

Thomas L. Kane and the Mormon Problem in National Politics

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After the Mormons began to leave their temporary settlements on the Missouri in 1847 to settle in Utah, three key events marked Thomas L. Kane's experience with the problems of the Mormons in national politics: (1) the Mormons' quest for statehood or territorial organization in 1849 and 1850; (2) the dispute over federally appointed officials in 1851 and 1852; and (3) the conflicts created by the judicial administration of James B. McKean in the early 1870s. This essay will explore these instances in which Kane assisted the Mormons and the people of Utah in their dealings with the federal government.

The National Scene

To understand how Thomas L. Kane helped the Mormons navigate the rough terrain of national politics, it is necessary to consider the context of American politics and society during the second half of the nineteenth century. Whether slavery should expand into the areas of the Louisiana Purchase and the Mexican Cession was an issue that divided Americans during the 1840s and 1850s. This division can be seen in the political parties of the era. The Democratic Party split into free soil and proslavery Democrats, and the Whigs split into conscience Whigs and proslavery Whigs. In 1848 a significant number of Democrats, including Kane, left the Democratic Party to support the Free Soil Party, which opposed the expansion of slavery into the territories.¹

By 1856 the Whig Party had died, and in its wake the Republican Party had arisen. The Republicans strongly opposed slavery in the territories and considered slavery and polygamy to be the "twin relics of

barbarism." They hoped to eventually eradicate both, although at times they hedged on slavery in the states. Beginning with Abraham Lincoln's election in 1860, the Republican Party, with its decidedly anti-Mormon agenda, controlled the presidency and a closely divided Congress during most of the remainder of the nineteenth century.² Under this political system, Thomas L. Kane worked to influence the administration and Congress to treat his friends in Utah justly.

Although Mormons would have preferred to remain aloof from the controversies surrounding slavery and polygamy, after 1856 they could not do so. Under the United States system of dual sovereignty, the states have jurisdiction over such matters as qualifications for marriage, voters, and candidates for offices. Territories, as creatures of the federal government, however, do not enjoy the benefits of dual sovereignty. The federal government considers them colonies preparing for statehood. The president selects the territories' principal executive and judicial officers with Senate approval, and Congress may legislate for the territories as long as it protects individual rights guaranteed by the Constitution as interpreted by the Supreme Court. Territories do elect members of their legislature, city and county officers, and a delegate to Congress. The delegate can introduce legislation, speak on the floor of the House, and vote in committee. However, this person may not vote on the floor of the House. Working within the realities of American politics, Kane took up the Mormon cause, he tried to convince the administration and Congress to treat his friends in Utah fairly.

Quest for Statehood

Between July 1847, when the first Mormon settlers arrived in the region that would later become Utah, and September 1850, when Congress organized Utah Territory, the Latter-day Saints ruled the region with a provisional government as the State of Deseret.³

The Mormon quest for statehood officially began in 1849, though Kane had offered advice on the matter as early as April 1847.⁴ In March 1849, the leadership in Utah drafted a constitution for what they called the State of Deseret.⁵ After the public approved the constitution, the leaders sent two men to Washington to lobby for authorization of either a territorial or a state government. Dr. John M. Bernhisel (fig. 1), a physician of conservative disposition, left for the east on May 3.⁶ Almon Whiting Babbitt (fig. 2), a local attorney who often did not seem to understand whom he represented, went east as the designated representative of the State of Deseret on July 27.⁷

Although Bernhisel carried a letter of introduction from the First Presidency of the Church to Senator Stephen A. Douglas of Illinois, who had previously aided the Mormons, Bernhisel and Mormon leader Elder Wilford Woodruff (fig. 3) met instead with Kane in Philadelphia on November 26, 1849. The purpose of the meeting was to plan for the campaign to legalize either a state or a territory. Kane told them that at Brigham Young's request, he had already applied to President James K. Polk for territorial government, but he had withdrawn the territorial petition on his "own discretion" after Polk told him that he did not favor the Mormons and that he would appoint outsiders to the territorial offices.⁸

However, Polk was now no longer in office, having turned the administration over to Zachary Taylor (fig. 4) and Millard Fillmore (fig. 5) on March 4, 1849. Kane offered Bernhisel and Woodruff tactical advice in dealing with the various politicians in their attempt to secure state or territorial government, urging the Mormons to take a neutral stand on the divisive slavery question. Kane also urged them not to align themselves with either party and promised that he would work with the Free Soil Party and that he would have his father, John K. Kane, and his friend George M. Dallas (fig. 6), the former vice president, work with the Democratic Party. Kane pointed out that

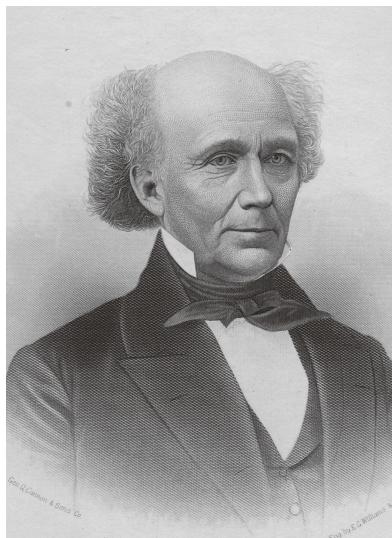


FIG. 1. John M. Bernhisel. Bernhisel was the first delegate from Utah Territory and served in the U.S. House of Representatives. Church History Library.

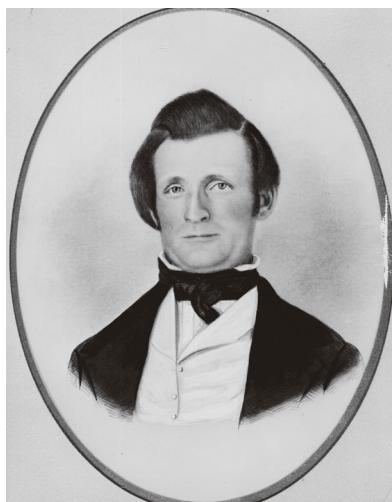


FIG. 2. Almon W. Babbitt. Babbitt served as lobbyist for the State of Deseret. He later served as the fourth secretary of Utah Territory, 1853–56. Used by permission, Utah State Historical Society, all rights reserved.

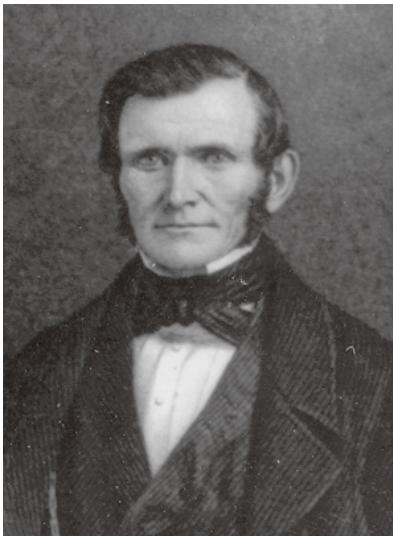


FIG. 3. Wilford Woodruff, steel engraving, c. 1853. Woodruff met Thomas L. Kane in 1846. Church History Library.



FIG. 4. Zachary Taylor. As twelfth president of the United States, Taylor urged delay in the organization of Utah Territory. Library of Congress.



FIG. 5. Millard Fillmore, c. 1877. As thirteenth president of the United States, Fillmore approved the Utah Territorial Organic Act that made Utah a territory, and he also appointed the first group of Utah territorial officials, some of whom became the controversial "runaway officials." Library of Congress.

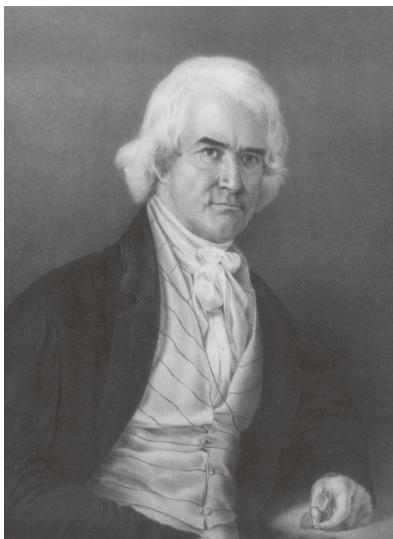


FIG. 6. George M. Dallas, c. 1844, by Currier and Ives. Dallas served as vice president to James K. Polk and was an influential friend of Kane's father, Judge John K. Kane. Library of Congress.

Mormons could count as “enemies” to Senators David R. Atchison and Thomas Hart Benton of Missouri, and intimated that the Mormons could expect little help from Illinois Senator Stephen A. Douglas (fig. 7), then serving as chair of the Senate Committee on Territories.⁹

Woodruff met again with Kane on December 4. Kane told Woodruff that Utahns would be better off “without any Government from the hands of Congress than [with] a Territorial Government. . . . You do not want,” he said,

Corrupt Political men from Washington strutting around you with military . . . dress. . . . You do not want two Governments with you. You have a Government now which is firm & Powerful and You are under no obligations to the United States. . . . Brigham Young should be your Govornor. . . . He has power to see through men & things. . . . [Under his leadership all associates will] work for the general good in all things and not act from selfish motives or to get some Petty office or a little salary.¹⁰

On the other hand, Kane suggested, if the people of Utah “did make up [their] minds to ask for a Territory [they] should use every exertion

in [their] power to get the assurance of the President that [their] Choice should be granted [them] in a Govornor & other officers.” If they could not secure such a promise, he recommended that they not ask for territorial organization, but await “the result.”¹¹

Citing his frequent bouts of ill health, Kane told Woodruff he might not be able to continue to work as much as previously for the Mormons. Woodruff told him he would “Pray for his success in our behalf” and “also for his health strength & prosperity.” Impressed with Kane’s “wisdom,” Woodruff wrote that he believed that the Pennsylvanian held “right views of things in General.” After Woodruff returned to Utah in fall 1850, he read the entries from his journal of conversations with Kane to the Church’s First Presidency and

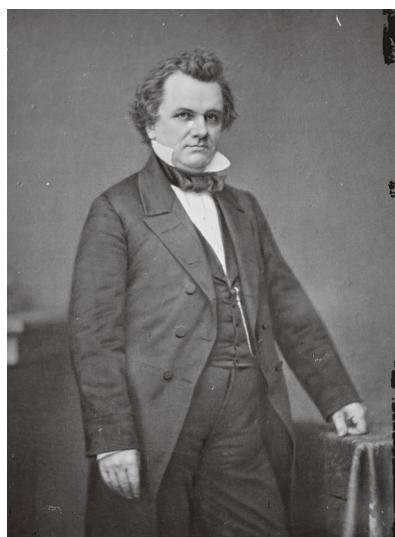


FIG. 7. Stephen A. Douglas, c. 1855–65. Douglas was a well-known orator and politician who represented Illinois as a congressman and as a senator. He championed such controversial bills as the Compromise of 1850 and the 1854 Kansas-Nebraska Act. Library of Congress.

