The Constitution of the State of Deseret

Peter Crawley

For the collector of Utahiana, the 1849 Kanesville *Constitution of the State of Deseret* is a fascinating book. It is the founding document of government in the Intermountain West; it is one of the first books published in Kanesville, Iowa; and it is a great rarity.

It is also one of the primary sources for the history of the beginning of government in the Great Basin. The standard versions of this story are perplexing, for they describe two concurrent, parallel efforts on the part of the Mormons to obtain a territorial government and to obtain statehood. And the question has persisted, why did the Mormons make competing, apparently independent applications for the two forms of government? The reason for this perplexity now seems clear; for, as I will argue below, *Constitution of the State of Deseret* describes events that did not take place and conveys impressions that were not justified. Which, of course, makes the book that much more intriguing.

With the exception of Utah, the western states were settled by every kind of adventurous soul, each drawn across the overland trail by his own particular vision. Manifest Destiny and the American Dream quickened the step of these pioneers. Individual enterprise was their guiding principle. Utah, on the other hand, was settled by Mormons whose visions were of Zion, not El Dorado. Cooperation, sacrifice, and obedience were Mormon guiding principles; the society they would build in the tops of the mountains was the focus of their commitments.

In contrast to the other western states, the basic structures that in one guise or another would govern in Utah were already in place before the Mormons entered the Great Salt Lake Valley in July 1847. These were the principal councils of the Church instituted in Ohio and Illinois many years before the move to the West. When the Mormons first pushed into the valley, the Council of the Twelve Apostles presided over the Church; the First Presidency had not yet been reorganized following the death of Joseph Smith. Six months

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Peter Crawley is a professor of mathematics at Brigham Young University. This essay, prepared in commemoration of the two millionth volume acquired by the Harold B. Lee Library at Brigham Young University, was originally published in Friends of the Library *Newsletter*, no. 19 (1982). It is reprinted here by permission.

later, however, after Brigham Young and most of the Twelve had returned to Winter Quarters (now Florence, Nebraska, near Omaha), the First Presidency were formally sustained, with Brigham Young as president and Heber C. Kimball and Willard Richards counselors.[1] All of the First Presidency and the Twelve belonged to the Council of Fifty, a body of about fifty men formed by Joseph Smith just before his death. Influential only insofar as the First Presidency and the Twelve allowed it to be, the Council of Fifty helped organize the exodus from Illinois and would serve for a time as a governing agency in the Salt Lake Valley.[2]

Five weeks after they reached the valley, Brigham Young and seven others of the Twelve turned back to Winter Quarters. On 5 September, near South Pass, they met another Mormon company heading for Salt Lake, of which John Smith, uncle of Joseph Smith, was a member. The next day the eight Apostles met with the officers of the two companies and nominated a presidency, a high council, and a marshal for Great Salt Lake City. John Smith was selected as president; Charles C. Rich and John Young were suggested as counselors. Henry G. Sherwood, Thomas Grover, Levi Jackman, John Murdock, Daniel Spencer, Lewis Abbott, Ira Eldredge, Edson Whipple, Shadrach Roundy, John Vance, Willard Snow, and Abraham O. Smoot were nominated for the high council.[3] On 3 October, a Church conference in the Salt Lake Valley formally sustained these officers, along with John Van Cott as marshal.[4]

For almost a year the responsibility for governing the Salt Lake pioneer colony rested with this high council, and with two Apostles, Parley P. Pratt and John Taylor, who remained in the valley and exerted considerable influence over the affairs of the community.[5] The high council drafted laws, levied taxes, apportioned land to the settlers, issued water and timber rights, located a cemetery, and imposed fines and punishments for criminal offenses.[6] When Brigham Young returned to the valley in September 1848, these civil responsibilities passed to the Council of Fifty, and on 6 January 1849 the high council was formally relieved of its municipal duties.[7] For another year the Council of Fifty met weekly at the house of Heber C. Kimball and directed the affairs of the colony. John D. Lee's diaries make it clear that the Apostles were far and away the most influential members of the council, especially Brigham Young, whose presence dominated the meetings.[8] This simple, practical form of government served the fledgling community well, and the early legislative decisions of the high council and Council of Fifty established precedents that would channel the deliberations of later territorial legislators. Had the

Mormons not lived in the middle of the United States, had they not faced the necessity of sooner or later coming to terms with the federal government, they likely could have survived for years with a government no more formal than the Council of Fifty.

But from the beginning the Mormons expected to engage the federal government. As early as December 1847—six weeks before the signing of the treaty of Guadalupe Hidalgo—the Twelve declared their intention to petition for a territorial government in the Great Basin "as soon as circumstances will permit."[9] One year later they took a first step. On 9 December 1848, shortly after it began meeting in the valley, the Council of Fifty voted to petition Congress for territorial status. It appointed a committee to gather signatures for the petition, and it proposed a slate of territorial officers: Brigham Young, governor; Willard Richards, secretary; Heber C. Kimball, chief judge; Newel K. Whitney and Parley P. Pratt, associate judges; and John M. Bernhisel, marshal. Here the council discussed the chief concern of the Mormons as they moved toward a more formal government: their determination to be governed by their own leaders and their abhorrence of unsympathetic carpetbag appointees who might be sent to the new territory. Here also it gave the territory a uniquely Mormon name, taken from the Book of Mormon, to symbolize industry: Deseret.[10]

The next day Thomas Bullock, secretary to Brigham Young and to the Council of Fifty, began collecting signatures for the petition—before it was composed. On 11 December, Willard Richards dictated the text of a petition to Bullock. Two days later Brigham Young, Heber C. Kimball, Richards, Bullock, and several others read over a number of memorials drafted by other states and finally settled on the one dictated by Richards. This petition was presented to the Council of Fifty on 16 December and presented again to the council on 6 January, when John M. Bernhisel was appointed to take it to Washington.[11] Bernhisel was a happy choice. A physician, sophisticated and socially adept, he would promote the Mormon cause in the nation's capital with devotion and skill.

