent to kill" in the alleged incident of June 16, 1874.¹⁴ Since Gibbs already had been acquitted of Harrington's murder of June 17,

⁹ *Denver Daily Times*, November 6, 1874, p. 1; *Denver Republican*, November 6, 1874, p. 1.

¹⁰ *Rocky Mountain News* (Denver), February 5, 1875, p. 4; February 6, 1875, p. 2; *Colorado Chieftain* (Pueblo), July 28, 1875, p. 2.

¹¹ *Canon City Times*, November 12, 1874, p. 3.

¹² Letter from J. C. McCannon, *Daily Central City Register*, December 28, 1874, p. 3.

¹³ *Colorado Chieftain*, January 28, 1875, p. 4.

¹⁴ Complaint of Helen Harrington and Warrant Issued for Arrest of Elijah Gibbs, January 22, 1875, by Hugh W. Mahon, Justice of the Peace in Lake County. All Lake County records cited are located in the Office of the Clerk, Chaffee County District Court, Salida.

the vigilance committee was having him charged with an event that had taken place a day earlier.

That night, with the avowed purpose of serving the warrant, several vigilantes approached Gibbs's cabin, which was occupied by Gibbs, his pregnant wife, their child, and a neighbor woman. The men ordered him to surrender, and when he refused they attempted to burn him out.¹⁵ He retaliated by firing into the crowd. Gibbs evidently shot two of the three men who were mortally wounded, in the chaos the third being shot by an individual from within the vigilante group. However, testimony at the inquest into the deaths reported that all shots came from inside the Gibbs cabin but were probably fired by more than one person.¹⁶ First reports of the shootings indicated that some citizens had retaliated by hanging Gibbs, although the accounts were corrected later to show that Gibbs was able to get away.¹⁷

There was great excitement in Denver when a telegram from William Bale of Lake County was published in the *Denver Daily Times* stating that D. C. and Samuel Boon had been shot by Elijah Gibbs.¹⁸ Later reports added the death of their uncle, Finley Kane.¹⁹ In one of the *Chieftain's* first accounts, before it was known that Gibbs had escaped, the paper said: "It is to be hoped that he was hanged, as the existence of such a scoundrel is a scandal upon the fair name of any community."²⁰

Gibbs escaped to Denver, where the newspaper reported his version of the affair. He stated that after the shooting he had turned himself over to a local constable and on the following Monday had been examined before A. B. Cowan, a justice of the peace, who released him on the grounds that he had acted in self-defense. Immediately following the investigation, Gibbs and three of his friends had left for Denver but had been chased for several miles by mounted vigilantes.²¹ One of the men with Gibbs, J. Mac Gilliland, a local Methodist preacher, swam his



Two figures—John Gilliland and Father Dyer—both to be connected with the Lake County war, attended the Methodist Episcopal Church Conference in Denver in 1865. Gilliland is second from right, standing, and Dyer is second from left, seated.

horse through the Arkansas River, became soaked, and rode twenty-five miles in freezing weather before finding a house where he could thaw out.²²

One resident of Lake County, John McCannon, wrote a letter soon after the Boon shootings to report that the whole county was aroused and suggested that more lives would be lost before the feud was settled. McCannon asserted: "I see no other way to conquer the difficulty except to fight it out, and it would be worse than folly to attempt to prove anything against them [the Gibbs faction] in the courts of law."²³ This correspondent maintained that the Gibbs supporters had control of the local courts and that there was no legal way to stop them. He also noted that a mass meeting was to be held by citizens who were opposed to permitting the southern part of Lake County to be used as a refuge for assassins.²⁴ Nevertheless, action continued to be taken within the legal processes. On January 29 John S. Boon, a surviving brother of the assassinated two, had warrants sworn out against William Gibbs, Elijah's brother, as a suspect in the murder of George Harrington. A. B. Cowan (a justice of the peace of the Brown's Creek Precinct), Lewis Gilliland, and J. Mac Gilliland were named as accessories.²⁵

¹⁵ A railroad man commented: "Mr. Gibbs with wife and child rode on my train . . . to Denver. It struck me as something horrible to try to burn Mrs. Gibbs and family up. By reading this book you will learn that the white men who had the benefit of a Christian religion were worse than the Indian or other Barbarians." Note of an unidentified person in the flyleaf of the copy of *Snow-Shoe Itinerant* owned by Louisa Ward Arps of Denver, Colorado.

¹⁶ Inquest of the Boons by Hugh Mahon, Lake County Coroner, January 26, 1875.

¹⁷ *Colorado Chieftain*, January 25, 1875, p. 2; *Daily Central City Register*, January 27, 1875, p. 3; *Canon City Times*, January 28, 1875, p. 2; *Denver Daily Times*, January 29, 1875, p. 4.

¹⁸ *Denver Daily Times*, January 25, 1875, p. 2.

¹⁹ *Daily Central City Register*, February 1, 1875, p. 3; *Canon City Times*, February 24, 1875, p. 2.

²⁰ *Colorado Chieftain*, January 28, 1875, p. 4.

²¹ *Rocky Mountain News*, January 29, 1875, p. 4; *Denver Daily Times*, January 29, 1875, p. 4; *Colorado Chieftain*, January 31, 1875, p. 4.

²² *Rocky Mountain News*, February 12, 1875, p. 4.

²³ *Daily Central City Register*, February 1, 1875, p. 3.

²⁴ *Ibid.*

²⁵ Issued by Hugh Mahon, Justice of the Peace in Lake County.

Early in February the sheriff of Lake County, John Weldon, traveled to Denver with warrants to arrest Elijah Gibbs and others who had escaped to Denver with him in connection with Helen Harrington's complaint. Unfortunately, the sheriff publicly commented that he had seventy-five men awaiting his return and expressed his bitterness toward the men whom he was attempting to arrest, giving the reporters in Denver the impression that if Gibbs and his followers were arrested and returned home, they would be faced with lynch law. About midnight on the night that the sheriff arrived in Denver, he was detained by local police on charges of drunkenness. The officers removed two revolvers from the lawman and gave him the choice of returning to his hotel or going to jail.²⁶ Consequently, Gibbs was not apprehended.

During February and March dispatches were published telling of continued violence in Lake County. Reports indicated that all roads leading into Lake County were guarded by vigilantes and that no one could pass without permission of those who guarded the roads. Also, several friends of Gibbs had been detained by the vigilance committee and were threatened with death if they did not leave the county.²⁷ Elias F. Dyer, the probate judge of the county and a friend of Gibbs, was one of those forced to leave. He took refuge in Denver, from which place Judge Dyer reported that he had been confined in a schoolhouse along with about thirty other individuals who were "the very best people in the community," including some who were mere boys. He noted that four charges had been placed against him—"believing Gibbs to be innocent of the murder of Harrington; giving false testimony during the trial in Denver . . . ; being pompous and proclaiming to the court at the trial that he was Probate Judge; and last, being a republican, and securing his election in a democratic county."²⁸ Dyer attempted to contact territorial officials to secure their influence in returning law and order to the county.²⁹ The governor was away on a trip to Washington, D. C., while the secretary of state, who was acting governor, was confined to his home because of illness.

The press in Denver was aroused when it seemed that no official action was being taken in the face of events in Lake County.³⁰ A *Rocky Mountain News* editorial expressed the feel-

ing that it was of no consequence at that particular time whether Gibbs had killed Harrington or not. "We do not propose to see him dragged back to Lake County, by a sheriff or anyone else, on a trumped up charge, without entering a protest threat. Having disregarded the forms of law, this excited mob has no right to appeal to the law in order to get Gibbs into their hands."³¹ One Denver writer suggested that sometimes vigilance committees had been necessary, "but there is nothing upon record to show that a vigilance committee has behaved like those in Lake County, when composed of honest men."³²

In the meantime John McCannon reported from Lake County another side of the story. A mass meeting had been held by citizens concerned about the outbreak of anarchy in the area. By January they had formed themselves into a self-protective association and disbanded what McCannon termed the "Gibbs gang," a well-organized, nefarious secret society. He went on to say that some of the same citizens had set up a people's court, composed of a judge and twelve jurors and known as the Committee of Safety; the people's court had heard testimony from over fifty witnesses and had uncovered all the facts related to the killings in the vicinity. McCannon informed his readers that several prominent men had been implicated in illegal activities. He accused the superintendent of schools, Galatia Sprague, of having fled the county with seventeen hundred dollars in school funds, some of which had been used for Gibbs's legal expenses in the Denver trial. McCannon referred to the vigilante proceedings as those of a



John McCannon, shown in his uniform as captain in the Third Colorado Volunteers, which saw service at Sand Creek.

²⁶ *Denver Daily Times*, February 2, 1875, p. 4; February 3, 1875, p. 4.

²⁷ *Rocky Mountain News*, February 5, 1875, p. 4; *Canon City Times*, February 11, 1875, p. 2.

²⁸ *Denver Daily Times*, February 3, 1875, p. 4.

²⁹ *Rocky Mountain News*, February 4, 1875, p. 4.

³⁰ *Ibid.*, p. 2; *Denver Daily Times*, February 4, 1875, p. 3.

"people's court" and noted that attendant delegations had come from Granite and areas extending from Cottonwood Precinct in the north to the Fremont County line in the south. As a result of the proceedings, six or eight persons were told to leave the county; some were given six hours and others ninety days in which to arrange their affairs.³¹

The official committee formed by the people's court was composed of five men, including County Treasurer James B. Demming. It sent a report of the proceedings to Denver, charging that members of the Gibbs faction had formed themselves into an organization known as "The Regulators" in May of 1874, before Harrington's murder, and that the leaders of the organization were Elijah Gibbs, William Gibbs, J. Mac Gilliland, Lewis Gilliland, Stewart McClish, A. B. Cowan, and others. The purpose of the Regulators, it was charged, was to commit murders, steal stock, commit highway robberies, and perpetrate miscellaneous other crimes. The Committee of Safety claimed that the Regulators had set out to steal one hundred head of stock, had planned and executed the murder of George Harrington, and had attempted the murder of John D. Coon, which failed.³⁴ The committee also noted that Wilburn Christison, then serving as probate judge of Park County, had been employed as the Regulators' attorney and counsel to protect them in their illegal activities.³⁵ It further was charged that the preliminary investigation by local authorities into the murder of George Harrington had seemed to incriminate Stewart McClish and Colin Armstrong. Christison had decided that it would be impossible to try these men and save Elijah Gibbs, William Gibbs, A. B. Cowan, and J. Mac Gilliland, who were named as the real murderers by the committee. Nevertheless, Gibbs and McClish were tried. Representatives of the people's court charged that a number of witnesses were sent to the Gibbs and McClish trial for the purpose of swearing to any statement demanded by the defense counsel and had admitted this before the people's court. Committee members also charged that the Regulators even had brought two witnesses from Saguache County to swear that Mrs. Harrington had been instrumental in having

her husband murdered. The Committee of Safety concluded its report by saying that because of the activities of the Regulators some 145 individuals had organized, "and we would say to parties who are guilty, and who are at present absent from the county, that they will do well to remain away, if they value their own safety."³⁶

Shortly after an official proclamation of February 5 was issued by the acting governor, John W. Jenkins, calling upon the lawless people of Lake County to disperse,³⁷ a private detective, David J. Cook, was sent into the county to investigate events which had taken place there. On February 17 Cook sent his official report to the chief executive. Cook had proceeded to Lake County, posted the proclamation of February 5 in several places, and informed the governor that, contrary to reports which previously had been circulated, peace and order had been restored and that he had been assured by citizens whom he had contacted personally that no further trouble would occur. When his arrival in the area had been made known, a mass meeting was held of the "best citizens" of the county, and they had assured him that all parties who had left the county with or without orders would be able to return without fear of violence or molestation. Cook continued by saying that the Committee of Safety originally had been composed of men called together as a sheriff's posse to assist in arresting the parties responsible for the murder of George Harrington. Subsequently, they had organized themselves for the purpose of investigating local conditions, such as alleged cattle stealing and the conduct of certain county officials. After the committee had served its function, it had disbanded. In conclusion, Cook was of the opinion that no further trouble of any kind would occur in the locality and that the citizens would abide by the law.³⁸

Factions within Lake County kept affairs agitated during the next few months, nevertheless, by airing issues of dispute in the columns of area newspapers. For example, Galatia Sprague replied to John McCannon's accusations of theft by stating that he had not stolen any school funds nor had any been used for the purpose of supporting the lawyers in Gibbs's defense; to the contrary, the defense lawyers had received but a small portion of their fees, and large balances still were owed.³⁹

³¹ *Rocky Mountain News*, February 3, 1875, p. 2.

³² *Denver Daily Times*, February 4, 1875, p. 3.

³³ *Daily Central City Register*, February 10, 1875, p. 3.

³⁴ *Rocky Mountain News*, February 11, 1875, p. 4.

³⁵ Christison formerly had served as probate judge in Lake County during some terms held between 1871 and 1873. See Lake County Probate Record of Estates, 1869-1880, pp. 20-26, and Lake County Minutes of Probate Court, 1868-1880, pp. 36-37. His rebuttal to the charges is found in the *Rocky Mountain News*, February 18, 1875, p. 4.

³⁶ *Rocky Mountain News*, February 11, 1875, p. 4. A rebuttal written by Elias Dyer appeared in the same newspaper on February 13, p. 4.

³⁷ Acting Governor John W. Jenkins, Proclamation, February 5, 1875, Colorado Executive Records, Executive Department Journals, 1869-75, pp. 411-13.

³⁸ The complete record is found in the *Denver Daily Times*, February 17, 1875, p. 4.

³⁹ *Daily Central City Register*, February 24, 1875, p. 3.

