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CONTENTS

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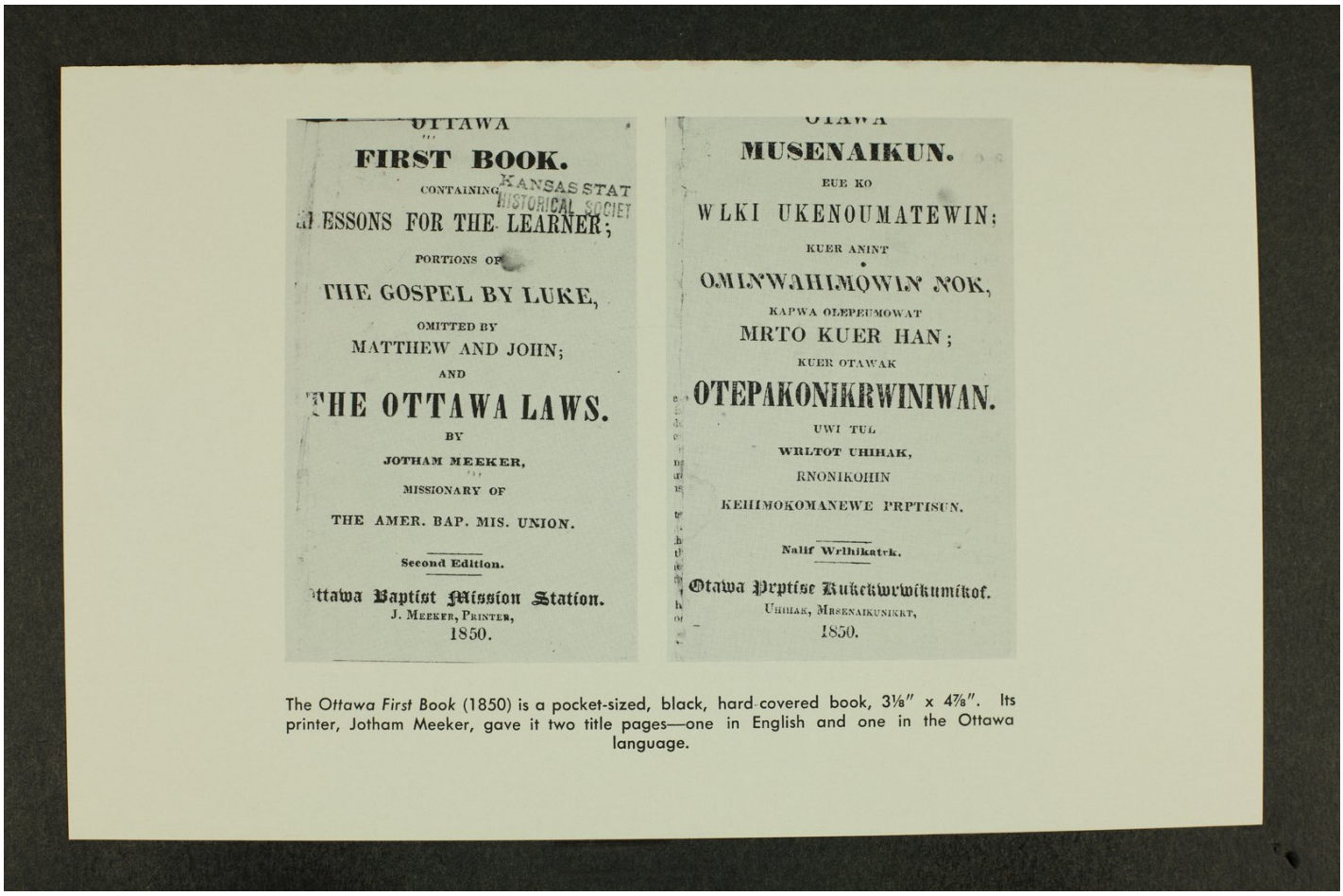
The Cover

With the coming of the Zanesville (Ohio) colony to establish the town of Pearlette in Meade county, Kansas, early in 1879, came the type and press for publication of its newspaper, the Pearlette *Call,* first issued on April 15, 1879. The first page of this minipaper is reproduced on the cover, and the remaining 11 pages of the 12-page issue appear *between* pp. 272-273.

Kansas historical quarterly



OTTAWA

FIRST BOOK.

CONTAINING

LESSONS FOR THE LEARNER;

PORTIONS OF

THE GOSPEL BY LUKE,

OMITTED BY

MATTHEW AND JOHN;

AND

THE OTTAWA LAWS.

BY

JOTHAM MEEKER,

MISSIONARY OF

THE AMER. BAP. MIS. UNION.

Second Edition.

Ottawa Baptist Mission Station.

J. MEEKER, PRINTER,

1850.

OTAWA

MUSENAIKUN.

EUE KO

WLKI UKENOUMATEWIN;

KUER ANINT

OMINWAHIMOWIN NOK,

KAPWA OLEPEUMOWAT

MRTO KUER HAN;

KUER OTAWAK

OTEPAKONIKRWINIWAN.

UWI TUL

WRLTOT UHIHAK,

RNONIKOHIN

KEHIMOKOMANEWE PRPTISUN.

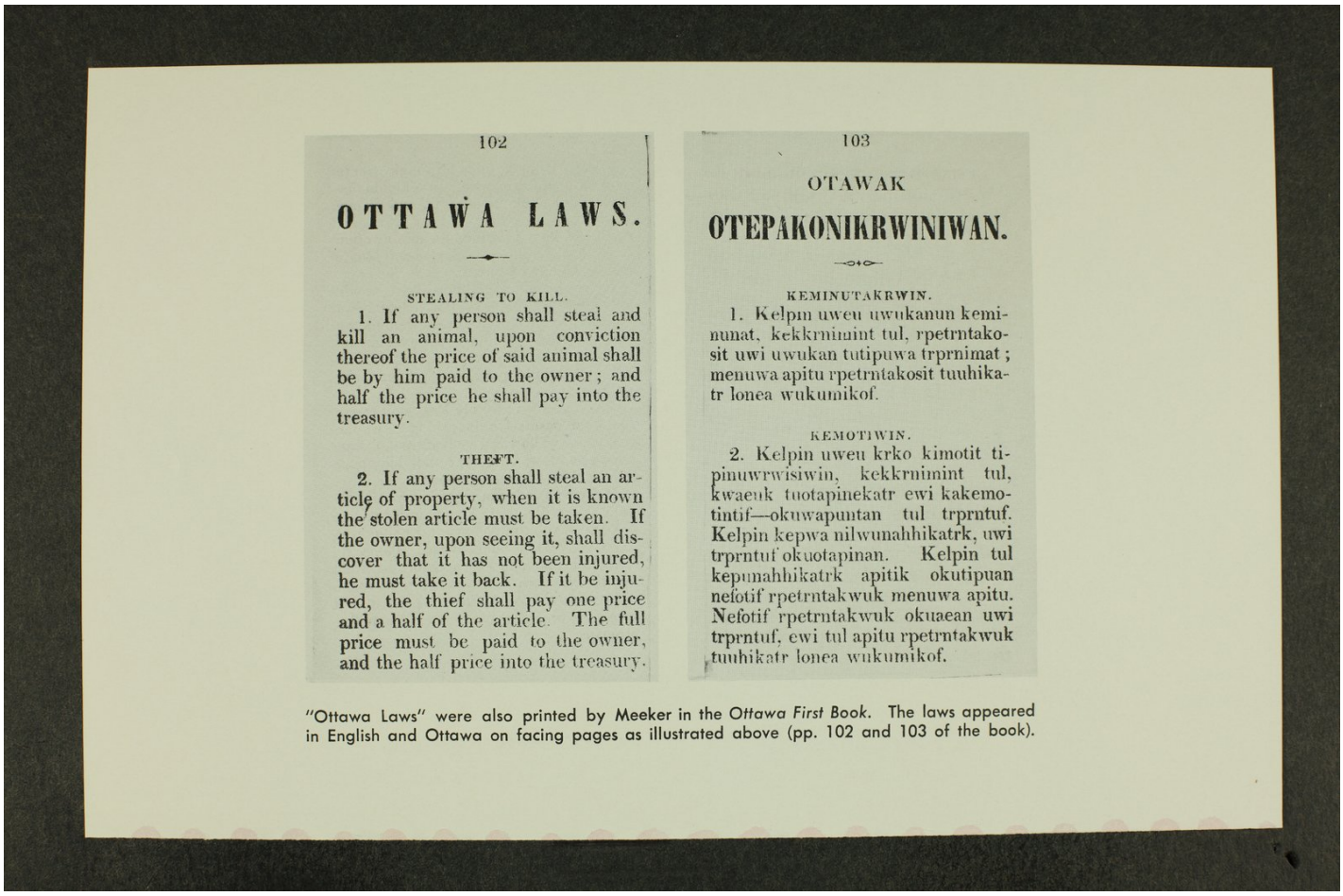
Nalif Wrlhikatrk.

Otawa Prptise Rukekwrwikumikot.

UHIHAK, MRSENAIKUNIKRT,

1850.

The *Ottawa First Book* (1850) is a pocket-sized, black, hard-covered book, 3⅛" x 4⅞". Its printer, Jotham Meeker, gave it two title pages—one in English and one in the Ottawa language.



102

OTTAWA LAWS.

STEALING TO KILL.

1. If any person shall steal and kill an animal, upon conviction thereof the price of said animal shall be by him paid to the owner; and half the price he shall pay into the treasury.

THEFT.

2. If any person shall steal an article of property, when it is known the stolen article must be taken. If the owner, upon seeing it, shall discover that it has not been injured, he must take it back. If it be injured, the thief shall pay one price and a half of the article. The full price must be paid to the owner, and the half price into the treasury.

103

OTAWAK

OTEPAKONIKRWINIWAN.

KEMINUTAKRWIN.

1. Kelpin uweu uwukanun keminunat, kekkrnimint tul, rpetrntakosit uwi uwukan tutipuwa trprnimat; menuwa apitu rpetrntakosit tuuhikatr lonea wukumikof.

KEMOTIWIN.

2. Kelpin uweu krko kimotit tipinuwrwisiwin, kekkrnimint tul, kwaeuk tuotapinekatr ewi kakemotintif—okuwapuntan tul trprntuf. Kelpin kepwa nilwunahhikatrk, uwi trprntuf okuotapinan. Kelpin tul kepunahhikatrk apitik okutipuan nefotif rpetrntakwuk menuwa apitu. Nefotif rpetrntakwuk okuaean uwi trprntuf, ewi tul apitu rpetrntakwuk tuuhikatr lonea wukumikof.