Territorial officers were again discussed in the Council of Fifty on 4 March 1849, when a slightly modified slate was nominated by the council: Brigham Young, governor; Willard Richards, secretary of state; Heber C. Kimball, chief justice; Newel K. Whitney and John Taylor, associate judges; Horace S. Eldredge, marshal; Daniel H. Wells, attorney general; Albert Carrington, assessor and collector; Newel K. Whitney, treasurer; and Joseph L. Heywood, supervisor of roads. Further, the council voted to hold a general "election" on 12 March where the citizenry would be given

the opportunity to ratify this slate.[12] Such an "election," unthinkable in any other part of the United States, was typical in Mormondom: officers were nominated by the Church leaders and then presented to the lay members for their sustaining vote. Despite a heavy snowstorm, the election came off as scheduled; 674 votes were polled in favor of the ticket, none in opposition.[13]

On 22 March, Thomas Bullock began compiling the signatures for the petition to Congress. Five and a half weeks later, Brigham Young, Heber C. Kimball, and Willard Richards attached their autographs to the completed memorial, twenty-two feet long, totaling 2,270 signatures. Proposed for the new territory was an immense area including all of what is now Utah and Nevada, most of Arizona, three-quarters of New Mexico, two-thirds of Colorado, half of Wyoming, and a third of California, including a strip of the Pacific coast near San Diego.[14] Bullock handed the memorial to Bernhisel on 3 May, and Willard Richards blessed him "in the name of Israel's God." The following day Bernhisel left for Washington.[15]

At this point the narrative becomes more complicated. The standard histories of Utah describe a parallel effort on the part of the Mormons to gain the admission of the Great Basin region into the Union as an independent state, an effort that ran concurrently with and independently of their endeavor for territorial status. According to these histories, the attempt for statehood began in February 1849 when a notice, signed by "many citizens," was given out for a convention to be held at Great Salt Lake City on 5 March "for the purpose of taking into consideration the propriety of organizing a Territorial or State government." On 5 March, so the story goes, "a large portion of the inhabitants of that portion of Upper California, lying east of the Sierra Nevada Mountains," met at Great Salt Lake and organized into a convention, with Daniel Spencer chairman, and Thomas Bullock one of the secretaries. After the obligatory speeches, the chairman appointed a committee of ten men to draft a state constitution. On the eighth, the committee submitted a constitution for a proposed state of Deseret, which, after considerable debate, was adopted by the convention on the tenth. Two days later, the "election" discussed above took place. On 2 July 1849, pursuant to the provisions of the constitution, those elected to the House of Representatives of the proposed state of Deseret met in Great Salt Lake City, presented their credentials, and organized the House. Among those qualified as representatives were Charles Shumway, Joel H. Johnson, John Murdock, Isaac C. Haight, and Hosea Stout; John D. Lee was elected assistant clerk. That same day the Senate was organized. The House and Senate each met on the

third; and in joint session on the fifth they elected Almon W. Babbitt the delegate to the U.S. Congress. On the sixth, a select joint committee presented in the House a memorial to the U.S. Congress for the admission of the state of Deseret into the Union "on equal footing with other states"; it was accepted and referred to the Senate. The Senate approved this memorial on 9 July. Eighteen days later, Babbitt left for Washington carrying the constitution and memorial for statehood.[16]

A single source is the basis for this account of the 5–10 March constitutional convention and the 2–9 July session of the legislature—the printed *Constitution of the State of Deseret*. And as one examines the constitution with the foregoing account in mind, certain inconsistencies appear. The constitution stipulates that a general election for state officers and members of the legislature be held on 7 May 1849. But a general election was held on 12 March, two days after the convention adjourned, and there is no record of any election being held on 7 May. Further, the constitution provides for the office of lieutenant governor, and *Constitution of the State of Deseret* reports that Brigham Young had been elected governor, with Heber C. Kimball, lieutenant governor; Willard Richards, secretary of state; William Clayton, auditor of public accounts; and Joseph L. Heywood, treasurer. This set of officers, of course, is different from the set elected on 12 March, which did not include a lieutenant governor. No legislators were elected on 12 March; yet *Constitution of the State of Deseret* lists thirty members of the House and fourteen members of the Senate. How these were selected is not explained. The constitution specifies that the chief and associate justices be elected by joint vote of the House and Senate, yet these three judges were "elected" by the citizenry in the election of 12 March.

