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Political Development in Oregon: The Provisional Government 1843-1849

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AN ABSTRACT OF THE THESIS OF James Merle Tompkins for the Master of
Science in the Teaching of History presented November 24, 1976.

Title: Political Development in Oregon: The Provisional Government,
1843-1849.

APPROVED BY MEMBERS OF THE THESIS COMMITTEE:

Gordon B. Dodds, Chairman _____

George A. Carbone _____

Walton Manning / _____

This study brings together in a single volume facts and opinions not previously consolidated on the subject of Oregon's provisional government. Previous writings or citations about the government were in the context of larger or different areas of interest. The main areas of concentration in the thesis include the political events of the government in session and the public's knowledge of these events. Also examined are the direction of government, the electoral process, and the newspaper coverage of the period.

The extant journals of the government are the primary sources

for the proceedings of the sessions. Public opinion and awareness is gleaned from the early newspaper, Oregon Spectator. Also valuable are the writings of the people active in or affecting the government. Writings of historians covering some aspects of the period are used to gain an overview.

POLITICAL DEVELOPMENT IN OREGON

THE PROVISIONAL GOVERNMENT

1843 - 1849

by

JAMES M. TOMPKINS

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

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TO THE OFFICE OF GRADUATE STUDIES AND RESEARCH:

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TABLE OF CONTENTS

	PAGE
INTRODUCTION	1
CHAPTER	
I PROVISIONS OF THE 1843 ORGANIC LAW	6
II THE ELECTORAL PROCESS	12
III SESSIONS OF THE LEGISLATURE JUNE AND DECEMBER 1844	21
IV THE HUDSON'S BAY COMPANY AND THE PROVISIONAL GOVERNMENT	34
V SESSIONS OF THE LEGISLATIVE COMMITTEE JUNE AND AUGUST 1845	40
VI SESSION OF THE HOUSE DECEMBER 1845	60
VII <u>THE OREGON SPECTATOR</u>	70
VIII SESSION OF THE HOUSE DECEMBER 1846	77
IX EVENTS OF 1847 AND THE DECEMBER 1847 SESSION . . .	93
X THE MILITIA, THE CAYUSE WAR, AND THE EXECUTIVE . .	104
XI J. QUINN THORNTON AND JOE MEEK, MESSENGERS TO WASHINGTON	115
XII THE GOLD RUSH, 1848 SESSION, 1849 SESSION	121
XIII ARDENT SPIRITS AND THE TEMPERANCE MOVEMENT	134
XIV THE COURTS	141
CONCLUSIONS	144
NOTES ON SOURCES	147

BIBLIOGRAPHY	149
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INTRODUCTION

A government does not come into existence and begin effective work overnight. It develops as slowly or as quickly as the need and the will for it requires. Orators at a typical Fourth of July picnic in the 1860s, along with toasts to the government back in Washington, would praise the pioneers who set up their own government in the Oregon Territory. A friendly argument would follow as to whether the government actually started in 1841 at the gathering following the funeral of Ewing Young or in 1843 at the Champoege meetings that produced a written code of laws. A typical meeting of the Oregon Pioneer Association in the 1880s would bring the same argument, except more of the pioneers would favor the Champoege choice because of their personal involvement. In the 1900s writers for the first numbers of the Oregon Historical Quarterly would continue the argument, drawing their references from the proceedings of the Oregon Pioneer Association and personal memoirs of the last known survivors of Champoege.

Add to these memories the biographies and autobiographies of the early pioneers published any time from 1850 to 1920. Each volume put its central figure in the best light possible, some even to the point of sensationalism. It is no wonder that the myth has passed to the current generation of school children that on July 5, 1843, Oregon suddenly had a working provisional government.

The purpose of this paper is to trace the political development of Oregon, starting in 1843 with the first complement of laws and officers, and continuing until 1849 when it was superseded by the territorial government. It should be evident that the point of view is that of the American settlers in the Willamette Valley. They started in the minority, competing for the land with the native Indians, transient Indians, the Hudson's Bay Company personnel, and retired Canadians. They came from varied backgrounds; active and retired fur traders out of the American mid-west, missionary parties from the north-east, former seamen who opted for Oregon's shores, and various farmers, merchants, and herders who came by wagon train from the Middle West, East and South.

The Indians had tribal law which was sufficient for their needs, at least until they were meddled with by the Americans. The British subjects, whether active in the fur industry or living as farmers in the Willamette Valley, came under the jurisdiction of a charter given to the Hudson's Bay Company. The Indians had their chiefs and the Hudson's Bay Company was fully officered from chief factor on down. But the Americans operated in a political vacuum. They had no officers, no laws, no means for protection, and no ties to their national government.

There were a handful of Americans in Oregon from the early 1810s when fur trappers of the Pacific Fur Company first came but there was no real trend towards settlement until the 1830s. Their numbers were sufficiently small enough to escape the need for an organized government. With the arrival of the first wagon trains

bringing missionary parties and various settlers came a need for organization. James Robertson's leading article in the first number of the Oregon Historical Quarterly gives nine reasons for developing a government in Oregon: 1) the feeling of nationality towards the country of their origin; 2) the love of a democratic type of government, especially free enterprise; 3) the desire for power to control the character of population that should come in; 4) the anxiety to secure more permanent titles to the lands taken up; 5) equal rights in the pursuit of the fur trade; 6) protection from the Indians; 7) the prevention of lawlessness among a mixed population; 8) the facilities for the conduct of such business as a growing population made necessary; and 9) in some cases personal ambition to exercise authority.¹

By the time the first law was set to paper in the late spring of 1843 the Americans already had several men in office for as long as two years. The offices were patterned after the American parliamentary system with its three branches of government: executive, legislative, and judicial. When Ewing Young died in 1841 leaving behind considerable property and no apparent heir the people were left with a problem of probate. A handful of citizens gathered after Young's funeral on February 17. It was proposed to hold a general meeting the next day at the Methodist Mission and create the offices of governor, supreme judge with probate powers, three justices of the peace, clerk of the court, recorder, treasurer, two overseers of the

¹James Rood Robertson, "The Genesis of Political Authority and of a Commonwealth Government in Oregon," Oregon Historical Quarterly, I (March 1900), pp. 32-33, hereafter cited as OHQ.

poor, and a seven-man committee to draft a constitution. The meeting of February 18 filled all of the propositions except governor (beginning the controversy over a single or plural executive that continued until 1845) and adding the protective office of high sheriff, three constables, and an additional justice of the peace. It is notable that the committee to draft a constitution never met.²

The first American to hold a significant public office in Oregon was Dr. Ira L. Babcock of the Methodist mission. On February 18, 1841, he was elected supreme judge and instructed to use the laws of New York, his home state. Babcock presided at the first Wolf Meeting and was president of the Champoege proceedings. On May 2, 1843, at Champoege the same offices were extended with new men in all of the positions except one, combination court clerk and recorder, George LeBreton. In most cases the offices had been vacant since 1841 when the French-Canadians followed the lead of their priest F. N. Blanchet in abandoning the government. The Champoege assembly added new military positions. The new officers were delayed from taking office until July 5, 1843, when a nine man legislative committee was to report a constitution to embody the offices.³

On July 5 the reports of the committees on Judiciary, Land Claims, Military Affairs, and Ways and Means were adopted. These

²Charles H. Carey, General History of Oregon: Through Early Statehood (Portland: Binsfords & Mort, 1971), pp. 319-320; "Public Meeting of Some Inhabitants," Oregon State Archives, MS 1083; and "Public Meeting at the American Mission House," OSA, MS 1083, hereafter cited OSA.