"Ottawa Laws" were also printed by Meeker in the *Ottawa First Book*. The laws appeared in English and Ottawa on facing pages as illustrated above (pp. 102 and 103 of the book).

THE KANSAS HISTORICAL QUARTERLY

Volume XLII *Autumn, 1976* Number 3

A Study of the Laws of the Ottawa Indians as Preserved in the *Ottawa First Book* (1850)

THEODORE JOHN RIVERS

I. INTRODUCTION

THROUGH the efforts of Jotham Meeker (1804-1855), Baptist missionary to the Ottawa Indians and first printer in the state of Kansas, 25 laws of the Ottawa Indians have been preserved.[1] The laws which have come down to us are found in the *Ottawa First Book*, a small volume printed by Meeker at Ottawa, Kan., in 1850, which contains, apart from the laws, a grammar on the Ottawa language, translations into Ottawa of Luke's Gospel, and mathematical tables.[2] The book also contains United States whiskey laws, which are translated into the Ottawa language. The only portion of this book which is in English are the laws themselves, in which the Ottawa original is accompanied by an English translation. This English translation comprises pages 102-124. The fact that the laws were rendered into writing at all is a remarkable achievement. Among primitive cultures, the traditions and customs of the past

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1. For Jotham Meeker, *see* Douglas C. McMurtrie and Albert H. Allen, *Jotham Meeker. Pioneer Printer of Kansas With a Bibliography of the Known Issues of the Baptist Mission Press at Shawanoe, Stockbridge, and Ottawa, 1834-1854* (Chicago, 1930), which contains a biography of Meeker's life, pp. 15-23, and extracts from his unpublished "Journal," pp. 43-126, for the years 1832-1855. The "Journal" itself is located at the Kansas State Historical Society, Topeka, and runs without interruption from September 10, 1832, to January 4, 1855. Also, *see* Floyd B. Streeter, "Jotham Meeker and the First Printing Press in Kancas [*sic*]." *The American Collector*, Metuchen, N. J., v. 5 (1927-1928), pp. 190-193, and Kirke Mechem, "The Mystery of the Meeker Press," *Kansas Historical Quarterly*, v. 4 (1935), pp. 61-73.

2. *Ottawa First Book. Containing Lessons for the Learner; Portions of the Gospel by Luke, Omitted by Matthew and John; and the Ottawa Laws*, by Jotham Meeker (Second edition, Ottawa Baptist Mission Station, J. Meeker, Printer, 1850). This law book, which was limited to 500 copies, is listed in Lester Hargrett, *A Bibliography of the Constitutions and Laws of the American Indians* (Cambridge, Mass., 1947), no. 209. The earlier edition of the *Ottawa First Book* has not come down to us.

I wish to express appreciation to the Rare Book Division of the New York Public Library and to its director, Mrs. Cole, for making the *Ottawa First Book* available to me. According to Hargrett, only three of a total of 500 copies of this book have been located, and these are probably the only surviving copies. Besides the copy in the N. Y. P. L., the other two copies are located at the Kansas State Historical Society, Topeka, and the Library of the Boston Athenaeum in Massachusetts. The *Ottawa First Book*, along with several other entries in Hargrett, are now available on microfilm through the Kraus Reprint Co.

are more usually conveyed in oral form by the elders or by those with exceptional memories.

The Ottawas first arrived in the Territory of Kansas in 1832, where they had been forcibly removed from Ohio and Michigan. Further removals occurred in the years 1837-1839. They were removed to Kansas against their will by the United States government, as were other Indian tribes (Chippewa or Ojibwa, Pottawatomie, and Huron) associated with them. In Ohio and Michigan, these Indians were fur traders and hunters; they were not farmers primarily. In the 17th century, the Ottawa lived in Canada, where they first made contact with the French in 1615.

A census conducted by the Office of Indian Affairs indicates that there were some 247 Ottawa in eastern Kansas in 1854,[3] that is, four years after the printing of the *Ottawa First Book*. Schoolcraft says there were 300 Ottawa in 1856-1857.[4] By either reckoning, the population of the Ottawa west of the Mississippi was not great some 20 years after their first arrival in Kansas. The 25 Ottawa laws which have survived apply to this small remnant of a once vast tribe.

There were two basic differences between the environments of Ohio and Michigan on the one hand, where the Ottawa lived prior to the 1830's, and Kansas on the other, where they were relocated. In Ohio and Michigan the Ottawa were primarily fur traders-hunters and lived in a heavily forested area. In Kansas the Ottawa were predominantly farmers and lived on a prairie. Although they eventually became dependent on the fur trade while residing in Ohio and Michigan, they could have been completely independent from the white fur trade had they chosen to do so; but white men's products (especially the rifle) became indispensable. Nevertheless, conditions derivative of a hunting society allowed the Ottawa to follow their tribal customs without a great deal of outside influence. Once they had relocated to Kansas and become farmers, they gave up their former source of income and rapidly adopted white men's agricultural practices.[5] The presence of Jotham Meeker and other missionaries, such as Isaac McCoy, also influenced the Ottawa to abandon their tribal customs and to adopt white man's ways.[6]

3. W. Stitt Robinson, Jr., "The Indian Problem in the Kansas Territory," *Your Government (Bulletin of the Governmental Research Center, University of Kansas)*, v. 9, no. 7 (March 15, 1954), p. [3].

4. Henry Rowe Schoolcraft, *History of the Indian Tribes of the United States: Their Present Condition and Prospects, and a Sketch of Their Ancient Status* (Philadelphia, 1857), v. 6, p. 547.

5. *Ibid.*, pp. 547-548.

6. William Frank Zornow, *Kansas: A History of the Jayhawk State* (Norman, Okla., 1957), p. 52.

The question must persist whether any of the Ottawa laws predate the movement of the Ottawa Indians to Kansas in the 1830's. Dating establishes, to be sure, that the last four (of the total of 25 laws) were promulgated for the first time in January, 1850, but there are no dates for the preceding 21. We do know that these 21 laws were two years earlier than their date of publication, since the publisher Meeker writes in his diary on March 3, 1848, that he has already translated them from the Ottawa language into English; [7] but we cannot take as conclusive evidence the inference of Hargrett [8] that a still earlier edition was published in 1838—an unfortunate lack, since any revisions that might have been found in the later edition as compared with the earlier would be of particular significance in illustrating the development of legal maturity among the Ottawa Indians.

Did the forced relocation of the Ottawa challenge their customs sufficiently to alter them permanently? [9] There are several indications that it did. A case in point is Law 15 which concerns punishment for setting fire to the prairie;[10] this obviously is a new condition derived from relocating to Kansas, where prairies were encountered for the first time. Unfortunately, no Ottawa laws have survived other than those preserved in the *Ottawa First Book*. The laws follow, and they are reproduced exactly as they appear in the *Ottawa First Book*. The titles which introduce the laws accompany the original.

II. The Ottawa Laws

STEALING TO KILL

1. If any person shall steal and kill an animal, upon conviction thereof the price of said animal shall be by him paid to the owner; and half the price he shall pay into the treasury.

THEFT

2. If any person shall steal an article of property, when it is known the stolen article must be taken. If the owner, upon seeing it, shall discover that it has not been injured, he must take it back. If it be injured, the thief shall pay one price and a half of the article. The full price must be paid to the owner, and the half price into the treasury.

7. McMurtrie-Allen, *Jotham Meeker*, p. 109.

8. *Constitutions and Laws of the American Indians*, p. 101.

9. Since a part of the Ottawa Indians moved to Canada in the late 1830's, either directly from Ohio or via Kansas, this group may have been more in tune with the traditions of the past. Unfortunately, no laws of these Indians have been preserved.—*See* Robert F. Bauman, "The Migration of the Ottawa Indians From the Maumee Valley to Walpole Island," *Northwest Ohio Quarterly*, Toledo, v. 21 (1949), pp. 86-112.

10. The seriousness of fire on the prairie, caused either naturally or by design, is illustrated in Meeker's "Journal," August 13, 1850.—*See* McMurtrie-Allen, *Jotham Meeker*, p. 119.

USING WITHOUT PERMISSION

3. If any person shall, without permission, be seen riding another's horse, for every mile he shall pay 25 cents. The price of horse hire shall be paid to the owner, and the balance into the treasury. If oxen shall be thus stolen, twice the price of ox hire shall be paid—one price of the hire shall belong to the owner, and the balance shall be deposited in the treasury.

INDIAN HORSES

4. If an Indian horse shall come into Ottawa country no attention shall be paid to him. If any person shall, regardlessly, use him, the same that is paid for an Ottawa horse per mile shall be paid for him. All of it shall be deposited in the treasury.

WHITE PERSON'S BEAST

5. If a White person's domestic animal shall come into the Ottawa country, he may be caught, to be taken care of. No person shall be permitted to take him far off, nor to work him. The person, on taking up such animal, shall write descriptions of him, which must be taken to Westport and to Wolftown to be nailed to the doors, in order that the owner may know it, who must bring proof before he can take him, and sign his name to a written receipt. If the owner shall not come, he may be kept for one year, and then sold. For each month three dollars shall be charged for keeping him if in the winter, and in the summer two dollars. For every dollar 25 cents shall go to the treasury. Half a dollar shall be charged for advertising.

GOOD FENCE

6. A good fence must be constructed as follows: Eight rails high, and crossed stakes; and so made that neither small pigs nor hogs can get through.

STOCK DESTROYING CROPS

7. If either pigs, hogs, cattle or horses, get through a good fence, and damage the crop, the owner of the said animals shall pay for it. But if the fence be not good, and animals get in, and damages the crop, the owner of the field shall lose it, and shall neither injure nor kill the said animals.

DEBTS

8. If any person shall owe his fellow Ottawa, having named a time to pay, and does not pay at that time, the creditor may ask him to set another time to pay, who must then name a time, not far off, but within two months. If he shall not then pay, the creditor may do as he shall think best. If he shall wish to take any articles of property, or animals, he may take them.

REVENGE

9. If any person, having his property lawfully taken, shall become angry, or threaten to take revenge, or shall injure the other's property, he shall see more trouble. Whatever the lawmen shall decide on, so it shall be.

HOUSE BREAKING

10. If any person sees a house that is locked, he must not open it, unless he has permission from the owner. If he does regardlessly open it, he shall, on conviction, pay two dollars. One half shall belong to the owner of the house, and the other half shall be deposited in the treasury.

SEARCHING

11. If any person shall miss any thing of his property, he may send the lawmen to search in any suspected house—the owner of which shall submit. If he shall refuse he must stand convicted.