When one examines manuscript sources, the inconsistencies multiply. No contemporary diary has been found that mentions the March constitutional convention or the July session of the legislature. John D. Lee, purportedly assistant clerk of the House, and faithful chronicler of the Council of Fifty, has a diary entry for 5 March 1849 dealing with the "great wolf hunt," a contest involving about a hundred men to rid the valley of predators. No reference to a constitutional convention is made here, in his entry for 6 March, or in the next entry for 10 March, which gives a detailed summary of the meeting of the Council of Fifty. Lee's entry for 1 July 1849 talks about the California emigration; there are no entries for 2-10 July.[17] Daniel Spencer, chairman of the constitutional convention, summarizes in his diary the "things of some importance" that transpired between 21 February and 12 March 1849, but reports

only two: an attempt to quell Indian depredations, and the 12 March election, for which he was a judge. There is no hint of a constitutional convention.[18] Thomas Bullock is listed in *Constitution of the State of Deser*et as a secretary of the convention. Bullock's diary, however, does not mention this. It does note that on 5 March Brigham Young stopped by the office on his way to a nearby fort; that on 8 March Bullock was in the office all day numbering bank notes and posting the bankbooks, Heber C. Kimball was still up in Mill Canyon preaching, and many had gone up into Mill Canyon to get out timber; that Kimball returned from Mill Canyon in a heavy snowstorm on the ninth; and that the Council of Fifty met at Kimball's on the tenth. One would expect Bullock not to omit an important political event like the convention, for his diary contains detailed references to the election of 12 March, his recount of the votes on 21 March, his work on the memorial for territorial status between 30 April and 3 May, and his efforts in getting Bernhisel ready for his trip 1–3 May.[19] The fact that a territorial government, not statehood, was in the minds of the Council of Fifty on 12 March 1849 is indicated in Bullock's minutes, which report Willard Snow saying at the opening of the election, "We contemplate petitioning Congress for a Ter. Govt. to be ext[ended] over us. We may or may not get it."[20]

For the July legislative session, the diary record is less illuminating but still casts doubt on the report in *Constitution of the State of Deseret*. Charles Shumway, reported to have taken his seat in the House, was actually at the Upper Platte Ferry at the time the legislature was supposed to have met.[21] Isaac C. Haight, listed as a member of the House, comments on the California emigration, crops, and the warm weather in a diary entry for 1 July 1849 but mentions no legislative session the next day.[22] The diaries of Joel H. Johnson, John Murdock, and Hosea Stout suggest that the first session of the legislature actually convened in December, not in July. Johnson records that he was elected a member of the House, "the first session of which commenced its setting on the eighth day of December 1849."[23] Murdock's entry for 6 December 1849 reads: "Received notice from Geo. D. Grant, Sergeant at Arms, of my appointment by the Governor as a member of the House of Representatives for the State of Deseret. On the 8th I took my seat accordingly."[24] Hosea Stout's entry for 2 July 1849, the day he was supposed to have been qualified as a member of the House, reads simply, "Around town." For 4 December 1849, he records: "On Tues Evening I received a notification to meet the House of Representatives on Sat next I being a member of the Body. By what process I became a Representative I know not."[25]

An entry in the journal of Franklin D. Richards, one of the Twelve, clarifies this picture a bit: "Thursday July 19th 1849. Attended Council the two weeks past, at which the Memorial[,] Constitution of the State of Deseret, Journal of its Legislature, Bill or Declaration of Rights, and the election of A. W. Babbitt as delegate to Congress, was all accomplished."[26] Consistent with this entry is Willard Richards's official certification as secretary of state on the last page of *Constitution of the State of Deseret,* which bears the date 19 July 1849. In addition, the LDS Church Archives contain a series of drafts of the constitution, the memorial to Congress, and the report of the July legislative session, some with corrections in Thomas Bullock's characteristic handwriting. One of these is docketed in Bullock's hand, 10 July 1849. Two other copies are docketed July 1849.

All of this evidence combines to suggest that what actually happened is this: The effort in the valley to petition for territorial status, beginning with the 9 December 1848 meeting of the Council of Fifty and culminating with Bernhisel's departure on 4 May 1849, proceeded as we have described it above—with no serious action in the direction of statehood. The 5–10 March 1849 constitutional convention did not occur. On 4 May 1849, as Bernhisel left Great Salt Lake City, the expectation of the Mormons was simply to apply for a territorial government and lobby for the appointment of its officers from among the leaders of the Church.

Then on 1 July 1849, Almon W. Babbitt arrived in Great Salt Lake City with the eastern mail.[27] At this point there seems to have been a clear shift in the thinking of the Church leaders toward statehood rather than territorial status. Why such a shift occurred is not apparent. It is conceivable that Babbitt himself influenced the Church authorities to apply for statehood. Babbitt had had some political experience in Iowa—including an acrimonious dispute with Apostle Orson Hyde, the presiding authority at Winter Quarters and Kanesville (now Council Bluffs, Iowa).[28] His subsequent performance in Washington, D.C., tempts one to conjecture that he viewed an application for statehood as an opportunity to further his own political ambitions. It is clear that Babbitt carried some influence in the valley. He was the principal speaker along with Brigham Young at the Sunday worship service on 8 July, and the main speaker again on 15 July.[29] More indicative than this, he was chosen the state of Deseret's delegate to Congress in spite of the fact that he had been on the wrong side of a political fight with a member of the Twelve. In any event, the Mormons' anxiety over the possibility of unsympathetic territorial appointees certainly played a part in their shift toward statehood.