³Carey, pp. 329-331 and "Public meeting at Champooick, May 2d 1843," OSA MS 12186.

reports make up the first constitution of Oregon known as the Organic Laws.⁴

⁴"Public Meeting held on the 5th July 1843," OSA MSS 425, 426, 423, 4912, 422, 430, 12187.

CHAPTER I

PROVISIONS OF THE 1843 ORGANIC LAW

Nine men were chosen on May 2, 1843, to make up the legislative committee. It was their responsibility to draft the first constitution and laws of Oregon. The nine were a good mixture of the population. Eight were between the ages of thirty-one and forty-three years. The eldest was sixty-two. Four represented the Methodist mission, three were mountain men, and one a deserter off a ship from California. Several had previous political experience, five continued in politics, and for three this was their only political venture.

Robert Moore, who was the senior of the group at age sixty-two, was elected chairman. He was a Presbyterian but worked at the Methodist mission. He had come to Oregon in 1840 with Farnham's Peoria Party and since 1841 had held the position of justice of the peace.

David Hill was thirty-four years old in 1843. He had settled in Oregon only the year before. After working on the Organic Laws he was to be on the first executive committee and then spend several years in the legislature.

Alanson Beers was also to be on the first executive committee, but for the forty three year old from the Methodist mission this was to be the last of his political career. He had come to Oregon in 1837 from Connecticut.

Robert Shortess also was of the Methodist mission and had been with Robert Moore and Jason Lee when they came in 1840 with the Farnham Party. For the thirty-nine year old this would be his only political office.

James O'Neil, thirty-seven, came to Oregon in 1834 with the Wyeth expedition. This being his only political experience, he returned to farming.

William H. Gray was one of the youngest participants at age thirty-three but already had seven years in Oregon, having come in 1836. Like Robert Moore he was a Presbyterian farming at the Methodist mission. He was a keenly religious man and the book he wrote gives pointed comments about the men he worked with for three years in the legislature.

William Doughty was the youngest at thirty-one. He came to Oregon in 1841. He ran for the executive committee in 1844 but had to settle for justice of the peace.

Thomas Jefferson Hubbard, called T. J., at thirty-seven had been in Oregon the longest. Nine years previously he had abandoned the life of a sailor for the shores of Oregon. Oregon justice had worked in his favor already as he had been cleared of a murder on Sauvie Island. This was to be his only political experience although he did run for second lieutenant in 1844.

The most respected member of the committee was Robert Newell. He was a retired mountain man at the age of thirty-nine. He had acquired the nickname "Doc" and illustrated many of his philosophical points with analogies to the good old days. Doc Newell was conveniently

located having built his house at Champoege. For Newell this was the beginning of a long career in Oregon politics. He was a member of every legislature of the Provisional Government except 1849 when he was in California mining gold.⁵

The legislative committee met May 16-19 and June 27-28 and after a report on the rules divided itself into committees on Judiciary, Ways and Means, Military, Land Claims, and Districts.⁶ The Judiciary Committee consisted of Messrs. Beers, Hubbard and Shortess. They were responsible for most of the preamble, excepting the phrase "until such time as the United States of America extend their jurisdiction over us" which was added in June by George LeBreton at the insistence of the full committee. The preamble is divided into four sections. The first states that no person shall be molested on account of his religion. The second declares that all inhabitants are entitled to full legal processes. The third section maintains that education is encouraged along with humanity towards the Indians. The fourth section asserts that neither slavery nor involuntary servitude be allowed.⁷

The second article of the Organic Laws is the constitution

⁵Carey, pp. 320, 328, 329, 332; Frederick V. Holman, "A Brief History of the Provisional Government and What Caused Its Formation," OHQ, XIII (June 1912), pp. 123-129; "Members of the Legislature of Oregon 1843-1967," OSA Bulletin 2; "Pioneer families of the Oregon Territory 1850," OSA Bulletin 3.

⁶"Minutes, Legislative Committee," OSA MS 72.

⁷"Fair Copy of the Original Organic Laws," OSA MS 1583.

itself. The first five sections of the total of eighteen are the work of the judiciary committee. Section one creates a nine-person legislature to be elected annually from their respective districts. Section two creates a three-person executive to be elected annually and given power to fill vacancies, remit fines, grant pardons, repel invasion, and recommend laws. Section three creates a judicial system of a supreme court (a supreme judge and two justices of the peace), a probate court, and justices of the peace; gives times and places of sessions; and establishes jurisdiction. Section four creates the office of recorder to record the proceedings of the legislature, supreme court, probate court and to record all land claims, weights and measures, and other legal documents. Section five creates the office of treasurer to receive and pay all monies of the territory.⁸

The Ways and Means committee consisted of Shortess, O'Neil and Doughty. They provided sections on elections and finances. A separate finance committee was proposed and rejected on May 16. Sections six through sixteen are the work of this committee. Section six calls for a system of subscriptions to defray expenses of the territory. Sections seven and eight continue 1843's offices until 1844 and call for elections the second Tuesday in May. Section nine calls for an oath of office. Section ten outlines who is eligible to vote. Sections eleven through fifteen extend the laws of Iowa Territory over Oregon unless otherwise provided. The sixteenth

⁸Ibid.

section sets limits and provisions on marriages.⁹

The report of the military committee of Hubbard, Newell, and Gray was not adopted into the Organic Law although later legislatures followed it closely. The private land claims committee was made up of Shortess, Doughty, and Hill. Section seventeen is theirs. It explains the methods of designating, recording, and improving a land claim. It limits the number and size of claims and excludes any religious missions.¹⁰

The committee on districts was made up of Gray, Doughty, and Beers. They added section eighteen to the Organic Laws. It created under the name of Oregon Territory four districts (Twality, Yam Hill, Clackamas, and Champooick), and gave their boundaries.¹¹

It should be remembered that the meeting at the Methodist mission of February 18, 1841, created a legislative committee that never met, a rudimentary judicial system that did operate, and deferred the question of the executive. It is evident from the original Organic Laws that this system was still satisfactory. The section on the judicial system is very explicit about when, where and how to proceed, yet the legislative section does not even call for a session. And the executive section merely provided powers to prevent emergencies. Had it not been for the emergency in Oregon City known as the Cockstock affair, March 4, 1844, the government of 1843 might have gone

⁹"Minutes, Legislative Committee," OSA MS 72; and "Fair Copy of the Original Organic Laws," OSA MS 1583.