Wilburn Christison reported that the Committee of Safety had ordered Lewis Hayden, county commissioner, and R. Matt Johnston, county clerk and recorder, to resign because they were friends of Gibbs.⁴⁰ John McCannon and others connected with the Committee of Safety regarded David Cook's report as an official endorsement of their activities, and McCannon wrote frequently to Denver to argue with the *Rocky Mountain News's* reports.⁴¹ The *Canon City Times* and *Colorado Chieftain* sustained McCannon and leaders of the Committee of Safety while Denver newspapers and the *Fairplay Sentinel* continued to call for further investigation into the conditions in Lake County.⁴² As evidence, Judge Dyer charged that friends of Gibbs were forced to leave the county and had not been able to return to their homes. But his report was contradicted by John McPherson of South Arkansas (now Poncha Springs), who claimed he was neutral in the feud although he actually wrote propaganda in support of the Committee of Safety.⁴³

On April 1 Charles M. Harding was found shot to death on the bank of the Arkansas River at Bales Station near the site of present-day Salida.⁴⁴ During the last week in January Harding, one of Gibbs's supporters, had been brought before the Committee of Safety's court. He was accused of having started a fire which caused the destruction of the Tom Cameron ranch during the previous summer. The court gave Harding thirty days to leave the county, but he swore that he would die rather than be driven out.⁴⁵ On March 13 Harding filed a complaint of assault against one Freeman who, a few days before the Gibbs-Boon confrontation of the previous December, had attempted to kill him. A warrant was issued for Freeman's arrest.⁴⁶ Harding's murder may have been a direct result of this action, although witnesses at the inquest held after the murder claimed no knowledge of why anyone would have committed the crime.⁴⁷

For the next few months life appeared to be normal in the county, superficially at least, as no more charges or counter-

⁴⁰ *Rocky Mountain News*, February 18, 1875, p. 4.

⁴¹ *Daily Central City Register*, February 17, 1875, p. 3, and February 23, 1875, p. 3.

⁴² *Canon City Times*, February 11, 1875, p. 2, and February 18, 1875, p. 2; *Denver Daily Times*, February 12, 1875, p. 2. Files of the *Fairplay Sentinel* do not exist, but references to the paper are located in the *Canon City Times* and *Daily Central City Register* of the period.

⁴³ Letter to the *Rocky Mountain News*, March 2, 1875, p. 4.

⁴⁴ Inquest into the Death of Charles M. Harding by Hugh Mahon, Lake County Coroner, April 2, 1875.

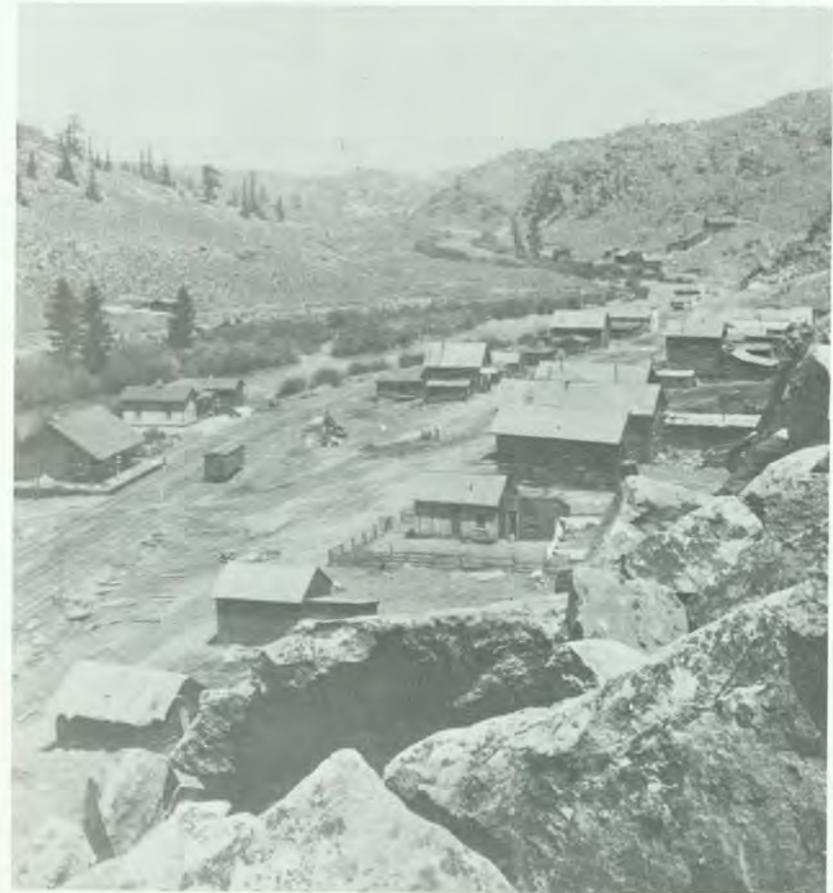
⁴⁵ *Rocky Mountain News*, January 5, 1875, p. 4.

⁴⁶ Warrant for the Arrest of Henry Freeman by Hugh Mahon, Justice of the Peace in Lake County, March 13, 1875.

⁴⁷ Inquest into the Death of Charles M. Harding, n.d.

charges were published in the press. In retrospect, however, it is obvious that conditions still were not peaceful. Early in June Judge Dyer alluded to the situation when he ordered the sale of cattle belonging to the Harding estate. He said there was great danger of their being driven from their accustomed range "owing to the unsettled state of society in the portion of our county where the stock ranges."⁴⁸ Then on July 3 Territorial Governor John Routt received a telegram sent by Richard S. Allen, editor of the *Fairplay Sentinel*, notifying the governor that Judge Dyer had been shot in his courtroom in Granite.⁴⁹ The deed was attributed to some members of the

An 1883 view of Granite with the courthouse seen fourth from lower left.



Committee of Safety led by Sheriff John Weldon.⁵⁰ Routt quickly responded by issuing a proclamation offering a reward of two hundred dollars (the amount limited to him by law) for the arrest of the perpetrators of the crime.⁵¹ On July 5 the governor received a personal request from Wilburn Christison of Fairplay, which asked for the governor's help in putting down lawlessness in Lake County. Governor Routt replied: "As soon as I get facts upon which to act I will render all assistance within my power to suppress the mob violence in Lake County. Give me information as to the extent of the trouble."⁵² This report was soon forthcoming in a letter from Richard Allen which explained that the judge had attempted to serve warrants on some members of the Committee of Safety and that, while holding court in Granite and examining witnesses involved in the affairs of the committee, he had been murdered. On July 7 the governor replied to Allen that he would do all that was in his power "under the law" to apprehend and punish the guilty parties.⁵³

As a result of the state of affairs that existed in Lake County, the *Daily Central City Register* called for immediate action:

Lake County is in a state of anarchy and confusion which surpasses in the enormity of its crime the worst epics of our Territorial history. The law is under the feet of an organization which has its own supreme control of civil affairs and enforces its decrees with knife and pistol. The statutes invest the sheriffs of counties with authority to call upon the governor for military aid in the event of their inability to restore order by the ordinary process. But in this case the sheriff is at the head of the mob, and is directly charged with the murder of Dyer. What, then is the governor's course of action in the premises? Clearly it seems to us, he should send a detachment of troops into the turbulent district, restore order, restate the supremacy of the broken tribunals, arrest the offenders, if to be found, and re-establish the local government. This must be done, or the lives and property of peaceful citizens must remain at the mercy of those who have illegally usurped the functions of government⁵⁴

John L. Dyer, a well-known and respected itinerant Methodist minister in the territory and father of Judge Dyer, was by this time in his old age. The Reverend Dyer was beside himself with rage wondering how he could retaliate against the people who had taken the life of his son. As noted in his auto-

⁴⁸ Lake County Probate Court Order Book for Probate Business, 1869-1880, p. 30.

⁴⁹ *Denver Daily Times*, July 5, 1875, p. 4.

⁵⁰ *Rocky Mountain News*, July 6, 1875, p. 1.

⁵¹ Governor John L. Routt, Proclamation, July 5, 1875, Colorado Executive Records, Executive Department Journals, 1869-75, pp. 453-54.

⁵² *Ibid.*, p. 454. Christison's letter to Routt is found in the *Denver Daily Times*, July 6, 1875, p. 4.

⁵³ Routt, Proclamation, p. 455.

⁵⁴ *Daily Central City Register*, July 9, 1875, p. 2.

biography, he had requested certain legislators and the governor to take some action in the affairs of the county but felt that his requests went unheeded.⁵⁵ Now, following the murder of Judge Dyer, Governor Routt became very disturbed, and on July 19 he penned a brief request to Major General John Pope of St. Louis asking for federal troops; but on second thought he did not send the letter.⁵⁶ The next day he wrote a lengthy confidential letter to General W. T. Sherman, also of St. Louis, in which he outlined the events which had taken place in Lake County and gave specific details on the murder of Judge Dyer.⁵⁷ The governor stated that following the murder he had sent three detectives to investigate affairs and that they described conditions even worse than he had supposed:

They were able to gather but few facts of any value, for the law abiding citizens are over-awed and threatened with death, if they shall be discovered giving any information; the mob openly declaring that they will kill detectives seeking it, and defying both civil authorities and military power to arrest them.⁵⁸

He continued by noting that there was no organized body of militia in the territory nor were there funds in the treasury at his disposal to arm forces of men to be sent to the area to preserve order and prevent further loss of life. His object was to prevent escape of the criminals and to bring them to justice, but he saw no way of succeeding without military aid. In his letter to Sherman, Routt concluded:

I therefore in view of all these facts, respectfully request, that you will send to Lake County one company of cavalry under a discreet officer, so that their presence will intimidate the mob and prevent their escape. I do not think there will be any actual conflict, but that the knowledge of a power sufficient to enforce the law, will alter them from offering resistance to the proper authorities.⁵⁹

Routt went on to say that the territorial court would be held in the troubled area within a few weeks; but, since the county officers were members of the mob, the hearings at the court would be a farce unless there were military authorities there to see that correct testimony was taken. "I do not wish, however, to make a formal application for troops, as it might provoke a newspaper controversy throughout the country, which would be productive of no good to the territory. . . ."⁶⁰

⁵⁵ Dyer, *Snow-Shoe Itinerant*, pp. 290-91.

⁵⁶ Letter from Governor John L. Routt to Major General John Pope, Letter Press Book of the Governor, 1873-79, pp. 61-63.

⁵⁷ Letter from Governor John L. Routt to General W. T. Sherman, Letter Press Book of the Governor, 1873-79, pp. 64-68.

⁵⁸ *Ibid.*, pp. 65-66.

⁵⁹ *Ibid.*, pp. 66-67.

⁶⁰ *Ibid.*, pp. 67-78.

The governor probably assessed the situation accurately, since a majority of newspapers were of the opinion that justice finally had been served in Lake County.⁶¹ Several accounts noted that conditions had relaxed in the area during the months following Gibbs's return to the valley and after Dave Cook's investigation but that Judge Dyer had returned to the valley from Denver and immediately had proceeded to avenge Gibbs's harsh treatment. Some suggested that when Dyer thought he had achieved enough strength among people in the valley, he started hearings again through the vehicle of a justice court rather than a higher authority.⁶² Specifically, on June 29 the judge issued a warrant for the arrest of Dr. W. A. Dobbins and A. R. Strickland on complaint of Jesse Marion for false imprisonment that had occurred on January 27.⁶³ Dyer intended to use Marion's testimony to prosecute members of the Committee of Safety. Dobbins and Strickland swore in an affidavit that they thought they would not get a fair trial from Judge Dyer and requested a change of venue, which he granted.⁶⁴ However, the action was not sufficient to prevent certain of his opponents from having him disposed of.

In testimony presented before a six-man coroner's jury held shortly after Dyer's murder, several witnesses maintained that they had seen five men armed with revolvers and rifles on the steps of the courthouse at the time the crime was committed. Among the witnesses at the inquest were Dr. Dobbins who examined the body, Sheriff Weldon, John D. Coon, and J. A. Woodward.⁶⁵ When asked if they recognized any of the men, all witnesses except one replied that they did not. Woodward, however, replied: "I am afraid to answer the question for the safety of my life."⁶⁶ Woodward testified that he had overheard previous threats made against Dyer's life but did not know the individuals' names. James H. Johnston reported that, although Dyer had on occasion been armed, he had not been at the time of his murder, even though he had a premonition of his impending death.

⁶¹ An exception was the *Colorado Springs Gazette*, July 10, 1875, p. 4, which had avoided taking sides. When the *Rocky Mountain News*, July 17, 1875, p. 2, claimed that Dyer died in the interest of justice, the *Canon City Times*, July 15, 1875, p. 2, accused the paper of having encouraged mob violence in Lake County.

⁶² *Colorado Chieftain*, July 13, 1875, p. 4.

⁶³ *People of the Territory of Colorado v. A. R. Strickland and W. A. Dobbins*, June 28, 1875, Lake County District Court.

⁶⁴ Affidavit Sworn and Subscribed before Elias F. Dyer, Lake County Probate Judge and Ex-Officio Justice of the Peace, June 29, 1875.

⁶⁵ Inquest Into the Death of Elias F. Dyer by Hugh Mahon, Lake County Coroner, July 13, 1875.

⁶⁶ *Ibid.*

Vigilante sympathizers in the valley reported after the murder that even some of Dyer's friends were heard to have cursed the judge for having renewed the feud.⁶⁷ As charges and countercharges were made concerning his death, vigilante supporters made strong statements about his conduct. He was called a "drunk" and he was charged with having been a drifter and a ne'er-do-well.⁶⁸ It was reported that he had not paid his taxes and that his business partner had become disgusted with him because of his activities and had broken off their business relationship.⁶⁹

Some of these accounts in the Pueblo paper elicited the following response:

Editors Chieftain:—I see a paragraph, write, write. Now I will say that you had better take back that foul slander against E. F. Dyer that appeared in your last paper or give your authority for it if you have any, as somebody may be put to the proof of the slander.

The friend and father of E. F. Dyer,
Monument, July 16, 1875.⁷⁰



"God's curse was
upon them all."
John L. Dyer,
Snow-Shoe
Itinerant.

The editor responded by saying that unfavorable comments made about Elias could be substantiated.⁷¹ The vigilante supporters also leveled charges against Dyer's good friend, the local minister, J. Mac Gilliland, for aiding the judge in his alleged machinations against them.⁷²

When information was circulated in the county that Governor Routt wanted to send troops into the area to restore order, some of the residents were very disturbed. John Spencer of South Arkansas said that all the governor knew of the situation was hearsay:

He never lived in Lake County, never did he ever lose any cattle. . . . Well, let him come, and bring his Denver soldiers with him, because Lake County has got only one thousand horses and one thousand more miners want riding animals, and if they come we will have some as sure as the grasshoppers are thick in Colorado. The affair is now settled amongst ourselves, and if everyone will leave both sides of the question alone, everything will be well. Outsiders, however, (we except no one,) will do well to attend to their own business. . . .⁷³

Routt's requests for federal troops were not heeded, and the most that he was able to do was to suggest the formation of a militia in his next message to the territorial legislature.