It also seems clear that the constitution of the state of Deseret was composed between 1 July and 18 July 1849. What are reported in *Constitution of the State of Deseret* as formal sessions of the House and Senate on 2–9 July were more likely a series of informal meetings involving certain members of the Council of Fifty, where the constitution and memorial to Congress were drafted, the members of the House and Senate were selected, and Babbitt was designated the delegate to the U.S. Congress.

A flurry of letters from the First Presidency, beginning with two to Orson Hyde, signaled this shift toward statehood. The first, written 19 July 1849, announced their intention to seek the admission of Deseret into the Union as a sovereign state and their choice of Babbitt as delegate—a presumably bitter pill for Orson Hyde.[30] The second, a confidential letter written on 20 July, urged Hyde to bury his differences with Babbitt and cooperate with him in the effort for statehood.[31] That same day the First Presidency wrote to Oliver Cowdery (who had just been rebaptized in Kanesville after eleven years away from the Church), asking him to join forces with Babbitt.[32] On 24 and 25 July, they posted three other letters—each announcing the effort for statehood and urging cooperation with Babbitt—to Nathaniel H. Felt in St. Louis, to Apostle Wilford Woodruff in the eastern states, and, of particular importance, to Thomas L. Kane, a man well connected in the capital and a staunch ally of the Mormons.[33]

Why the fictions of the March constitutional convention and the July session of the legislature? The obvious answer is that Congress would not have considered an application that had not been produced by a constituent convention and ratified by popular election. In the case of the Salt Lake Mormons, there were additional ramifications. If indeed the decision to press for statehood was reached after 1 July, then time was a problem. Congress would convene within five months, and there was not sufficient time to follow the traditional procedure of calling for a constituent convention, drafting a constitution, holding a ratifying election, and getting the petition to Washington. The Council of Fifty must have viewed these procedures as irrelevant as well. When Brigham Young, Heber C. Kimball, and Willard Richards were sustained as the First Presidency at Winter Quarters in December 1847 and again in the Salt Lake Valley in October 1848, the will of the Mormon people was expressed that these men govern—in whatever manner they deemed suitable; any other expression of this nature was essentially superfluous. On the other hand, the council undoubtedly was concerned with how a petition from Mormons, who had been plagued by charges of political

misconduct for fifteen years, would be received by Congress. The council must have feared that any suggestion of a departure from traditional political procedures would jeopardize their application. *Constitution of the State of Deseret* reflects an almost obsessive concern with procedure. Where *Constitution of the State of Iowa* (1846)—upon which the constitution of Deseret was modeled—states little more than the fact of a constituent convention, *Constitution of the State of Deseret* prints the text of a call for a convention issued 1 February, day-by-day minutes of a convention 5–10 March, results of an election 7 May, and day-by-day minutes of an organizing session of the legislature 2–9 July. In this light, then, *Constitution of the State of Deseret* was as much a public relations piece as an application for statehood, a document designed to show that the traditional American political processes were alive and well in Deseret.

Although the federal constitution was the ultimate prototype, there is little doubt that the constitution of Deseret was derived from the Iowa constitution of 1846.[34] Fifty-seven of the sixty-seven sections are taken from the Iowa constitution, in most cases word for word. The area proposed in the preamble for the state of Deseret, though a bit smaller than that proposed for the territory, still included virtually all of what is now Nevada and Utah, most of Arizona, much of Wyoming, Colorado, and New Mexico, parts of Oregon and Idaho, and a third of California, including a stretch of the Pacific coast near San Diego.[35]

Eight articles comprise the primary text of the constitution. Article 1 divides the powers of government between the legislative, executive, and judicial branches. Articles 2–4 outline the structure, limits, organization, and procedures of the legislative, executive, and judicial branches respectively. Some intriguing differences exist between the Iowa and Deseret constitutions. Biennial sessions of the legislature are specified in the Iowa constitution; annual sessions are stipulated in the Deseret constitution. The Iowa constitution requires that members of the House be at least twenty-one years old, senators at least twenty-five, and the governor at least thirty; in the Deseret constitution these age limits are twenty-five, thirty, and thirty-five, thus conforming more closely to the federal constitution. On the other hand, the Iowa constitution requires that revenue bills originate in the House while no such restriction appears in the constitution of Deseret. The Deseret constitution provides for the office of lieutenant governor; the Iowa constitution specifies that the secretary of state is the second executive office. The Supreme Court is designated an appellate court in the Iowa constitution; there is essentially no

restriction on the jurisdiction of the Supreme Court in the Deseret constitution.

Article 5 deals with elections, setting "the first Monday in May next," 7 May 1849, as the first election for state officers and legislators and for the ratification of the constitution. Article 6 provides for a militia of "all able bodied, white, male citizens, between the ages of eighteen and forty-five years." No provision is made for exemption from service in the militia because of a conscientious objection to bearing arms, as there is in the Iowa constitution. Article 7 outlines the process for amending the constitution. Article 8 is a declaration of rights that enumerates the traditional freedoms, such as the rights of religious worship, free speech, and trial by jury, freedom from unreasonable search and seizure, the prohibition of bills of attainder and ex post facto laws, etc. No reference is made to slavery. Nor does the constitution provide for the remuneration of legislators or state officers, except the governor.