¹⁰Ibid.

¹¹Ibid.

the way of the government of 1841. In this incident the territorial recorder George LeBreton was shot and killed by a drunken Indian named Cockstock. Because of this incident the executive committee (with only two members present) held their first meeting and issued their first executive message.¹²

An article on Oregon printed in the Oregon Spectator, June 24, 1847, contains the following essay on government:

Sketches of Oregon, No. 2.
The Process of Government.

In our first sketch we gave the historical facts connected with the organization of Government in Oregon, and we now propose to show some of the various achievements of the popular spirit in its progressive movements. We scarcely deem it worth while to give an abstract of the laws which were reported by the Legislative Committee and adopted by the people at the meeting of the 5th of July at Champoege, as they were subsequently amended and perfected. This committee, which is designated in the records as "Legislative," was composed of nine persons, whose names were Robert Moore, W. H. Gray, Robert Newell, Robert Shortess, A. H. Beers, T. J. Hubbard, David Hill, J. A. O'Neil, ---Doughty. Their proceedings seem to have been characterized by the dignity and decorum becoming such a body and their conclusions evidently were not arrived at without mature deliberation. They worked in good heart and faith, and although what they wrought was not faultless, still to them belongs the honor of having laid the foundation of our civil superstructure.

Of the Organic Laws, or Articles of Compact, the Land Law particularly, which was susceptible of great improvement, has since been amended, some highly objectionable portions of it having been repealed, and its spirit considerably improved. The immigration which arrived in the Territory in the autumn of '43 was very large and contributed materially in effecting alterations in the laws and the face of the country, which were altogether desirable.¹³

¹²"A Meeting at Larshapell's," OSA MS 1510.

¹³Oregon Spectator, June 24, 1847.

CHAPTER II

THE ELECTORAL PROCESS

Five regular annual elections were held during the period of the Provisional Government; one under the rules of the original Organic Laws and four under the revised rules of 1845. In addition there were local special elections to fill vacancies caused by resignation and absence of legislators departing for California, and a special referendum of the people to win approval of the revised Organic Laws. Election procedures remained basically the same but each election brought a more sophisticated campaign.

Article two, Section ten of the original Organic Law states who is eligible to vote:

Every free male descendant of a white man, inhabitant of this Territory of the age of twenty one years and upwards, who shall have been an inhabitant of this Territory at the time of its organization shall be entitled to vote at the election of Officers, Civil and Military and be eligible to any office in the Territory; provided that all persons of the description entitled to vote by the provisions of this section, who shall emigrate to this territory after organization shall be entitled to the rights of Citizens after having resided six months in the Territory.¹⁴

This section was unchanged by the revision of 1845 except for punctuation and capitalization.

Section eight of the same article calls for holding elections

¹⁴"Fair Copy of the Original Organic Laws," OSA MS 1583.

for civil and military officers on the second Tuesday in May. Section fifteen says that these elections will be "in the most central and convenient place in each District" and "under such regulations as the Laws of Ioway provide."¹⁵ The election of Tuesday May 14, 1844, was held under these rules and will be discussed later.

During the summer of 1845 the Organic Laws were revised and amended then submitted to the people and passed. The only major change was to place election day for civil officers (the military was dropped entirely from the Organic Laws) on the first Monday in June annually. A section of the article on land laws refers to an election to be held on the first Tuesday in June 1845 but this date was the product of a lack of communication among the revisionists as the 1845 election as well as 1846, 1847, and 1848 were held on Mondays.¹⁶

Two new sections concerning elections were added to the Organic Laws by the 1845 revisionists. One provided for a special election to be called by the governor to fill any vacancy in the legislature, given at least ten days notice. The other called for voting on amendments to the Organic Laws at regular elections, two-thirds concurrence necessary.¹⁷

The only other revision to the laws governing elections came December 28, 1847, under the lengthy title "Amendatory to an act

¹⁵Ibid.

¹⁶"Fair Copy of the Amended Organic Laws," OSA MS 1096.

¹⁷Ibid.

entitled an act in the Statute Laws of Iowa, 'defining the duties of Judges of Elections,' to be appended to the eighth section of that act." The law requires judges of elections to deposit all votes in a box, not count them until the polls close, place them on a string, then deposit them with the county clerk for reference.¹⁸ This shows some sophistication in elections because in 1844 there were no printed ballots, just tally sheets.

Campaigns for public office show a marked growth generally paralleling the increase in population in Oregon. The campaigns of 1844 and 1845 were before the introduction of the locally printed word so they were by word of mouth. Existing institutions like the Willamette Falls Debating Society were no doubt used but the first declared candidate did not occur until 1846. Decisions on who to vote for were made in small group discussions at the mission, at the stores in Oregon City, or over dinner among friends of the last wagon train. Groups of people would decide that George Abernethy was their choice for governor and tell their friends and acquaintances.

The Oregon Spectator had been in existence only six weeks when on March 19, 1846, in its fourth number, was carried the following paid advertisement: "many citizens of Clackamas county are desirous of A. L. Lovejoy, esq., should be a candidate for the next legislature." A similar unpublished convention in 1845 had nominated A. L. Lovejoy, James Nesmith and John Long for office. By May 28 six candidates

¹⁸ LaFayette Grover, Laws of a General and Local Nature Passed by the Legislative Committee and Legislative Assembly, 1843-1849 (Salem: Asahel Bush, 1853), p. 51.

were being asked to run (A. L. Lovejoy, Samuel Parker, H. Straight, A. Husted, Philip Foster and Samuel K. Barlow). M. M. McCarver stated his choice not to run and one candidate actually had the nerve to declare himself.¹⁹

1846 brought with it a new element in Oregon elections currently popular back east. As the Spectator announced on May 14, "On Monday next, the several candidates of Clackamas county will address their fellow-citizens, from the stump, in Oregon City. This will be something new in Oregon . . ."²⁰ Under the headline "Signs of the Times" the Spectator reported the event of Monday May 18.