Situated as we are on the frontier it is especially important that we have a body of well trained and disciplined troops, to protect in cases of Indian outbreak, to check mob violence, and to enforce the civil authority when resisted. While the probability of their active employment is small, yet it would be very well to have a few thoroughly organized companies in different portions of the Territory, that would at once be available in emergencies.⁷⁴

For all practical purposes the Lake County War was over. Those who had opposed the Gibbs faction finally had won control of the local legal machinery. Cases that had been pending before the Dyer court were expedited under the new probate judge, John McPherson.⁷⁵ By 1879 the major portion of the county that had been involved in the struggle was set aside in a new county named Chaffee.⁷⁶

⁶⁷ *Colorado Chieftain*, July 20, 1875, p. 4.

⁶⁸ *Daily Central City Register*, July 26, 1875, p. 3.

⁶⁹ *Canon City Times*, July 29, 1875, p. 2; *Colorado Chieftain*, August 12, 1875, p. 2. Tax bills were levied against Elias' estate for the years 1866, 1868, 1871, 1872, 1873, 1874, 1875, 1876; Docket of Probate-Bills Allowed by Lake County Probate Court Against Estates, 1874-1880, p. 63.

⁷⁰ *Colorado Chieftain*, July 17, 1875, p. 4.

⁷¹ *Ibid.*

⁷² *Canon City Times*, July 29, 1875, p. 2.

⁷³ *Colorado Chieftain*, August 12, 1875, p. 2.

⁷⁴ Routt, Message to the Legislature, Colorado Executive Records, 1875-1876, p. 81.

⁷⁵ See, for example, Wm. Bale v. P. J. Goodfellow, et al., Minutes of Probate Court, County Court Civil Cases Book No. 1, 1868-1880, pp. 48-75.

⁷⁶ E. R. Emerson, "History of Chaffee County," *History of the Arkansas Valley, Colorado* (Chicago: O. L. Baskin & Co., 1881), pp. 478-80.

Many of the persons who had supported Gibbs and Dyer left the area and never were heard of again. Local legend says that Elijah Gibbs returned to the area as an old man in his eighties sometime after 1930. No comment survives that he ever admitted guilt in the Harrington murder. Several men who had participated in the vigilante proceedings died violent deaths in the years that followed, "but regardless of the cause of death people often said it was because of the War." Charles Nachtrieb, who had been a member of the Committee of Safety, was murdered in 1881 reportedly by a nephew of George Harrington who thought Nachtrieb to be the real murderer of his uncle.⁷⁷

Originating as a feud between two men, the Lake County troubles had multiplied to include hundreds of residents who took sides on the question of vigilante justice. The final result was a major breakdown in the legal machinery then in existence, framing a colorful but sad chapter of Colorado history.

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⁷⁷ Dr. Wendell Hutchinson, "The Lake County War," Paper read before the Denver Westerners, May 22, 1968.

Moses Hallett, Chief Justice

BY JOHN D. W. GUICE

On February 8, 1866, the Fifth Session of the Colorado Territorial Assembly adopted a "Joint Memorial" imploring the president of the United States to appoint a local resident as chief justice of the territorial supreme court.¹ Displaying little timidity, the legislators carefully explained the legal problems peculiar to mining and irrigation, requirements unfamiliar to and not comprehended by Easterners. The boldness of these pioneer Coloradoans increased with the length of their memorial, for they even announced to the president their choice for the position—Moses Hallett!

Rather than a beginning, the joint memorial was merely the climax to a vociferous campaign to rid the territory of venal and incompetent carpetbagger judges.² While the carpetbagger epithet had a degree of accuracy, recent investigation has shown this image to be misleading in reference to the entire early territorial bench in Colorado.³ Nevertheless, deeply embedded in the minds of many "Pikes Peakers" was the necessity to have government officials appointed from within their ranks, and, in the case of the judiciary, Moses Hallett was their man. Illustrative of this spirit is the observation of Samuel Bowles, contemporary editor and traveler.⁴ "One especial motive with the Coloradoans," he noted, "is to get a judiciary of their own that shall be both more intelligent and independent than that furnished by Washington authorities."

¹ *General Laws, Joint Resolutions, Memorials, and Private Acts, Passed at the Fifth Session of the Legislative Assembly of the Territory of Colorado* (Central City: Printed by David C. Collier, Miners' Register Office, 1866), p. 181.

² Earl Pomeroy, "Carpet-Baggers in the Territories, 1861-1890," *The Historian*, I (Winter 1939), pp. 53-65.

³ John D. W. Guice, "Colorado's Territorial Courts," *The Colorado Magazine*, XLV (Summer 1968), pp. 204-24.

⁴ Samuel Bowles, *Across the Continent: A Summer's Journey to the Rocky Mountains, the Mormons, and the Pacific States, with Speaker Colfax* (Springfield, Mass.: Samuel Bowles & Company, 1865), p. 60.

When his nomination by President Andrew Johnson was confirmed by the United States Senate on April 10, 1866, Moses Hallett was only thirty-two years of age. The lure of a quick fortune had brought him to the mining districts of Clear Creek and Gilpin counties in the spring of 1860 from Illinois, where he was born in 1834 in Galena.⁵ Son of a successful though not wealthy Illinois pioneer, Hallett was educated at Rock River Seminary and Beloit College. Having read law in the office of an attorney in Chicago, he was admitted to the bar there in 1858. Hallett practiced in Chicago until overcome by "gold fever" on hearing and reading of the success of the "fifty-niners."

The two hundred dollars Hallett brought from Illinois was soon depleted, and the future magistrate found "working a rocker" on Clear Creek far less financially rewarding than he had anticipated.⁶ By the fall of 1860, Hallett was in Denver. Luck that had avoided him in the goldfields came to him there, for soon he became a partner of Hiram P. Bennet, one of the most prominent attorneys in the area.⁷ One account credits this partnership's formation to the recommendation of a local businessman, Steve Hempstead, who guaranteed Bennet the reimbursement of Hallett's wages. Only years later did Hallett discover the true source of his first five-dollar fee for preparing a mechanic's lien.⁸ Catching Steve Hempstead's eye was only the beginning of Hallett's good fortune. Having arrived in Denver with the first wave of lawyers in 1859, Bennet was not



Attorney Hiram P. Bennet served as Colorado's first territorial delegate to Congress.

only a man of influence, but he also had the most extensive library available, totaling some fourteen volumes.⁹ The paucity of law books is hard to visualize today. In Gilpin County, for example, there existed only one set of Illinois Statutes, and many of the new territorial statutes of Colorado were adopted from those of Illinois.¹⁰ Again, Hallett was in luck, for he enjoyed the advantage of having been trained in those codes.

Among the first twenty-seven attorneys formally admitted to practice before the newly organized territorial courts, July 11, 1861, was Moses Hallett.¹¹ The following September Bennet was elected delegate to the United States Congress, resulting in the dissolution of the Hallett-Bennet partnership shortly thereafter. By then, however, the younger partner was well on his way to prominence of his own as well as considerable financial success. His name appears often in reports of court cases in the columns of the *Rocky Mountain News*. Files of the civil cases of the first district court as well as the first several volumes of the *Supreme Court Opinions of the Territory of Colorado* indicate Hallett enjoyed an active practice prior to his appointment as chief justice.¹²

Correspondence with the Central City law firm of Teller and Johnson also is a barometer of his activity during the early part of the decade.¹³ Suggested by these letters is Hallett's dissatisfaction with the early territorial bench. Benjamin F. Hall, Colorado's first chief justice, is described as an officious, overbearing judge. Hallett's feelings concerning the supreme court as a group were so strong he felt justified in planning diversionary tactics to keep it from meeting as an appellate body. "Keep him [Judge A. A. Bradford] away and it is all right," Hallett wrote, urging his friend to detain the judge in Central City so the supreme court could not be held that week.¹⁴

⁹ The most reliable biographical sketches are in the *Dictionary of American Biography* (Centenary edition; New York: Charles Scribner's Sons, 1946), VIII, 155-56, and *Portrait and Biographical Record of Denver and Vicinity, Colorado* (Chicago: Chaplain Publishing Company, 1898), pp. 171-72.

¹⁰ Fitz-Mac [James Philip MacCarthy], *Political Portraits* (Colorado Springs: The Gazette Printing Co., 1888), p. 214.

¹¹ Clipping in the T. F. Dawson Scrapbooks, IV, 121, State Historical Society of Colorado Library.

¹² *Ibid.*

¹³ Peter Wikoff, "The Bench and Bar of Denver and Colorado," *Magazine of Western History*, IX (March 1889), pp. 606-07.

¹⁴ Address of Ebenezer T. Wells at ceremonies attending the retirement of Moses Hallett, May 1, 1906, *Colorado Bar Association Report*, IX (1906), p. 15.

¹⁵ *Daily Rocky Mountain News* (Denver), July 12, 1861, p. 3.

¹⁶ These files can be found in the Colorado State Archives and Records Service.

¹⁷ Letter from Hallett to [H. M.] Teller and [H. A.] Johnson, June 30, 1862, Teller Papers, Western History Collection, Norlin Library, University of Colorado, Boulder.

¹⁸ *Ibid.*



Judge Wilbur F. Stone
later compiled the multi-
volumed History of Colorado,
published in Chicago in 1918.

For an undertermined duration in 1865-66 Hallett and Alfred Sayre were partners.¹⁵ Judge Wilbur F. Stone, himself on the supreme court after Colorado achieved statehood, described Sayre as "the leading lawyer in practice in Denver."¹⁶ Apparently this mutually profitable relationship was terminated with Hallett's elevation to the bench. While other indications of his diligence as an aspiring young attorney appear in the newspapers, perhaps his tenure as Denver city attorney at a monthly salary of \$83.33 is the most worthy of mention here.¹⁷ His resignation, tendered March 31, 1866, was accepted with great praise for his promptness and devotion to duty. Reports of the council meetings reflect his leadership.

From the earliest stages of his career in Denver, Hallett displayed traits of personality which explain his later judicial, financial, and social preeminence. Correspondence with other attorneys points to his diligence in preparation and his desire to win. An 1863 letter to Teller and Johnson requested a particular code book "needed badly least [sic] he may be defeated." Hallett accented his concern with an offer to pay the freight charges if no acquaintance was about to depart for Denver who might deliver it.¹⁸

Not only did his professional associations place him in good stead, but Hallett appeared to make the best of all contacts,

¹⁵ Advertisements under the firm name Hallett and Sayre appear in the *Rocky Mountain News* from January 3, 1865, at least through January 2, 1866.

¹⁶ Wilbur Fisk Stone, *History of Colorado* (Chicago: S. J. Clarke Publishing Company, 1918), I, 743.

¹⁷ *Daily Rocky Mountain News*, September 30, 1865, p. 3; March 31, 1866, p. 3; April 7, 1866, p. 4.

¹⁸ Letter from Hallett to Teller and Johnson, July 28, 1863, Teller Papers.

even those at his boardinghouse. Among his fellow boarders in his first months in Denver was George Clark of Clark and Gruber minting and banking fame.¹⁹ Throughout his career, names prominent in Colorado history appear among those with whom he associated professionally and otherwise, offering obvious clues of his ability to enter the right circles and his alertness to opportunity. The young lawyer's frequent trips between Central City and Denver, recorded in the notices of arrivals and departures, are indicative of his interest in and closeness to mining operations.²⁰ Later eminence as a progenitor of mining law may well be traced to these firsthand experiences in mining technology and finance.

Hallett served as chief justice for ten consecutive years preceding Colorado's admission to the Union. His accomplishments and performance during these three appointments more than justified the confidence in him expressed by the assembly in its 1866 resolution. Among his contemporaries he was acknowledged as a jurist of exceptional ability across the nation, and during its final ten years Colorado's territorial supreme court was unquestionably a Hallett court. He attended ten terms and averaged ten opinions per term, nearly double the number of the most productive of his associates.²¹

At his own expense the chief justice compiled and published the first and second volumes of *Colorado Reports*.²² An examination of the original journals containing the supreme court opinions of the Territory of Colorado indicates some discrepancies may have occurred with regard to the earliest cases before the court. Considering the confusion characteristic of some of the first appellate bodies in Colorado Territory, any omissions or other inaccuracies are understandable, and they would in no way detract from the plaudits due Hallett for his undertaking. Also indicative of his energy and drive was his willingness to sit for his associates in their district courts if necessary to facilitate the work of the court. At his retirement ceremonies in 1906, a former colleague on the territorial bench, Judge Ebenezer T. Wells, may have embellished Hallett's serv-

ice a bit in his remarks: "Almost all the terms of the District Court of Gilpin, and some of the terms in other counties, while Judge Gorsline remained upon the Bench, were held by Judge Hallett."²³

It is by achievement, not energy, that the performance of officials is ultimately scored. Hallett, through his opinions, sustained previous decisions upholding Kansas law during the transitional stages of the territorial period.²⁴ Continuity of rule of law was assured; anarchy was avoided. However, it was in the formulation or, in the jargon of lawyers, the "making" of mining and water law that Hallett would excel to the point of becoming internationally known at the peak of his career.

The rules and regulations of mining districts were recognized and given legal status by his opinions, particularly concerning the vital question of the validity of claims.²⁵ His opinions as territorial chief justice asserted that claims, in order to be valid, must comply with the regulations of the mining district within which they were located. Hallett's decision legalizing the extralegal actions of miners constituted a breach of the English common law.

It was in regard to riparian rights, however, that Hallett without hesitation made his boldest departure from centuries of English legal precedent. Parts of an 1872 opinion on irrigation



This photograph of Chief Justice Moses Hallett was taken in 1872, the year he delivered his opinion on irrigation law in a "dry and thirsty land."

¹⁹ Evelyn Bradley, "The Story of a Colorado Pioneer, Mrs. Charles A. Finding," *The Colorado Magazine*, II (January 1925), p. 50.

²⁰ Many notices in the *Rocky Mountain News* include Hallett's name. Illustrative is December 5, 1865, p. 4.

²¹ Robert B. Murray, "The Supreme Court of Colorado Territory," *The Colorado Magazine*, XLIV (Winter 1967), pp. 24-27. Murray's account of the "Hallett Court" is mainly a compilation of decisions in *Colorado Reports*.