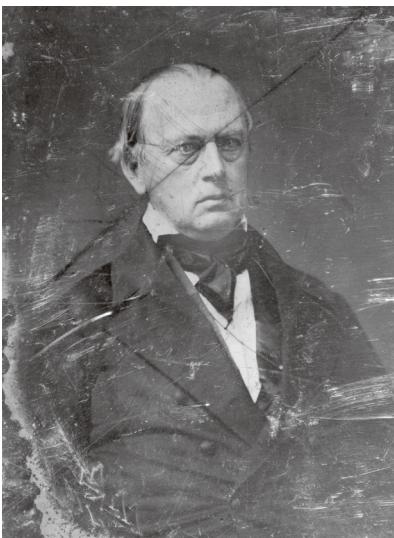


FIG. 8. Truman Smith, daguerrotype, c. 1844–60. As a senator from Connecticut, Smith assisted unofficial Utah territorial delegate John M. Bernhisel in lobbying for Utah statehood. Library of Congress.

Quorum of the Twelve, as Kane had requested.¹²

Kane and Bernhisel continued to lobby Congress and the administration. By mid-January 1850, a perceptive Bernhisel understood that Congress would most likely not admit Deseret-Utah as a state, though Whig Senator Truman Smith (fig. 8) of Connecticut encouraged Bernhisel to believe, at first, that Congress might authorize Utahns to elect their own territorial officers. By this time, President Taylor had begun floating the idea of organizing California as a monster state (covering present-day California, Nevada, and Utah) that might be divided later. After assessing the situation, Bernhisel understood that Congress would not act until mid-to-late summer, at the earliest, on the application for statehood.¹³

Meanwhile, Almon W. Babbitt was managing to make a nuisance of himself, and neither Bernhisel nor Kane had much confidence in Babbitt's judgment or character. Kane said Babbitt lacked "wisdom, prudence and discretion."¹⁴ Bernhisel witnessed such failings in Babbitt in an incident that took place early in 1850. By January a rumor had circulated that President Taylor would veto any bill "for the benefit of the Mormons." Imprudent as usual, Babbitt told Bernhisel that Fitz Henry Warren, the First Assistant Postmaster General, had made an appointment to introduce Babbitt to the president on January 11. Before the visit, Babbitt told Bernhisel he would ask the president if the rumor was true. If Taylor said yes, Babbitt would reply, "We might as well abandon our application for a government." Bernhisel urged Babbitt not to say anything to the president on the subject of state or territorial government.¹⁵

On the day after Babbitt's visit with Taylor, Bernhisel met with Babbitt again. Having ignored Bernhisel's advice, Babbitt and Warren had spoken with the president on the matter. Taylor had responded by commenting on "the absurdity of the Mormons asking for a State or Territorial

government." Upset with Babbitt's lack of judgment, Bernhisel urged him again to remain quiet on the subject, telling him he would "entirely blast our prospects here" if he did not. Babbitt promised to drop the subject, and he asked Warren to do the same.¹⁶ Nevertheless, in his message to Congress on January 21, 1850, President Taylor urged delay in the organization of Utah territory.¹⁷

By early March, Bernhisel had concluded they could not "get such a form of government, as will authorize us to choose our own officers." Under the circumstances, Bernhisel agreed with Kane that they "had better continue [their] provisional government." Under such a government, they could "enjoy peace and quiet, until [their] population" had grown large enough "to entitle [them] to admission . . . as a State."¹⁸ Acting on Kane's advice, Bernhisel tried to induce Stephen Douglas to withdraw the application for territorial status. Unmoved by his attempt, Douglas told Bernhisel that Congress had a "duty to organize the territories" and that Congress and the nation could not settle the slavery question "until the territories were organized."¹⁹ These comments undoubtedly reflected Douglas's views that adopting popular sovereignty in the territories would solve the slavery issue.

By late March 1850, Bernhisel had been left on his own to try to influence Congress to meet the Utahns' needs. Babbitt was visiting Nauvoo and Council Bluffs, and Kane had grown so ill that after he had delivered a lecture on the Mormons to the Historical Society of Pennsylvania on March 26, 1850, his physician ordered him to go to the West Indies for his health.²⁰ Kane's lecture and its publication in pamphlet form appeared at a crucial time during congressional consideration of Utah's application for state or territorial government. The address provided such a positive treatment of the Mormons and their persecution that, although it did not soften Taylor's resolve, it did help to shape public opinion in the Mormons' favor.²¹

Bernhisel secured the help of Senator Truman Smith, who tried to bypass Douglas's Territorial Committee by inserting an amendment in an appropriation bill to legalize the State of Deseret. That failed, and Douglas introduced bills to organize Deseret Territory, which the senators renamed Utah, and New Mexico Territory. Douglas's bill, amended in both the Senate and the House, languished until after President Taylor's death on July 9, 1850. Thereafter it moved with deliberate speed through the two houses. The newly installed president, Millard Fillmore, who proved as well-disposed toward Utahns as they could realistically expect, signed the Utah Territorial Organic Act on September 9, 1850, as part of the multifaceted Compromise of 1850.²²



FIG. 9. Willard Richards, steel engraving, c. 1853. Member of the Twelve, Church Historian, and a counselor to Brigham Young, Richards became territorial secretary, pro tem, in 1851. Church History Library.

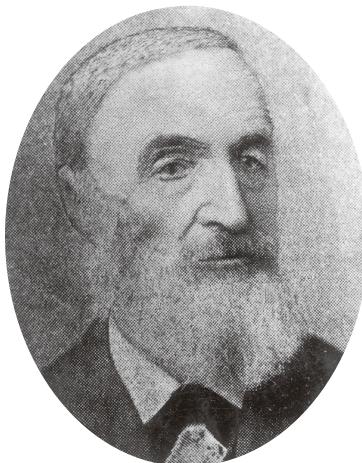


FIG. 10. Zerubbabel Snow. Snow served as supreme court associate justice for Utah Territory, 1850–54. He later became the attorney general in 1869. Used by permission, Utah State Historical Society, all rights reserved.

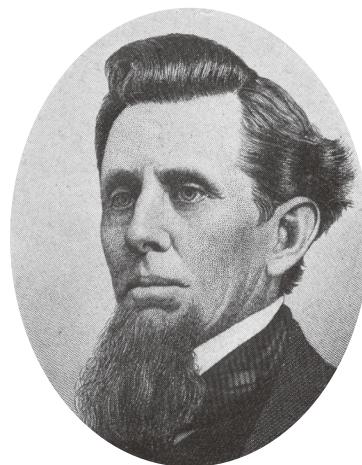


FIG. 11. Seth M. Blair. The first U.S. district attorney for Utah, Blair was nominated by President Millard Fillmore in 1850 and served until he was called on a Church mission in 1854. *Pioneers and Prominent Men of Utah*, 245.

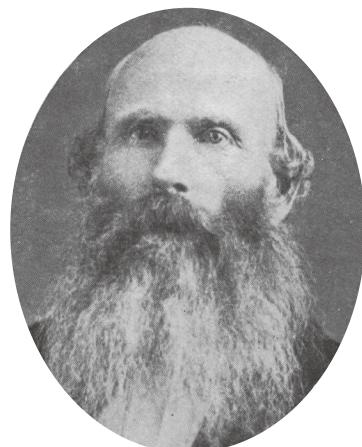


FIG. 12. Joseph L. Heywood. Heywood was appointed U.S. marshal for Utah by President Millard Fillmore in 1850. He later helped settle southern Utah. *Pioneers and Prominent Men of Utah*, 121.

The Federal Appointees

Unfortunately, Kane's prediction of the intense grief that Utahns would suffer with officials appointed from outside the territory proved all too accurate, as the relationship with the first set of officials demonstrated. On September 16, 1850, Bernhisel sent President Fillmore a list of men Utahns recommended as their territorial officials. These included Brigham Young as governor, Willard Richards (fig. 9) as territorial secretary, Zerubbabel Snow (fig. 10) as supreme court chief justice, Heber C. Kimball and Newel K. Whitney as associate justices, Seth M. Blair (fig. 11) as U.S. attorney for Utah, and Joseph L. Heywood (fig. 12) as U.S. marshal for Utah. In his letter submitting the recommendations, Bernhisel

argued that Utahns had a "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."²³

Babbitt successfully undercut Bernhisel's argument and recommendations by sending his own recommendations to Secretary of State Daniel Webster (fig. 13) dated September 21, 1850, seven days before Fillmore sent his nominations to the Senate. Styling himself "Delegate from the Territory of Utah," Babbitt provided a different list of candidates, which he may have discussed earlier with Webster and perhaps even with Fillmore. This discussion seems probable because, with one exception, the list coincided with the nominations Fillmore actually made. The exception was Henry R. Day of Missouri, whom Babbitt recommended as territorial secretary. Fillmore appointed Day as an Indian subagent rather than as secretary.²⁴

Following Babbitt's and Bernhisel's recommendations, Fillmore nominated Young as governor, Blair as attorney, and Heywood as marshal. Kimball (fig. 14) and Whitney (fig. 15) were rejected as justices, though this is understandable as neither was an attorney. From Babbitt's list, Fillmore nominated Joseph Buffington of Pennsylvania as chief justice.