. . . such was their curiosity to witness, in this "sun-down" land, scenes with which they had once been familiar in the far east, . . . many of the voters proclaimed aloud, that they would vote for no man who had declared himself a candidate and would not publicly express his sentiments beforehand . . .

"Husted! Husted!" was heard from every part of the room. Gen. Husted said, "It appeared as if the candidates were called upon for to give their views and their sentiments upon various subjects which might come before the legislature--there were many subjects both political and agricultural that ought to be attended to." He hardly knew what position to take, but would go for such measures as would tend to advance the prosperity of Oregon. (Applause)

Mr. Parker was next called. Mr. P. said he was almost a stranger in the country, and it might appear forwardness in him to offer as a candidate, having been so short a time in the country; but he was a citizen of Oregon, and consequently felt an interest in her prosperity.

Mr. Barlow next occupied the floor, and said, we, as a separate people, had a right, in common with all detached communities, to govern ourselves.

Mr. Straight followed, and said he was not accustomed

¹⁹Oregon Spectator, March 19, 1846; April 16, 1846; April 30, 1846; May 28, 1846.

²⁰Oregon Spectator, May 14, 1846.

to such proceedings, but would give his views as briefly as he could.

Mr. Foster was called next. He was unaccustomed to stump speaking--considered himself an American citizen, and was proud of it.

Esq. Lovejoy being called, said he felt bound to respond to their call, though he had nothing prepared--had been busied with other matters. If he should omit any point, he hoped some one would call his attention to it, and he would be there.

Gen. McCarver being repeatedly called, arose and said he was not in the field--was not a candidate--consequently, had nothing to say.

The curtain dropped--all was over, and the crowd dispersed, doubtless highly gratified and instructed.²¹

By 1847 the declared candidate was acceptable. Both George Abernethy and A. L. Lovejoy placed themselves before the people as candidates for governor as had several candidates for the legislature. Joseph L. Meek became the first person outside of Clackamas county to declare himself a candidate via the Spectator. But a new format had developed, public meetings "for the purpose of nominating suitable persons as candidates for the different Territorial and County offices." Two nominating conventions were held in Champoege county. Eight people were nominated for the five seats in the legislature between two conventions. One convention nominated Lovejoy for governor, the other split between Lovejoy and Abernethy.²²

Within the next two weeks Clackamas and Tuality counties held conventions and Champoege held its third. The Clackamas convention recommended three people for the legislature none of which were elected and declined to name a candidate for governor. Tuality recommended

²¹Oregon Spectator, May 28, 1846.

²²Oregon Spectator, May 27, 1847.

Abernethy for governor, three representatives and various other officers. At the Champoege convention, among the five candidates for legislature were three new names bringing to eleven the number of nominated candidates. George Abernethy was nominated for governor making Champoege county evenly split.²³

Due to the Cayuse War there was considerably less interest in the Election of 1848. The election notice printed in the Spectator May 4 sheds much light on the process of voting and the duties of the judges of elections. Judges hold their offices until their successors are appointed by the county justice or another judge of elections. The judge must take an oath to perform his duties according to law and the best of his ability. The judges may postpone the closing of polls from eight to nine o'clock if necessary. The county clerk must provide two poll books, one of which goes to the judge. The judge must deposit all votes in a box, et cetera, as directed by the 1847 legislature (see above).²⁴

One issue throughout the six years of provisional government distinguishes the more populous counties from the less populated districts: voter apathy. Of the four districts in 1844 Yam Hill did not hold an election, while in the Clatsop portion of Tuality only eight people voted, four of them being judges of the election and two of them receiving all the votes. An editorial in the Spectator, May 28, 1846, reads,

²³Oregon Spectator, May 27, 1847.

²⁴Oregon Spectator, May 4, 1848.

In the older counties, if we may believe our informants, there seems to be a degree of unconcern exhibited with respect to the individuals to be elected, which is difficult to account for in this present important, and perhaps, highly momentous year . . . ²⁵

A year later the issue was repeated:

We understand that some of the citizens of Polk are indifferent about holding an election in that county for Territorial and County officers. This is by no means right, our friends in that section should do their duty and do it as loving it. IF they do not obey and support the laws, they have no right to expect or ask the aid or protection of those laws. The good of their country demands that they should have patriotism enough, at least, to perform a small service like this. ²⁶

THE ELECTION OF 1844

A new element was added to the voting public in 1844 as the immigrants of 1843 fulfilled the necessary six months residency and were eligible to vote and hold office. The election was held on Tuesday, May 14 as required by the original Organic Laws. Eleven territorial offices were up for election: three men for the executive committee, a supreme judge, sheriff, treasurer, clerk and recorder, major, captain, first lieutenant and second lieutenant. Various district offices included representatives (Tuality 4, Champoege 3, Clackamas 1, Yam Hill 1), justice of the peace (Champoege 1, Tuality 2, Clackamas 1, Yam Hill 1), and constable. ²⁷

²⁵Oregon Spectator, May 28, 1846.

²⁶Oregon Spectator, May 27, 1847.

²⁷"Klackamus District--Wallamette Falls--May 14, 1844," OSA MS 1688; "House of James Flet in the Twalihme district," OSA MS 1689; "Clatsop Plains--May 14, 1844," OSA MS 1692; "House of I. L. Babcock in the Champoege District," OSA MS 1693.

Tuality district had two polling places, the second being in the remote Clatsop area. Each polling place had three or four judges of elections. As can best be determined two-hundred people voted: sixty-six in Clackamas, forty-six in Tuality, and eighty-eight in Champoege. There was no election in Yam Hill. As there was no ballot available not every voter voted for each office and each voter volunteered a name. A total of eighty-one people received at least one vote.²⁸

A new executive committee was elected for 1844. Of the previous committee David Hill garnered six votes, all from Clackamas, and Alanson Beers received 49 votes, 21 short of election. The new executive committee consisted of Osborne Russell (244 votes), a mountain man who settled down in 1842; Peter G. Stewart (140 votes), an 1843 immigrant; and Dr. William J. Bailey (70 votes), of the Methodist Mission. It is noteable that only three of Bailey's seventy votes came from outside of Champoege where the Methodist Mission is located.²⁹

Another example of the mission influence was the election of supreme judge. Dr. Ira Babcock got all eighty-three of his votes in Champoege where the election was being held at his house and where he was the incumbent and a judge of the election. Dr. Babcock resigned his position six months later on November 11, 1844, to return east.

²⁸Ibid.

²⁹"Election Results 'Oregon Territory' May 25, 1844," OSA MS 1691; "Election Results--May 25, 1844," OSA MS 1694; Carey, p. 341.