²² Moses Hallett, *Reports of Cases at Law and in Chancery Determined in the Supreme Court of Colorado Territory to the Present Time* (Albany, N.Y.: Weed, Parsons and Co., 1872, 1876).

rights read as if they might have been dictated some sixty years later by Walter Prescott Webb.

The principles of law are undoubtedly of universal application, but some latitude of construction must be allowed to meet the various conditions of life in different countries. The principles of the decalogue may be applied in the conduct of men in every country and clime, but rules respecting the tenure of property must yield to the physical laws of nature, whenever such laws exert a controlling influence.

In a dry and thirsty land it is necessary to divert the waters of streams from their natural channels, in order to obtain fruits of the soil, and this necessity is so universal and imperious that it claims recognition of the law.²⁶

The divergence from the common law of riparian rights incorporated into this opinion made it one of the most significant in the history of the trans-Mississippi West. Through the years it has been the cornerstone on which an entirely new concept of water rights has been erected, the doctrine of prior appropriation. Though other areas had applied this theory on an extralegal basis, Hallett's opinion and the subsequent codification of the doctrine have led to its being labeled the "Colorado System."

In addition to deep involvement in mining and water law, Hallett soon found himself in the midst of another gigantic struggle, the railroad wars. Random findings indicate a propensity to find in favor of the railroads as opposed to individuals bringing suit against them.²⁷ When he later became a federal district judge, he was at times immersed in railroad litigation, especially in cases concerning the Denver and Rio Grande.²⁸ Aspersions cast on Hallett by litigants in railroad cases constitute the only insinuations of venality.

The leadership of the young chief justice was felt not only in the courtroom but through the entire territorial community as well. Few aspects of Colorado's life escaped his influence. He served on a special committee to advise the federal authorities on Indian policy,²⁹ and he showed no reluctance to join other signatories in exhorting President Andrew Johnson by telegram in 1867 to bolster federal protection from the Indians.³⁰

A director of the Denver YWCA, a trustee of the First Presbyterian Church, and a charter member and director of the Denver Club, Hallett quickly involved himself in a wide range of community services.³¹ That Hallett was soon held in high esteem is clearly indicated by correspondence from James B. Thompson, the governor's private secretary, to the War Department, which was seeking citizens of some judgment as a source of what would today be called "intelligence." Thompson suggested that the War Department consider Hallett as representative of the top citizenry of the territory.³²

Though chief justice, Hallett's "home" court was that of the third judicial district in Pueblo. As did his associate justices, Hallett "rode the circuit," holding court in various county seats, and quips by the dozen attributed to him have been passed down through generations of Colorado attorneys.³³ In his improvised court in the San Juan region, for example, the celebrated "leather seat" incident took place. On being questioned by "His Honor" why the same faces always appeared on the jury, the sheriff replied that, due to the dangers of splinters from the roughly hewn log benches, only those men owning britches with leather seats were placed on the venue.³⁴

In 1870 George Q. Richmond, a prominent member of the Colorado Bar in the late nineteenth century, emigrated to



George Q. Richmond,
Denver and
Cripple Creek
attorney at law.

²³ Wells, *Colorado Bar Association Report*, p. 10.

²⁴ *Ibid.*, p. 16.

²⁵ Murray, "Supreme Court of Colorado Territory," p. 26.

²⁶ *Yunker v. Nichols*, 1 Colo. 553 (1872).

²⁷ *Daily Rocky Mountain News*, March 19, 1874, p. 4.

²⁸ Robert G. Athearn, *Rebel of the Rockies* (New Haven: Yale University Press, 1962), contains numerous citations of Hallett railroad decisions.

²⁹ *Daily Rocky Mountain News*, June 29, 1866, p. 1.

³⁰ *Ibid.*, June 4, 1867, p. 1.

the Rockies from the East. He expected to find a "rough and tumble" judicial system in which the participants would be better "versed in 'Colt on Revolvers' than Coke on Common Law." Yet Richmond described the atmosphere of Hallett's adobe-walled, dirt-floored court in these terms: "A more orderly crowd, a more dignified judge, a more respectable appearing lot of attorneys, I have never seen than was there collected."³⁵ Of those present that day, two, Calvin J. Thatcher and Wilbur F. Stone, were destined to serve on the Colorado Supreme Court.

Moses Hallett shared with his associate justices numerous responsibilities which are not apparent on casual observation of territorial organization. While district attorneys and marshals were available to represent the interests of the United States government, members of the supreme court performed duties associated today with the responsibilities of state attorneys general.³⁶ As such they were requested to offer opinions on both bills pending before the assembly and those already enacted.

The governors wisely consulted the judges before whom convicted felons were tried before exercising their prerogatives of pardon and commutation. Despite the wisdom of this tradition, it was another function of the territorial judges in lieu of other state agencies, and frequent communications on these matters indicate it was not a rare occurrence.³⁷ Another demand on their time was service on various commissions and boards, and Hallett responded, as did his colleagues. Evidently the justices rotated in serving on a board which examined and certified the accounts of the territorial auditor and treasurer at the conclusion of each fiscal year.³⁸ Being subject to assign-

ment by the governor, the judges found themselves on occasion unexpectedly ordered to occupy the bench of a colleague. While absence from the territory was the most frequent cause of this juggling of court terms, the jurists occasionally disqualified themselves for reasons of "personal interests." Hallett was called on in more than just a few instances in this manner.³⁹ The plea of conflict of interest, especially in Central City, within the second judicial district, conceivably could reveal significant mining speculation by members of the bench.

While the judges each had a clerk of the court for the district to take care of details, each judge was ultimately responsible for the orderliness of the business of his court. A nine-page booklet containing samples of some twenty-four forms of oaths suggests that by 1875 the operation of territorial courts had assumed at least a semblance of efficiency.⁴⁰ Thus, the responsibilities of the court varied from the august to the mundane, and Moses Hallett shared in both.

One Colorado political pundit, a contemporary of Hallett, erroneously concluded that the young attorney from Illinois had no stomach for politics, being incapable of political infighting.⁴¹ This conclusion was predicated primarily on Hallett's decision not to challenge Henry M. Teller for one of the seats in the United States Senate on admission to statehood. While Hallett rejected pleas for an active candidacy at this juncture, his entire adult career discredits ideas of lack of political adroitness.

From his father, Moses Hallett, Sr., young Hallett had a political legacy of sorts, for the senior Hallett served four terms as sheriff of Jo Daviess County, Illinois, and was twice justice of the peace.⁴² Despite the insignificance of these posts, the younger Hallett arrived in Colorado with a knack for finding his way around. His first law partner, Bennet, was successful in his bid to become the territory's first congressional delegate, and Hallett's diligent campaigning contributed substantially to the victory.⁴³ Hallett served in the Council of the Territorial Legislative Assembly during its third and fourth sessions in 1864 and 1865.⁴⁴ The legislation for which he is best remembered

³¹ *Ibid.*, February 6, 1867, p. 1; April 13, 1867, p. 1; June 1, 1868, p. 4.

³² Thompson to Chief Clerk, War Department, *Journal of the Colorado Territorial Secretary, 1861-1875*, p. 32, microfilm of National Archives records, reel 2, Colorado State Archives and Records Service.

³³ Richard Peete (ed.), *Anecdotes of the Jealous Mistress: Selections from the Gustave Ornauer Collection* (Boulder: Rocky Mountain Law Review, University of Colorado, 1959). Forty-nine separate items refer to Moses Hallett in this anthology of newspaper clippings, outnumbering many times references to any other single member of the Bar.

³⁴ Ray H. Cooper, "Early History of San Juan County," *The Colorado Magazine*, XXII (September 1945), p. 212.

³⁵ George Q. Richmond, "The Men With Whom I've Smiled," *The Colorado Magazine*, I (April 1924), p. 146.

³⁶ Letter from Territorial Secretary Frank Hall to Hallett, February 21, 1872, Secretary's Record Book, 1866-1875, p. 111, Colorado Secretary's Journals and Papers, Library of Congress microfilm, Colorado State Archives and Records Service.

³⁷ Letter from Hall to Hallett, January 21, 1873, *ibid.*, pp. 147-48; McCook to Hallett, August 31, 1869, Record of Executive Proceedings, Book A, p. 390, Colorado State Archives and Records Service.

³⁸ Letter from George W. Jenkins to Hallett, January 9, 1875, Secretary's Record Book, p. 427.

³⁹ Letter from Hall to Hallett, July 9, 1866, Record of Executive Proceedings, Book A, p. 262.

⁴⁰ *Forms of Oaths for the District Court of the First Judicial District of Colorado Territory*, Edward F. Bishop, Clerk (Denver: Daily Evening Times Printing House, 1875).

⁴¹ Fitz-Mac, *Political Portraits*, p. 214.

⁴² Letter, including reference report on Hallett's father, from Illinois State Historian William K. Alderfer to the author, March 29, 1968.

⁴³ Hallett to H. A. Johnson (Teller and Johnson), August 27, 1862, Teller Papers, Western History Collection, Norlin Library.

⁴⁴ *The Legislative Manual of the State of Colorado* (Denver: Denver Times Publishing House and Bindery, 1877), pp. 214-15.

was Council Bill No. 22, introduced February 19, 1864, providing for the incorporation of Colorado Seminary.⁴⁵

On both the county and territorial levels Hallett was actively participating in affairs of the Union Party, backers of the Washington administration. The *News* in September and October 1865, referred to his prudent and honest political maneuvering, and its reports in its columns listed his activity.⁴⁶ The efforts of this enterprising young attorney were by no means fruitless. Earlier that year, almost eleven months to the day prior to the memorial calling for his nomination to the court, Hallett had been enthusiastically recommended for the honor by Governor John Evans in a note to President Abraham Lincoln shortly before Lincoln's assassination.⁴⁷ Prominently mentioned was Hallett's support of the "regular union ticket."

During his first term as chief justice, Hallett was politically active, journeying to Washington to urge passage of the bill for admission under consideration in 1866-67.⁴⁸ Only three votes kept Colorado out of the Union in the attempt to override President Johnson's veto in January 1867.

The years 1874-75 were precarious times for federal appointees in Colorado Territory; often this era is known as the "Grant Purge." Though Hallett was the only territorial official to survive, rumors circulated on the streets of Denver that a clique of his former friends had tried to unseat him.⁴⁹ Of the various explanations of Hallett's political durability, the most interesting attributes his longevity of office to the influence of a college classmate, General John A. Rawlins. For years General and later President Ulysses S. Grant's most trusted advisor, Rawlins eventually was chief of staff and secretary of war, and the association of Hallett, Grant, and Rawlins with Galena, Illinois, undoubtedly worked to Hallett's advantage.⁵⁰ The precise explanation of Hallett's survival of the "Grant Purge" is still a matter of conjecture, but his performance ascertains that he was not politically inept.

⁴⁵ Ann W. and LeRoy R. Hafen, "The Beginnings of Denver University," *The Colorado Magazine*, XXIV (March 1947), pp. 64-66.

⁴⁶ *Daily Rocky Mountain News*, September 1, 1865, p. 1; September 4, 1865, p. 2; October 31, 1865, p. 1.

⁴⁷ Letter from Evans to Lincoln, March 6, 1865, photographic copy in the Lincoln Papers, Territorial Collection, Colorado State Archives and Records Service.

⁴⁸ *Daily Rocky Mountain News*, March 12, 1867, p. 2; Howard R. Lamar, *The Far Southwest, 1846-1912: A Territorial History* (New Haven: Yale University Press, 1966), p. 261.

⁴⁹ *Daily Rocky Mountain News*, February 4, 1874, p. 4.

⁵⁰ Fitz-Mac, *Political Portraits*, p. 214; "Ulysses Simpson Grant," *Dictionary of American Biography*, VII, 493; "John Aaron Rawlins," *Dictionary of American Biography*, XV, 402. Rawlins was a native of Galena, and Grant lived there briefly before the Civil War, clerking in a leather goods store.

With the birth of the "Centennial State" on August 1, 1876, Hallett's office as territorial judge terminated, but his distinguished career was far from its peak. President Grant appointed him as the first United States District Judge for the District of Colorado where he remained until retirement, May 1, 1906. These three decades of extraordinary service to community, state, and nation, based on a previous decade of experience as a territorial judge, cannot be ignored if true measure of the man is to be made.

While his most notable decisions from the district bench were in mining, water, and railroad litigation. Hallett displayed as well a keen interest in the federal court system in general. Consequently, he was soon engaged in steady correspondence with Senator Teller pertaining to the structure of the courts.⁵¹ New York Senator Roscoe Conkling was intent on increasing the number of districts, but Hallett advised Teller that a more feasible approach would be the establishment of more court facilities throughout the state, making it possible for one judge to serve more effectively a greater number of citizens. While Hallett admitted New York might require more judges, he argued that Colorado could be served by one with proper facilities. On one occasion the Colorado judge wrote four pages on details of the organization of his court.⁵² Cynics may interpret Hallett's attitude as protection of self-interest; admirers will praise his energy and sense of duty.

The brilliant interpretations of mining law begun by Hallett as a territorial judge were augmented by dozens of important opinions from the district court. Estimates by fellow members of the Colorado Bar credit Hallett, in his thirty years as federal judge, with hearing nine-tenths of all mining suits argued in the state during his tenure.⁵³ In upholding Hallett's definition of a lode in *Iron Silver Mining Company v. Cheesman*, the United States Supreme Court wrote in its opinion: "We are not able to see how the Judge who presided at the trial of the case, could have better discharged this delicate task than he has in the charge before us."⁵⁴

Considerable prestige was gained by the newly founded University of Colorado Law School when, in 1892, Hallett was named its first dean and professor of American constitutional

⁵¹ Letters from Hallett to Teller, Teller Letters 417, 418, 419, 236, Denver Public Library Western Collection.

⁵² *Ibid.*, 418.

⁵³ Memorial in *Colorado Bar Association Report*, XVI (1913), p. 311.

⁵⁴ Quoted in Wells, *Colorado Bar Association Report*, IX, 18.

law and federal jurisprudence.⁵⁵ By 1898 the school boasted a faculty of twenty-seven, most of whom were evidently on a part-time basis.⁵⁶ In 1902 Hallett resigned from his positions there.

Hallett's interest in charitable causes was widespread, and he supported many of them with considerable donations. In memory of his wife, the Katherine Hallett Home for Nurses at Saint Luke's Hospital was built. As the trustee of the George W. Clayton estate, the judge was instrumental in the establishment and development of Clayton College for Boys, still a thriving institution in Denver.