RE-EXCHANGING

12. If any person swops away his horse, and wishes to re-call his bargain, he can do so by paying $5.00 in cash. All other articles exchanged may be re-exchanged by paying 25 cents on every dollar.

BAD STUD

13. If any person shall own a bad stud which shall kill a horse or colt, he must pay to the owner the value of that which is killed.

SLANDER

14. If any person shall injure another by slander, he shall pay to him the amount of injury done him.

BURNING

15. If any person shall set fire to the prairie, and burn another's property, he shall pay for what is burnt.

WHISKEY

16. Whiskey on the Ottawa land cannot come. If any person shall send for it, or bring it into the Ottawa country, he who sends, or he who brings shall pay five dollars, and the whiskey shall be destroyed. Any one sending or bringing the second time, shall forfeit all of his annuity money. For the third offence, he shall be delivered over to the United States officers, to try the severity of the White men's laws.

GAMBLING

17. If any person on the Ottawa land shall be seen at mocasin playing he shall pay two dollars and a half.

BORROWING

18. If any person shall borrow or hire a horse, ox or wagon, the time shall be named for returning them, although he may be done using them the daily price of hire shall continue to be paid. If however, sickness, or a severe rain storm should prevent, he may be excused. And also, all other articles borrowed must be returned at the time appointed. If they are not returned at the time, regular pay must then commence.—For every day the borrower must pay 12½ cents.

RESIDENTS

19. Whoever shall live on the Ottawa land must be dealt with if he shall violate any of these laws. He shall also be permitted to prosecute others if he shall be in any way wronged.

LAWMEN

20. When any one shall be elected to be a lawman he must not refuse to serve, unless he shall pay five dollars in order that he may be excused.

ATTENDANCE

21. The lawmen are required to be present at the Councils wherever held on the Ottawa land—sickness only may hold them back. If they shall carelessly neglect to attend after being informed, they shall pay each one dollar.

CANCELLING DEBTS

22. The Ottawas, knowing that much evil has hitherto resulted from their running in debt, now resolve to act differently. Those who, from this time forward, shall go in debt, shall be compelled to cancel all such debts at each annuity payment. If any one shall not, at that time, pay his debts in full, any creditor whose claims have not been cancelled, let him come from wheresoever he may, can then act according to his own wish. He can require the lawmen to seize any property whatsoever belonging to the said debtor which he may wish. If he, the creditor, shall not want the said property, the lawmen must sell it, and make payment. The debtor must also pay over to the law ten cents for every dollar thus collected, which must be deposited in the treasury. Jan. 1850.

TAXING

23. For every acre of land cultivated in the Ottawa country ten cents shall be paid.—For every head of cattle from two years old to four years old, five cents shall be paid.—For older cattle, ten cents per head shall be paid. For horses the same amounts shall be paid which are to be paid for cattle. The above amounts are to be paid once every year, and to be deposited in the treasury. The time for collecting these payments shall be in the month of September. If any one shall fail to pay at that time, and shall not have paid at the annuity payment, his money shall then be taken. January, 1850.

POOR TAX

24. Every man living on the Ottawa land shall pay annually 12½ cents. This amount is also to be paid in the month called September, and is to be given for the benefit of the poor.—To be deposited in the treasury. January, 1850.

WIDOWS AND ORPHANS

25. On the Ottawa land if a married man shall die, having children, the said children shall own all of his fields, domestic animals, and houses; and the widow shall own every thing else of his personal estate. If the said man shall die without children, the woman shall own all. If another person shall take any part of it by force, as a thief is dealt with by the law, so shall that person be dealt with who shall rob the widow and children of what belongs to them.—January, 1850.

III. A Discussion

A. *Basic characteristics.* The Ottawa laws are primarily criminal laws, that is, they are concerned with the definition and punishment of crimes. An overwhelming number of these laws are concerned with monetary compensation as a means of the redress of crimes. Like most American Indian tribes, the Ottawa do not possess the idea of confinement or imprisonment as a form of retribution. Rather, 20 laws (1-5, 7-8, 10, 12-18, 20-24) of a total of 25 describe or imply monetary compensation; and furthermore, nine of these 20 laws involve payment of such compensation to a public treasury, which indicates that the Ottawa were evolving legally

from the primitive law of personal wrongs to the more sophisticated concept of criminal law.

Ottawa law is primarily private rather than public law. It is also primarily customary law. Yet in 1850 it was evolving in the direction of statute law made in the tribal council (so specified by Laws 22-25, passed in January, 1850) as distinguished from laws simply passed on in oral manner from generation to generation. It showed a grasp, too, of the related principle of territoriality of law; Law 19 shows that whoever is on Ottawa land, whether an Ottawa Indian or not, is subject to Ottawa law. It is universally upheld by legal historians of comparative law that the concept of territoriality is an outgrowth of the personality of law. An attempt to explain Ottawa law, like all law, may be equated with an attempt to explain the regulations under which a society lives.

B. *Lawmen.* Five laws discuss the institution of the "lawman." That the lawman may have represented an institution new to the Ottawa in the 19th century is evident in two of these laws, which delineate this functionary's election to office and his mandatory attendance in the tribal council. "Lawman" is a somewhat arbitrary title, since he did more than legislate; he also functioned as the police.

The office of the lawman, an elective one, required attendance at the council meetings under penalty of a $1.00 fine.[11] That he was sometimes drafted by the people without his consent is evident from Law 21, which makes clear that some Ottawa Indians were elected and tried not to serve. Those who openly refused to serve were fined $5.00; the payment of this fine freed them of their obligations.[12] The lawmen made policy, and their judicial decisions were expected to be followed by their constituents.[13]

As an enforcement officer, the lawman had the power to execute the law[14] and to enforce the redress of grievances. This latter is most noticeable in Law 22, which gives the lawman the right to settle a debt by seizing a debtor's property and by reaching a settlement with the creditor. If the creditor does not want the property, the lawman can sell it and make payment (in money) to the creditor. Law 22 was enacted by the Ottawa council in January, 1850, and it constitutes one of the four new laws enacted in that year.

C. *Public treasury.* References to the public treasury appear in

11. Law 21.
12. Law 20.
13. Law 9.
14. Law 11.

the Ottawa laws a total of nine times; principally at the beginning and near the end, with one exception toward the middle (Laws 1-5, 10, 22-24). Penalty payments to this treasury were in most cases required *in addition to* penalties exacted on behalf of the victim of a crime; when property of an unknown victim was abused (as in the case of a stray horse appropriated by an Ottawa tribal member, Law 4), the penalty was payable to the public treasury in full.[15] Penalties stipulated for payment to the public treasury by Laws 22-24 are considerably smaller than those stipulated by Laws 1-5, 10. However, the proportion paid to the victim of a crime and to the public treasury varies from law to law; it is not fixed.

What is the function of the public treasury? It cannot be said that those laws which require payment to the treasury affect the whole community, and therefore are public laws in every case; yet payment to the treasury adds one more sanction to those who violate the law. Payment to the public treasury exemplifies that the concept of criminal law is beginning to emerge from the primitive law of personal wrongs and private redress. One definite benefit of payment to the public treasury is illustrated in Law 24, which describes the poor tax which every man (every adult male?) is required to pay each year; the revenues collected are deposited in the treasury to be distributed among the poor.

D. *Debts.* Two Ottawa laws concern repayment of debts, and these are Laws 8 and 22. Law 22, which was passed in January, 1850, adds new conditions to those proposed in Law 8. Law 8, undoubtedly the earlier, requires the debtor to pay back the debt within two months, and if the debt is not paid within this time, the creditor may take whatever action he feels is necessary—probably the seizure of property—to make restitution;[16] Law 22 adds new and somewhat more liberal conditions to Law 8, permitting restitution at the time of the annuity payment (*see* section G). Property may still be seized under Law 22 as under Law 8, but lawmen with their police powers are also used in conjunction with the creditor in compelling the debtor to pay back his debt. Under Law 22, the debtor must also make payment to the public treasury. The promulgation of Law 22 illustrates that debts were not being paid within the two-month period described by Law 8, and the Ottawa government saw to it that debtors were forced to pay back debts

15. There are four additional laws (16-17, 20-21) which make no explicit mention of the public treasury, but which may still require payment to it. Since no individual victim is specified in these laws, it may be inferred from their context that payment was made to the public treasury.

16. Law 8 permits retributive seizure of articles of a debtor's property on the part of his creditor; Law 9 restrains the debtor from rash reactions to such a seizure.

under the added authority of the lawmen, and this is done at the time of the annuity payment. Evidently, part of the debtor's annuity payment was paid to the creditor.

E. *Law of Inheritance.* It is known that in the 17th century the Ottawa traced descent patrilineally and were exogamous.[17] These customs still apply to the Ottawa residing in Kansas.[18] That the Ottawa traced descent patrilineally is reinforced by Law 25, which indicates that preference is given to a man's children rather than to his wife in dividing the paternal inheritance. This is to be expected, since in an agricultural community, children would have scant means of support other than the paternal inheritance. Under this law, children inherited the most valuable possessions, land and livestock, and the widow (unless childless, in which case she was the sole beneficiary) inherited all remaining property of her late husband. What remained, of course, constituted a mere fraction of the paternal inheritance. Land may have descended through a father's sons only, although this cannot be proved. This law of inheritance applies only to legitimate children; there is no condition for illegitimate children.

F. *Animals.* Three types of animals are described in 12 Ottawa laws, and these are cattle and oxen, pigs and hogs, and horses. Horses are by far the most important of these three types, since they are described in seven of these 12 laws, and three laws are devoted to them exclusively. Cattle and oxen are often discussed in conjunction with horses; pigs and hogs are the least important. (There is no mention of animals other than those described here, such as chickens.) The enumeration of animals appears in a variety of contexts. There is a law which specifies the amount of tax to be paid on cattle or horses;[19] a law which requires compensation because pigs and hogs, or cattle, or horses have damaged another's crops;[20] a law which defines the illegal use of another's animal without receiving the owner's permission;[21] a law which penalizes the owner of a stud horse which kills a horse or colt;[22] a law which allows animals to be seized for payment of a debt;[23] a law which includes animals in the paternal inheritance;[24] a law

17. Paul Weer, "Ethnological Notes on the Ottawas," *Proceedings of the Indiana Academy of Science*, Indianapolis, v. 49 (1939), p. 27.