James Nesmith, who had received thirty-nine votes to finish second, was appointed to replace Babcock.³⁰

In other results Philip Foster was elected treasurer with forty-eight votes. John E. Long was elected clerk and recorder with seventy-three votes (Mathew 65, Johnson 26). Joseph Meek received 143 of the 146 votes cast for sheriff.³¹

In the vote for legislature Tuality elected Peter H. Burnett, Mathew C. Gilmore, David Hill and M. M. McCarver in that order. Champoege elected Robert Newell, Daniel Waldo, and Thomas D. Keysur. Clackamas elected Asa Lawrence Lovejoy and Yam Hill was to go unrepresented.³²

³⁰Ibid.

³¹Ibid.

³²Ibid.

CHAPTER III

SESSIONS OF THE LEGISLATURE JUNE AND DECEMBER 1844

Two involved people of definite points of view were Dr. Elijah White and William H. Gray. Dr. White was dispatched to Oregon from the United States as sub-agent of Indian Affairs. He carried on and got carried away in a manner befitting the only officer of the United States in Oregon. His nature almost caused an Indian War, was probably a cause of another, nearly cost him his life in a duel, and forced him to leave Oregon amid fiery protestations. William Gray was a farmer at the Methodist Mission who contributed to the government from 1843 to 1845. He had decided opinions about his religions and other people's religions. White and Gray had one thing in common--they both published books about their experiences in Oregon, one in 1848 and the other in 1870.

Dr. White declared in his book that the 1844 legislators were of three classes. The first class was the mission gentlemen. They were not the clergymen (Jason Lee and David Leslie never did actively participate in the Provisional Government) but of the secular department working around the mission. The second class, by far the largest, were the enterprising, intelligent men of considerable property. The third class were those who spent time in fur companies and then settled down in the Willamette Valley.³³

Gray was more explicit in his comments about the legislators.

Peter Burnett, he wrote, "came to Oregon to seek his fortune, as well as a religion that would pay the best, and give him the most influence." He had no regard for the constitutionality of the Organic Laws, but was ". . . unquestionably the most intelligent lawyer then in the country," and "a very ambitious man--smooth, deceitful, and insinuating in his manners." David Hill, with "strong prejudices, having no regard for religion or morality," had left a wife in Ohio and claimed to be widowed, was an opponent of the Hudson's Bay Company and missionary efforts, yet was generally respected and popular. M. M. McCarver, called general because of his commissary positions in Iowa's Black Hawk War, strove hard for popularity, fluttered around Dr. White for influence, and never originated any important measure or performed any service. Gilmore neither said nor did much. A. Lawrence Lovejoy always acted like the later radical Democrats. Daniel Waldo's claim to fame was experimenting in farming hills since his land in Missouri was washed away. Thomas Keizur did all he could to curtail mission claims. He considered all dirty tricks and slanders against opponents justifiable.³⁴ It was this group of men along with mountain men Robert Newell and clerk John Long that met at the house

³³Dr. Elijah and Lady White, Ten Years in Oregon (Ithaca, New York: Mack Andrus, 1848), p. 319.

³⁴W. H. Gray, A History of Oregon 1792-1849 (Portland: Harris and Holman, 1870), pp. 374-378. Although there were no political parties in Oregon at this time it is generally agreed upon that there were three factions: the ultra-Americans, neo-Methodists or mission party; the moderate Americans; and the independents. See Dorothy Johansen, Empire of the Columbia and Kent Richards, Growth and Development of Government in the Far West.

of Felix Hathaway in Oregon City June 18, 1844.

The Legislative Committee of the Provisional Government for 1844 met Tuesday, June 18. Seven of the eight elected members were present, Mathew Gilmore being absent. Secretary Long was also absent so Peter Burnett acted in his place. The oath of office as prescribed in a resolution by Burnett was taken. M. M. McCarver was unanimously chosen speaker. There was a short break while Burnett and Lovejoy informed the executive committee the house was in session.³⁵

The executive message started with an introductory philosophy about the situation of the Oregon territory justifying the passage of laws. The members recommended several laws. First and foremost they suggested a measure "for a more thorough organization." Also recommended were measures for a light tax to support the government, a single person executive, and an individual judge for each court. The executive wished several laws to be amended, including the laws of "Ioway," the militia law, the land laws. They wished the fourth section of the land law repealed. They wished laws for commissioners to locate roads and ferries, to encourage education, to deal with blacks and mulattoes, and to punish Indian inciters. They closed with the following words of advice:

. . . use as much discretion vigilance and caution in maturing and adopting measures for promoting the interests of this little colony as if we expected our names and acts would be enrolled in the pages of history or inscribed on pillars³⁶ of stone, when our days and generations have passed away.

³⁵"Journal of the Legislative Committee," OSA MSS 1125-1131.

³⁶"To the honorable the Legislative Assembly of Oregon Territory," OSA MS 1381.

When the legislature finished reading the executive message they heard McCarver's appointments to standing committees. In each case the first name given is the chairman. Each representative got two appointments except the absent Gilmore who received three. Appointed to Ways and Means were Newell, Hill, and Gilmore; to Military Affairs were Hill, Keizur, and Gilmore; to Land Claims were Lovejoy, Waldo, and Newell; to Roads were Burnett, Waldo, and Keizur; and to Judiciary were Burnett, Lovejoy, and Gilmore.³⁷

One final act before adjournment on the first day was the naming of a special committee of Lovejoy, Burnett, and Waldo to write the rules. Almost the entire session of Wednesday June 19 was spent working on the rules, which remained substantially the same for the next six years.³⁸ There were five steps to a legislative day although periodically the rules were suspended to move an item along out of its natural order: 1) Call for petitions. Petitions were read by members of the house and referred to various committees. Most petitions were received during the first few days of a session and most of them were for roads, canals, or divorces. 2) Committee reports. Standing committees gave their reports first then special committees. Any bills reported out by committees were given first readings. 3) Resolutions. Members who wished a point of view declared did so here. Any bills were given first readings. 4) Orders of the day. Bills

³⁷"Journal of the Legislative Committee," OSA MSS 1125-1131.

³⁸Ibid.

were read for the second time and either tabled or referred to the committee of the whole. During the committee of the whole bills were read a third time, discussed and either recommended for passage and engrossing or tabling. Each time the committee of the whole met there was a different chairman, otherwise the speaker was in the chair. This work portion of the day was not recorded. The house then went back into session for any votes (including roll calls if called for) and any intentions to introduce bills. 5) Adjournment.