The most fascinating aspect of Hallett's life lies in the accumulation of the better part of a million dollars by the time of his death, April 25, 1913, with scarcely a hint of corruption during his forty-year tenure in office. His highly acclaimed perception of the law must have been matched only by business acumen. In 1866 at the time of his appointment, territorial judicial salaries were eighteen hundred dollars per year. The following year this figure was increased to twenty-five hundred and, in 1870, to three thousand.⁵⁷ Most of his colleagues found little money left over after the high cost of living. Since his father was only a moderately successful Illinois frontier farmer, it is not likely Hallett received significant financial resources from home.⁵⁸ In 1882 Hallett did marry the daughter of a merchant in Galena, Illinois, but by then he was reputed already to have considerable wealth.



In later years Hallett posed for this portrait with his young grandson.

The answer to this puzzle seems to be, using today's parlance, his ability as a "promoter." Evidently efforts in this direction date from his association with Hempstead, who in turn arranged for Hallett's job with Bennet. But the first solid evidence of this characteristic was the incorporation, January 9, 1863, of the Julesburgh [sic] and Fort Lupton Wagon Road Company. The terms of incorporation gave the company a ten-year franchise to build and operate a toll road between Julesburg and Fort Lupton. Capital stock was \$12,000, and there were two other incorporators, Andrew J. Williams and M. C. Keith.⁵⁹

The nature of his law practice prior to his appointment is evidence of a connection from the beginning with the moneyed interest over the territory. Frequent notices of Hallett's real estate transactions in the *News* attest to his rapid involvement in land deals, with some sale prices amounting to one-third of his yearly salary.⁶⁰ While no specific record of mining ventures has been uncovered, the close association indicated by his law practice with the mining industry is ample ground for conjecture that he had financial interests in the territory's most important economic segment during the early 1860s.

The history of economic growth in Colorado after the territorial period clearly suggests Hallett was closely allied with several of the state's most powerful financiers. Records of incorporation reveal Hallett to be in frequent company with David H. Moffat, Walter S. Cheesman, and George W. Clayton. In 1886 this group chartered the First National Bank of Aspen with capital stock reaching \$100,000 within two years.⁶¹ With the same group and others, Hallett was an incorporator of the National Trust Company in Denver in 1891, which soon evolved into one of the city's most important financial institutions, the International Trust Company.⁶² In 1895 Cheesman, Moffat, and

⁵⁵ "Moses Hallett," *Dictionary of American Biography*, VII, 155; *Denver Republican*, April 26, 1913, clipping in the Dawson Scrapbooks, LXV, 15.

⁵⁶ *Graphic*, VII (April 15, 1898), p. 253, copy in the Western History Collection, Norlin Library.

⁵⁷ U.S., *Statutes at Large*, Vol. XII (December 5, 1859-March 3, 1863), "An Act to provide a temporary Government for the Territory of Colorado," February 28, 1861, ch. 59, art. 11, p. 175; *ibid.*, Vol. XIV (December 1865-March 1867), "An Act amendatory of 'An Act to provide a temporary Government for the Territory of Montana,' approved May twenty-six, eighteen hundred and sixty-four," March 2, 1867, ch. 150, art. 7, p. 427; *ibid.*, Vol. XVI (December 1869-March 1871), "An Act to regulate the Salaries of chief Justices and associate Justices in the Territories," June 17, 1870, ch. 130, p. 152.

⁵⁸ Letter from William K. Alderfer with reference report, March 29, 1968.

⁵⁹ Certificate of Incorporation, Colorado State Archives.

⁶⁰ See, for example, the *Daily Rocky Mountain News*, February 26, 1874, p. 4; June 11, 1874, p. 4.

⁶¹ John G. Canfield (ed.), *Mines and Mining Men of Colorado* (Denver: John G. Canfield, Publisher, 1893), p. 32.

⁶² Stone, *History of Colorado*, I, 402.

Clayton along with Hallett were heavily involved as incorporators and directors of the Denver Union Water Company, which had a capital stock of \$7,500,000 and was created to consolidate nine water companies of the Denver area.⁶³

Probate records list the total cash value of the estate of Moses Hallett at \$851,806.19. Real property, valued at \$274,760.00, consisted of fifty-three parcels of land, primarily lots in Denver and Pueblo. There was some acreage in Jefferson and El Paso counties as well as a few mining properties. The bulk of the personal property, valued at \$576,046.19, was in the form of some 140 notes, mainly to individuals, a majority of which were bearing seven-percent interest. Only insignificant amounts of stock were listed. The first year following his death, Hallett's estate earned \$39,813.08; of this amount \$35,947.58 was from interest, with rents comprising the balance.⁶⁴ It is clear Hallett had divested himself of all meaningful holdings of stock, and, whether or not it was his intent, he deprived researchers of an obvious clue to even his more recent major corporate investments.

Except for a confrontation with the state tax collector over unpaid taxes in 1909,⁶⁵ the only hint of irregularities in his financial affairs is based on criticism of his railroad decisions, and only insinuations are offered in that area. Perhaps intensive investigation of the tax litigation would produce a lead, but throughout his career, only superlatives were offered, at least publicly, in praise of his integrity, conduct, and judicial ability, qualities which obviously did not inhibit his business activities.

Historians have often classified the judiciary as the weakest branch of a territorial administration characterized by inefficiency and corruption,⁶⁶ and this image has some basis in fact, particularly with respect to several of the first appointees in Colorado. However, the contributions of Moses Hallett stand as a compelling argument against the "carpetbagger" description in reference to the later territorial bench. The assembly in 1866 had wisely assessed territorial needs. Mining operations and titles together with irrigation posed "novel and peculiar" problems which could best be solved by local citizens "identi-

fied with the people" and who would "attend to their public duties." Moses Hallett was no disappointment in the achievement of these objectives.

JOHN D. W. GUICE, who is assistant professor of history at the University of Southern Mississippi, Hattiesburg, participated in the Conference on the History of the Territories of the United States held last fall in Washington, D.C.

⁶³ Clyde Lyndon King, *The History of the Government of Denver with Special Reference to its Relations with Public Service Corporation* (Denver: The Fisher Book Co., 1911), p. 202.

⁶⁴ Inheritance tax appraisals and receipts, File No. 15889, Probate Court of the City and County of Denver (formerly known as the Denver County Court).

⁶⁵ *Denver Post*, November 8, 1909, p. 1.

⁶⁶ Earl S. Pomeroy, *The Territories and the United States, 1861-1890* (Philadelphia: University of Pennsylvania Press for the American Historical Association, 1947), p. 61.

The Impact of the Colorado State Constitution on Rocky Mountain Constitution Making

BY GORDON M. BAKKEN

Not only did Colorado's constitutional convention of 1875-76 write fundamental law for the Centennial State, but it also exerted an impact throughout the Rocky Mountain territories. When delegates assembled in later conventions, they looked to their regional experience and particularly to Colorado's precedents for guidance. Delegates studied the Colorado constitution and the state's entire legal experience in debating eminent domain, taxation of mining industries, and water rights—areas of special concern to territories with substantial mining constituencies represented in their constitutional conventions.

The Colorado experience provided both a model and a rhetorical tool for debate. Although Colorado's provisions were derivative of her own experience, they offered conservatives of other territories a powerful argument. One can point to specific sections in various constitutions to show Colorado's influence, but the overall attitudes were more significant to the constitution-making processes than to the provisions finally adopted in the constitutions.

This investigation is concerned with these influences on the making of other state constitutions. Consequently, in choosing the parameters for study, the focus is upon specific constitutional questions and roll-call alignments. This orientation to issues, by means of a quantitative method, is at the expense of methods which would produce more reliable data on partisan behavior. However, as these constitutional issues and law in general are of present concern, and as the attitudes in-

involved permeated much of late nineteenth-century legal thinking, concentration upon their formation rather than upon partisan behavior is permitted and emphasized by the choice of issue-oriented roll calls.¹

Methods of roll-call analysis used in this paper are the cluster-bloc² and Guttman-scaleogram³ techniques. Both devices have limitations. The cluster bloc may not reveal shifting patterns of agreement and does not identify radicals within the bloc. The use of the debates can clarify this problem but cannot solve it completely. The scaleogram is designed to rectify this situation by identifying delegates with extreme adherence to positions. However, the scaleogram masks temporary relationships, fails to isolate self-conscious groups, and rejects roll calls which will not scale. On the whole, neither the cluster-bloc technique nor the Guttman scale is perfect or all-revealing; but, if used together in conjunction with traditional historical evidence and analysis, these methods can reveal the constituent factors which produced fundamental law.

For example, the composition of Colorado's convention and voting patterns by delegates forecast the later conventions with certain exceptions. One incidental exception was that, although fifteen of Colorado's thirty-nine delegates were lawyers, the other Rocky Mountain territories were to send only handfuls of attorneys to convention halls.⁴ Also, Colorado's delegates

¹ The Colorado analysis was based on twenty roll calls involving the issues of the grand jury, religion, eminent domain, railroad rates, corporations, prohibiting a release of liability in a labor contract, a board of county commissioners, and salaries. *Proceedings of the Constitutional Convention Held in Denver, December 20, 1875, to Frame a Constitution for the State of Colorado* (Denver: The Smith-Brooks Press, State Printers, 1907), pp. 86, 206, 206, 206-07, 201-02, 203, 203, 448, 450, 450, 498, 498, 499, 231, 231, 231, 454, 454, 502, 363-64, hereafter referred to as *Colorado Proceedings*.

² Patterns of constitutional convention delegate behavior can be described quantitatively through the use of several devices and the computer. If the percent agreement among the delegates on a variety of issues is calculated, cluster blocs may be constructed. By finding the two delegates with the highest pair-agreement scores, placing them in the upper left-hand corner of a matrix, and adding other delegates in a similar fashion, a cluster bloc is formed. The size of the bloc is largely determined by the minimum pair-agreement score chosen by the researcher. Generally, the higher the bloc minimum, the smaller the bloc. The bloc is a descriptive tool rather than a mathematically certain and conclusive device. Blocs must relate to observed behavior which we find in traditional historical sources. It only adds a graphic dimension to our analysis, but it does describe delegate behavior not otherwise available on delegates without stated positions on issues. For further discussion of this and the Guttman scaleogram technique see Allan G. Bogue, "Bloc and Party in the United States Senate, 1861-63," *Civil War History*, XIII (September 1967), pp. 224-25. The cluster bloc used was Bogue's Boguetab, Social Systems Research Institute, University of Wisconsin.

³ The Guttman scaleogram focuses upon individual roll calls rather than roll-call records. It identifies a roll call on which a small group of delegates votes against the majority. Then roll calls are added in which other delegates join the original minority until all the roll calls are added. This produces a scale which reflects delegate adherence to a particular position, radicals at either end of the scale and more moderate delegates in the center. This device provides the researcher with an indication of the extremity of delegate attitudes.

⁴ Howard R. Lamar, *The Far Southwest, 1846-1912: A Territorial History* (New Haven: Yale University Press, 1966), pp. 290, 407. For a biographical profile

met in the fall of 1875 in the midst of hard times and Granger dissent. The Panic of 1873 had halted new expansion of railroads and mining, and everyone in Colorado was feeling its effects.⁵ Although the delegates were writing their constitution in a watershed of American economic history⁶ and in a period of regional distress, the belief in prosperity in mining and railroad enterprises was not dead. Moreover, while the Grangers protested high freight rates and railroad practices, a faith in American enterprise and industrial capitalism permeated the delegation, as it did the other state conventions.

Colorado's convention was dominated by Republican voting power, as evidenced by the dispensation of patronage offices in the convention, but the party membership was divided by Henry P. H. Bromwell who led the "Granger faction" of from six to nine stalwarts. These men proposed the radical Granger approach to constitution making and gave the Democrats under Yale lawyer George E. Pease, a forceful personality in the convention, a good target for criticism. The Republicans could afford the division with a twenty-four to fifteen voting edge, but the state also was split on sectional lines between the English-speaking north and Spanish-speaking south. This sectional split on cultural grounds was exacerbated by an urban-rural split which was apparent in revenue and irrigation matters when Denver delegates were isolated by a coalition of farmers and ranchers. Finally, there was also a generation gap among the delegates. Wilbur F. Stone, Henry C. Thatcher, Casimiro Barela, and Lafayette Head were the only members of the "old guard," the younger generation being numerically dominant in the convention.⁷

These cleavages in voting attitudes worked within the general political context which found the Granger Republicans at

of the Colorado convention see the *Denver Daily Tribune*, February 14, 1876, supplement, and *Portrait and Biographical Record of the State of Colorado* (Chicago: Chapman Publishing Co., 1899), pp. 85-86, 109-10. On other conventions see Marie H. Erwin, *Wyoming Historical Blue Book* (Denver: Bradford-Robinson Printing Co., 1943), pp. 1308-16; *Twenty-Second Biennial Report of the Idaho State Historical Department* (Boise: n.p., 1950), pp. 8-16; Henry Knippenberg, *History of the Society of the Framers of the Constitution of the State of Montana* (Glendale, Mont.: Baler-Randolph Lithograph and Engraving Co., 1890), pp. 1-60; and the *Salt Lake Tribune*, March 4, 1895, pp. 1, 2.

⁵ Lamar, *Far Southwest*, p. 291.

⁶ *Ibid.*, p. 293. Also, see generally Carl Ubbelohde, *A Colorado History* (Boulder: Pruett Press, Inc., 1965), pp. 146-48, and Donald Wayne Hensel, "A History of the Colorado Constitution in the Nineteenth Century" (unpublished Ph.D. dissertation, University of Colorado, 1957), pp. 92-94.

⁷ On the Head-Barela-Thatcher-Stone relationship, Head voted with Barela fifty percent, Thatcher fifty-six percent, and Stone sixty-nine percent. Barela voted with Thatcher fifty-three percent and Stone fifty percent. Thatcher voted with Stone ninety percent. Both Thatcher and Stone were from Pueblo County, but the former was a Republican and the latter a Democrat. See figures 1 and 2.

one extreme and Pease Democrats at the other. The compromises that made the constitution possible were effected by the moderate Republicans who voted between the extremes.⁸ (See figures 1 and 2 for cluster-bloc and Guttman scaleogram analyses of roll-call votes in the Colorado convention.)