At the time they drafted the constitution and memorial, the Church leaders ordered two thousand copies printed for distribution to the president and each member of Congress.[36] A printing press had not yet been brought into the Salt Lake Valley, but Orson Hyde was operating one in Kanesville.[37] So on 27 July 1849 Babbitt started east with a manuscript copy of the constitution, expecting to pause in Kanesville while the constitution was printed there.

The year before, Hyde had journeyed to the East Coast to raise money for a press. With eight hundred dollars borrowed in Washington, D.C., he purchased type, fixtures, and a printing press from the Cincinnati Type Foundry. By mid-November he was back in Kanesville setting up his printing shop and waiting for his printer, John Gooch, to arrive from St. Louis.[38] On 7 February 1849, Hyde and Gooch issued the first number of a semimonthly newspaper, the *Frontier Guardian,* which for the next sixteen months was the only Mormon periodical published in the United States. Ironically, it was this press that precipitated Hyde's dispute with Babbitt. As Hyde was traveling east in the summer of 1848, Babbitt offered to buy a press for him if he would publicly endorse Lewis Cass, the Democratic candidate for president. Hyde refused, asserting that he would go with Zachary Taylor, "press or no press."[39] Babbitt reached Kanesville on 3 September 1849.[40] *Constitution of the State of Deseret* was undoubtedly printed soon thereafter.

John M. Bernhisel's trip to the nation's capital occupied six months, during which he filled his mind with the politics of the day. In October he reached New York City, to be greeted there by a letter from the First Presidency informing him of their decision to apply

for statehood.[41] Five weeks later Bernhisel and Wilford Woodruff called on Thomas Kane in Philadelphia. Kane, of course, knew of the First Presidency's decision, and he urged Bernhisel in the strongest terms to work for the admission of Deseret as a state. "You are better without any government from the hands of Congress than with a Territorial government," he declared.

> The political intrigues of government officers will be against you. You can govern yourselves better than they can govern you. I would prefer to see you withdraw the bill, rather than to have a Territorial government, for if you are defeated in the State government, you can fall back upon it again at another session, if you have not a Territorial government; but if you have, you cannot apply for a state government for a number of years. I insist upon it[;] you do not want corrupt political men from Washington strutting around you, with military epaulettes, and dress, who will speculate out of you all they can.[42]

Bernhisel arrived in Washington on 30 November, Babbitt the next day. On 3 December the first session of the Thirty-first Congress convened, and on the twenty-seventh Stephen A. Douglas presented Deseret's memorial for statehood to the Senate. Here he asked that Deseret be admitted either as a state or as a territory, according to the will of Congress. The memorial was presented to the House on 3 January, and Babbitt's petition to be seated in the House as the delegate from Deseret was referred to the committee on elections on 28 January.[43] But secession was in the air, and the wishes of two or three thousand Mormons isolated in the Great Basin were of small concern to a Congress battling to keep the Union from disintegrating. Although Bernhisel would lobby tirelessly in her behalf, the fate of Deseret was determined by the flood of events that would culminate in the Compromise of 1850.[44]

The central problem was slavery, more particularly the extension of slavery into the new western region acquired as a result of the Mexican War. Six issues confronted the Congress: statehood for California; statehood or territorial governments for Deseret and New Mexico; a dispute over the western boundary of Texas—a slave state; the abolition of slavery in Washington, D.C.; and a demand from southern congressmen for a stricter fugitive slave law.

Congress divided almost equally along party lines. Sixty-three ballots were taken before the Democrats finally organized the House of Representatives. The Senate split into four almost equal factions: northern Whigs, led by William H. Seward and southern Democrat Thomas Hart Benton, who advocated the exclusion of slavery from the West; most of the southern Democrats, led by John C. Calhoun and Jefferson Davis, who insisted on slavery's

extension to some part of the new region; nearly all of the northern Democrats and a few southern Democrats, led by Lewis Cass and Stephen A. Douglas, who proposed compromise on the basis of "popular sovereignty," allowing each territory to decide its own position on slavery; and almost all southern Whigs and two northern Whigs, led by Henry Clay and Daniel Webster, who tended toward popular sovereignty. Here the three giants—Clay, Webster, and Calhoun—appeared together on the Senate stage for the last time.

Vitriolic discussions of the extension of slavery and slavery in the nation's capital filled the opening weeks. But no faction had sufficient strength in both houses to achieve its objectives. A break in this impasse came on 29 January 1850 when Henry Clay delivered his great speech in the Senate that outlined the basic ideas that ultimately would form the compromise. Clay proposed to admit California as a free state; provide territorial governments for Deseret and New Mexico with no restriction or conditions regarding slavery; reduce the area of Texas and pay off her debt; allow slavery in Washington, D.C., but abolish the slave trade there; and pass a more stringent fugitive slave law. Clay's speech marked the opening of one of the great debates in the history of the Senate, a debate that would stretch over eight months and include the final Senate addresses of Daniel Webster and John C. Calhoun.