A. Lawrence Lovejoy became discontented with the work of the legislature and was several times quashed in his efforts. The house refused his efforts to resign from the land committee, to meet an hour later in the morning, and later to adjourn sine die before all business was finished.³⁹

The first bill passed the legislature June 22, 1844. It created an additional district at Clatsop out of the existing Tuality. It also replaced the word "district" with "county" henceforth and called for a special election to elect officers.⁴⁰ In two related bills the boundaries of Yam Hill county were altered and the Columbia River was made the northern boundary of Oregon.⁴¹

The 1844 legislature passed several bills concerning roads. A lengthy bill in two articles passed June 24. It provided for public

³⁹Ibid.

⁴⁰E. E. Rich, ed., The Letters of John McLoughlin from Fort Vancouver to the Governor and Committee, 1844-46 (Toronto: The Champlain Society, 1944), pp. 234-235.

⁴¹Rich, pp. 226, 243-244; and Grover, Laws, pp. 74 and 87.

roads, overseers, viewers, and workers. It described the width and condition of new roads. It also provided a system of penalties for not working on roads. Several new roads were authorized including Willamette Falls to Yam Hill, Linton to Yam Hill, and Willamette Falls to Tuality Plains.⁴²

The committee on roads also reported and the legislature passed bills for ferries by Hugh Burns and Robert Moore. A ferry for John McLoughlin was denied but he was granted a canal around Willamette Falls. The ferry bills were almost identical. They were good for one year and cost the operator a \$20 usage fee. The rates were foot-man 6¼¢, man and horse 12½¢, wagon and team 150¢, cart and team 75¢, head of cattle or horse 6¼¢, sheep or hog 3¢, pleasure carriage 75¢, and 100 pounds of goods 3¢. McLoughlin was given two years to complete his canal and a twenty year permit. Its tolls were canoe or skiff \$1, other craft per ton 50¢, rafts of sawed lumber 25¢ per 1,000 feet, and saw logs 10¢ each.⁴³

There were also laws on marriages, legalizing acts of officers, judicial proceedings, appropriations, apportionment, regulating salaries of officers, wild horses, appointing assessors, and regulating seamen but there were minor compared to five bills that shook the constitutional framework of the Organic Laws. Two of them will be covered in later chapters but will be mentioned here briefly. On June 24 speaker McCarver signed a bill preventing the introduction, sale and

⁴²Rich, pp. 219-220, 235-236, 244-250; and Grover, Laws, pp. 78-80, 88.

⁴³Rich, pp. 238-241; and Grover, Laws, pp. 73, 75, 81.

distillation of ardent spirits in Oregon. This law marks the beginning of a long temperance battle in the various governments of Oregon. Also on June 24 the ways and means bill was passed. This altered the section of the Organic Law on financing the government by levying a tax of one-eighth of one percent.

The Cockstock Affair (see above) prompted the formation of an Oregon militia. At the meeting of March 9, 1844, at Andre Larshapell's (LaChapelle) on French Prairie the articles of compact of the Oregon Rangers were drawn. Power of enlistment was granted any officer, executive, or legislator. The men were to provide their own rifle and horse and receive one dollar a day, double when fighting. The twenty-five men who attached their names on March 16 expected to receive a charter from the "Colonial Government." By April 29 there was neither an Indian War nor a charter. The three leaders (including Thomas Keizur) wrote the executive asking for means of payment and munitions. They were not satisfied with the inaction of the legislature, which had not yet met.⁴⁴ The 1844 legislature, when it did meet, adopted the report of the committee on Military Affairs (Thomas Keizur a member) and made it law. The militia was divided into a single regiment of infantry, light infantry, riflemen, mounted riflemen, dragoons, and artillery. Offices from colonel to third lieutenant were created. As in most militias field grade officers were elected positions. The law called for regular meetings, courts martial, and penalties. The executive was commander-in-chief. Ferrymen,

⁴⁴J. Henry Brown, Brown's Political History of Oregon, I (Portland: Wiley B. Allen, 1892), pp. 129-130.

ministers, physicians, millers, clerks, judges, and sheriffs were exempt from normal service.⁴⁵

The two bills on land laws are more notable for what they excluded rather than what they included. The new arrivals demanded many changes and the legislature responded with some. Besides the permissible farmland of 640 acres, a town lot was granted to settlers, although both must have permanent improvements and bona fide declarations to occupy within two months or the claim was lost. The December session further loosened this by allowing 600 acres of prairie and 40 acres of timber, not necessarily adjacent. The claim must be square if possible and conform to the cardinal points of the compass. The effective section very simply stated that all previous laws were repealed. This is not an unusual section to most laws except in this case it repealed the law that required recording the claim within twenty days and the law that allowed large grants of land to religious missions. Both of these statutes were unpopular with the new arrivals. It should be pointed out that the Methodist mission had already begun subdividing its many plots among its members.⁴⁶

Jesse Applegate, a future legislator, stated that Robert Shortess, the principal framer of the Organic Laws, had used the Ordinance of 1787 as his model because it settled the problems of slavery. Slavery was a major national issue, and for some the reason

⁴⁵Rich, pp. 227-233.

⁴⁶Rich, pp. 237-238; Grover, Laws, p. 77; and Carey, p. 343.

for leaving the United States. There was no Negro problem in Oregon; in fact there were only a handful present, but the framers of the laws did not want a problem to be created. On Tuesday, June 25, Peter Burnett introduced "An Act in Regard to Slavery and Free Negroes and Mulattoes." It passed the next day. It prohibited slavery in Oregon. It also prohibited any Negroes or mulattoes from residence and provided a penalty of twenty to thirty-nine lashes for any Negro who failed to leave. The December session eased the penalty by repealing the sections on whipping and substituting a system of hiring men to remove Negroes from the territory. Although the law was entirely inoperative because it did not take effect for three years, no one insisted upon fulfillment, and there are no examples of enforcement, it was nevertheless on the books and did not go unnoticed by Southern senators Clay and Calhoun when it came time to consider Oregon as a territory.⁴⁷

DECEMBER SESSION

The second session of the Oregon legislature was scheduled to start work Monday December 16, 1844, but due to absences was unable to convene until after two the next day. The executive message was called for and received. It explained that the reason for adjourning in June was the expectation of a boundary adjustment between the

⁴⁷Rich, pp. 233-234; Brown, pp. 133-134; Walter Carleton Woodward, The Rise and Early History of Political Parties in Oregon 1843-1868 (Portland: J. K. Gill, 1913), p. 22; and "An Act in Regard to Slavery and Free Negroes and Mulattoes," OSA MS 1088.