GRANGERS:

Byron L. Carr
100 J. S. Wheeler
94 94 William Lee
89 83 83 William E. Beck
74 68 63 84 S. J. Plumb
77 69 62 77 86 A. K. Yount
63 58 58 74 80 86 H. P. H. Bromwell

FIGURE 1

MODERATES:

W. C. Stover
77 Daniel Hurd
75 88 W. B. Felton
77 69 75 William James
59 71 69 82 William M. Clark
40 50 50 60 82 Lafayette Head
53 75 75 53 75 86 L. C. Rockwell

C. P. Elder

95 L. C. Ellsworth
75 81 Henry Crosby
87 75 67 William H. Cushman
63 78 63 63 George G. White

PEASE and SOUTHERNERS:

F. J. Ebert

91 Alvin Marsh
100 89 Casimiro Barela
67 67 80 E. T. Wells
69 78 60 74 Robert A. Quillian
83 79 67 67 94 John S. Hough
69 72 60 58 85 88 J. W. Widderfield
69 67 50 53 80 88 95 Henry Thatcher
69 67 50 42 70 81 85 90 Wilbur Stone
63 71 56 47 60 82 80 87 87 George Pease
62 61 60 37 55 63 70 75 75 87 Robert Douglas
62 61 50 26 55 63 70 75 85 80 90 J. C. Wilson
62 67 60 32 60 63 65 70 70 80 85 85 W. W. Webster

Generally, the higher the bloc minimum, the smaller the bloc. For example, while fifty-three percent is adequate to describe the Granger and Moderate blocs (excluding the Stover-Head score), the Pease bloc cannot be so described. The Pease bloc could be considered two blocs, Ebert to Widderfield and Thatcher to Webster. As the pair-agreement scores for E. T. Wells indicate, the Thatcher bloc strongly disagreed with him. But excluding Wells, a unified bloc at fifty percent is described.

FIGURE 2

SCALEOGRAM OF COLORADO DELEGATION BASED ON TWENTY ROLL-CALL VOTES

YYYYYYYYYYYYYYYYNNNNNNNNNNNNNNNNNNNNNN	Delegate	Party	County
++0+0000+ 00+0 ++ ++ ++	P. P. Wilcox	Rep.	Arapahoe & Douglas
+ + +000 ++ ++ +0++ + + + +	Henry R. Crosby	Rep.	LaPlata
++++ + + 0+++++ +++++ + + + +	William Lee	Dem.	Jefferson
+ + ++++++ ++ ++++++ + + + +	H. P. H. Bromwell	Rep.	Arapahoe
+++ + + + + + + + + + + + + +	William E. Beck	Rep.	Boulder
+++ +0+ ++++++ ++++++ + + + +	Byron L. Carr	Rep.	Boulder
+++ ++++++ ++ ++ ++ + + + + +	S. J. Plumb	Rep.	Weld
+0+ ++++++ +0 000+0+ + + + +	A. K. Yount	Rep.	Weld & Larimer
+00+0 + +0+ ++++++ + + + +	Lafayette Head	Rep.	Conejos
++ + + ++++++ ++++++ + + + +	J. S. Wheeler	Dem.	Weld
+ ++ + + + + + + + + + + + +	L. C. Ellsworth	Rep.	Arapahoe
+ ++0+ ++++++ ++++++ + + + +	C. P. Elder	Rep.	Arapahoe
++0++ ++++++ ++++++ + + + +	William M. Clark	Rep.	Clear Creek
++0++ ++ + + +0++ + + + + +	William James	Rep.	Park & Lake
+++++ ++0+ 0++00++ + + + +	William H. Cushman	Dem.	Clear Creek
+ ++++++ ++ + + +0 + + + + +	W. C. Stover	Dem.	Larimer
++ + + + + + + + + + + + +	Daniel Hurd	Rep.	Arapahoe
+ + +0 + + + + + + + + + + + +	L. C. Rockwell	Rep.	Gilpin
+ + + + + + 0+0++ + + + + + +	W. B. Felton	Rep.	Saguache
+ + + + + + + + + + + + + + +	Agapeta Vijil	Dem.	Las Animas & Huerfano
+ + + + + + 0+0+0 +00+00 ++	F. J. Ebert	Rep.	Arapahoe
+ + + + + + + + + + + + + + +	Alvin Marsh	Rep.	Gilpin
+ + + + + + + + + + + + + + +	Robert A. Quillian	Dem.	Huerfano
+ + + + + + 0+00+0 + + + + + +	John S. Hough	Dem.	Bent & Elbert
++ + + + + + + + + + + + + +	J. C. Wilson	Rep.	El Paso
+ + + + + + + + + + + + + + +	Wilber Stone	Dem.	Pueblo
+ + + + + + + + + + + + + + +	Robert Douglas	Rep.	El Paso
+ + + + + + + + + + + + + + +	Henry C. Thatcher	Rep.	Pueblo
+ + + + + + + + + + + + + + +	J. W. Wilderfield	Dem.	Bent
+ + + + + + + + + + + + + + +	W. W. Webster	Rep.	Clear Creek, Summit & Grand
+ + + + + + 0+0+0 +0+0 +00+ +	William R. Kennedy	Dem.	Rio Grande & Hinsdale
+ + + + + + 0+0+0+0+0+ + + + +	George Pease	Dem.	Park & Lake
+ + + + + + + + + + + + + + +	William H. Meyer	Rep.	Costilla
+ + + + + + + + + + + + + + +	George Boyles	Dem.	Las Animas
+ + + + + + + + + + + + + + +	Casimiro Barela	Dem.	Las Animas
+ + + + + + + + + + + + + + +	A. D. Cooper	Rep.	Premont
+ + + + + + + + + + + + + + +	E. T. Wells	Rep.	Arapahoe

With this alignment of delegates the Colorado constitutional convention approached the major issues, one of these being eminent domain. Eminent domain, the sovereign power of the state to appropriate real property for public use or for the public welfare, was a traditional concept which had split many other constitutional conventions when they attempted to define their own particular exceptions to the rule. Colorado's solution to this problem was to become a popular one in the late nineteenth century. Whereas the private use of another's property traditionally was obtained through contractual arrangements, environmental conditions in the West dictated a change in legal thinking. To enable irrigation and mining to succeed in an arid country, lawmakers recognized that users had to be delegated a portion of the sovereign's power. Miners and farmers required "ways of necessity" for water ditches, flumes, drains, and the like. A denial of this right of way could choke the economic livelihood of the region. Consequently, early in territorial

history the mining and irrigating territories recognized this private prerogative to use eminent domain powers.

The Colorado delegates, standing as they did at a crossroad of economic history, made crucial decisions for future generations. Market processes had to be promoted; but, as the balance of economic power shifted away from the individual, delegates recognized that rampant capitalism needed limitations. The Granger element, led by Bromwell, articulated this need for imposing restraint and succeeded in part. In broad terms the convention forbade the taking of private property for private use but then listed numerous exceptions. Private ways of necessity, reservoirs, drains, flumes, and ditches were excepted if for agricultural, mining, milling, domestic, or sanitary purposes. The extensive exceptions and practical realities of their application mooted the broad prohibition. Conceding the necessity of the provision, the delegates sought a balance by providing for review of damages by a board of commissioners of three or more freeholders or a jury. Until damages were paid, the property could not be "needlessly" disturbed. Questions of "public use" were specifically delegated to the judiciary "without regard to any legislative assertion."⁹

Colorado's response was dictated by a growing concern in the West for maintaining the fluidity of market processes unhampered by what delegates considered unwarranted interference by interests operating in the legal system. At the same time, the delegates recognized the limits of their power in that the processes had to be operative within a legal framework. The right of eminent domain for ways of necessity was a statement of economic belief, while its constitutional regulation was a response to experience and future apprehensions. The balancing process in determining damages withdrew discretion from the normal channels. This marginally allayed fears of corporate lawyers dominating legal proceedings at the conventions and, more importantly, speeded along the whole eminent domain issue by establishing the board of commissioners. The delegation of power to the courts to decide the issue of "public use" removed the question from the political caprice of the legis-

⁹ See Colo. Const. art. II, secs. 14, 15; *Colorado Proceedings*, pp. 205-07. Note that the Felton and Rockwell amendments to expand the included exceptions won wide margins. The Stone amendment, *Colorado Proceedings*, p. 207, to insert "needlessly" before "disturbed" in sec. 15, won by a much narrower margin, seventeen to ten. This Stone amendment was "Granger" in nature but reasonable in context, and enough "miner" votes swung this small victory. On the final passage, only southwestern delegates and their allies opposed the measure; and this opposition was consistent on most issues related to mining interest. See also Hensel, "A History of the Colorado Constitution," pp. 138-39.

⁸ Lamar, *Far Southwest*, pp. 290-93; Ubbelohde, *A Colorado History*, pp. 146-48.

lature. In theory, the market processes were promoted and equity was protected.

The Idaho convention met in Boise in 1889. Although delegates drew directly on their territorial heritage and the Colorado precedent in debating the merits of private eminent domain, more than a decade of American economic history separated the conventions and the Populist critique had achieved more vitality. The delegates were divided into two major groups on this issue: miners and non-miners. Within each group factions based their voting on broad theory: whether or not private power should be subject to public power in the sphere of mining and agricultural development. Within this framework delegates debated the proper locus of economic decision-making. The coalition of miners and free-enterprise delegates dominated the convention, but significant opposition forced them to resort to parliamentary maneuver.

Idaho delegates came to these convention debates with a long territorial heritage and constant reminders by the press of the significance of the issue. Idaho territorial law and the federal mining laws of 1866 and 1872 had permitted the taking of private property for ways of necessity for miners.¹⁰ These statutes, however, did not retard the desire for a constitutional right. The *Idaho Daily Statesman* called for a positive use of the state's power of eminent domain in private hands to promote mineral and agricultural development and characterized the issue as one of vested versus states' rights.¹¹ The statement of the right in the constitution would guarantee Idaho's growth, according to the *Statesman*. Delegates were in agreement that the right was necessary due to environmental conditions and was a proper means of stimulating economic growth. They disagreed, however, on the extent to which the sovereign power of the state should be delegated to private power. Here interest lines were drawn.

Miner and non-miner delegates rallied behind specific proposals and fought over their merits. Non-miners, led by Weldon Heyburn, a Shoshone County lawyer, and Orlando Batten, a Ketchum lawyer, advocated the adoption of Colorado's consti-



Weldon Heyburn, a lawyer from Shoshone County and member of the Idaho convention.

tutional provisions. These provisions, they argued, were proved by time and provided sufficient safeguards against the uncompensated taking of private property. The miners, on the other hand, pushed for a broad grant of power. Led by William H. Claggett, the convention president, the miners parried with statements on the nature of state power, the "necessities of our country," and the interests of miners.¹² Each group characterized its particular proposal in terms of its benefit either to agriculture or mining. Moderates, operating between these poles of opinion, emphasized the importance of irrigation; but they specifically tried to strike a balance by tempering the miners' proposal with limiting clauses taken directly from the Colorado constitution.

Early efforts at compromise failed because of the unwillingness of extremists to moderate their views. Delegates of the non-mining interests characterized the miners' proposal as "thievery" and a "tool of monopolists."¹³ Miners warned that if their proposal did not pass, the whole constitution could be lost. However, the rhetorical deadlock was mooted by the overwhelming acceptance of a committee proposal written by the miners.¹⁴ But when the measure came up for final consideration,

¹⁰ *General Laws of the State of Idaho Passed at the First Session of the State Legislature Convened on the Eighth Day of December, A.D. 1890, and Adjourned on the Fourteenth Day of March, A.D. 1891, at Boise City* (Boise City: Statesman Printing Company, 1891), p. 577. See also *Proceedings and Debates of the Constitutional Convention of Idaho* (2 vols.; Caldwell, Idaho: Caxton Printers, Ltd., 1912), I, 288-313, hereafter referred to as *Idaho Proceedings and Debates*. Note Claggett speeches for reference to precedent in federal mining law.

¹¹ *Idaho Daily Statesman* (Boise), July 20, 1889, p. 2. When the convention completed its work, the paper praised the measure as a positive step toward prosperity. *Ibid.*, August 2, 1889, p. 2.

¹² *Idaho Proceedings and Debates*, I, 299 (Gray); I, 328 (Claggett); II, 1615 (Beatty).

¹³ *Ibid.*, I, 356 (Batten); 358-61 (Ainslie).

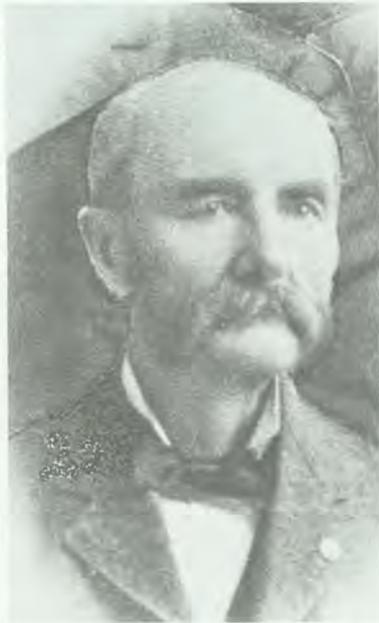
¹⁴ *Ibid.*, p. 366.

the opposition renewed its epithets, and one delegate dramatized his disgust by walking out.¹⁵ The miners tried to soothe the opposition by demonstrating that their measure had precedent in other state constitutions. Thereupon Batten again offered the Colorado sections, opening the debate anew.¹⁶ Former territorial Chief Justice John T. Morgan, who had previously advocated compromise, now voiced the miners' argument, for in the intervening time the miners had made Morgan aware of the necessity of their position.¹⁷

With the battle lines firmly drawn, the issue of constitutionalism was invoked as the measure was pushed to a vote. James Wesley Reid, former North Carolina congressman and a Lewis-



John T. Morgan



James Reid

ton lawyer, objected to the miners' version on the grounds that it contained no limits for power. Property could be taken, he asserted, for "any purpose on God's green earth" and that in itself was unconstitutional.¹⁸ This broad coverage, its opponents vehemently claimed, subjected all property owners to arbitrary

power, contrary to any concept of constitutionalism.¹⁹ H. S. Hampton, a Cassia County lawyer, replied for the miners. The Colorado constitution provisions were too narrow, he argued, as the miners wanted something that would "cover every industry."²⁰ This argument was discredited quickly as an open-ended invitation to rank injustice.²¹ Seeing their advantage dwindling, the miners forced to a vote Batten's section, which had been drawn from the Colorado model. This lost by a wide margin, fourteen to thirty-three. The non-miners then engaged in an amendment fight based on constitutionality. Reid offered an amendment limiting the definition of what constituted a necessary purpose. This lost seventeen to thirty-one. George Ainslie, a Boise lawyer, immediately offered a similar amendment which lost twenty-two to twenty-seven. Under this onslaught of offensive amendments, the miners resorted to a parliamentary power play. With Morgan presiding, the miners rammed the section through on a voice vote. The non-miners received their defeat with resignation, a frequent occurrence in the Idaho convention.²² The economic arguments of the miners had carried the day and become fundamental law.²³

The Idaho experience represented an extreme in constitution making on this issue, which was implicitly recognized as legislation. This assertion of power, as in Colorado, deprived the legislature of its function as policy maker. All delegates agreed that something on eminent domain was required in the constitution and feared solely court interpretations, and that only in minimal terms. Economic considerations weighed more heavily than constitutional arguments in shifting votes and in orienting debate. As such, historic economic rights as defined in a bill of rights were fundamental, but economic necessity called for, and delegates responded with, a right of eminent domain akin to that existent under territorial law.