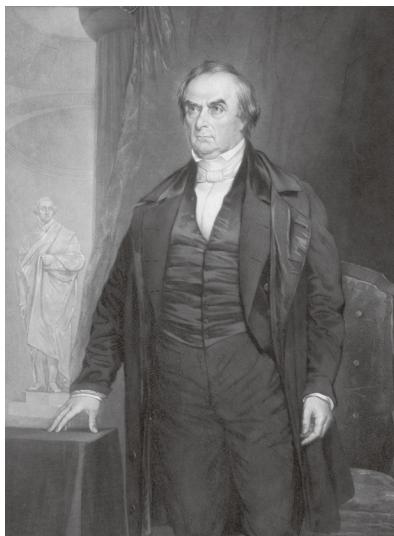


FIG. 13. Daniel Webster. An esteemed statesman, Webster served as U.S. representative from New Hampshire, as U.S. representative and senator from Massachusetts, and twice as U.S. secretary of state. Library of Congress.

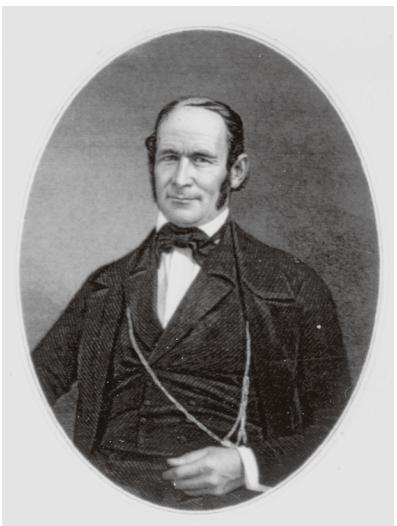


FIG. 14. Heber C. Kimball, steel engraving, c. 1853. Utah Territory representative John Bernhisel recommended to President Fillmore that Kimball serve as an associate justice in the territory. Church History Library.

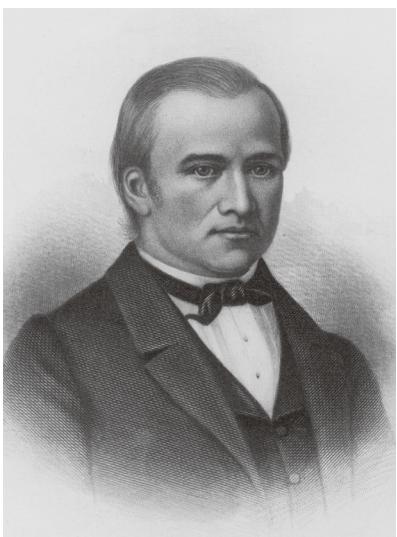


FIG. 15. Newel K. Whitney. Bernhisel also recommended that Whitney serve as another associate justice in the territory. Church History Library.

When Buffington refused to serve, Fillmore nominated Lemuel G. Brandebury, whom Babbitt also had recommended. For the other associate justices, Fillmore followed Babbitt's list and nominated Zerubbabel Snow of Ohio and Perry E. Brocchus (fig. 16) of Alabama. Instead of Richards or Day, Fillmore nominated Broughton D. Harris of Vermont as territorial secretary.

Utah's first territorial chief justice, Lemuel G. Brandebury of Carlisle, Pennsylvania, arrived in Utah on June 7, 1851, earlier than any of the other appointees from outside the territory. Before accepting the judgeship in Utah, Brandebury had lobbied unsuccessfully for appointment as recorder of the General Land Office in Washington, D.C., and for a position in the Treasury Department solicitor's office.²⁵ In 1851, Pennsylvania friends campaigned for his appointment as chief justice of Utah Territory. Letters and petitions poured in from members of the Pennsylvania congressional delegation.²⁶ Although Brandebury sent two letters to Fillmore withdrawing his application, the president nominated him on March 12, 1851. Congress confirmed the appointment, and despite his reluctance, Brandebury agreed to serve.²⁷

On August 17, Associate Justice Perry E. Brocchus, a Democrat from Alabama, arrived in Utah, the last of the outside appointees to reach Salt Lake City. He had practiced law in Alabama and served as a law clerk in



FIG. 16. Perry E. Brocchus. President Millard Fillmore appointed Brocchus as a supreme court justice for Utah Territory in 1850. He left Utah in 1851, soon after arriving. Special Collections Department, J. Willard Marriott Library, University of Utah.

the solicitor's office in Washington, D.C. Beginning in 1847, the ambitious Brocchus had lobbied the Polk administration for appointment as a supreme court justice in both Minnesota and Oregon territories. He failed in his efforts to secure either appointment, and he did not apply for the Utah judgeship. Nevertheless, Fillmore appointed Brocchus on September 28, 1850, with the first judicial list.²⁸

Among the three justices appointed on the first list, only one, Zerubbabel Snow, was a Latter-day Saint. (Zerubbabel's brother Erastus was a member of the Quorum of the Twelve.) Snow, a Democrat like Brocchus and Babbitt, had joined the Church in 1832. He lived in Ohio at the time of his appointment as an associate justice. Significantly, Snow's file contains fewer letters of support than Brandebury's and

Brocchus's.²⁹ Interior Secretary Alexander H. H. Stuart wrote to Fillmore on the same day the president nominated Snow. Stuart repeated allegations from two clerks who said Snow was "a man of bad character, of no talent, and has always been a *loco foco*," a pre-Civil War designation for a radical Democrat.³⁰ Fillmore acted in spite of Stuart's letter and did not rescind the nomination. Snow arrived in Salt Lake City on July 19, accompanied by Bernhisel and Babbitt. With them also came territorial secretary Broughton D. Harris and Indian agents Henry R. Day and Stephen B. Rose.³¹

Brigham Young's nomination as governor caused more of a stir. Young was recommended by Babbitt and Bernhisel and also had the endorsement of Kane, who spoke directly with Fillmore, defending Young from a number of unflattering newspaper attacks. Kane had recommended Kimball and Richards, and he had provided Fillmore with information "upon which to base his defence against . . . assailants" of the three. Kane also had written a confidential letter in support of Young that someone leaked in a garbled and uncomplimentary form to a newspaper.³² After a series of attacks and counterattacks appeared in party newspapers, Kane succeeded in blunting the effects of the assaults, convincing Fillmore to maintain

the nomination.³³ In his defense of Young and others, Kane also found it necessary to mount a rearguard action in the press against Babbitt's "improper conduct and [to disavow] his improper associations," presumably for fear he would undermine the nomination.³⁴

Flight of the Runaways

After the flurry of disputes over the appointment of Young, the arrival of the territorial officials in Salt Lake City seemed a tame affair. Kane wrote a letter of introduction to Young praising Brocchus and Brandebury.³⁵ The Mormons greeted the officials with social events and dinners.³⁶ Then on September 8, 1851, Brocchus spoke in a session of the semiannual conference of The Church of Jesus Christ of Latter-day Saints, and relationships deteriorated rapidly. Although no transcript of his message has survived, summaries exist, and historians have commented widely on its content. Fortunately, we have a lengthy summary by Wilford Woodruff, who may have prepared it for his diary from shorthand notes.

According to Woodruff, Brocchus maintained a good rapport with the congregation until he came to the discussion of the violent attacks against Mormons in Missouri and Illinois. He deplored the persecution, but justified the failure of the federal government to come to the Mormons' aid, arguing that the government "had No power"—we probably would use the term "authority"—to do so. He told the people if they "wanted redress" for their wrongs, they should "Apply to Missouri & Illinois," where they had received these wrongs. "This part of the speech," Woodruff wrote, "stir[r]ed the Blood of the whole congregation." Then, Woodruff wrote, "Much was said By the speaker which was Calculated to Stir the Blood of the people And offend them."³⁷

Brocchus did not seem to understand that Mormons had sought redress in both states, but had received neither judicial, legislative, nor executive assistance in Missouri and only token executive assistance in Illinois. Rather, local militias had forced Mormons to flee both states with the loss of hundreds of thousands of dollars in property and hundreds of lives, principally from disease, starvation, malnutrition, and freezing weather. Young arose after the speech and commented that "Judge Broc[c]hus was either profoundly Ignorant or wilfully wicked" in denying the culpability of the federal government in failing to redress the grievances of the Latter-day Saints in the two states.³⁸

Brocchus's speech and Young's reply engendered a vigorous response. Fearing for their lives in a hostile community, Brocchus, Brandebury, Harris, and Day left the territory for the United States on September 28,

1851.³⁹ The flight of the secretary and judges had serious consequences for Utahns. Harris took with him the money Congress had appropriated for the territorial government. Young and the territorial legislature tried to force him to leave the money, but the judges ruled against them. The absence of the two judges left only Snow to preside over all district court business for a territory whose settlements stretched, in 1851, from Brigham City on the north more than three hundred miles to Cedar City on the south and from Fort Bridger (now in Wyoming) on the east nearly seven hundred miles to Carson Valley (currently in western Nevada) near the California border on the west.

In an attempt to apprise Fillmore of the seriousness of the runaways' actions, shortly after the judges left, Young wrote to the president outlining the steps he had taken, after waiting more than a year following the passage of the territorial organic act, to inaugurate the government of Utah Territory. Young admitted he had moved with dispatch and without approval of the territorial secretary, who had not yet arrived, to order a census and the apportion of the territory into districts for the election of the legislature and a delegate. Young had begged Harris, Brandebury, and Brocchus not to leave the territory. Harris's intentions particularly distressed him because the secretary planned to take the funds with him that Congress had appropriated for the payment of legislative expenses, a course Young "considered . . . illegal." In an attempt to thwart Harris's action, Young, with the secretary's approval, called the legislature into an extraordinary session. Harris, however, refused to prepare a roll for the legislature or to perform other duties prescribed in connection with the session, and he secured a ruling from the territorial supreme court sustaining his decision to carry the money from the territory.