Early in March, at the instigation of H. S. Foote, the Senate formed a committee of thirteen to pass upon the sectional problems and unite Clay's proposals into a single bill—afterward called the "Omnibus Bill." That month Bernhisel had a series of interviews with Stephen A. Douglas, who, as chairman of the Senate committee on territories, was an especially influential friend. Douglas disliked the name "Deseret" and insisted on the name of "Utah." He also indicated that Congress would substantially reduce the proposed boundaries of Deseret.[45] At a subsequent interview, Bernhisel inquired about withdrawing the Mormons' application. Douglas responded that this would make little difference, "for Congress deemed it their duty to organize the territories, and that both the great political parties were of the opinion that the question which now agitates Congress, and the nation from one end to the other, could not be settled until the territories were organized." To Bernhisel's question concerning the prospect for officers for a territorial government, Douglas replied that there was little chance a member of the First Presidency or the Council of the Twelve would be appointed.[46]

As the session dragged into May and June, Zachary Taylor continued firm in his opposition to Clay's proposals. The president

differed with Clay primarily in his solution to the Texas boundary problem and his insistence on statehood for New Mexico, and it was apparent that without a softening of his position the Omnibus had little chance. Then on 9 July Zachary Taylor died. Millard Fillmore ascended to the presidency; Webster was appointed his secretary of state; Clay became the unofficial White House spokesman. The administration was now clearly behind the Omnibus Bill. On 31 July the Omnibus was before the Senate, and passage seemed certain. Without warning, its opponents rose to tear at the bill. First came opposition to the New Mexico component; the Senate responded by voting this out. Texas fell under attack next; a vote of the Senate removed all parts relating to Texas. David R. Atchison—Joseph Smith's lawyer in Missouri—who had sided with the compromisers, now moved that California statehood be eliminated; this proposal was quickly accepted. "The Omnibus is overturned," exulted Thomas Hart Benton, "and all the passengers spilled out but one. We have but Utah left—all gone but Utah! It alone remains, and I am for saving it as a monument of the herculean labors of the immortal thirteen." Thirty-two of the fifty senators remaining in the chamber agreed, and the bill creating Utah Territory passed the Senate the next day. Stephen A. Douglas now stepped into the leadership of the compromisers, and between 9 August and 16 September he directed five separate bills through the Senate that embodied the aims of the Omnibus. The Omnibus passed the House in five separate bills between 6 and 17 September, a territorial government for Utah passing on 7 September. On 9 September, Fillmore signed Utah Territory into law.

Bernhisel's skill as a lobbyist now became particularly important as Fillmore began to consider appointments for the new territory. Between 10 and 16 September he had several discussions with the president, and on the latter date he handed Fillmore his recommendation for Brigham Young, governor; Willard Richards, secretary; Zerubbabel Snow, a Mormon from Ohio, chief justice; Heber C. Kimball and Newel K. Whitney, associate justices; Seth M. Blair, attorney; and Joseph L. Heywood, marshal. At this meeting Bernhisel repeated what had been from the beginning the Mormons' principal concern: "The people of Utah cannot but consider it their right, as American citizens, to be governed by men of their own choice, entitled to their confidence, and united with them in opinion and feeling." Four days later the president announced his decision. The officers for the new territory of Utah would be Brigham Young, governor; Broughton D. Harris of Vermont, secretary; Joseph Buffington of Pennsylvania, chief justice; Zerubbabel Snow of Ohio and Perry C. Brocchus of

Alabama, associate justices; Seth M. Blair of Utah, U.S. attorney; and Joseph L. Heywood of Utah, U.S. marshal. Stephen A. Douglas, six months before, had underestimated the ability and tenacity of John M. Bernhisel.[47]

In the meantime the Council of Fifty met weekly throughout 1849 and continued to direct the municipal affairs of the Salt Lake community. Its last legislative action seems to have occurred on 29 December 1849 when it passed an ordinance creating a recorder of "marks and brands."[48]

The first true session of the legislature of the provisional state of Deseret convened early in December 1849 and met intermittently until it recessed in March 1850. A second session sat from 4 July to 5 October 1850. News of the Utah bill reached the valley on 15 October, and the full text of the act creating Utah Territory was printed in the *Deseret News* of 30 November. Consequently the third session of the legislature of Deseret was known to be the last when it convened on 2 December 1850. This legislature passed its final ordinance, a law "to suppress gaming," on 24 February 1851; and by joint resolution on 28 March it brought the state of Deseret to an end. Brigham Young took the oath of office as governor of the new territory from Daniel H. Wells, chief justice of the provisional state of Deseret, on 3 February 1851. The territorial appointees from outside of Utah arrived in the valley during June, July, and August. And on 22 September 1851 the first legislature of the territory of Utah convened in Great Salt Lake City. Twelve days later, by joint resolution of the territorial legislature, the laws of the provisional state of Deseret were legalized as territorial statutes.[49]

Because of the confusion surrounding the chronology of events in the Mormons' effort for statehood, a number of interpretations of this episode appear in the published histories of Utah. Recent histories conjecture that this effort was really an attempt to establish the political kingdom of God, the millennial world order that would govern at the Second Coming.[50] But this idea does not appear in the discussions of the Council of Fifty or the correspondence among Church officials. What does emerge from these sources is a single, practical concern: to be governed by their own. Bernhisel's correspondence makes it clear that the particular form of government was not important to the Mormons; a continuation of the provisional state of Deseret, statehood, or even a territorial government was acceptable if the officials were chosen from among the leaders of the Church.[51] Thus at its fundamental level, *Constitution of the State of Deseret* was a plea for the most venerable of all American rights, the right of a free people to be governed by those of their own choosing.

NOTES

[1]T. Edgar Lyon, "Nauvoo and the Council of the Twelve," in F. Mark McKiernan et al., eds., *The Restoration Movement: Essays in Mormon History* (Lawrence: University Press of Kansas, 1973), 167–205; D. Michael Quinn, "The Evolution of the Presiding Quorums of the LDS Church," *Journal of Mormon History* 1 (1974): 21–28.