18. Lewis Henry Morgan, *The Indian Journals, 1859-62*, ed. Leslie A. White (Ann Arbor, 1959), p. 36. Also, *see* Norman G. Holmes, "The Ottawa Indians of Oklahoma and Chief Pontiac," *The Chronicles of Oklahoma*, Oklahoma City, v. 45 (1967), pp. 204-205.

19. Law 23.

20. Law 7.

21. Laws 3-4.

22. Law 13.

23. Law 8.

24. Law 25.

which concerns stealing another's animal with the sole purpose of killing it.[25] There are laws concerning animals besides these.[26] An overwhelmingly large number of laws, therefore, concern livestock; there is no other category of the Ottawa laws which receive as much attention as that of animals. Since the Ottawa Indians became agriculturists, livestock became correspondingly a vital part of their economy.

G. *Annuity payment.* The yearly payment given by the United States government to the Ottawa Indians in compensation for the appropriation of their land in Ohio and Michigan constitutes the annuity payment. This payment was given to the head of every Ottawa household. Three laws describe full or partial appropriations made from this payment, and they concern penalties paid for violation of whiskey laws (Law 16), repayment of debts (Law 22), and taxes (Law 23). There are innumerable references to the annuity payment in treaties between the Ottawa and the U. S. government, beginning with the treaty at Greeneville in 1795;[27] three references to it appear in the Ottawa laws. The first of these concerns the violation of Ottawa whiskey laws. An Ottawa Indian found guilty of sending or bringing whiskey on Ottawa territory a second time was liable to the confiscation of his annuity payment. (The first time he is fined $5.00.) This is given in Law 16, and the severity of this law obviously was an attempt to pressure the Ottawa to relinquish a bad habit. If an Ottawa was discovered to be in violation of Law 16 a third time, he was placed in the custody of U. S. officials and was tried under American whiskey laws.

The second reference to the annuity payment appears in Law 8, which permits the cancellation of debts at the time of annuity payment instead of within the two-month period specified in the earlier law. Debts made good at the time of the annuity payment assured the creditor that the debtor had enough funds to cancel the debt. Thirdly, the annuity payment was used to pay the annual tax on livestock and land, and this is contained in Law 23. Both Laws 22 and 23 were added by the Ottawa council in January, 1850.

IV. Conclusion

There must have been other Ottawa laws which have not come down to us. Such an hypothesis is particularly likely in the absence of a law for murder. That the Ottawa punished a murderer

25. Law 1.
26. Laws 5-6, 12, 18.
27. Charles J. Kappler, comp. & ed., *Indian Affairs. Laws and Treaties* (Washington, 1904), v. 2 (Treaties), pp. 41-42.

with death is evident from John Tanner's *Narrative*.[28] In this account, the murderer expected to be slain for his crime and even dug a grave for two people—for the murdered man and himself. The murderer of the episode would have suffered capital punishment had he not come from a powerful family, but as it was his life was spared, and no blood feud resulted. Although no date accompanied this incident, it may be dated ca. 1810. This custom still survived among the Ottawa in the 1830's.[29] But did it survive to the year 1850 when Meeker printed the Ottawa laws? If it did not survive, it must have been replaced by white man's justice. The very act of relocating west of the Mississippi river may have changed Ottawa custom substantially, since the Ottawa believed Kansas to be a dry and barren land and in danger from the Plains Indians, who were more warlike than themselves. That still more legislation has been lost is evident from the absence of laws intended for the redress of crimes such as adultery and assault. Those laws which have survived may consist either of new laws passed since relocating to Kansas, or older laws which needed to be reinforced, or both.

This is not to say that every Ottawa institution needed a law. A case in point regards the trade of blacksmith, which was introduced into Ottawa society by the U. S. government. The earliest reference to the blacksmith is found in a treaty signed at Detroit between the Ottawa Indians and the U. S. government (November 17, 1807),[30] and subsequent references can be found in treaties for 1821, 1829, 1836, and 1846.[31] All of these treaties make special mention of this craftsman; he must have performed an important function among the Ottawa. Schoolcraft[32] says that Pottawatomie blacksmiths were employed for the repairing of farm and household implements. That the blacksmith is found among the Pottawatomie in Schoolcraft's *History* and is absent from his discussion of the Ottawa may be indicative of the large differences in population between these two Indian tribes. The Pottawatomie outnumbered

28. *A Narrative of the Captivity and Adventures of John Tanner (U. S. Interpreter at the Saut de Ste. Marie), During Thirty Years Residence Among the Indians in the Interior of North America,* prepared for the press by Edwin James (London, 1830), p. 175. Although this incident may really describe the Chippewa (Tanner was captured by them when he was nine years old in 1789), the customs of the Chippewa closely parallel those of the Ottawa as well as the Pottawatomie. Reference to John Tanner and the Chippewa is taken from Claude Charles Le Roy, Bacqueville de la Potherie, *History of the Savage People Who Are Allies of New France* (in) *The Indian Tribes of the Upper Mississippi Valley and Region of the Great Lakes,* ed. and trans. Emma Helen Blair (Cleveland, 1912), v. 2, p. 37.

29. Robert F. Bauman, "Young Jim, the Ottawa's Last Hope. A Selection From the Dresden W. H. Howard Papers," *Northwest Ohio Quarterly,* v. 23 (1951), p. 49.

30. Kappler, *Laws and Treaties,* v. 2, p. 93.

31. *Ibid.,* pp. 200, 298, 453, and 559.

32. *History of the Indian Tribes,* v. 6, p. 547.

the Ottawa by 17 to 1 according to the census conducted by the Office of Indian Affairs in 1854.[33]

Nor can it be said that the promulgation of the Ottawa laws constituted the last attempt of a people to assert their national identity. Rather the Ottawa realized their tribal mores had been seriously challenged with their relocation to Kansas and, as a result, they attempted to modernize their tribal custom. What have survived, therefore, are laws which illustrate a period of transition between older tribal custom, which is impossible to pinpoint exactly, and more modern law.[34]

33. *See* Footnote 3 above.

34. *See* the comments in *The Annual Register of Indian Affairs Within the Indian (or Western) Territory*, published by Isaac M'Coy, Shawanoe Baptist Mission, J. Meeker, printer, no. 2 (January 1, 1836), p. 51.

Kansas historical quarterly

"No Propriety in the Late Course of the Governor": The Geary-Sherrard Affair Reexamined

DAVID E. MEERSE

AT 2:00 P. M. on Wednesday, February 18, 1857, a crowd estimated at 200 to 300 people assembled on Capitol Hill, Lecompton, seat of the government of territorial Kansas. Assembled in response to public notices addressed "to all good citizens of Lecompton and vicinity," the crowd was a curious mixture. There were official delegates elected by public meetings, editors of the local newspaper, the former sheriff of the county, at least one former justice of the peace, some federal officials, and a group of prisoners, taken there by the territorial master of convicts, Kentuckian Levi J. Hampton.

Regardless of the diversity of their backgrounds or political preferences, all knew that the purpose of the meeting was to take some action in regard to recent insults offered by 28-year-old William T. Sherrard, recently appointed sheriff of Douglas county, to 38-year-old John W. Geary, Mexican War hero, first American mayor of San Francisco, and, until his appointment as territorial governor, operator of coal mines in his native Pennsylvania and the Kanawha region of (West) Virginia, Sherrard's native state. Sherrard's insults, which had escalated to the level of an attempt at the governor's assassination, stemmed from Geary's refusal to issue the official commission entitling Sherrard to exercise the office to which the board of county commissioners had appointed him.[1]

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1. Numerous newspaper accounts of the February meeting exist, all colored by the political preferences of their authors: the pro-Sherrard accounts are to be found in the Lecompton *Union*, February 25, 1857; the Westport correspondence of Henry Clay Pate in the St. Louis *Missouri Republican*, February 26-27, 1857; letter of A. W. Jones to the editor, *ibid.*, March 6, 1857; Richmond (Va.) *Enquirer*, March 2, 7, April 16, 1857; and Washington (D. C.) *Evening Star*, March 19, 1857. The pro-Geary accounts are to be found in the New York *Evening Post*, February 26, 1857; reprinted in the New York *Times*, February 28, 1857; the account of "Kent," Lawrence, February 18, 1857, in N. Y. *Evening Post*, March 7, 1857; the account of "Trimmer," Lawrence, February 18, 1857, in N. Y. *Times*, March 4, 1857; *Herald of Freedom*, Lawrence, February 28, 1857, and account of "A National Democrat," Lecompton, February 20, 1857, in *Missouri Republican*, February 28, 1857. An extremely valuable account, composed of personal observations and interviews with eyewitnesses on the Free-State side is to be found in S. P. Hand to Thaddeus Hyatt, Lawrence, February 19, 1857, "Thaddeus Hyatt Manuscripts," Kansas State Historical Society. Geary's account of the events is found in his letter to James Buchanan, Lecompton, February 10 [*sic*], 1857 [copy], "John W. Geary Manuscripts," Yale University. A comparison of this copy with the original in the "James Buchanan Manuscripts," Historical Society of Pennsylvania, indicates that both are misdated; internal evidence indicates that the letter was begun on February 20 and completed on February 21, 1857. Geary's coal-mining activities are well documented in the "Geary Mss."

But as the crowd gathered, one key individual was absent: the man scheduled to serve as presiding officer, James Skaggs, reputedly the largest slaveowner in the territory. In light of Skaggs' absence and because some trouble was anticipated, A. W. Jones, one of the editors of the Lecompton *Union*, and Dr. John P. Wood, who held the dual offices of United States commissioner for Kansas territory and of probate judge for Douglas county, prevailed on Mayor Owen C. Stewart to take the chair. After securing the services of James Cook of Lawrence, as secretary, Stewart called the meeting to order, and, in response to a motion, appointed a five-man resolutions committee. The committee moved to nearby stores to perform their duties; in its absence, Stewart carefully "farmed out" the floor to speakers on both sides of the issue.[2] Hampton, master of convicts, spoke first, praising Governor Geary. Stewart then recognized the *Union's* other editor, R. H. Bennett. But Bennett, a friend of Sherrard, was drunk, and his speech brought forth catcalls and derision. Succeeding Bennett was Richard McAllister, one of Governor Geary's secretaries.