In his letter to Fillmore, Young faulted the government for failing to execute "those laws in times past, for our protection." He accused some unnamed officials of "abuse of power . . . even betraying us in the hour of our greatest peril and extremity, by withholding the due execution of laws designed for the protection of all the citizens of the United States." As a proximate case in point, the governor cited the actions of the runaway officials who deprived the territory "of a Supreme Court," of the official seal, of publication of laws, and of other statutory benefits. In addition, Young faulted the judges for their failure to take up their judicial duties after they arrived in the territory. He recommended that the president appoint people who had some knowledge of conditions in Utah, and he also suggested the government forward territorial funds through Charles Livingston, a non-Mormon merchant doing business in Salt Lake City, who could see to

the payment of legislative and other expenses. The legislature approved a memorial supporting Young's allegations.⁴⁰

Three weeks after the judges left, Young wrote to Fillmore again. The governor explained the administrative and legal problems caused by the flight of the judges and secretary and the lack of instructions from Washington on Indian affairs. In the exigency of the situation, he appointed Willard Richards as territorial secretary pro tem.⁴¹

With the flight of the judges, the people of Utah faced the difficulty of finding courts to try offenders or judges to preside in the territory. As a stopgap measure, Governor Young vested responsibility for all of the territorial district courts in Judge Snow. Then, to help relieve the pressure on Snow, in 1852 the territorial legislature extended the jurisdiction of the county probate courts to include civil and criminal cases.⁴² In addition, justices of the peace adjudicated cases within their jurisdictions. Most of the federal judges considered Utah's probate court jurisdiction illegal.⁴³ In 1874 the U.S. Supreme Court agreed, and in the same year Congress abolished the jurisdiction in a provision of the Poland Act.⁴⁴

While Young and others argued their case from far-distant Utah, Bernhisel returned to Washington to defend his Mormon constituents. On December 12, he met with Fillmore. Bernhisel asked the president whether anyone had preferred charges against Young. Fillmore said the runaway officials had done so verbally, and he had told them to "reduce their charges to writing and send them to the State Department." He told Bernhisel that when the runaways had lodged their charges, "he would give [Bernhisel] an opportunity to answer."⁴⁵

Eager to secure support from someone friendly to the Mormons with political connections, Bernhisel wrote to Kane first on December 11, 1851, to apprise him that Brandebury and Harris had arrived in Washington.⁴⁶ On December 17, Bernhisel wrote Kane again. This second letter was the first the Pennsylvanian had read that outlined details of the charges against the Utahns. He resolved to assist the Mormons and considered it his duty to ask for the closest scrutiny of the charges by a congressional committee. Kane drafted a letter to Fillmore and a resolution for the House of Representatives on the matter. The resolution asked the president to refer the charges to a special congressional committee with authority to subpoena persons and papers to investigate the matter. Kane sent copies to Bernhisel, cautioning that they must conduct the defense "wisely and temperately."⁴⁷

As Fillmore requested, Brandebury, Brocchus, and Harris published their grievances in letters to President Fillmore and Secretary of State Webster in the *Congressional Globe*. The runaway officials also wrote to

others elaborating on these and some additional charges. The letters are significant as much for what they reveal about the runaway officials as about conditions in Utah. Clearly anti-Mormon in his views and unfeeling in his attitude toward the people he had sworn to serve, Brocchus gave his version of his speech. He obviously had failed to understand the deep feelings of the people about the violence they had suffered in Missouri and Illinois and about the failure of President Taylor to honor their applications for state or territorial government. Moreover, Brocchus had cast aspersions on Utahns' patriotism by telling them "if they could not offer a block of marble [for the Washington Monument] in a feeling of full fellowship with the people of the United States, . . . they had better not offer it at all."⁴⁸

The runaways' charges attacked both the Mormon leadership and the Mormon people. As was usual in such charges, the runaways alleged that Young successfully commanded "unlimited sway over the ignorant and credulous," by which the runaways meant all the Latter-day Saints. The runaways criticized the deep resentment of the Mormon people for the abuse they suffered in Missouri and Illinois and the feelings against the government for appointing judges from outside the territory. The officials criticized the way in which Young conducted elections and superintended the census to apportion representatives.⁴⁹

Some of the comments were self-contradictory. The runaway officials asserted that the governor had not appointed local judicial and executive officers as required by the territorial organic act, then commented on decisions made by the allegedly nonexistent judges with whom they disagreed. The runaways alleged first that no elections were held; then they said the people had elected officials obedient to Young. The runaways complained that the legislature was not scheduled to meet until January 1852, but then pointed out it had met September 22, 1851. They alleged from rumors—and without evidence—that various murders had been committed with the approval of Church leaders. Brocchus's speech, they insisted, was designed to "arrest that flow of seditious sentiment which was so freely pouring forth from their bosoms toward the country to which they owed their highest patriotism and their best affections."

The letter told also of the disputes between the legislature and Governor Young on the one side and Secretary Harris and Babbitt on the other. The legislature and the governor sought reimbursement for the expenses incurred in legislative meetings and territorial business, but Harris and Babbitt refused to part with the money Congress had appropriated for these purposes. Eventually, a local court ordered Babbitt's property seized and sold to settle the debt, but Harris left Utah with the money entrusted to him, which he deposited with the assistant U.S. Treasurer in St. Louis.⁵⁰

Taking the opportunity Fillmore promised him, after receiving a copy of the charges from the State Department, Bernhisel penned a response on December 27. This letter added very little to a letter to Fillmore that Bernhisel had sent on December 1, in which he denied the charges of seditious statements and accused Brocchus of insulting the people of the territory in his speech by questioning their patriotism.⁵¹

Moreover, Bernhisel informed Fillmore and Kane of the falsity of specific charges against Young. Since the charges included allegations that Young had conducted a fraudulent census, Bernhisel secured a statement from the superintendent of the census that said the “returns are all in good and regular form,” including all information required by census takers.⁵² Bernhisel then supplied information on the conduct of elections. He pointed out that Young had ordered the elections in conformity with the provision of the Utah territorial organic act that authorized him to conduct the first election “in such manner,” time, and place “as the Governor shall appoint and direct.”⁵³

“A Plain Statement of Facts”

Energized by the need to act, Kane collaborated with Bernhisel and also with Jedediah M. Grant (fig. 17), the current mayor of Salt Lake City and a member of the Church’s First Council of the Seventy, whom the Utah leaders sent to Washington to help deal with this problem. Grant arrived in Washington on December 8, 1851. After consulting with Bernhisel, Grant went to Philadelphia, where he met with Kane later that month.⁵⁴

Early in their discussions, Kane learned from Grant something that disturbed him. Grant explained for the first time of the practice of polygamy among the Mormons, which, according to Kane, made it impossible “truthfully to refute the accusation of their enemies that they tolerate polygamy or a plurality of wives among them.” He felt deeply pained and humiliated “by this communication for which [he] was indeed ill prepared.” Nevertheless, he wrote, he retained “personal respect and friendship” toward Bernhisel and the Mormons.⁵⁵ More important, however, this information did not dim Kane’s resolve to assist the Mormons.

In February 1852, at Kane’s suggestion, Kane and Grant decided to draft what the Pennsylvanian called “a plain statement of facts” over Mr. Grant’s signature, which met with Bernhisel’s “entire approbation.”⁵⁶ Grant published the first letter in the *New York Herald*, and it was published as a pamphlet, together with two other letters signed by Grant that defended the Mormons against the runaways.⁵⁷ The letters, written in a folksy style, emphasized the friendly treatment bestowed on the officials that had been

reciprocated with verbal attacks and officiousness. (For example, the locals had sponsored elaborate balls and banquets for Brandebury, Harris, and Snow that Governor Young and local dignitaries had attended.) Grant and Kane used sarcasm and ridicule in the first letter with a description of Brandebury's shirt, which "came about as near to being *the great unwashed . . . [and] the most Disrespectful Shirt, ever was seen at a celebration.*"⁵⁸

From there, Kane and Grant moved to refute the runaways' charges against Mormons by attacking Brocchus's September 8 speech. The two letter writers characterized the speech as self-serving and offensive, claiming Brocchus had insulted Mormon women and questioned Mormons' patriotism. Kane and Grant then professed astonishment that "neither Brandebury nor Harris" disavowed Brocchus's actions. Rather, both officials announced their intentions to return with Brocchus. Moreover, in spite of the actions of the U.S. Marshal and the territorial legislature in their attempts to induce Harris to distribute the money due the legislature for "mileage, stationery, &c." from the \$24,000 he carried for the purpose, the secretary refused. Instead, he wrote the legislators "an insulting letter," alleging "they were illegally elected and constituted."⁵⁹

In the second letter, Kane and Grant turned specifically to the charges made in the reports of Brandebury, Brocchus, and Harris. Listing the charges *seriatim*, Kane and Grant labeled them either as true or false. On some charges they explained their answer, and on most they asked for a trial to examine the allegations on the evidence. They agreed that "almost the entire population" of Utah consisted of Mormons but denied that the Church controlled "the opinions, the actions, the property, and even the lives of its members" and denied that it had usurped and exercised "the functions of legislation and the judicial business of the Territory."⁶⁰

Kane and Grant denied that the Church had disposed of the "public lands upon its own terms." Rather, the Mormons claimed the land only as

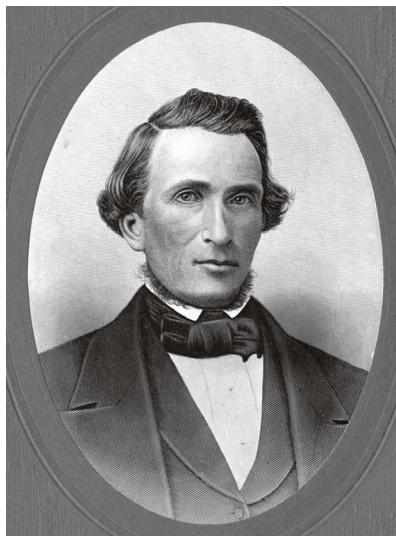


FIG. 17. Jedediah M. Grant. Grant served as a member of the Church's First Presidency and as mayor of Salt Lake City. He worked with Kane to defend the Mormons in print. Church History Library.

squatters, by which they owned only “a certain right of preëmption in for our Improvements.” Because of “the delay of Congress in legislating . . . [they] remain without Titles to [their] Homes.”⁶¹

The letter writers claimed the Mormons had made a mistake in coining money. From lack of expertise in purifying the gold, they said, the coins were worth less than the stamped amount. Rather than circulating at their stamped value, as the runaways had insisted, the coins circulated at their actual value in gold.⁶² Kane and Grant then acknowledged that the Church did ask members to pay tithing, but did not require it of nonmembers. Tithing, they asserted, “is a Free Will Offering purely, [calculated] by the giver, and is not accepted from those who are not in full communion.”⁶³