[2]D. Michael Quinn, "The Council of Fifty and Its Members, 1844 to 1945," *Brigham Young University Studies* 20 (1980): 163–97. Compare Klaus J. Hansen, *Quest for Empire: The Political Kingdom of God and the Council of Fifty in Mormon History* (East Lansing: Michigan State University Press, 1967).

[3]Journal History of The Church of Jesus Christ of Latter-day Saints, 6 September 1847, Library-Archives, Historical Department, The Church of Jesus Christ of Latter-day Saints, Salt Lake City (hereafter cited as LDS Church Archives).

[4]Ibid., 3 October 1847.

[5]John Nebeker, "Early Justice in Utah," *Utah Historical Quarterly* 3 (October 1930): 88.

[6]A detailed summary of the activities of the high council during this period is given in Dale L. Morgan, "The State of Deseret," *Utah Historical Quarterly* 8 (April 1940): 65–239.

[7]Journal History, 6 January 1849.

[8]Robert G. Cleland and Juanita Brooks, eds., *A Mormon Chronicle: The Diaries of John D. Lee, 1848–1876*, 2 vols. (San Marino, Calif.: Huntington Library, 1955), 1:80–114 (hereafter cited as *Lee Diaries*).

[9]*General Epistle from the Council of the Twelve Apostles, to The Church of Jesus Christ of Latter-day Saints Abroad, Dispersed throughout the Earth* (St. Louis: N.p., 1848), 4.

[10]*Lee Diaries* 1:80–81. The problem of carpetbag appointees is discussed in two letters from the Mormon settlements on the Missouri River: G. A. Smith and E. T. Benson to B. Young, 10 October 1848; and E. M. Green to Young, 7 October 1848; both in Journal History under the respective dates.

[11]Journal History, 10–11, 13 December 1848; *Lee Diaries* 1:81–82, 86; and Thomas Bullock, Diary, 10–11, 13 December 1848, LDS Church Archives.

[12]Journal History, 4 March 1849; *Lee Diaries* 1:98–99.

[13]Journal History, 12 March 1849; Bullock, Diary, 12, 21 March 1849.

[14]Bullock, Diary, 22 March and 30 April 1849; Journal History, 30 April 1849. The exact description of the proposed territory is that area "lying between Oregon and Mexico, and between the Sierra Nevada and the 27th degree longitude west of Washington W. L.," that is, the area bounded as follows: commencing at the crossing of the Rio Grande and the 32° north latitude to the Pacific Ocean; thence along the coast northward to the crossing of the 119° west longitude; thence north on the 119° west longitude to the Sierra Nevada Mountains; thence continuing along the summit of the Sierra Nevada to the 42° north latitude; thence running east "by the southern boundary of Oregon" to the Green River; thence north up the main channel of the Green River to the 43° north latitude; thence east to the 104° west longitude; thence south along this longitude to 38° north latitude; thence west on this latitude to the Rio Grande; thence south down the main channel of the Rio Grande to the 32° north latitude.

[15]Bullock, Diary, 1–4 May 1849; Journal History, 4 May 1849.

[16]The most detailed version is given in Morgan, "State of Deseret," 84–91. Compare Richard D. Poll et al., eds., *Utah's History* (Provo: Brigham Young University Press, 1978), 156–57.

[17]*Lee Diaries* 1:100–101, 110.

[18]Daniel Spencer, Diary, 21 February to 12 March 1849, LDS Church Archives.

[19]Bullock, Diary, 5 March to 3 May 1849.

[20]"Thomas Bullock Minutes," 12 March 1849, LDS Church Archives. Willard Snow was a member of the Council of Fifty.

[21]Kenneth W. Godfrey, *Charles Shumway: A Pioneer's Life* (Provo: J. G. Stevenson, 1974), 49–50.

[22]"Biographical Sketch and Diary of Isaac Chauncey Haight," 52–53, typescript, Special Collections, Harold B. Lee Library, Brigham Young University, Provo, Utah (hereafter cited as Lee Library).

[23]"Diary of Joel Hills Johnson," 35, typescript, Lee Library.

[24]"An Abridged Record of the Life of John Murdock, Taken from His Journal by Himself," 44, typescript, Lee Library.

[25]Juanita Brooks, ed., *On the Mormon Frontier: The Diary of Hosea Stout, 1844–1861*, 2 vols. (Salt Lake City: University of Utah Press, 1964), 2:354, 358 (hereafter cited as *Stout Diary*).

[26]Franklin D. Richards, Journal, 19 July 1849, typescript, LDS Church Archives.

[27]*Stout Diary* 2:354; Journal History, 1 July 1849.

[28]J. Keith Melville, *Highlights in Mormon Political History*, Charles E. Merrill Monograph Series, no. 2 (Provo: Brigham Young University, 1967), 20–37.

[29]Journal History, 8, 15 July 1849.

[30]Ibid., 19 July 1849.

[31]The First Presidency to Orson Hyde, 20 July 1849, quoted in Melville, *Highlights in Mormon Political History*, 59 n. 45.

[32]Journal History, 20 July 1849.

[33]Ibid., 24–25 July 1849.