United States and Britain. Its recommendation included framing a new constitution, settling the Ewing Young estate (\$3,734.26 due), creating a jail (" . . . it is better to have the building standing, without a tenant, than a tenant without a building."), adopting a process to fill vacant offices, amending the Negro bill to exclude corporal punishment (see above), adopting laws concerning the Indian lands, lunatics, and insane persons. It closed with the following aspiration:

. . . we sincerely hope that Oregon . . . may set an unprecedented example to the world of industry, morality, and virtue. And although we may now be unknown as a state or Power, yet we have the advantages, by united efforts of our increasing population in a diligent attention to agriculture, arts and literature, of attaining at no distant day, to as conspicuous an elevation as any state or Power on the Continent of America.⁴⁸

The first order of business was to clean up some unfinished business from June. On June 27 a bill of censure was passed against David Hill on the grounds of misconduct and absenteeism. On December 17 this bill was rescinded. During the June session a petition was received from A. W. King for a divorce. The legislature was unprepared for such an action and let the issue ride in special committee. On December 17 this committee was discharged. History does not record whether Mr. King made amends with Mrs. King or otherwise. In 1845 the legislature began processing divorces on a regular basis. Another issue carried over from June was that of incorporations. The community at Willamette Falls had wished to become Oregon City, and the Methodist mission wished incorporation along with its Oregon Institute.

⁴⁸"Executive Message December 16, 1844," OSA MS 1381.

Oregon City reapplied in December and was granted its incorporation.⁴⁹

In 1845 incorporations were granted to the Multnomah Circulating Library, Wahomi Milling Company, and Columbia Transporting Company.

The executive had requested a jail be built as a deterrent. Early Friday, December 20 a committee under A. L. Lovejoy was appointed to select a lot for the jail. By six they had returned with the promise of John McLoughlin for the lot in Oregon City. A petition from J. R. Robb objected to using said lot because of Dr. McLoughlin's background with the Hudson's Bay Company, but the petition was tabled. The bill to rerect the jail was considered Saturday December 21 and passed Tuesday December 24.⁵⁰ The bill empowered the executive to appoint an administrator (Lovejoy) to collect the debts due the estate of Ewing Young and use the money to pay for a substantial log jail at Oregon City not to exceed \$1,500. The remaining monies would go to the general treasury. ". . . said jail shall be used alike for the imprisonment of all criminals in Oregon."⁵¹

The executive had also requested a bill in regard to whites using Indian lands. On December 23 the following bill was passed:

AN ACT

In relation to Indians.

WHEREAS, the Indians inhabiting this country are rapidly diminishing, being now mere remnants of once powerful tribes, now disorganized, without government, and so situated that no treaty can be regularly made with

⁴⁹"Journal of the Legislative Committee," OSA MS 1568.

⁵⁰Ibid.

⁵¹Grover, Laws, p. 94.

them;

AND WHEREAS, by an act passed in July, 1843, this government has shown its humane policy to protect the Indians in their own rights;

AND WHEREAS, the Indians are not engaged in agriculture, and have no use for, or any right to, any tracts, portions, or parcels of land, not actually occupied or used by them: therefore,

SECTION 1. Be it enacted by the Legislative Committee of Oregon, as follows, That the Indians shall be protected in the free use of such pieces of vacant land as they occupy with their villages or other improvements, and such fisheries as they have heretofore used.⁵²

The June session had made several changes in the Organic Laws assuming submission to the people unnecessary. The December session made still further amendments to executive and judicial power. Although the changes were statutory in nature the manner in which they were adopted created dissatisfaction. The legislators were bitterly denounced for not submitting their work to the public for approval. To return to W. H. Gray's description, Peter Burnett's influence "in the Legislative Committee was sufficient to induce that body to pay no attention to any organic law or principle laid down. . . ." Further, "he asserted that there were no constitutional provisions laid down or adopted by the people in general convention at Champoege the year previous."⁵³

It was the opinion of some members of the legislature that a general revision of the Organic Laws was necessary. On December 18 the committee of the whole agreed to the need for revision and a bill

⁵²Grover, Laws, p. 70.

⁵³Woodward, p. 23; and Gray, p. 374.

calling for a convention was drafted. The next day a vote was called and the bill failed. Rather than drop the matter and incur more criticism from the public Lovejoy presented a bill to refer to the public the question whether to hold a constitutional convention. The bill read:

AN ACT

To provide for holding a Convention.

WHEREAS, the end of the institution, maintenance and administration of government is to secure the existence of the State and to furnish the individuals who compose it with the power of enjoying in safety and peace their natural rights and the blessings of life; therefore, it is expedient and highly proper that the people of Oregon should be informed and consulted upon the important question of forming a constitution, placing the government upon a more firm and permanent basis.

SECTION 1. Be it enacted by the Legislative Committee as follows, That the executive committee shall, in the manner prescribed by law for notifying elections in Oregon, notify the inhabitants of all the respective counties qualified to vote for members of the Legislature at their next annual election, to give⁵⁴ in their votes for or against the call of a convention.

⁵⁴"Journal of the Legislative Committee," OSA MS 1568; and Grover, Laws, p. 84.

CHAPTER IV

THE HUDSON'S BAY COMPANY AND THE PROVISIONAL GOVERNMENT

In November of 1843 John McLoughlin reported to his superiors that the "American party with a few Englishmen, who came by way of the States, and some Foreigners, formed themselves into a body . . ." The Canadians were invited to join but positively refused to take part. This was because the organization did not have McLoughlin's favor. He saw them as a voluntary association of individuals with strong American bias, land laws favoring Methodists and discriminating against the Hudson's Bay Company, and depending on voluntary contributions.⁵⁵ Governor Simpson in a letter to the Board of Governors of Hudson's Bay Company showed an even stronger dislike of the Americans.

. . . this infant Government appears to be very energetic, the Bowie knife, Revolving Pistol and Rifle taking the place of the Constable's⁵⁶ baton in bringing refractory delinquents to justice.

McLoughlin kept his superiors informed of all activities in Oregon. In reference to Dr. White he reported that he was aware from the beginning of his intentions and refused to recognize any authority emanating from the United States west of the Rocky Mountains. He reported the elections of officers and sent copies of nearly every

⁵⁵Rich, p. xxxviii.

⁵⁶Frederick Merk, "The Oregon Pioneers and the Boundary," OHQ, XXVIII (December 1927), pp. 378-379.

law of the June 1844 session. In his opinion the two important laws were those on land claims and ardent spirits. He did not report his donation of land for a jail.⁵⁷

Of greatest interest to the Hudson's Bay Company was the Provisional Government's handling of its northern boundary. In June of 1844 Clatsop county was created to extend north of the Columbia River. McLoughlin protested first that no Americans lived there and secondly it would hurt United States-British negotiations. An amendatory act was passed to strike any counties north of the Columbia, but public response forced the December 1844 session to claim all territory up to 54°40'.⁵⁸

James Douglas, co-factor along with McLoughlin, privately reported the events of 1844 also. He also did not report McLoughlin's gift of land but was skeptical about the government's assurances to McLoughlin that jurisdiction would not be extended north of the Columbia. The Hudson's Bay Company was bound to resist any taxation but saw no relief for the recovery of its debts.⁵⁹

In 1845 the climate towards the Hudson's Bay Company changed dramatically. The immigrations of 1843 and 1844 had put the Canadians in the minority for the first time. These migrations also made the Provisional Government tolerant towards the Hudson's Bay Company with the emergence of men like Peter Burnett and Jesse Applegate. By 1845

⁵⁷Rich, pp. 28, 32-33.