To the charge that the Mormon community levied “enormous taxes” on nonmembers, Kane and Grant replied with an explanation. They agreed in rather convoluted language that Mormons did levy high taxes on liquor and that this fell inordinately on those who consumed large amounts. The tax burdened non-Mormons more than Mormons because the latter did not drink as much alcohol as the former.⁶⁴ Kane and Grant also denied that they made the rules and teachings of the Church the basis of “all the obligations of morality, society, of allegiance, and of law.”⁶⁵

The second letter ended in a peroration designed to blunt the substance of the charges. The thesis of the section lay in the opening, which charged “the enemies of Religious Liberty” with using “the old Trick” of “persuading the ignorant to confound the two notions of *Spiritual* or strictly Religious influence, and *Material* or Political influence.” Although they “often go hand in hand, . . . they are two things entirely distinct and independent of each other.” The substance of the argument was that Mormons followed Brigham Young not because he or others forced them to do so, but because they believed his leadership had helped preserve and promote their community and that the missionaries sent out under his direction would spread American civilization throughout the world.⁶⁶

The third letter included a defense against a number of charges. It argued for Mormons’ true patriotism by citing their backgrounds and family connections to the colonial founders and American revolutionaries.⁶⁷ It defended Young’s leadership as salutary and approved by the majority. It also denied that his influence derived from violent abuse.⁶⁸ Kane and Grant attacked the attempt of the runaways to blame the entire Mormon community for the violence of some in the community. They explained the murders of John M. Vaughn and James Monroe, by the cuckolded husbands Madison Hamilton and Howard Egan, as the result of the two defiling the marriage bed through “adultery.”⁶⁹ Both Hamilton

and Egan stood trial for the murders, and in both cases the juries found them not guilty. In Egan's trial, his attorney, George A. Smith, argued that in similar cases of the murder of adulterers in New Jersey and Louisiana, juries had returned similar verdicts.⁷⁰ Kane and Grant also offered an oblique defense of plural marriage.⁷¹

After the letters were published in pamphlet form, Grant sent a copy to Fillmore with a cover letter. The letter argued for religious and political liberty and insisted that "we contradict every single statement of the Delinquent officers, and by wage of law or battel [sic] will equally rejoice to be brought to prove their falsehood.—We call for the Examination under oath."⁷²

Kane and Grant's first letter along with Bernhisel's lobbying led Fillmore to side with the Utahns against the runaway officials. On March 17, 1852, Bernhisel met with Fillmore at the president's request. The discussion led Bernhisel to conclude that Fillmore appeared eager "to do justice to the people" of Utah and that he would not remove Young as governor.⁷³

Fillmore did, however, ask Bernhisel about the murder of John M. Vaughn. Amos E. Kimberly, a friend of Vaughn's, had written to Fillmore, blaming the entire Mormon community for the murder.⁷⁴ Unlike Grant, who excused the murder because Vaughn had committed adultery with Hamilton's wife, Bernhisel deplored the murder. He pointed out that the courts had tried the murderer and the jury had returned a verdict of not guilty. He explained that after a previous incident of adultery between Vaughn and another married woman, Young had actually intervened to protect Vaughn after he had professed repentance, promised to reform, and submitted to rebaptism.⁷⁵

By early May it had become clear that Fillmore, Webster, and Congress had all accepted the Mormon view of the dispute. Kane, Grant, and Bernhisel had played crucial roles in shaping public opinion on the question, and Fillmore seems also to have accepted Young's explanation of his actions. Fillmore decided to retain the Mormon appointees Young, Blair, Heywood, and Snow. After some failed or withdrawn nominations, the Senate confirmed Lazarus H. Reed as chief justice to replace Brandebury, Leonidas Shaver to replace Brocchus, and Benjamin G. Ferris to replace Harris.⁷⁶ Reed and Shaver proved exceptionally popular in Utah, while Ferris remained only six months before leaving the territory and writing an anti-Mormon exposé.⁷⁷

In the short run, Utahns won this skirmish, though the charges of sedition and the flight of the officials came back to haunt them in Ferris's exposé and again in 1857, when President James Buchanan sent an army to Utah with a new set of federal officials. In the case of the original runaways, however, on June 15, 1852, Congress passed a law prescribing forfeiture of

pay for territorial officials who left their posts without permission, and Secretary of State Webster recommended that Brocchus return to Utah or resign. Public opinion as expressed in the press remained predominantly anti-Mormon, although a few articles supported the Saints.⁷⁸

“Federal Authority versus Polygamic Theocracy”

The case of the runaways did not end Kane’s assistance to the Mormons. Kane again became their mediator with the U.S. government during the Utah War in 1857 and 1858. He accomplished this task admirably as William MacKinnon has shown in a number of publications, including his essay herein.⁷⁹ Between 1858 and 1871, Kane involved himself in a number of business and military affairs. From 1861 to 1863, he served as a commander of Pennsylvania units in the Civil War, reaching the rank of Brigadier General (and Brevet Major General) of Volunteers.⁸⁰ Calls for help from the Mormons tailed off, as did correspondence with them until 1869, when he began to lobby Congress and various presidents to try to defeat anti-Mormon legislation.

Kane became even more intensely involved in Mormon relations with the federal government following President Ulysses S. Grant’s 1870 appointment of James B. McKean (fig. 18) as chief justice of the Utah Territorial Supreme Court.⁸¹ McKean became extremely unpopular with the Mormons and in 1872 admitted he had gone to Utah on a mission from God to suppress Mormonism.⁸² Grant undoubtedly shared McKean’s views on the need to suppress Mormon polygamy and to control theocratic government. Grant’s appointment of anti-Mormon judges to Utah Territory, such as Cyrus M. Hawley, Obed F. Strickland, and Jacob S. Boreman, seems to parallel those feelings. U.S. Attorney William Carey and his assistant Robert N. Baskin (fig. 19)

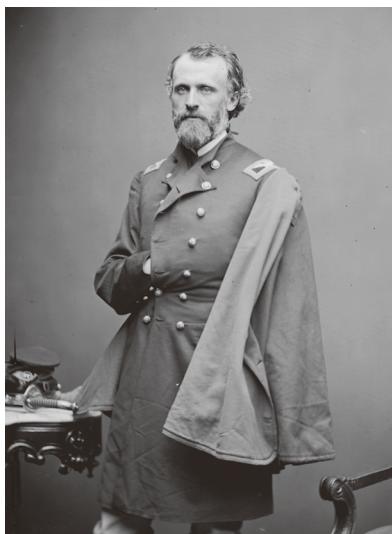


FIG. 18. James B. McKean. Appointed chief justice of the Utah Territorial Supreme Court in 1870 by President Ulysses S. Grant, McKean was antagonistic toward the Mormons and the practice of polygamy. Several of his actions and court decisions illegally disadvantaged the Mormons. Library of Congress.

had intense dislike for Mormons. On the other hand, some of Grant's appointees such as Samuel A. Mann, Philip H. Emerson, George C. Bates, and Sumner Howard got along well with Mormons.⁸³

Some of the actions McKean took to suppress the Mormon influence he so strongly opposed were clearly illegal. For instance, ruling that territorial district courts were United States district courts, he authorized the U.S. Marshal to empanel grand juries on an open venire rather than under the Utah Territorial court statute of 1852. Under McKean's ruling, rather than having the judge of the county probate court select potential jurors from a list of men from the tax rolls as territorial law required, the marshal simply walked along the street and picked men to serve on the grand jury. This practice led to juries packed with anti-Mormons who returned indictments against Mormons.⁸⁴

One of the earliest of these indictments challenged the legality of actions taken under a warrant issued by a previous federal judge, Chief Justice John F. Kinney (fig. 20). Acting on Kinney's warrant, in 1862 a posse led by deputy marshal Robert T. Burton had tried to free William Jones and two other men held as prisoners at Kingston Fort in South Weber by an apocalyptic religious group headed by Joseph Morris. In the attempt to free the prisoners, Burton's posse killed

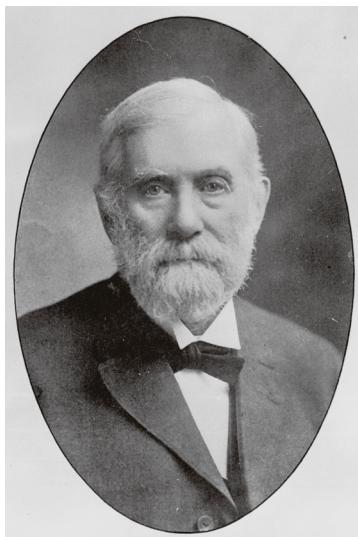


FIG. 19. Robert N. Baskin. Baskin served as an assistant U.S. Attorney. He later served as mayor of Salt Lake City and as chief justice of the Utah State Supreme Court. Used by permission, Utah State Historical Society, all rights reserved.