[34]*Constitution of the State of Iowa, Adopted in Convention, May 18, 1846,* 29th Cong., 1st sess., S. Doc. 384, 10 June 1846.

[35]The exact boundaries are "commencing at the 33 degree of North Latitude where it crosses the 108 degree of Longitude, West of Greenwich; thence running South and West to, and down the main channel of the Gila River, on the Northern line of Mexico, and on the Northern boundary of Lower California to the Pacific Ocean; thence along the coast North Westerly to 118 degrees 30 minutes of West Longitude; thence North to where said line intersects the dividing ridge of the Sierra Nevada Mountains; thence North along the summit of the Sierra Nevada Mountains to the dividing range of mountains that separates the waters flowing into the Columbia River, from the waters running into the Great Basin; thence Easterly, along the dividing range of mountains that separates said waters flowing into the Columbia River on the north, from the waters flowing into the Great Basin on the south, to the summit of the Wind River chain of Mountains; thence South East and South, by the dividing range of mountains that separate the waters flowing into the Gulf of Mexico from the waters flowing into the Gulf of California; to the place of beginning, as set forth in a map drawn by Charles Preuss, and published by order of the Senate of the United States, in 1848."

[36]*Constitution of the State of Deseret,* 15.

[37]Actually some small bank notes had been printed in the valley in January 1849 on a small greeting-card press made by Truman O. Angell, which was not large enough to do book printing. The Ramage press that ultimately printed the *Deseret News* was purchased in Boston by W. W. Phelps and brought to Winter Quarters in November 1847. It remained there unassembled and crated until April 1849, when it was transported to the valley by Howard Egan. Egan arrived in the valley on 7 August. The press was unpacked by Brigham H. Young, Brigham Young's nephew, in September 1849, about the same time *Constitution of the State of Deseret* was being printed in Kanesville.

[38]Journal History, 5 April 1849, 5–8; 15 October 1849; and 16 November 1849; *Millennial Star* 11:52; *Frontier Guardian,* 7 February 1849, 2; Douglas C. McMurtrie, "The First Printing at Council Bluffs," *Annals of Iowa* 18 (1931): 2–11. John Gooch, twenty-four years old at the time Hyde employed him, had been a member of the Boston Branch of the LDS church and a printer there four years earlier. He compiled and printed the tract *Death of the Prophets Joseph and Hyrum Smith* (Boston, 1844).

[39]Melville, *Highlights in Mormon Political History,* 20–37.

[40]Journal History, 3 September 1849.

[41]Melville, *Highlights in Mormon Political History,* 65.

[42]Journal History, 26 November 1849.

[43]Ibid., 21 March 1850. The Senate and House printings of the memorial and constitution are, respectively: 31st Cong., 1st sess., S. Misc. Doc. 10; and 31st Cong., 1st sess., H. Misc. Doc. 18. The House subsequently rejected Babbitt's petition (see 31st Cong., 1st sess., H. Rep. No. 219, 4 April 1850).

[44]Good accounts of Bernhisel's activities in Washington are found in Morgan, "State of Deseret," 113–32; and Melville, *Highlights in Mormon Political History,* 64–99. A standard work on the Compromise of 1850 is Holman Hamilton, *Prologue to Conflict* (Lexington: University of Kentucky Press, 1964).

[45]Journal History, 21 March 1850. Thomas Hart Benton also objected to the name *Deseret.* When formed in 1850, Utah Territory retained the western and eastern boundaries of Deseret, but the north boundary was set at the 42d parallel, and the southern boundary was raised to the 37th parallel.

[46]Journal History, 27 March 1850.

[47]Ibid., 12, 16 September, and 2 October 1850. Buffington declined the appointment as chief justice. In his place Lemuel G. Brandebury of Pennsylvania went to Utah as the first chief justice.

[48]This ordinance, together with eight others passed between 24 February and 24 November, was printed just after the first of the year in a four-page folded sheet entitled *Ordinances, Passed by the Legislative Council of Great Salt Lake City, and Ordered to Be Printed.* The passage of the first two of these ordinances by the Council of Fifty on 24 February and 17 March 1849 is recorded in *Lee Diaries* 1:94–96, 102.

[49]Morgan, "State of Deseret," 83–113, gives a detailed summary of the legislatures of the state of Deseret. See also *Stout Diary* 2:358–406. Several Salt Lake imprints were produced by the activities of the provisional state of Deseret. Two ordinances passed by the Council of Fifty and fourteen passed by the first legislative session are printed, together with the constitution, in a thirty-four-page pamphlet bearing the caption title *Constitution of the State of Deseret.* The ordinances passed by the third legislative session are printed in an eighty-page book entitled *Ordinances Passed by the General Assembly of the State of Deseret.* Other imprints include a four-page petition concerning education entitled *To the General Assembly of the State of Deseret,* dated at end 8 February 1850; a twelve-page speech of Willard Richards on education, *Address. Willard Richards, Secretary of State; To the Chancellor and Regents of the University of the State of Deseret, Delivered in the Bowery, at Great Salt Lake City, in Pressence of His Excellency, Governor Young, April 17th, 1850;* and a three-page message of Brigham Young, *Governor's Message; Deseret, December 2, 1850. To the Senators and Representatives of the State of Deseret.*

[50]See, for example, Poll, *Utah's History,* 157.

[51]Bernhisel to B. Young, 21, 27 March 1850, Journal History.