McAllister's speech was interrupted by the return of three members of the resolutions committee with their majority report, consisting of a preamble and three resolutions. Upon concluding the reading of their report, the majority spokesman made a few remarks, when a motion was put to adopt the majority report. Sherrard, who was in the crowd, secured Stewart's permission to address the crowd, and took the stand. In the course of his remarks, Sherrard declared that anyone who would vote to sustain the resolutions was "a liar, a coward, and a scoundrel." In the crowd about the stand was Joseph W. Sheppard, who was heard to say that he endorsed the resolutions. With an oath, Sherrard drew his revolver and commenced firing. Sheppard replied, wounding Sherrard once, while suffering two wounds himself, none of which were serious. This was the signal for a general outbreak of shooting in the crowd, with perhaps as many as 50 shots being fired.[3]

In light of the large numbers in attendance and the volume of fire, the small number and limited nature of wounds suffered is somewhat surprising, but may have been due to the quick actions

2. The best account of Stewart's role in the meeting is his own, to be found in his testimony at J. A. W. Jones's arraignment, in "Records of the United States District Court for the Second District of Kansas Territory, 1854-1861," Archives division, Kansas State Historical Society: Case File, Case of John A. W. Jones, 1857. The arraignment testimony of Stewart and others was published, with significant deletions, in the *Kansas Weekly Herald*, Leavenworth, March 21, 28, 1857. On Skaggs' intended position as presiding officer, *see* "A National Democrat's" account, *Missouri Republican*, February 28, 1857.

3. *Herald of Freedom*, February 28, 1857; "A National Democrat" in *Missouri Republican*, February 28, 1857; S. P. Hand to Thaddeus Hyatt, February 19, 1857, "Hyatt Mss," KSHS. The accounts differ widely as to the number of shots fired; I have accepted Hand's statement.

of the officials of the meeting. As soon as the firing commenced Stewart plunged off the platform, calling on the crowd generally to help him keep the peace, while striking about with a heavy cane to deflect the aim of those shooting. Stewart, ex-Sheriff Samuel J. Jones, and others separated Sheppard and Sherrard, who had exhausted the load in his revolver. Sherrard parted from those who restrained him, and Stewart, at least, turned away to bring an end to outbursts of firing elsewhere.[4]

Up to this point no serious personal damage had resulted. But then occurred the incident which supposedly transformed a frontier gunfight into a major political event. Sherrard, in turning away, confronted John A. W. Jones, yet another of Governor Geary's secretaries and a man with whom Sherrard had had a personal difficulty three weeks before. A shot rang out and, in the words of a witness, "I saw Sherrard leap into the air as a bullet struck him in the forehead." Fatally wounded, his brains oozing from the bullet hole, Sherrard was carried off to die; surprisingly, he clung to life for more than two days, expiring on the morning of February 21, 1857.[5]

This "Sherrard affair" figures in most histories of Kansas. Among historical accounts it generally is represented as part of the efforts of those desirous of seeing Kansas become a slave state to thwart or eliminate the influence of Gov. John W. Geary. Geary, generally hailed as the best of the six territorial governors, is described as an able, efficient, and initially impartial administrator who "pacified" Kansas in late 1856 and thus made possible the victory of the Democratic presidential candidate, James Buchanan.

But once the election was over, Geary discovered the real purpose of the Proslavery forces, entrenched in the territorial legislature and judiciary, to make a last desperate gamble to preserve Kansas for slavery. Although standing virtually alone, faced with the hostility of every other federal official in the territory, and with a legislature every one of whose members was selected as a Proslavery supporter, abandoned by the national administration which

4. On Stewart's role in attempting to quell the outbreak of firing, *see* his testimony, corroborated by that of ex-Sheriff Jones, in J. A. W. Jones arraignment record, as printed in Leavenworth *Herald*, March 21, 1857, and account of "Kent," Lawrence, February 18, 1857, in N. Y. *Evening Post*, March 7, 1857. The slight physical damage and small number of superficial wounds are indicated in all accounts, but *see* especially *Herald of Freedom*, February 28, 1857.

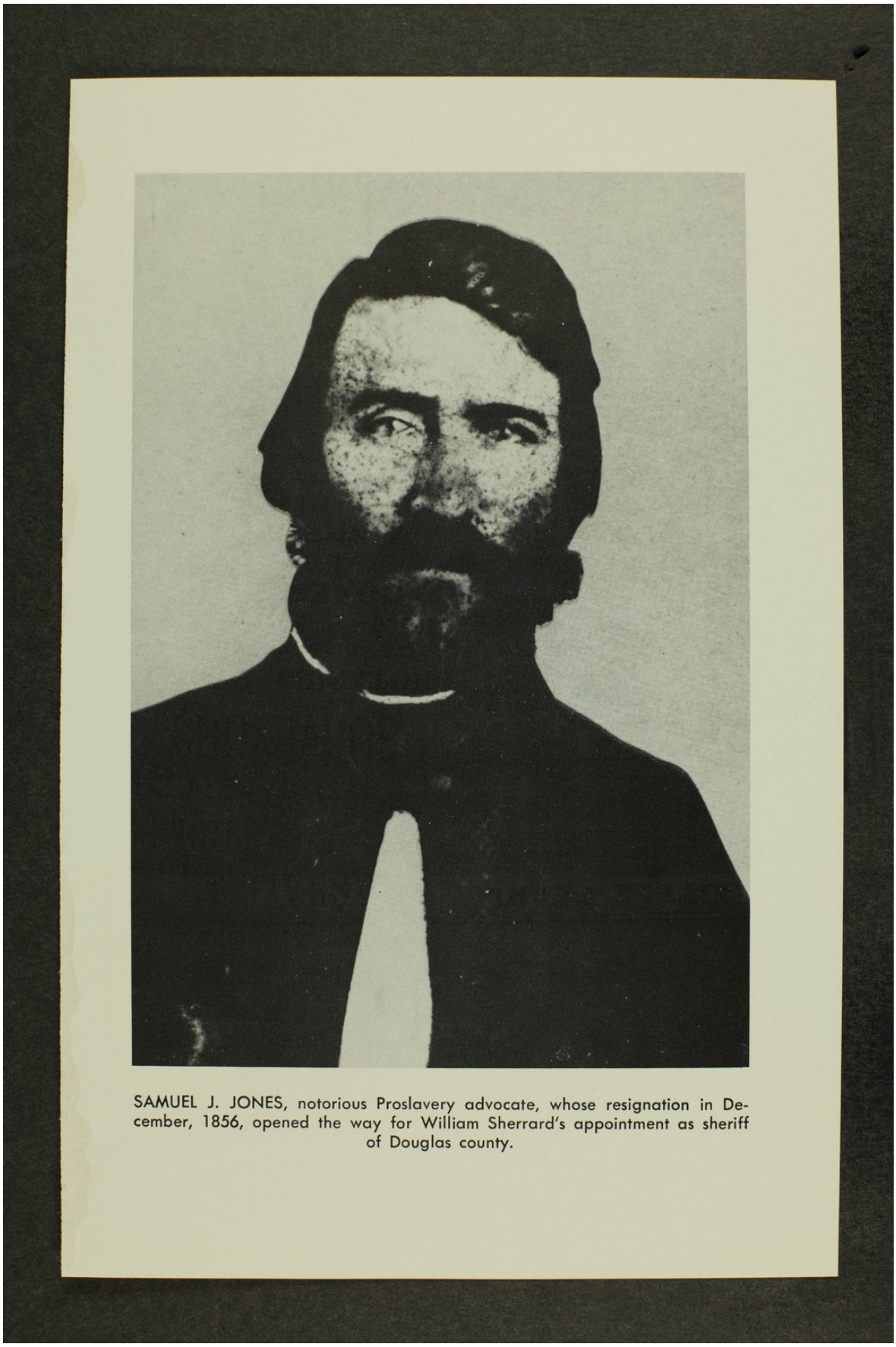
5. The spectator's account is from Leverett W. Spring, *Kansas: The Prelude to the War for the Union* (Boston, 1885), p. 207, and reprinted in Allan Nevins, *The Emergence of Lincoln* (2 vols., New York, 1950), v. 1, p. 138. The previous difficulty between Jones and Sherrard is mentioned in Lecompton *Union*, February 25, 1857; N. Y. *Evening Post*, February 27, 1857; and in testimony of Wm. A. B. Goddard at J. A. W. Jones arraignment, as printed in Leavenworth *Herald*, March 21, 1857. Sherrard's death is detailed in the grand jury presentment against Jones, May 15, 1857, in Case File, Case of John A. W. Jones, "U. S. District Court Records," Archives division, KSHS.

had appointed him, and deprived of his authority to call out the troops of the U. S. army to maintain peace in the territory, Geary nevertheless struggled on. But as do most heroes of this nature, Geary effectively wielded the few weapons left him, primarily his vetoes of blatantly Proslavery legislation, to arouse public opinion in the free states. With their schemes exposed, the Proslavery forces resorted to personal violence, in the Sherrard affair, to eliminate Geary. In the short run they succeeded: 10 days after Sherrard's death, Geary resigned his gubernatorial honors and returned to the East. But in the long run the Proslavery forces failed: the "tocsin" that Geary sounded on his return aroused the nation, and the Proslavery efforts, embodied in the Lecompton constitution, proved subsequently abortive.[6]