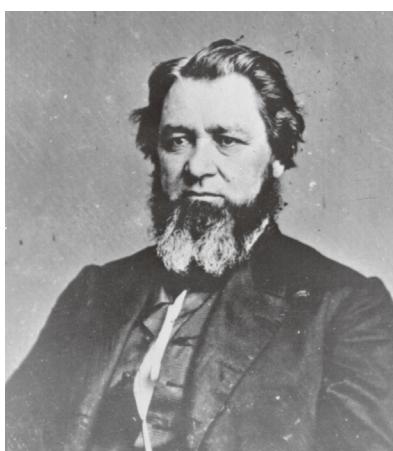


FIG. 20. John Fitch Kinney. Kinney served as Chief Justice of the Supreme Court of Utah Territory from 1854 to 1857 and again from 1860 to 1863. Used by permission, Utah State Historical Society, all rights reserved.

several members of the group, including Isabella Bowman. One of McKean's packed grand juries indicted Burton for Bowman's murder, but later in the trial the petit jury found Burton not guilty.⁸⁵

In April 1871, after the grand jury indictment, but before Brigham Young knew the petit jury would free Burton, Young turned to Kane for help. With Kane's connections in Washington, Young hoped the Pennsylvanian might be able to induce Grant to rid the territory of a judge who had "rendered himself so obnoxious to the people by his tyrannical and high handed measures." McKean had, Young said, become "the acknowledged standard bearer" of a "miserable clique of pet[t]ifogging carpetbaggers with their packed grand jury."⁸⁶

In September 1871, a similarly packed grand jury indicted Mormon leaders Brigham Young, George Q. Cannon, and Daniel H. Wells, along with Godbeite leader Henry W. Lawrence under territorial law that prohibited "lewd and lascivious cohabitation and adultery."⁸⁷ After admitting Young to \$5,000 bail, McKean denied the motion of Young's attorney, Thomas Fitch, to quash the indictment. In a long statement of his intent, McKean asserted that although "the case at bar is called, 'The People versus Brigham Young,' its other and real title is, 'Federal Authority versus Polygamic Theocracy.'"⁸⁸

Fitch filed a bill of exceptions to what he considered McKean's outrageous statement. It seems clear that McKean had perverted the territorial laws because "Mormons [through the Utah legislature] had not intended the adultery and lewd and lascivious cohabitation laws to apply to their plural marriage system." In addition, McKean refused to recognize the marriage exception to the testimony of plural wives against their husbands.⁸⁹

U.S. Attorney George C. Bates, who would have had to prosecute the accused, questioned the indictments because the grand jury did not indict Mormon leaders under the Morrill Act of 1862, which prohibited polygamy. Instead, the indictments were given under local laws that the territorial legislature had passed to punish adultery and prostitution instead of plural marriage.⁹⁰

In October 1871, McKean began excluding all potential Mormon jurors from petit as well as grand juries by asking them whether they believed in the revelation authorizing plural marriage. Young recognized that McKean's action placed him and other Church leaders in additional jeopardy, and Young turned again to Kane. Apparently loath to trust the U.S. mail, Young sent his son John W. Young with a letter to Kane pleading for help. McKean's rulings, the Mormon leader wrote, "have deprived the old settlers here of the right to sit on all juries, and in other ways deny to us

the rights belonging to the common people." He believed that by excluding Mormons from juries, McKean and his associates "have at last succeeded in what they trust will be a death blow to Mormonism." Owing to the actions of the grand jury, Young expected "to be a prisoner in the Military Post, Camp Douglass, long before" the letter reached Kane.⁹¹

McKean and his associates, especially Robert N. Baskin, who served for a time as assistant U.S. attorney, had long hoped to indict Young for something more serious than polygamy. They got their opportunity by working with William Adams Hickman, a confessed murderer. In September 1868, Hickman's Taylorsville bishop excommunicated him from the Church *in absentia* for his felonious activities. In September 1870, Hickman murdered a man who threatened his family in Tooele County. Indicted for the murder, Hickman agreed with McKean and Baskin to turn states' evidence against Young and others in return for his freedom. On the basis of Hickman's stories to Baskin, McKean secured indictments against Brigham Young, Daniel H. Wells, and Hosea Stout for the murders of Richard Yates and several others during the Utah War. McKean asserted he had evidence other than Hickman's testimony, but the prosecuting attorney provided none.⁹²

The letter John W. Young carried to Thomas L. Kane apprised him of the danger created by McKean's action. In a letter replying to Young, Kane said he was considering coming to Utah to meet with Young, which he eventually did during winter 1872-73. In the meantime, in view of the indictment, Kane advised Young to retain the best legal counsel available. Kane suggested hiring William M. Evarts, who had served as chief counsel for Andrew Johnson in his impeachment hearings and as U.S. attorney general during the early years of the Grant administration.⁹³

Later in the fall, Kane contacted William H. Hooper, who served as Utah's territorial delegate from 1859 to 1861 and again from 1865 to 1873. On Kane's suggestion, Hooper agreed to introduce a bill "providing for appeals in criminal causes from the Territorial courts to the Supreme Court of the United States." Kane also met with "influential parties" to lobby in support of Hooper's bill and other pro-Mormon matters.⁹⁴

Fearing for Young's life under McKean's rulings, Kane urged Young to hide out and to restrict information on his location to close friends. "In the present crisis," Kane wrote, "I can think of nothing as essential to the safety of your people as your personal security." In addition, he suggested George A. Smith, John Taylor, Orson Pratt, and others with names familiar to the public go into hiding. "We do not want," he wrote, "your persecutors to get hold of any man with name enough to help them to a sensation trial." Kane expected that "political friends of ours may originate more

than one measure in Congress for the relief of Utah." He also encouraged Young not to engage in "duplicity" but rather to remain open about the Church's beliefs and practices and to be certain that his followers did the same.⁹⁵

Although Kane had urged Young to remain in hiding, the Church president did not do so. Instead, he turned himself in. McKean refused to admit him to bail, but because of Young's ill health, the judge sentenced him to house arrest rather than incarcerating him at Fort Douglas with several of the others who had been indicted.⁹⁶

After learning of Young's arrest, Kane began preparing notes for an argument for removing McKean, and Kane lobbied with Congress and Grant either to provide legislative relief or to remove McKean and other supporters. Kane pointed out that friends in California had agreed to serve as sureties for bail equal to a hundred times the bail accepted for Jefferson Davis, the former president of the Confederacy. Yet McKean still refused to grant bail. McKean should not require Young, Kane argued, to submit to imprisonment for an indefinite period designed to break down his health before he could obtain an acquittal on the charges. Kane met with Pennsylvania Senator Simon Cameron, and Cameron met with Grant to argue Kane's case. Kane also met with Secretary of State Hamilton Fish and with Grant. Instead of securing help, Kane found that Grant seemed bent on prosecuting Young.⁹⁷

After Young had spent several months in house arrest, which the other indicted leaders spent at Fort Douglas, the United States Supreme Court ruled against McKean's theory of jury empanelling. In the federal case of *Clinton v. Englebrecht*,⁹⁸ the Supreme Court ruled that the territorial federal courts had to follow local law in empanelling juries. Contrary to McKean's ruling, the Supreme Court said, the territorial courts were merely legislative courts of the territory created by federal statute and thus subject to territorial law. This decision provided the legal basis for throwing out 130 indictments found by McKean's grand juries, and it vacated judgments in his petit juries as well.⁹⁹ Significantly, the *Englebrecht* decision invalidated the indictments for lewd and lascivious association and adultery against Young, Cannon, Wells, and Lawrence, and the indictments for murder against Young, Wells, and Stout.

Thwarted in his efforts to try the Mormons for polygamy and for murder, in 1873 McKean mounted a rearguard action against Brigham Young. To do so, McKean accepted the divorce suit of Ann Eliza Webb Dee Young (fig. 21), Brigham's twenty-fifth wife.¹⁰⁰ Failing to recognize that under federal statutes Brigham's marriage to Ann Eliza was illegal, McKean ordered

the prophet to pay alimony of five hundred dollars per month pending the outcome of the litigation. Brigham refused to do so on the grounds that she was not his legal wife, but that she had been sealed to him in a religious rather than a civil ceremony. Refusing to accept his plea, McKean fined Brigham twenty-five dollars and sent him to the territorial penitentiary in Sugar House for a night. Recognizing that accepting the marriage as legitimate would undermine federal statutes that prohibited polygamy, the U.S. attorney general later ordered the case dismissed.¹⁰¹

Conclusion

After the failure of McKean's judicial crusade, Kane continued to work for the Mormons on a number of other matters. These included the attempt to secure statehood in 1872 and several bills designed to undermine local control. He helped, for instance, to mitigate the impact of the Poland Act of 1874, since the act as finally passed authorized the judges of the county probate courts to remain involved in the selection of jury panels instead of turning over the entire empaneling to the U.S. marshal. Kane also tried, unsuccessfully, to derail the Edmunds Act.

In retrospect it seems clear that, although he failed in a number of his efforts, Kane played a crucial role in helping the Mormons in their dealings with Washington from 1849 until his death in 1883. As citizens of a territory, Mormons in the Great Basin could not vote in national elections, they had to accept whatever appointees the president and Senate chose to send to them, and their delegate to Congress had only limited power. Kane used his personal prestige and political connections to overcome these obstacles. His efforts to secure the appointments of Young, Snow, Blair, and Heywood to territorial offices had undoubtedly helped. Kane's assistance in thwarting the efforts of the runaway officials to undermine local government and interests proved invaluable. Most particularly, his advice



FIG. 21. Ann Eliza Young, lithograph, c. 1869–75. Ann Eliza filed for divorce from Brigham Young in 1873. A highly publicized trial followed, and the U.S. Attorney General ordered the case dismissed two years later. Library of Congress.

to Bernhisel and especially his work with Jedediah Grant in drafting the three letters to the *New York Herald* helped immeasurably. Although Kane also provided advice in the campaign to thwart McKean and Baskin in their effort to undermine local democratic government in Utah and to lodge spurious charges against Young and other Church leaders, his extensive efforts in Washington proved of little help, largely because the Grant administration supported McKean's efforts. It is unclear just whether Kane's public efforts in support of the Mormons in this case had any influence on the Supreme Court in the *Englebrecht* decision. Significantly, however, he did assist in helping to remove the most obnoxious features of the Poland Act of 1874.

Kane's efforts proved to be as successful as one might expect in a representative democracy. This was particularly true since the people of Utah had little political clout. On balance, Kane's personal prestige and political connections helped the Mormons a great deal.

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1. For a general discussion of these matters, see Michael F. Holt, *The Rise and Fall of the American Whig Party: Jacksonian Politics and the Onset of the Civil War* (New York: Oxford University Press, 1999); Joseph G. Rayback, *Free Soil, the Election of 1848* (Lexington: University of Kentucky Press, 1970); Daniel Walker Howe, *The Political Culture of the American Whigs* (Chicago: University of Chicago Press, 1979). On Kane's support for the Free Soil Party, see Matthew J. Grow, "Liberty to the Downtrodden": *Thomas L. Kane, Romantic Reformer* (New Haven: Yale University Press, 2009), 93–112.