¹⁹ See "What Is a Public Use?" in "Idaho Constitutional Convention Journal Proceedings, Book B," MSS in the Idaho State Historical Society, Boise.

²⁰ *Idaho Proceedings and Debates*, II, 1623.

²¹ See *ibid.*, p. 1625 (Shoup).

²² See *ibid.*, p. 1633. Note Morgan's change of attitude, as evidenced in his speeches and in his actions in cutting non-miners off in debate; pp. 1612 (taking chair); 1619 (allowing Claggett extra time over protests of Mayhew); 1624 (cutting Hampton short); and 1633 (announcing voice vote). George Ainslie was one of Morgan's chief antagonists and one of the anti-miner spokesmen. See "Hawley Notes on Idaho Biography," in "James H. Hawley, Private Accounts," Boise, January 1, 1907, MSS in the Idaho State Historical Society.

²³ Based on the three above-mentioned roll-call votes, the non-miner bloc was composed of Batten, Chaney, Clark, Heyburn, Jewell, Lamoreaux, Mayhew, Pyeatt, Reid, Vineyard, and Pefley (one-hundred-percent agreement score). The miners consisted of Allen, Anderson, Armstrong, Beatty, Bevan, Cavanah, Claggett, Coston, Crutcher, Glidden, Hampton, Harris, Hays, King, Lewis, Maxey, McConnell, Melder, Myer, Moss, Sinnott, Underwood, Whitton, Wilson, and Lemp (one-hundred-percent agreement). Beane, Morgan, Pinkham, Ainslie, Campbell, Hasbrouck, and Hogan were the delegates who swung their allegiance before the voice vote.

¹⁵ *Ibid.*, II, 1597.

¹⁶ *Ibid.*, pp. 1607-09.

¹⁷ *Ibid.*, p. 1610.

¹⁸ *Ibid.*, pp. 1619-20.

Similarly, when the constitutional conventions deliberated the taxation of mineral wealth, the final product of each convention reflected the power of economic interests, territorial experience, and regional precedents. The evolution of legal thought on mining and the impact of convention procedures and bloc voting in constitution making also were evident.

Again economic interests often led to deadlocks on this issue in the conventions. Moderates, who held the necessary votes in several conventions, brought about compromise. The conventions usually stated their decisions on the issue in specific terms, although some deadlocks led to abdication to future legislatures. This behavior indicated a distrust by the conventions of legislative action and their assumption of a policy-making role for the new state. It also reflected the ability of economic interest blocs to act in concert to attain specific goals.

Although territorial experience with mining had resulted in a common belief that the industry was environmentally unique and that it needed some form of economic encouragement, delegates also recognized that statehood would necessitate increased tax burdens. Since mineral wealth was an appropriate object for taxation, the delegates were forced to consider the relative burden for that industry. Farming, cattle, and irrigation interests also sought favorable tax treatment, thus creating the political atmosphere for deliberations. Moreover, since delegates were increasingly aware of a public distaste for tax favoritism, they began to question the policy of tax exemptions and the equities of the entire system. However, while this debate came to the fore in Arizona, it was minimal in other conventions.

The taxation of mineral wealth was a critical issue for many conventions. Many delegates saw their constituencies scrutinizing the deliberations and threatening rejection of the whole constitution if sections adverse to mining were included. Within the conventions deadlock often generated an atmosphere of crisis. In this context delegates bargained for compromise and a constitution.

The Colorado delegates had long experience with mining economics, and pressure for encouragement of the industry was strong. In the constitutional convention the revenue committee reported a bold tax exemption for mines and mining property, but agrarian opposition was strong enough to limit the exemption to ten years.²⁴ Nevertheless, the section demonstrated

the voting power of the mining bloc and indicated the feasibility of similar action by other constitutional conventions. The Colorado miners were successful because of their voting strength, the depressed economic conditions of the times, and the necessity of economic encouragement to get the state moving. But other conventions were to meet under different conditions and with different convention delegations. Their use of the Colorado precedent was to demonstrate not only the acceptance of a regional experience but also the changing attitudes on mining as conventions repeatedly rejected exemption.

The Wyoming and Idaho conventions of 1889 illustrate the divergent paths Westerners were taking in the late nineteenth century. Mining in Wyoming was synonymous with the Union Pacific, and in 1889 that company was in political trouble. Westerners in general reacted to railroad abuses with new restrictions, railroad commissions, and the like.²⁵ Wyoming's delegates went to Cheyenne in 1889 to do something about long-standing railroad abuses; Union Pacific coal lands were only part of that effort. Idaho's delegates, on the other hand, were pro-mining and already had written extreme measures, such as provisions for eminent domain, into their constitution. Only the unexpected could prevent a tax exemption. Delegates in both Wyoming and Idaho waved the Colorado section before their delegations, but the atmosphere of each convention determined the course of debate.

Throughout the debates Wyoming delegates maintained a hard line on mining property taxation because of concern for adequate revenues and economic stability and also their desire to deal with the Union Pacific. The territorial press urged delegates to be courageous, unselfish men and blasted the inequity of the territorial mining tax which did not even pay the salary of the mine inspector.²⁶ Henry G. Hay, a Cheyenne banker, led

See also Hensel, "A History of the Colorado Constitution," pp. 177-78. On related tax matters, especially the taxing of church property, see the *Daily Rocky Mountain News* (Denver), December 30, 1875, p. 4; January 9, 1876, p. 2; *Denver Daily Times*, January 8, 1876, p. 2. See also H. P. H. Bromwell, "Bromwell's Minority Report on Suffrage, 1875-6, and Other Original Documents of the Colorado Constitutional Convention," bound documents in the State Historical Society of Colorado Library, Denver. The Colorado tax exemption did not extend to net proceeds or surface improvements, but exemption policy did give the mines a de facto exemption as the law was administered. Other conventions concentrated their attentions upon exemption as a general policy rather than on the particulars of the Colorado model.

²⁵ Robert E. Riegel, *The Story of the Western Railroads* (New York: Macmillan, 1926), p. 291.

²⁶ The *Cheyenne Daily Sun*, September 17, 1889, p. 2, urged the delegates on and equated an equitable tax with statehood itself. The *Cheyenne Daily Leader*, September 25, 1889, p. 2, noted the failure of the mining tax revenues to pay the salary of the mine inspector. See also "Scraps," MSS in the Grace Raymond Hebard Collection, University of Wyoming Library, Laramie.

²⁴ The Colorado revenue committee reported a section which exempted mines and mining property, but this position was tempered by the agrarian interests to a ten-year exemption. This, at least, put discretion into the hands of the legislature by 1886. *Colorado Proceedings*, pp. 414, 483, 505-07, 616-17.



Henry G. Hay



Melville C. Brown

the pro-mining attack. He introduced a substitute for the revenue committee article "taken almost word for word from the Colorado constitution." This measure provided for a ten-year tax exemption and minimal taxation thereafter. Hay used Colorado's "phenomenal" growth in mining as an illustration of what an exemption could do and maintained that Wyoming's condition was not "very difficult."²⁷ Melville C. Brown, president of the convention, was not swayed by the argument and pointed out that Colorado's mines had not put "five cents" in that state's coffers since 1876. He did not want Wyoming to be so afflicted and debt-ridden.²⁸ But Hay persisted with his oratorical offensive, urging the distinction between revenue and general economic prosperity. Tax incentives which yielded little revenue from one source, he maintained, would increase revenues from others.²⁹ The conceptual lines thus were drawn with an equitable concept of deriving tax dollars from mines in competition with the idea that exemptions benefited the whole state.

The tax-exemption scheme was attacked vehemently, and as division grew more ominous, delegates started to introduce compromise solutions which would give discretion to the leg-

²⁷ *Journals and Debates of the Constitutional Convention of the State of Wyoming* (Cheyenne: The Daily Sun, 1893), p. 637, hereafter referred to as *Wyoming Journals and Debates*.

²⁸ *Ibid.*, pp. 637-38.

²⁹ *Ibid.*, p. 643.



Frederick H. Harvey



A. C. Campbell

islature. Frederick H. Harvey, a Douglas lawyer, offered the provision for "proceeds alone being taxed," as provided by the Nevada constitution; but Brown continued his assaults, arguing that a static tax had to be imposed to prevent state legislative jobbery. Brown suggested a two-cent-per-ton tax, which prevailed as the Hay and Harvey sections were voted down.³⁰ The *Cheyenne Daily Sun* editorially supported this tax on actual tonnage, and it received increasing support in the convention.³¹ With this additional backing, the Brown forces moved to put specific tax provisions in the constitution. Their proposal of a minimum tax on output, however, provoked other delegates to call on the convention to leave the matter to the legislature. Anthony C. Campbell, United States Attorney for Wyoming, added his support to moderation by branding the proceeds tax as a tool of speculators which would allow them to sit on their holdings without paying any tax.³² Campbell's objections found

³⁰ *Ibid.*, p. 663 (Harvey); p. 663 (Brown); p. 673 (Hay amendment); pp. 680-81 (Harvey amendment).

³¹ *Ibid.*, p. 681 (Campbell). The Brown substitute "provided further, that the output of coal mines shall be taxed at not less than one cent per ton for state purposes on each ton of coal mined, and not less than one-half a cent per ton for county purposes on the same produce." *Ibid.*, p. 683; *Cheyenne Daily Sun*, September 22, 1889, p. 2. See also the continuing editorial comment in the *Sun*, September 15, p. 2; September 19, p. 2; September 24, p. 2; September 25, p. 2; and September 27, p. 2. In terms of the relative weight of the territorial tax system, the coal mines greatly benefited, paying only 1.5 percent of the total, while livestock owners paid 32 percent. *Cheyenne Daily Sun*, September 25, 1889, p. 2.

³² *Wyoming Journals and Debates*, pp. 684-97 (Campbell amendment and debates).

fruition in section 2 of the article, where, although Brown's substitute was lost, its spirit was enacted. Wyoming delegates levied a tax on dormant coal lands, surface improvements, and the gross product of the mines.³³ The tax on the gross product was in lieu of taxes on land, and the taxation of the gross proceeds by value rather than tonnage avoided the specificity which the Brown forces had advocated.

Wyoming's compromise solution went far beyond Nevada's in taxing gross proceeds, but it did not perpetuate an extreme form of exemption as did Colorado's. The Wyoming taxation scheme was harsher than those in other Rocky Mountain states, but the object of taxation, the Union Pacific, was obvious. Only the efforts of a few delegates prevented a tax policy whose static nature could have crippled the mining industry. The final solution, at least, allowed the burden of taxation to fluctuate with the value of coal and the economy in general.

The Idaho convention never seriously deviated from territorial practice in formulating its provisions. Exemptions had been public policy, and mining delegates took full advantage of traditional practice. When a general ad valorem section was offered, the miners immediately proposed that the legislature be allowed to exempt "a limited amount of improvements upon land."³⁴ The floodgate thereby was opened to numerous other interests to exempt forever their property from taxation.³⁵ In the exuberant flood of exemptions Charles M. Hays, a miner and editor of the *Owyhee Avalanche*, offered an omnibus provision modeled on Colorado's.³⁶ But when finally one delegate

³³ Wyo. Const. art. XV, sec. 2: "All coal lands in the State from which coal is not being mined shall be listed for assessment, valued for taxation and assessed according to value." Sec. 3: "All mines and mining claims from which gold, silver and other precious metals, soda, saline, coal, mineral oil, or other valuable deposits, is or may be produced shall be taxed in addition to the surface improvements, and in lieu of taxes on the lands, on the gross product thereof, as may be prescribed by law; provided, that the product of all mines shall be taxed in proportion to the value thereof."

³⁴ *Idaho Proceedings and Debates*, II, 1645.

³⁵ *Ibid.*, pp. 1652-53. The Parker amendment survived briefly in convention and became the central point of controversy. "Property, real and personal, of the United States, and property of the state and counties, and property of municipalities and common school properties, cemeteries not owned or used for private or corporate profit, public libraries, growing crops, livestock under six months old, and all mines and mining claims, both placer and rock in place, containing or bearing gold, silver, copper, coal or other valuable mineral deposits, shall be exempt from taxation: *Provided*, that all machinery used in mining, and all property and surface improvements appurtenant to or upon mining claims, which have a separate and independent value, shall be taxed as provided by law, and all laws exempting from taxation property other than hereinbefore mentioned shall be void."

³⁶ *Ibid.*, pp. 1654-55. Hays substitute: "All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws, which shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal; provided, that mines and mining claims bearing gold, silver or other precious metals, except the net proceeds and surface improvements thereof, shall be exempt from taxation for a period of ten years from the date of the adoption of this constitution, and there-

even wanted to exempt "net proceeds," the convention returned to an orderly discussion of the issues.³⁷ The exemption provision created a group reaction to legislation overtly favoring special interests, and some wondered who ultimately would pay the state's bills.