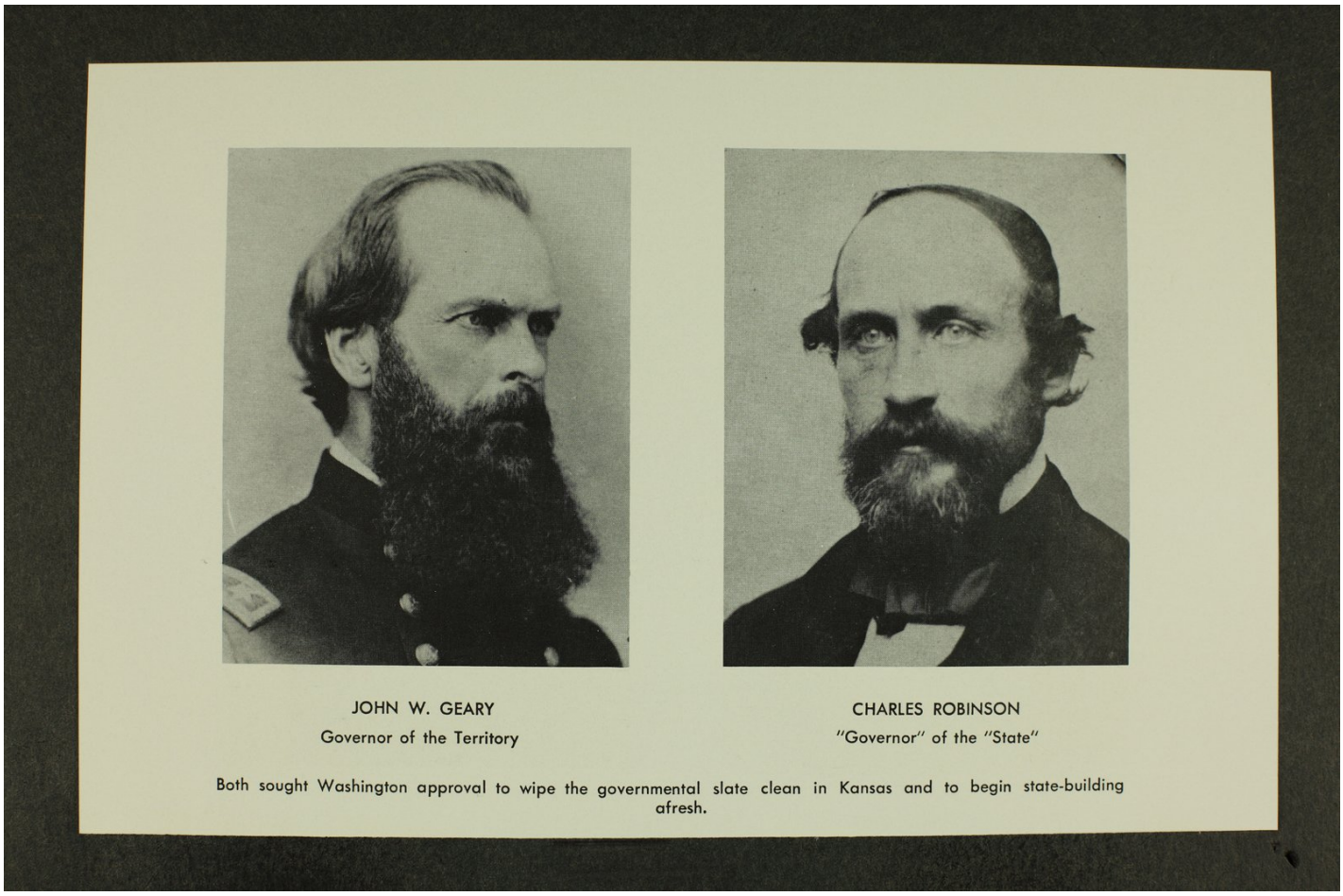
It is not surprising that this view of Geary's role in territorial affairs generally, and in the Sherrard affair in particular, should prevail in historical writing, since most historians have based their accounts upon John H. Gihon's *Geary and Kansas* (Philadelphia, 1857). Gihon, who styled himself, "Private Secretary of Governor Geary," had the advantage of participating in the events he described. Additionally, he claimed access to wide varieties of official and private papers, including Geary's confidential correspondence. Moreover, Gihon admitted going to Kansas a firm supporter of the Proslavery position, but asserted his experiences converted him into an opponent of that faction. Taking at face value this confession of conversion as evidence of objectivity, and adding the advantage of being an eyewitness with access to private intelligence, historians have been content to rely heavily upon Gihon.[7] But by so doing they have left the personality, character, and motivation of Geary's protagonist, William T. Sherrard, to be painted by his antagonists. More importantly, by such reliance they have allowed

6. Spring, *Kansas*, pp. 197-208; Nevins, *Emergence*, v. 1, pp. 133-144; Alice Nichols, *Bleeding Kansas* (New York, 1954), pp. 145-168, 172-185; James A. Rawley, *Race & Politics: "Bleeding Kansas" and the Coming of the Civil War* (Philadelphia, 1969), pp. 159-160, 167, 176-179; David Potter, *The Impending Crisis, 1848-1861* (New York, 1976), pp. 214-216.

7. John H. Gihon, *Geary and Kansas. Governor Geary's Administration in Kansas: With a Complete History of the Territory Until July 1857* . . . (Philadelphia, 1857). Gihon's statement of his conversion is to be found on pp. iii-iv. For the general reliance upon Gihon, *see* Nichols, *Bleeding Kansas*, pp. 286-293; Nevins, *Emergence*, v. 1, pp. 135-136; Potter, *Impending Crisis*, p. 215. Spring, *Kansas*, p. 205, while declaring Gihon's account "rather intemperate and heavily-colored," still concludes that it "retains large elements of historic fidelity." A comparison of Gihon's account with "Governor Geary's Private Diary Kept by His Secretary," "Geary Mss," Yale, indicates it to have been the "private papers" to which Gihon had access in writing his volume. The "Diary" consists primarily of letters sent by Geary to President Pierce and President-elect Buchanan; comparison of the "Diary" versions with originals of the extant letters in the "Franklin Pierce Manuscripts," Library of Congress (microfilm edition), and the "Buchanan Mss," HSP, indicates that they are faithful copies. This makes Gihon's account, in fact, Geary's; on some matters, as for example the Sherrard affair, Gihon's accounts are almost *verbatim* copies from the "Diary." Gihon did not, however, apparently have the use of Geary's incoming correspondence. For Gihon's relations with Geary while writing and publishing his book, *see* his letters to Geary, Philadelphia, May 26, July 15, 29, 1857, "Geary Mss," Yale.



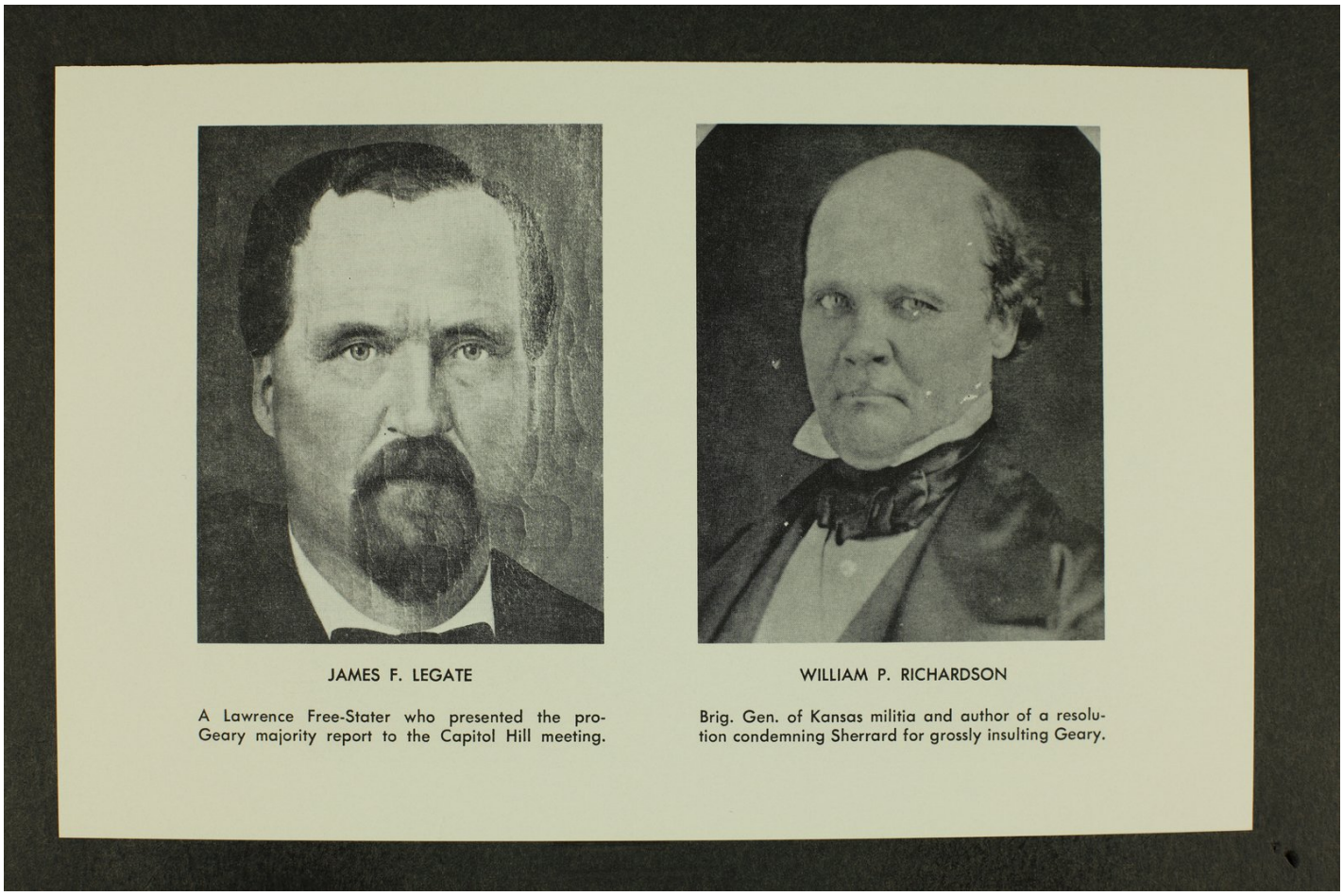
SAMUEL J. JONES, notorious Proslavery advocate, whose resignation in December, 1856, opened the way for William Sherrard's appointment as sheriff of Douglas county.



JOHN W. GEARY
Governor of the Territory

CHARLES ROBINSON
"Governor" of the "State"

Both sought Washington approval to wipe the governmental slate clean in Kansas and to begin state-building afresh.

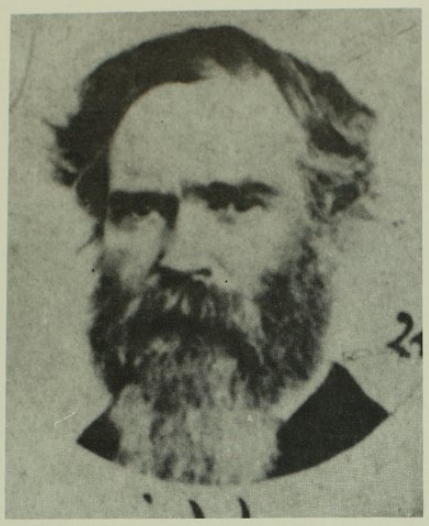


JAMES F. LEGATE

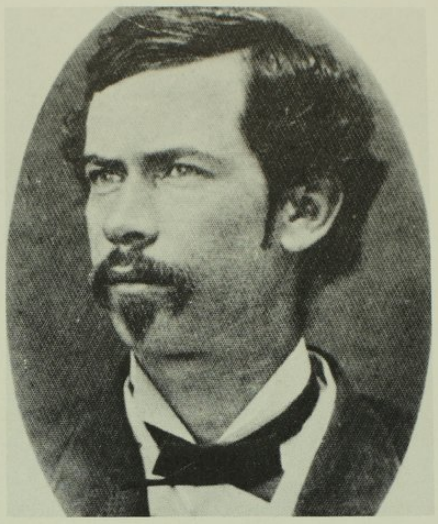
A Lawrence Free-Stater who presented the pro-Geary majority report to the Capitol Hill meeting.