2. On these matters, see Eric Foner, *Free Soil, Free Labor, Free Men: The Ideology of the Republican Party before the Civil War* (New York: Oxford University Press, 1995); Michael F. Holt, *The Political Crisis of the 1850s* (New York: Wiley, 1978); and Michael F. Holt, *The Fate of Their Country: Politicians, Slavery Extension, and the Coming of the Civil War* (New York: Hill and Wang, 2004). On the presidents after the Civil War, see Brooks D. Simpson, *The Reconstruction Presidents* (Lawrence: University Press of Kansas, 1998).

3. Dale L. Morgan, *The State of Deseret* (Logan: Utah State University Press with the Utah State Historical Society, 1987), 13–66.
4. Grow, “*Liberty to the Downtrodden*,” 81.
5. Peter Crawley, “The Constitution of the State of Deseret,” *BYU Studies* 29, no. 4 (Fall 1989): 10. The enormous state they proposed encompassed the land from the Sierra Nevada to the crest of the Rockies, covered all the Great Basin, included present-day Arizona south to the Gila River, and extended over a swatch of southern California to a seaport at San Diego. Morgan, *State of Deseret*, 31, 35–36, 128.
6. Morgan, *State of Deseret*, 67.
7. Morgan, *State of Deseret*, 39.
8. Wilford Woodruff, *Wilford Woodruff’s Journal, 1833–1898 Typescript*, ed. Scott G. Kenney (Midvale, Utah: Signature Books, 1983), 3:513–14. This entry and those cited in the next four footnotes are summaries that Woodruff wrote of his discussions with Kane and that he placed at the end of the year rather than at their respective dates.
9. Woodruff, *Journal*, 3:513–14.
10. Woodruff, *Journal*, 3:515–16. Woodruff’s spelling has been retained.
11. Woodruff, *Journal*, 3:516. Woodruff’s spelling has been retained.
12. Woodruff, *Journal*, 3:516 (entry at end of year); 3:579 (October 27, 1850).
13. John M. Bernhisel to Thomas L. Kane, January 17, 1850, Thomas L. and Elizabeth W. Kane Collection, L. Tom Perry Special Collections, Harold B. Lee Library, Brigham Young University, Provo, Utah.
14. Bernhisel to Kane, January 17, 1850, Perry Special Collections.
15. Bernhisel to Kane, January 17, 1850, Perry Special Collections.
16. Bernhisel to Kane, January 17, 1850, Perry Special Collections; Almon W. Babbitt to Brigham Young, July 7, 1850, as quoted in Morgan, *State of Deseret*, 82.
17. Morgan, *State of Deseret*, 73.
18. John M. Bernhisel to First Presidency, March 5, 1850, as quoted in Morgan, *State of Deseret*, 74.
19. John M. Bernhisel to Brigham Young, March 27, 1850, as quoted in Morgan, *State of Deseret*, 75.
20. Morgan, *State of Deseret*, 76.
21. Thomas L. Kane, *The Mormons: A Discourse Delivered before the Historical Society of Pennsylvania, March 26, 1850* (Philadelphia: King and Baird, 1850). A second printing in 1850 added more positive information on the Mormons by answering questions Kane had encountered by those who showed interest in the religious group.
22. Morgan, *State of Deseret*, 78–81. On the compromise, see Holt, *Fate of Their Country*.
23. John M. Bernhisel to Millard Fillmore, September 16, 1850, as quoted in Morgan, *State of Deseret*, 86.
24. Almon W. Babbitt to Daniel Webster, September 21, 1850, in “Letters of Application and Recommendation during the Administrations of James Polk, Zachary Taylor, and Millard Fillmore, 1845–1853,” General Records of the Department of State, RG 59, microfilm 873, reel 4, National Archives, Washington, D.C. (hereafter cited as “Letters of Application”).

25. Pennsylvania Congressmen [illegible, perhaps Jehu Glancy Jones], Thaddeus Stevens, and Joseph Casey to Treasury Secretary William M. Meredith, March 8, 1850, in "Letters of Application," reel 9.

26. Twelve Congressional Representatives from Pennsylvania to Millard Fillmore, n.d. [1851], in "Letters of Application," reel 9; Representative Moses Hampton to Millard Fillmore, February 25, 1851, in "Letters of Application," reel 9; Representative Joseph Casey to Solicitor of the Treasury John C. Clark, February 6, 1851, in "Letters of Application," reel 9; John C. Clark to Millard Fillmore, February 7, 1851, in "Letters of Application," reel 9.

27. Lemuel G. Brandebury to Millard Fillmore, February 17 and February 25, 1851, in "Letters of Application," reel 9; List entitled "Chief Justices,—Utah Territory," in "Records Relating to the Appointment of Federal Judges, Attorneys, and Marshals for the Territory and State of Utah, 1853–1901," RG 60, microfilm 680, reel 1, National Archives, Washington, D.C. (hereafter cited as "Records Relating to the Appointment").

28. "Associate Justices,—Utah Territory," in "Records Relating to the Appointment," reel 1.

29. Z. Snow to David K. Carter [*sic*], September 17, 1850, in "Letters of Application," reel 82. C. W. Belden et al. to Millard Fillmore, September 23, 1850, in "Letters of Application," reel 82.

30. Alexander H. H. Stuart to Millard Fillmore, September 28, 1850, in "Letters of Application," reel 82.

31. Jenson, Church Chronology, 43.

32. Thomas L. Kane to Brigham Young, Heber C. Kimball, and Willard Richards, July 29, 1851, Perry Special Collections. I have been unable to determine which newspaper published the letter. Kane simply called the newspaper the "Republic." It was possibly the *Baltimore Republican and Argus*.

33. Millard Fillmore to Thomas L. Kane, July 4, 1851; and Thomas L. Kane to Millard Fillmore, July 11, 1851, in *Frontier Guardian*, September 5, 1851, both cited in Matthew Grow to author, December 8, 2008.

34. Kane to Young, Kimball, and Richards, July 29, 1851, Perry Special Collections.

35. Thomas L. Kane to Brigham Young, April 7, 1851, cited in Matthew Grow to author, December 8, 2008.

36. Gene A. Sessions, *Mormon Thunder: A Documentary History of Jedediah Morgan Grant* (Urbana: University of Illinois Press, 1982), 323–25.

37. Woodruff, *Journal*, 4:61–62. For comments by other historians on Brocchus's talk, see B. H. Roberts, *Comprehensive History of The Church of Jesus Christ of Latter-day Saints, Century 1* (Salt Lake City: Deseret News Press, 1930), 3:522–23; Clifford L. Ashton, *The Federal Judiciary in Utah* (n.p.: Utah Bar Foundation, 1988), 1–2; Norman F. Furniss, *The Mormon Conflict, 1850–1859* (New Haven: Yale University Press, 1960), 24–26.

38. Woodruff, *Journal*, 4:62–63; Roberts, *Comprehensive History*, 3:522–23.

39. For the date of their flight I have relied on Roberts, *Comprehensive History*, 3:534.

40. Brigham Young to Millard Fillmore, September 29, 1851, in *Appendix to the Congressional Globe*, 32nd Cong., 1st Sess. (January 9, 1852), 91–92; "Memorial Signed by the Members of the Legislative Assembly of Utah, to the President of the

United States," September 29, 1851, in *Appendix to the Congressional Globe*, 32nd Cong., 1st Sess. (January 9, 1852), 92–93.

41. Brigham Young to Millard Fillmore, October 20, 1851, in *Appendix to the Congressional Globe*, 32nd Cong., 1st Sess. (January 9, 1852), 86.

42. On this matter, see James B. Allen, "The Unusual Jurisdiction of County Probate Courts in the Territory of Utah," *Utah Historical Quarterly* 36, no. 2 (Spring 1968): 132–42.

43. A number of other territories with scattered populations including Nevada, Washington, Nebraska, Colorado, Idaho, and, to a limited extent, Montana later made similar provisions for expanded probate court jurisdictions. Only the probate court jurisdiction in Utah, however, seems to have elicited much opposition. Earl S. Pomeroy, *The Territories and the United States, 1861–1890: Studies in Colonial Administration* (Philadelphia: University of Pennsylvania Press, 1947), 59–60.

44. *Ferris v. Higley* 87 U.S. 375 (1874); Poland Act, 18 U.S., *Statutes at Large*, 253 (1874).

45. John M. Bernhisel to Thomas L. Kane, December 17, 1851, Perry Special Collections. On the date of the arrival of Brandebury and Harris, see Jedediah M. Grant to Brigham Young and Council, December 30, 1851, in Sessions, *Mormon Thunder*, 91.

46. John M. Bernhisel to Thomas L. Kane, December 11, 1851, Perry Special Collections.

47. Thomas L. Kane to John M. Bernhisel, December 29, 1851, Perry Special Collections.

48. "Extract of a letter from a judicial officer [Perry E. Brocchus] of the Government at Great Salt Lake City," September 20, 1851, in *Appendix to the Congressional Globe*, 32nd Cong., 1st Sess. (January 9, 1852), 85–86.

49. "Extract of a letter from a judicial officer [Perry E. Brocchus] of the Government at Great Salt Lake City," September 20, 1851, in *Appendix to the Congressional Globe*, 32nd Cong., 1st Sess. (January 9, 1852), 85–86.

50. Lemuel G. Brandebury, Perry E. Brocchus, and Broughton D. Harris to Millard Fillmore, December 19, 1851; Broughton D. Harris to Daniel Webster, January 2, 1852; Broughton D. Harris to Millard Fillmore, January 2, 1852, in *Appendix to the Congressional Globe*, 32nd Cong., 1st Sess. (January 9, 1852), 86–90.

51. Bernhizel [sic] to Millard Fillmore, December 1, 1851, in *Appendix to the Congressional Globe*, 32nd Cong., 1st Sess. (January 9, 1852), 85; John M. Bernhisel to Millard Fillmore, December 31, 1851, in *Appendix to the Congressional Globe*, 32nd Cong., 1st Sess. (January 9, 1852), 91. Judge Snow also wrote to Fillmore in anticipation of the judges' flight, referring the president to Bernhisel, who was then in Washington, for further information. Zerubbabel Snow to Millard Fillmore, September 22, 1851, in *Appendix to the Congressional Globe*, 32d Cong., 1st Sess. (January 9, 1852), 86.

52. Joseph C. G. Kennedy, Superintendent of the 7th Census to John M. Bernhisel, January 27, 1852, included in John M. Bernhisel to Thomas L. Kane, February 4, 1852, Perry Special Collections.