The situation brought delegates back to a consideration of principles. Exempting net proceeds went too far for some, but "exempting a lot of little things from taxation" seemed equally inappropriate to others.³⁸ Lycurgus Vineyard, a Hailey lawyer, thought the convention had missed the point of minimal taxation of mining. "The indirect sources of taxation that [grew] out of . . . mining enterprises" yielded revenue beyond any net proceeds, he maintained.³⁹ Picking up this argument and not wanting to lose control for their faction, the miners rallied behind the Colorado scheme.⁴⁰ Again, as in the Wyoming convention, miners found the Colorado experience analogous and lauded it as a work of constitutional genius, while the agrarian delegates damned it as an inequitable farce.

Riding the crest of their own oratory, the pro-mining delegates miscalculated their strength and, in advocating their extreme position, alienated the majority. Judge W. H. Claggett, the leading exponent of protection, set off the reaction when he offered an ironclad definition of net proceeds favorable to the miners.⁴¹ The proposal contained a slush-fund clause which obviously amounted to exempting mines from all taxes. Thereafter, one exemption amendment after another fell before the disgruntled majority.⁴² Finally, only a general statement of tax

after may be taxed as provided by law; and provided further that the household goods of every person being the head of a family to the value of \$200 shall be exempt from taxation; and ditches, canals and flumes owned and used by individuals or corporations for irrigating land owned by such individual members thereof, shall not be separately taxed so long as they shall be owned and used exclusively for such purpose; and lots with buildings thereon, if said buildings are used solely for religious worship or for charitable purposes; also cemeteries not used or held for corporate or private profit, shall be exempt from taxation unless otherwise provided by general law. All laws exempting from taxation property other than that herein mentioned shall be void."

³⁷ See *ibid.*, pp. 1703-07 for the other amendments and the Glidden amendment to strike "net proceeds."

³⁸ See *ibid.*, p. 1708 (Morgan) and p. 1713 (Parker).

³⁹ *Ibid.*, p. 1716.

⁴⁰ See *ibid.*, pp. 1716-17 for the King speech and pp. 1718-27 for the response. Also see *ibid.*, pp. 1722-23 (Ainslie).

⁴¹ *Ibid.*, pp. 1729-30. The Claggett amendment provided "that mines and mining claims bearing gold and silver or other precious metals, and the gross proceeds thereof shall be exempt from taxation; but the surface improvements and net proceeds thereof shall be taxed, and such net proceeds shall consist of the gross proceeds of the mine remaining after deducting all ordinary and proper expenses of conducting the business of the mine, the cost of all permanent improvement made during the fiscal year in which the tax is levied, and any surplus fund accumulated and undivided and held by the owner of the mine for the purpose of making further permanent improvements thereon, or for the working thereof, or meeting any disaster thereto, or unfavorable development therein."

⁴² See *ibid.*, pp. 1742-59. The Gray amendment struck all the exemption pro-

uniformity remained. Delegates then followed the middle path, allowing the legislature to exempt property and keeping territorial exemptions in force.⁴³ The resolution of the conflict turned discretion over to the legislature, which could best vary taxation according to need and the ability to pay. It was only because of parliamentary maneuver and interest deadlock that a static solution was not embodied in constitutional law.

The Rocky Mountain conventions of the nineteenth century produced tax schemes which favored certain interests, then. Even when certain industries no longer needed economic encouragement, the forces of tradition, inertia, and interest group politics argued for continued favoritism. The constitutional convention proved to be not only another forum for this continuing battle but also a peculiarly powerful one. The closer the respective conventions were to economic dependency on mining, the more credible pro-mining arguments seemed. But when mining delegates advocated extremes for constitutional law, agrarian radicalism helped to polarize convention debate and open the way for compromise. When compromise was available, extreme positions were tempered although familiar interests remained.

The territorial experience was the pattern for constitutional law in many instances, of which exemption is the best example. Leaving the matter to future legislatures in some instances also accomplished no more than allowing previous practice to continue. But the overriding characteristic of the tax debates and the constitutional provisions which resulted was a preoccupation with the particular. Equity and adequate state revenues were secondary matters and were dealt with through equalization schemes, interest legislation dominating taxation concerns in the constitutional conventions.

In the third major area, water rights, territorial Colorado had produced a unique western system, and her constitutional convention adopted that territorial precedent. Colorado's prior appropriation system was widely known in the Rockies, and

visions, leaving the general statement (pp. 1758-59).
⁴³ See *ibid.*, p. 1759 (Morgan amendment) and p. 1765 (Claggett amendment). The Morgan amendment passed thirty-three to fourteen and the Claggett amendment passed forty-one to ten indicating a desire to maintain the exempt status of certain properties. Idaho Const. art. 7, sec. 5: "All taxes shall be uniform upon the same class of subjects within the territorial limits, of the authority levying the tax, and shall be levied and collected under general laws, which shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal: *Provided*, that the legislature may allow such exemptions from taxation from time to time as shall seem necessary and just, and all existing exemptions provided by the laws of the territory, shall continue until changed by the legislature of the State: *Provided further*, that duplicate taxation of property for the same purpose during the same year, is hereby prohibited." *Ibid.*, p. 2067.

many of the territories had adapted it to their situations. Under these systems economic interest groups acquired vested rights and came to the conventions to protect them. Wyoming offered an alternative system with water administered through a state irrigation engineer rather than through market processes as in Colorado. However, experience with Colorado's system had developed by the time that conventions met in the late nineteenth century.

The constitutional conventions presented delegates with an opportunity for dynamic change or for interest entrenchment. Reformers were faced with the forces of inertia and vested interests, for prior appropriators had had favorable treatment in the territorial period and wished to continue it. Such problems frequently resulted in convention deadlock which generally was resolved in favor of continuing territorial practice.

The interest contests over water rights were predicated on the same beliefs as were those over mining taxation. All wanted economic advantage, to be sure, but equally they desired stability in economic functions. There was a desire to end abuses of the legal system and thereby to assure a seasonally constant supply of water. This conservative attitude toward legal institutions and process encountered difficulty in securing changes in the territorial system unless alternatives suggested a more equitable and stable system than did special interest legislation. The operation of these forces in the conventions forced political and parliamentary strategy into the open and illustrated the conservative nature of the delegates on the issue.

The Colorado delegates met in 1875 not only amid the gloom of the Panic of 1873 but also a severe locust plague and a growing public revulsion toward monopolistic water corporations. The Colorado Grange offered the convention a resolution which prohibited the legislature from ever giving away, selling, bonding, or granting charters to corporations for the use or control of water in the state. The Grangers wanted incorporation only of "actual settlers" upon whose land the water was to be used.⁴⁴ The *Greeley Tribune*, however, reminded the delegates that "nothing can be more out of place than for

⁴⁴ *Denver Daily Times*, December 20, 1875, p. 2. Colorado irrigation was fairly widespread by the time the convention met. The Greeley colony started large-scale works, but previously "an intelligent class of farmers" and cattlemen had extensive works. For a firsthand description of some of these works see T. J. Hickman, "Irrigation in Colorado, Colorado Dictations," John S. Routh, "Territory and State," and George H. Church, "Irrigation in Colorado, Colorado Dictations," MSS, Bancroft Library, University of California. According to his recollections, Church came to Colorado in 1861, built the first reservoir for irrigation purposes in 1868, introduced the first Herefords, and built a substantial cattle empire. Also see generally Ubelohde, *A Colorado History*, pp. 187-95.

lawyers to undertake to legislate on a subject of which they can have but a general idea."⁴⁵ The *Colorado Transcript* in Golden feared that the Republican majority was not reliable to "effectually guard against water and land grabs."⁴⁶ The *Denver Daily Tribune* urged, on the other hand, that the waters of Colorado be declared public property and that the state regulate them for the benefit of the people.⁴⁷ The public urgency was apparent. The first and all-important question was public ownership, without which all else would fail.

The issue was joined when public ownership resolutions hit the floor of the convention. Byron L. Carr, a one-armed Civil War veteran and Longmont lawyer, offered a resolution vesting ownership in the state, instructing the legislature to act equitably in distributing water and authorizing the legislature to pass irrigation incorporation laws.⁴⁸ S. J. Plumb, farmer-stockman and chairman of the irrigation committee, then offered a similar public ownership section. But the committee version was complicated by specific references to prior appropriation, eminent domain, price fixing by a board of county commissioners, a taxation provision, and a fence law.⁴⁹ The committee version was attacked by Willard B. Felton, a Lake City probate judge, who proposed a substitute which limited public ownership to unappropriated water.⁵⁰ Felton's substitute then became the basis for a compromise which left appropriated water as private property and the remainder in state hands.⁵¹ This half-a-loaf solution gained constitutional sanction.

The convention then adopted the familiar features of territorial law with prior appropriation being given constitutional sanction over the protests of a few. The *Greeley Tribune*, for example, pointed out that in some counties prior appropriation was not environmentally applicable; therefore, the question needed study and was best left to the legislature.⁵² But the protest was minimal and the territorial law became part of the constitution. Similarly, a section authorizing the county commissioners to set water rates became constitutional law. The

⁴⁵ *Greeley Tribune*, January 12, 1876, p. 2.

⁴⁶ *Colorado Transcript* (Golden), November 3, 1875, p. 2.

⁴⁷ *Denver Daily Tribune*, December 15, 1875, p. 2.

⁴⁸ *Denver Daily Tribune*, February 14, 1876, supplement; *Portrait and Biographical Record of the State of Colorado*, pp. 85-86; *Colorado Proceedings*, p. 44.

⁴⁹ *Denver Daily Tribune*, February 14, 1876, supplement; *Colorado Proceedings*, pp. 296-97.

⁵⁰ *Colorado Proceedings*, p. 344.

⁵¹ *Ibid.*, pp. 393, 406, 501, 504, 594, 615, 700. Also see Hensel, "A History of the Colorado Constitution," pp. 169-71.

⁵² *Colorado Proceedings*, pp. 296, 394, 406, 501, 502-04, 594, 615, 616, 700; *Greeley Tribune*, February 2, 1876, p. 2.

same provision had been on the books since 1861 and stimulated little debate. Only H. P. H. Bromwell, the Granger leader, suggested substantive alterations, but the familiar policy was retained.⁵³

When the Montana constitutional convention considered irrigation in 1889, it turned first to the Colorado system, became deadlocked on the issues, and resolved the conflict by doing nothing. The committee on irrigation reported a verbatim copy of the Colorado section to the convention,⁵⁴ a provision well known to the delegates. The irrigation issue became involved in the taxation controversy, which turned delegate attention to the question of corporate monopolies of water. Martin Maginnis, long-time delegate to Congress, noted the plight of the Greeley, Colorado, pioneers under the worst system of "landlordism and rack-rent" in the world.⁵⁵ Timothy Collins, a Great



Martin Maginnis



Timothy Collins

⁵³ *Colorado Proceedings*, pp. 61, 146, 297, 393, 490, 491, 505, 595, 616, 700-01; Hensel, "A History of the Colorado Constitution," p. 173; *Denver Daily Tribune*, January 7, 1876, p. 4. Even the *Greeley Tribune*, January 12, 1876, p. 2, criticized Bromwell's proposals. Also see Bromwell, "Bromwell's Minority Report on Suffrage, 1875-6, and Other Original Documents of the Colorado Constitutional Convention," p. 2.

⁵⁴ *Proceedings and Debates of the Constitutional Convention Held in the City of Helena, Montana, July 4th, 1889, August 17th, 1889* (Helena: State Publishing Company, 1921), p. 376, hereafter referred to as *Montana Proceedings and Debates*.

⁵⁵ *Ibid.*, p. 472. On Maginnis see James Hamilton, *Wilderness to Statehood* (Portland: Binsford and Mort, 1957), pp. 202-03, 483-84, 526, 532, 575-88; Knippenberg, *History of the Society of the Framers of the Constitution of the State of Montana*, p. 63; *Daily Inter Mountain* (Butte), July 8, 1889, p. 2.

with "simple and concise language," and suggested an article based on the Colorado system.⁶² In the convention the Wyoming and the Colorado systems were offered for consideration. The argument against the Wyoming system was four-fold. Most delegates agreed that the cost of an engineer was prohibitive to a fledgling state. A few thought the whole scheme revolutionary. This view was well received by a conservative convention whose main concern was to avoid experimentation. The Wyoming system also violated traditional concepts of property rights and thus might antagonize Congress. But one of the most persuasive arguments was that the Wyoming system was only a minor improvement on the district system which Utah already had. Besides, many argued, declaring water to be public property would interfere with "business as usual."⁶³

Proposal of the Colorado system received similar treatment. One delegate charged that Colorado had copied Utah's territorial system and had "made a plumb muddle of it."⁶⁴ Hence, if there was no substantive difference, why not maintain the territorial system? A majority of delegates agreed and the convention passed an innocuous declaration reaffirming a half century of Mormon practice. The delegates who supported the Wyoming system tried to convince others that uses were becoming more complicated, but the Mormon majority had a vested interest not only in confirming its rights to water but also in retaining control of the system in the state legislature. Thus, territorial practice again was confirmed by a constitution.

In summation, the work of Colorado's constitutional convention provided later Rocky Mountain conventions with concrete legal experience to use both as a mode and as a basis for debate. Eminent domain, mining taxation, and water rights all were dominant issues of the entire region, and thus Colorado's constitutional experience was pertinent to the others. Moreover, the legislative procedures developed in Colorado were reflected in the other conventions. Although later con-

ventions considered their own particular territorial experience as the most relevant factor in drawing up provisions in their conventions, all paid close attention to the work of the Centennial State delegates of 1876.

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⁶² *Deseret Evening News* (Salt Lake City), March 7, 1895, p. 4; March 19, 1895, p. 2; March 20, 1895, p. 4; April 3, 1895, p. 4.

⁶³ *Official Report of the Proceedings and Debates of the Convention Assembled at Salt Lake City on the Fourth Day of March, 1895, to Adopt a Constitution for the State of Utah* (Salt Lake City: Star Printing Company, 1898), p. 1203, hereafter referred to as *Utah Proceedings and Debates* (Chidester: "The engineer and board of control . . . is an expensive luxury in which we do not, or should not wish to indulge."); p. 1203 (Lauritz Larsen: "I am not in favor of creating new and expensive offices in this state."); p. 1209 (Maloney: "You cannot take away vested rights by constitutional amendment or enactment."); p. 1211 (Snow: "We are very jealous of our water rights."); *Deseret Evening News*, March 7, 1895, p. 4: "The idea of district systems of irrigation in which land owners are also owners of water, has shown itself to be well adapted here."

⁶⁴ *Utah Proceedings and Debates*, p. 1213 (Hammond).