WILLIAM P. RICHARDSON

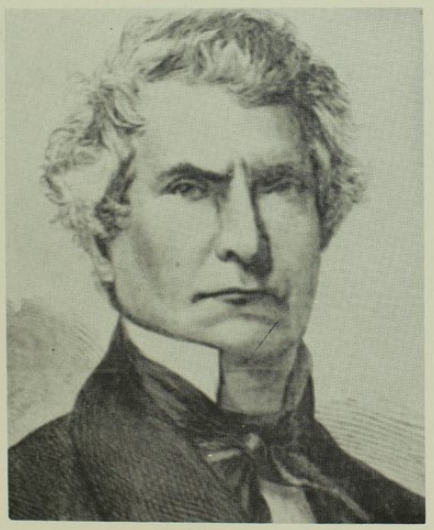
Brig. Gen. of Kansas militia and author of a resolution condemning Sherrard for grossly insulting Geary.



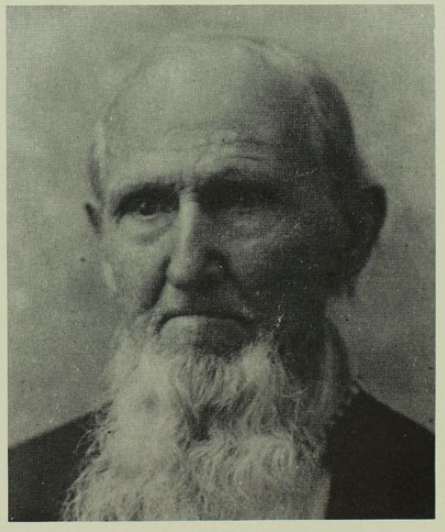
SAMUEL LECOMPTE
Territorial Chief Justice



DANIEL WOODSON
Territorial Secretary



JOHN CALHOUN
Surveyor General



ISRAEL B. DONALSON
U. S. Marshal

Although charged by Geary with being members of a Proslavery conspiracy, not all behaved that way.

Geary to describe his own motivations and policies without subjecting that description and analysis to customary historical evaluation.

William T. Sherrard was born in Winchester, Va., July 28, 1828. His father, Joseph H., was a merchant-banker and, at the time of his son's death, cashier of the Farmer's Bank of Winchester. Although the Sherrard family was large, educational opportunities were provided for the children, including, in William's case, collegiate instruction. But illness, which "in some degree paralyzed his great energy of will," prevented William from completing his formal education. Nevertheless, he was described as a man whose mind was "acute, ready, and vigorous," who was affectionate, and whose manners were frank and manly. It was also acknowledged that he was "sensitive," had "quick passions" and an "impulsive" temper, and was "uncompromising" in his sense of right and wrong.[8]

To recover his health William Sherrard left home at the end of 1855 and traveled westward to Illinois, where he settled in Quincy. There he quickly involved himself in local politics, becoming a Democratic party activist, not a difficult thing to do in the hometown of William A. Richardson, house leader in the fight to pass the Kansas-Nebraska bill of 1854 and Democratic gubernatorial nominee in 1856. Democratic Congressman Isaac N. Morris also hailed from Quincy, which was the former home of the state's leading Democratic politician, Sen. Stephen A. Douglas. Despite his political activities, however, Sherrard did not remain in Quincy for much more than six months before departing for points farther west. From St. Louis, where he had relatives, Sherrard moved on to Kansas, settling in Douglas county in September, 1856. After only two months in the territory, this Virginian-turned-Illini was appointed sheriff of Douglas county on December 16, 1856.[9]

The agency which appointed Sherrard was the board of county commissioners of Douglas county, whose status, by December, 1856, was legally somewhat questionable. Under the territorial laws of 1855 the board consisted of three men, a judge of probate and two county commissioners. None of these officials were elected, all

8. Biographical information on William T. Sherrard and his family is to be found in the resolutions of a public meeting held in Winchester, Va., on March 7, 1857. These resolutions were widely reprinted.—*See Missouri Republican*, March 25, 1857; New York *Herald*, March 15, 1857; Richmond *Enquirer*, March 19, 1857; and Quincy (Ill.) *Herald*, April 6, 1857. For other biographical information *see* Richmond *Enquirer*, March 7, 1857, and the statement of John M. Sherrard and three others in *Missouri Republican*, March 3, 1857.

9. Sherrard's career in Quincy politics is outlined in Quincy *Herald*, February 9, 16, March 9, 23, April 6, 1857. The *Herald* undertook the difficult task of asserting that Sherrard never touched a drop of liquor during his entire residence in Kansas, but otherwise its statements of his political activity seem veracious.

being appointed by the territorial legislature to serve until territorial elections in October, 1857. Subsequent legislation provided that if the office of judge of probate became vacant during a legislative recess, the commissioners could appoint a new judge. But no such provision concerning a county commissioner vacancy was made.

The legislature of 1855 appointed John P. Wood probate judge of Douglas county, and John M. Banks and George W. Johnston county commissioners. The board went about its business of naming other county officers, including Joseph W. Sheppard a justice of the peace for Lecompton township. But then the situation not covered by existing laws arose: sometime in the summer of 1856 G. W. Johnston departed from Kansas. On September 26, 1856, Judge Wood and Commissioner Banks appointed John Spicer to fill the vacant office; on the following day, Governor Geary, who had been in the territory only 18 days, duly issued Spicer his formal commission. Then, to complicate matters still further, Commissioner Banks also left the territory. On the same day on which Sheriff Jones's resignation was received, Wood and Spicer proceeded to declare Banks's seat vacant and appoint James M. Tuton to fill the vacancy. Tuton not being present, it was thus Judge Wood, whose position was legally unquestioned, and Commissioner Spicer, whose position was legally questionable, that constituted the appointing power which named William T. Sherrard to fill Jones's place.

In making such an appointment, Spicer and Wood were engaging, however, in an action of some dubious legality. Like Wood, Jones had been appointed to his post by the 1855 territorial legislature. The legislation describing the sheriff's duties provided that the board of county commissioners filled vacancies in the office of sheriff. But left unclear was whether the sheriff's resignation creating such a vacancy should be directed to the county board or to the territorial legislature.[10] From all of this certain conclusions emerge. As the actions of Geary, Wood, Banks, and Spicer indicate, in the fluid frontier situation there was more concern with getting a job done than in legal niceties. But, in a situation of some legal dubiousness, the personality of the officeholder would have as much to do with effective law enforcement as the commission he carried. Finally, for someone who wished to impede the workings of

10. The foregoing paragraph is based primarily on the report of the judiciary committee of the council of Kansas territory, published originally, together with all of the other documentation on Sherrard's legal and legislative efforts, in *Journal of the Council of the Territory of Kansas at Their Second Session* . . . (Lecompton, 1857), pp. 289-303 (hereinafter cited as *Council Journal*) and reprinted in the *Transactions* of the Kansas State Historical Society, v. 5 (1889-1896), pp. 277-286 (known by its more popular cover title of *Kansas Historical Collections*; cited hereinafter as *KHC*).

Sherrard's office there were ample legal grounds on which to make the effort.

Unfortunately, no extant evidence clearly indicates why Samuel J. Jones, notorious for his Proslavery sympathies as evidenced by his involvement in the "sack of Lawrence," chose this particular moment to resign as sheriff of Douglas county. But the resignation may not have been unrelated to the policies which Governor Geary was formulating for the political future of the territory, and his own future therein. Almost from the day of his arrival in the territory, Geary had denounced the other federal officials in Kansas. Their Proslavery sympathies, Geary declared, made them useless to him in his initial efforts to restore peace in Kansas by winning Free-State confidence in the impartiality of federal administration. Initially condemning the federal justices, marshal, and district attorney, for failure to enforce the law and keep the courts operating to prosecute criminals, Geary soon broadened his attack. "There is not a Sheriff, County or Probate Judge or Clerk, County Commissioner, justice of the Peace, Constable, Military officer from Major General to Lieutenant," Geary informed Pres. Franklin Pierce, "in a word there is not an officer high or low [who does not] have the same predilections and prejudices of the government officials."

Geary called on the President and Secretary of State William L. Marcy to remove the existing federal officials and replace them with men who "with their *official influence* will sustain me." And, to give weight to the sense of urgency with which he desired Washington officials to act, he added:

> I am now made aware of a most insidious and foul conspiracy formed for the purpose of dissolving this Union and of defeating my policy as the means by which it will be cemented and perpetuated. This conspiracy includes among its members [David R.] Atchison, [Benjamin F.] Stringfellow, the two Territorial Judges [Samuel D. Lecompte and Sterling G. Cato], Secretary of State [Daniel H. Woodson], District Attorney [A. J. Isacks], Marshal [Israel B. Donalson], Surveyor General [John Calhoun], [George W.] Clark [*sic*] the agent for the Pottawatomie Indians, the last named is stained with murder and arson and all the rest aiding, abetting and giving official countenance to crimes and enormities of the deepest dye not excepting murder.[11]

11. For the gradual broadening of Geary's charges, from an initial demand for a new territorial secretary and new teritorial judicial officers, to include all those named in the quoted statements, *see* John W. Geary to Franklin Pierce, September 16, 19, November 9, 24, December 8, 20, 1856, in "Diary," "Geary Mss," Yale. This broadening is in marked contrast to Gihon's account, which places the description of the total submission of all territorial officials, both federal and local, to the "slave power," immediately following Geary's inaugural address. Gihon also declares at this point that U. S. Surveyor General John Calhoun was the head of this anti-Geary conspiracy, a position which Geary did not advance until the time of the Sherrard affair, although he had included Calhoun as one whose removal would be desirable in the November 9, 1856, letter cited above.