53. John M. Bernhisel to Thomas L. Kane, February 7, 1852, Perry Special Collections.

54. Kane to Bernhisel, December 29, 1851, Perry Special Collections.

55. Kane to Bernhisel, December 29, 1851, Perry Special Collections; Grant to Young and Council, December 30, 1851, in Sessions, *Mormon Thunder*, 92–93.

56. Bernhisel to Kane, February 4, 1852, Perry Special Collections.

57. The *Herald* published only the first one, which is probably why the men issued a pamphlet with the other letters.

58. Sessions, *Mormon Thunder*, 325. All three letters are reproduced in an appendix in Sessions, *Mormon Thunder*, 319–68. Perry Special Collections has a copy of the original pamphlet.

59. Sessions, *Mormon Thunder*, 333. The first Kane-Grant letter “afforded a great deal of amusement” in Washington. Bernhisel learned Secretary of the Treasury Thomas Corwin was “delighted with it, saying that it is the best thing he ever read . . . and that he does not believe a ‘whit’ of the charges preferred by the late officers.” The public became gleeful over Grant and Kane’s characterization of Brandebury’s filthy shirt, and rumors circulated that “Brandebury [had become] . . . very wroth about ‘that shirt.’” John M. Bernhisel to Thomas L. Kane, March 18, and March 29, 1852, Perry Special Collections.

60. Sessions, *Mormon Thunder*, 338, 339.

61. Sessions, *Mormon Thunder*, 338, 339. There was no federal office in Utah Territory until 1868.

62. Sessions, *Mormon Thunder*, 338, 339–40.

63. Sessions, *Mormon Thunder*, 340.

64. Sessions, *Mormon Thunder*, 338, 340–41.

65. Sessions, *Mormon Thunder*, 338–39, 341–42.

66. Sessions, *Mormon Thunder*, 342–50.

67. Sessions, *Mormon Thunder*, 359–60.

68. Sessions, *Mormon Thunder*, 355–57.

69. Sessions, *Mormon Thunder*, 360–62.

70. The cases were *New Jersey v. Mercer* and *Louisiana v. Horton*. Robert Wynn, “Howard Egan: Outlaw or Guide?” <http://www.robertwynn.com/EganH.htm>. On the Egan case, see Kenneth L. Cannon II, “Mountain Common Law: The Extralegal Punishment of Seducers in Early Utah,” *Utah Historical Quarterly* 51, no. 4 (Fall 1983): 308–27.

71. Sessions, *Mormon Thunder*, 362–63.

72. Jedediah M. Grant to Millard Fillmore, May 1, 1852, in Sessions, *Mormon Thunder*, 369.

73. John M. Bernhisel to Thomas L. Kane, March 18, 1852, Perry Special Collections.

74. On the general view of violence, see D. Michael Quinn, *The Mormon Hierarchy: Extensions of Power* (Salt Lake City: Signature Books, 1997), 241–61; Jon Krakauer, *Under the Banner of Heaven: A Story of Violent Faith* (New York: Doubleday, 2003).

75. John M. Bernhisel to Millard Fillmore, April 8, 1852, enclosed in John M. Bernhisel to Thomas L. Kane, April 9, 1852, Perry Special Collections.

76. John M. Bernhisel to Thomas L. Kane, May 11, 1852, May 19, 1852, May 29, 1852, August 16, 1852, Perry Special Collections.

77. On Ferris, see “Benjamin G. Ferris,” Wikipedia, http://en.wikipedia.org/wiki/Benjamin_G._Ferris.

78. Furniss, *Mormon Conflict*, 32–33.

79. For more on this topic, see William MacKinnon's essay herein.

80. On these matters, see Grow, "Liberty to the Downtrodden," 207–35. For more on Kane's Civil War service, see Matthew Grow's and Edward Geary's essays herein.

81. For an article on McKean and his career in Utah, see Thomas G. Alexander, "Federal Authority versus Polygamic Theocracy: James B. McKean and the Mormons, 1870–1875," *Dialogue: A Journal of Mormon Thought* 1, no. 3 (Autumn 1966): 85–100. I should point out I do not now agree with many of the conclusions I arrived at in defense of McKean. Rather, I now believe that he was an anti-Mormon bigot and that many of his actions were clearly illegal and aimed at undermining Mormonism.

82. "In January, 1872, in the Ebbett House, in Washington, Judge McKean avowed his principles to Judge Louis Dent, brother-in-law of the President, in these precise words: 'Judge Dent, the mission which God has called upon me to perform in Utah, is as much above the duties of other courts and judges as the heavens are above the earth, and whenever or wherever I may find the Local or Federal laws obstructing or interfering therewith, by God's blessing I shall trample them under my feet.'" Edward W. Tullidge, *Life of Brigham Young; or, Utah and Her Founders* (New York: Tullidge and Crandall, 1876), 420–21.

83. On Grant and the people of Utah, see Thomas G. Alexander, "A Conflict of Perceptions: Ulysses S. Grant and the Mormons," *Newsletter of the Ulysses S. Grant Association* 8 (July 1971): 29–42. Elizabeth Kane's manuscript account of the 1868 visit of President Grant to the Kane home in Kane, Pennsylvania, is in the Kane collection, Perry Special Collections.

84. Alexander, "Federal Authority," 86–87.

85. On the Morrisites and Burton's trial, see *Utah History Encyclopedia*, ed. Allan Kent Powell (Salt Lake City: University of Utah Press, 1994), s.v. "The Morrisites."

86. Brigham Young to Thomas L. Kane, April 16, 1871, Perry Special Collections.

87. Alexander, "Federal Authority," 89.

88. Alexander, "Federal Authority," 89–90; Orson F. Whitney, *History of Utah* (Salt Lake City: George Q. Cannon and Sons, 1892–1904), 2:592; "The U.S. District Court," *Salt Lake Tribune*, September 19, 1871, [3]; "New Phase of the Mormon Question," *Salt Lake Tribune*, October 9, 1871, [1].

89. Orma Linford, "The Mormons and the Law: The Polygamy Cases," *Utah Law Review* 9, no. 2 (Winter 1964): 331; 12 *Statutes at Large*, 501; "Third District Court," *Salt Lake Tribune*, October 8, 1874, [4]; *Friel v. Wood*, 1 Hagan (Utah), 160 (1874).

90. Whitney, *History of Utah*, 2:604–6, 620, 678.

91. Brigham Young to Thomas L. Kane, September 27, 1871, Perry Special Collections.

92. Robert N. Baskin, *Reminiscences of Early Utah* (Salt Lake City: Privately printed, 1914), 37; Whitney, *History of Utah*, 2:629–33, 663–64, 666–71. On Hickman's excommunication and turning states evidence, see *Utah History Encyclopedia*, s.v. "William Adams Hickman."

93. Thomas L. Kane to Brigham Young, October 12, 1871, Perry Special Collections. On Evarts see "William Maxwell Evarts," Civil War Landscapes Association, <http://civilwarlandscapes.org/cwla/per/civil/wme/wmef.htm>.

94. Thomas L. Kane to Brigham Young, November 30, 1871, Perry Special Collections. There are several drafts of this letter in the Kane Collection.

95. Kane to Young, November 30, 1871, Perry Special Collections.

96. Thomas L. Kane, "Notes of Communication to Prest. Young when he was urged to seek refuge," n.d. [probably 1872], Perry Special Collections.

97. Thomas L. Kane, "Notes of Communication," Perry Special Collections; Grow, "*Liberty to the Downtrodden*," 260–62.

98. The case in question involved a judgment of \$59,063.25 in McKean's court against Salt Lake alderman and justice of the peace Jeter Clinton. Saloonkeeper Paul Englebrecht had refused to pay a city liquor tax that he considered exorbitant, and Clinton had ordered the destruction of his liquor stock as a punishment. Englebrecht had appealed to McKean's court, and one of the packed juries had ruled against Clinton. The Utah Territorial Supreme Court made up of McKean and anti-Mormons Obed F. Strickland and Cyrus M. Hawley had sustained the award against Clinton. Clinton appealed successfully to the United States Supreme Court. *Clinton v. Englebrecht*, 80 U.S. 434, 1872.

99. *Clinton v. Englebrecht*. On the fallout from this decision, see Cyrus M. Hawley to George H. Williams, November 9, 1872, in "Department of Justice Selected Documents from the Appointment Clerk Files Relating to Utah Judges," vol. 1, RG 60, National Archives, Washington, D.C. (microcopy, Utah State Archives, Salt Lake City); McKean to Williams, November 12, 1873, in "Department of Justice Selected Documents"; "Decision in the Engelbrecht Case," *Salt Lake Tribune*, October 5, 1871, [2]; "The Jury Question," *Salt Lake Tribune*, April 3, 1873, [2]; "Important Proceedings in Court," *Salt Lake Tribune*, October 22, 1873, [4]; "Judge McKean Sustained by the Supreme Court," *Salt Lake Tribune*, December 10, 1873, [1]; "A Judicial Nondescript," *Salt Lake Tribune*, January 8, 1874, [4]; "The Jury Bill," *Salt Lake Tribune*, February 1, 1874, [2]; "Territorial Marshal," *Salt Lake Tribune*, May 8, 1874, [4]; "Grand and Petit Jurors," *Salt Lake Tribune*, July 23, 1874, [4]; "Third District Court," *Salt Lake Tribune*, December 19, 1874, [4].

100. Leonard J. Arrington, *Brigham Young: American Moses* (New York: Alfred Knopf, 1985), 420–21. Even though Orson F. Whitney's *History of Utah* identifies Ann Eliza as Brigham's nineteenth wife, I have counted his wives on Arrington's list and determined she was the twenty-fifth.

101. Whitney, *History of Utah*, 2:757–60; "The Impending Suit," *Salt Lake Tribune*, July 31, 1873, [2]; "The Divorce Suit," *Salt Lake Tribune*, August 1, 1873, [2]; "Important Divorce Case," *Salt Lake Tribune*, July 25, 1874, [4]; "Revelation!" *Salt Lake Tribune*, August 26, 1874, [4]; "Third District Court," *Salt Lake Tribune*, February 26.