Geary's charges had their effect on Washington officials. The President acted first by appointing a Pennsylvanian, Thomas F. Cunningham, to fill the vacant federal judgeship in the third judicial district. Then he accepted Donalson's resignation of the marshalship, appointing an Ohioan, William Spencer, in his stead. He removed Indian Agent George W. Clarke, and replaced him with Isaac Winston of Virginia. Finally, Pierce nominated a successor to Justice Lecompte, Kentuckian C. O. Harrison. A special messenger bearing the news to Donalson and Clarke, and news of Harrison's nomination, arrived in Lecompton on December 10, 1856.[12]

As the governor wrote to the President, "the removal of Donaldson [*sic*], Clark [*sic*], and Lecompte has been received here with general acclamation by the people, and men recently disposed to vilify and abuse you are loud in your praise." Those men were the leaders of the Free-State party in the territory, who looked upon the removals as evidence of Washington support for Geary's policy. They also considered it as evidence supporting Geary's promises that an impartial, even-handed course in administering territorial affairs would be carried out. It is not implausible to assume that men on the Proslavery side considered the removals and appointments in the same light. Such an impartial course would seem to some to be the doom of their hopes; other Proslavery supporters, however, might have tried to garner what credit they could by clearing the way for the appointment of county officers more amenable to the governor's way of thinking. And, at least in the case of Douglas county, it seems evident that some local officials were sympathetic to Geary's policy and were moving to make local administration less one-sided than it had been.[13] Viewed in this light, a recent arrival in the territory, not identified with the previous territorial troubles, a Virginian, but resident lately of Illinois, with some connection to political leaders very important in congressional control of territorial affairs, may have seemed an

12. On the effect of Geary's recommendations on Pierce, *see* Theodore Adams to Geary, Washington, September 26, 1856; J. H. Gihon to Geary, Philadelphia, November 13, 1856, "Geary Mss," Yale. On Donalson's resignation, and the arrival of the special messenger, *see KHC*, v. 4 (1886-1890), p. 657.

13. John W. Geary to Franklin Pierce, Lecompton, December 20, 1857, "Diary," "Geary Mss," Yale. The evidence for the shift of the Douglas county commissioners to a more neutral position is circumstantial, but strong. One of the two commissioners, John Spicer, was reportedly warned by a secret Proslavery group known as the "Regulators" to leave the territory, warnings which Spicer ignored. *See* Geary's letter to Spicer, Lecompton, December 20, 1856, concerning these warnings, and Spicer's reply, Wheatland, December 20, 1856, in *KHC*, v. 4, pp. 660-661. On February 19, 1857, the territorial legislature filled vacancies among the county offices. Both county commissioners' seats for Douglas county were declared vacant and filled with two men other than Spicer and Tuton: *Journal of the House of Representatives of the Territory of Kansas . . .* (Lecompton, 1857), p. 279 (hereinafter cited as *House Journal*). This action of the legislature was a recognition of the irregularity of Spicer's and Tuton's appointments; but the significance lies in the failure of the legislature, a body supposedly dominated by the "slave power" conspirators, to reappoint the two commissioners.

ideal candidate to implement this policy in Douglas county. Certainly a large number of men, more ardently and publicly identified with the Proslavery cause, could have been selected to fill Jones's place.

But by December, 1856, Governor Geary had developed plans for a solution to Kansas' problems which went far beyond simply making the federal and local officials a unit behind him and in favor of an impartial administration of existing territorial laws. Geary believed that most of the extreme Proslavery laws of the 1855 legislature were based on deliberate or accidental discrepancies between the Washington and Lecompton versions of the Kansas-Nebraska bill of 1854, the territory's organic law. These discrepancies, Geary believed, would justify congress in declaring all actions of the territorial legislature invalid.[14] Wiping the legal Kansas slate clean by congressional action would open the way for a new governmental organization in the territory. Adherents of both former political groups could support this new government without having to admit to any errors in their former actions. And, obviously, the man responsible for implementing this face-saving scheme could expect an ample reward.

Geary realized that the Democratically controlled federal senate would be unwilling to undertake this action if either the federal house of representatives or the Free-State Topeka organization attempted to substitute either the Topeka state "constitution" or a code of "state" laws for the congressionally eliminated territorial legislation. Such a code could be enacted by the Topeka legislature, due to assemble on January 5, 1857, unless Geary could persuade Free-State leaders to render law-making by that body difficult if not impossible. Admittedly a deep and somewhat devious game was being asked of Free-State leaders by Geary, that they could play with extreme difficulty if federal or territorial officials overtly interfered with the Topeka legislature's meeting. Free-State leaders could hardly hope to maintain their positions if they appeared to bow to Proslavery pressure. Geary had the two-step task, then, of persuading Free-State leaders to support his plans by preventing Proslavery interference with the Topeka organization so far as it lay in his power to do so.

Geary was eminently successful with the first step of the process. Not only did "Governor" Charles Robinson resign his post, but,

14. In urging upon Pierce the propriety of recommending to congress the repeal of all the Kansas legislative acts, Geary declared that he found "some 67 interpolations, omissions, and additions," which threw "strong suspicion of fraud over the publication of the entire Kansas Statutes."—Geary to Pierce, Lecompton, December 8, 1856, "Diary," "Geary Mss," Yale.

with a promise that if Kansas were admitted to the Union, "I shall be most happy to aid in placing you [Geary] in the Executive Chair" of the new state, he departed for Washington to use his influence with Republican members of the house of representatives to accept the senate actions.[15] He placed his resignation in the hands of W. Y. Roberts, "lieutenant governor" of the Topeka organization. Roberts also made preparations to depart for his native Pennsylvania. With both executive officers absent, the Topeka organization, it was anticipated, would be unable to legislate or to function.[16]

The second stage of Geary's task, that of winning Free-State confidence by preventing Proslavery interference with the Topeka meeting, involved territorial law-enforcement agencies. There were still outstanding many judicial writs against Free-State leaders. If these writs, from both the federal and county courts, were used to arrest and imprison Topeka legislators, as Charles Robinson and others had been imprisoned in 1856 before Geary's arrival, trust in Geary's leadership would be seriously affected. With Spencer replacing Donalson as marshal, the likelihood of federal writs being served was lessened. But there remained the county writs that the county sheriff could serve to prevent the Douglas county representatives from attending the "legislature's" meeting.[17] Thus it became essential that whoever took Jones's place should be willing to follow a hands-off policy with regards to the writs.

Thus, when William T. Sherrard appeared at Geary's office on December 18, 1856, to ask for the commission that would permit him to enter upon his official duties, Geary questioned him closely and apparently explained enough of his policy to Sherrard to

15. Exactly what Geary promised Robinson has been a point of some historical controversy. Robinson, in his "Topeka and Her Constitution," *KHC*, v. 6 (1897-1900), p. 300, and Spring, *Kansas*, p. 204, give a dramatic tale of the two meeting in the attic of Geary's house in Lecompton, where Geary supposedly promised Robinson to support admission under the Topeka constitution. Nichols, *Bleeding Kansas*, p. 291, dismisses the story as lacking contemporary substantiation, but Don W. Wilson, *Governor Charles Robinson of Kansas* (Lawrence, 1975), p. 49, accepts it. There is much documentary evidence that Geary made proposals to Robinson that led the latter to believe the former would accept congressional admission of the territory under the Topeka constitution.—Charles Robinson to John W. Geary, Lawrence, December 20, 1856, "Geary Mss," Yale; Robinson to Amos A. Lawrence, Lawrence, December 2, 1856, and Robinson to G. L. Stearns, n. d., in Samuel C. Smith to A. A. Lawrence, Lawrence, December 4, 1856, "Amos A. Lawrence Manuscripts," Massachusetts Historical Society. But other sources question the sincerity of Geary's support for the Topeka constitution as anything more than a means to secure Robinson's support of Geary's proposals.—Edward Hoogland to Geary, Washington, January 8-10, 1857, "Geary Mss," Yale.

16. Robinson later stated that he did not know that Roberts also intended to be absent from the territory.—Charles Robinson to [?], Boston, January 28, 1857, in New York *Times*, March 27, 1857. In support of his contention, *see* Robinson to Amos A. Lawrence, Lawrence, December 19, 1856, "Lawrence Mss," MHS. Geary may well have made separate arrangements with Roberts, a fellow Pennsylvanian, concerning his absence.

17. On the importance to Free-State men of the writs, *see* Thaddeus Hyatt to John W. Geary, Lawrence, December 5, 1856, "Geary Mss." Yale. According to Robinson, "Gov. Geary promises us protection in [the] meeting [of the Topeka legislature]." Robinson to Amos A. Lawrence, Lawrence, December 19, 1856, "Lawrence Mss," MHS.

make him understand why it was not desirable to have the writs served. And, Geary asked, "'would [Sherrard] act inimicable to [me] or not?'" Sherrard's reply was that he would "'see that the laws are faithfully executed.'" This was hardly what Geary wanted or expected, and he resorted to stalling tactics. He assured Sherrard that the commission would be given to him the next day. Sherrard waited not one but three days and then prepared a letter to Geary threatening legal action. But before the letter could be dispatched, Geary changed his stalling tactics, calling in Sherrard's friend R. H. Bennett of the Lecompton *Union* to say that the absence of Territorial Secretary Daniel Woodson, who had to cosign the commission, was holding up the issuance. According to Sherrard's statements, never contradicted by Geary, the governor also declared that he "never [had] any intention of refusing to make out [Sherrard's] commission." Mollified, Sherrard again waited. But Woodson returned, and still no commission was forthcoming. On December 29, 1856, Sherrard informed Geary that he would seek a federal *mandamus* to secure his commission.[18]

On January 2, 1857, Sherrard appeared before Justice Samuel D. Lecompte seeking his writ. According to Geary, Gihon, and most subsequent writers, Lecompte was also a part of the anti-Geary conspiracy. Therefore, Sherrard should have secured the desired writ without difficulty, bringing on a confrontation between the federal judiciary and the governor. Lecompte, however, failed to act in accordance with this conspiracy theory. He denied Sherrard's initial application, but did permit him until January 13, 1857, to file an amended plea.[19]

The date chosen for Sherrard to file his amended application was not an unimportant one. On January 12, 1857, the territorial legislature assembled at Lecompton to begin its second session. And on the same day a convention of the Proslavery "law and order" party was scheduled to meet in Lecompton. Many of the members of the legislature were also delegates to the convention, and the interchangeability of the two groups was further emphasized by the fact that the convention used the legislative hall for its meetings while the legislature was in recess. Both Samuel Jones

18. Sherrard's personal account of the interview is to be found in William T. Sherrard to John W. Geary, Lecompton, December 22, 1856, with postscript dated December 29, 1856, "Geary Mss," Yale. The conversation is related in the letter of A. W. Jones to the editor, *Missouri Republican*, March 6, 1857. The Lecompton *Union*, February 25, 1857, charged that Sherrard, when he went to see Geary to secure his commission, had writs in his possession "for the arrest of men whom Geary had taken under his especial wing of protection."

19. John W. Geary to Franklin Pierce, Lecompton, November 9, 1856, "Diary," "Geary Mss," Yale. Gihon, *Geary and Kansas*, pp. 158-159. For Lecompte's decision, *see KHC*, v. 5, p. 279. Lecompte denied Sherrard's application on the grounds of defective form and that some of his supporting documentation was insufficiently explicit.