⁵⁸Merk, pp. 376-377.

⁵⁹Rich, p. 179.

all former members of the legislature except Newell and Hill were gone, and with it the mission antagonism.⁶⁰ In a letter dated March 21, 1845, the executive committee extended its first formal invitation to the Hudson's Bay Company to join the government. The next sign to Fort Vancouver was the election of Frank Ermatinger to the office of territorial treasurer and the legislature's refusal to oust him. Ermatinger was the manager of the Company store at Oregon City and chief trader. The final signal to the Hudson's Bay Company was when the legislature altered the oath of membership to read ". . . so far as they were consistent with their duties as citizens of the United States, or subjects of Great Britain." The Provisional Government's reasons for asking the Hudson's Bay Company to join were: 1) to guarantee their own security by alliance with the largest group of dissenters, 2) to legitimize this dependence on the Hudson's Bay Company for supplies, 3) to take advantage of the Hudson's Bay Company's control over the Indians, and 4) to possibly prevent themselves from going further into debt.⁶¹

In August of 1845 the Hudson's Bay Company joined the Provisional Government. McLoughlin's first notice to the board of Governors was

⁶⁰ Rich, p. xxxviii; Leslie M. Scott, Champoeg Memoranda (Salem: Oregon State Library, n. d.), p. 5; "Letter--Jesse Applegate to John Minto," Oregon Historical Society Archives MS 752; Robert Carlton Clark, "The Last Step in the Formation of a Provisional Government for Oregon in 1845," OHQ, XVI (December 1915), p. 319.

⁶¹ Rich, p. 266; and Clark, pp. 316-317, 324; Frances Fuller Victor, The River of the West (Hartford, Connecticut: Columbian, 1870), p. 364.

August 30 when he wrote:

. . . since I last wrote you on the 19th of July last we have yielded to the wishes and requests of the respectable part of the people in this Country, of British and American origin, by uniting with them in the formation of a temporary and provisional Government, having for its object the protection of life and property, the peace, good order and happiness of the community. In the present circumstances of the Country, I did not feel at liberty any longer to oppose a general union of the inhabitants in so desirable an object, or to hesitate in taking part in it, as the only means of preventing scenes of violence and contention, which beside being fatal to the peace of the Country and productive of much individual suffering, might have had the effect of disturbing the peaceful relations of our respective Governments and dragging them into a ruinous war. This Organization has no reference whatsoever to the claims or rights of the Governments to which the parties interested respectively belong, and is binding in them only so far as such Laws are consistent with their duties as British or American subjects.⁶²

In a later letter McLoughlin admitted to secret motives for joining. Company property was in danger by a hostile population. Employees were taking arms with them into the fields. He received a letter from Jesse Applegate dated August 14 asking him to join the government. He replied that he could not answer for his employees. A number of men were deserting, no naval vessel was expected, and debts were going unpaid without enforcement by the Provisional Government. McLoughlin went to Oregon City to meet with Applegate and the legislature. He was informed of the legislature's intentions to create Lewis and Clark Counties north of the Columbia and asked again if the Hudson's Bay Company would join the government and pay taxes. McLoughlin and Douglas replied that they would. A compromise bill before the legislature to create one county of Vancouver and have it controlled

⁶²Rich, pp. 94-95.

by Hudson's Bay Company officials passed by one vote after some argument. Hudson's Bay Company employees rapidly filed land claims for the Fort Vancouver area and tensions eased.⁶³

Peter Skene Ogden upon returning to Fort Vancouver early in 1846 filed secretly a report to Governor Simpson.

Messrs. McLoughlin and Douglas having join'd the Organic compact prior to my arrival and altho I refused to become a party to the same, still as I found myself situated I was obliged to act in accordance with it or in other words follow the stream; I can see no great benefit that will result from this measure however as I am singular in this opinion and it cannot be very lasting in the present state of affairs it is unnecessary for me to make any comments so far all is apparently tranquil but still we are look'd on with a most suspicious eye by one and all . . .⁶⁴

The December 1845 legislature created Lewis County out of Vancouver County and held an election to choose officers. Both members to the 1846 legislature were from the Hudson's Bay Company. Members of the Ultra-American (mission) party objected to the name Vancouver for a county as it appeared to be a concession of American rights to the north bank of the Columbia. An attempt failed in 1845 but in 1849 they finally convinced the legislature to change the name of Vancouver County to Clark County. A resolution did pass the house in the final minutes of the December 1845 session stating that any measure of the house calculated to defeat the friendly relations between the people of the United States and Great Britain was in direct violation of the true intention for which the government was formed.⁶⁵

⁶³Rich, pp. 97-110.

⁶⁴Rich, p. 149.

John McLoughlin drew much criticism from some employees like Peter Skene Ogden and Governor Simpson for selling out the Hudson's Bay Company to the Americans. In January of 1846 McLoughlin moved from Fort Vancouver to Oregon City and took over the mills and sales shops as personal accounts. When news reached Oregon in November 1846 of the settlement of the boundary issue, McLoughlin was ready to become an American citizen. In May 1849 he took the Oath of Naturalization.⁶⁶

⁶⁵Harvey W. Scott, "The Formation and Administration of the Provisional Government of Oregon," OHQ, II (June 1901), pp. 111-113; Clark, p. 326; and "Journal of the House of Representatives," OSA MS 1538.

⁶⁶Rich, p. lxi.

CHAPTER V

SESSIONS OF THE LEGISLATIVE COMMITTEE JUNE AND AUGUST 1845

The original organic laws were still in force in spring of 1845 but the 1844 legislature had made many alterations, the issue of calling a convention was to go before the people, and revision was generally in the air. It was without protest that the election of 1845 was held on June 3 rather than in May and the vote was to be for a single executive rather than a committee, although the current executive committee would continue through July.

A nominating convention had been held prior to the election and A. L. Lovejoy was nominated for governor, J. W. Nesmith for supreme judge, and J. E. Long for recorder. The nomination of the radical American Lovejoy for governor was opposed by the independent English who put up Osborne Russell, of the executive committee, as their candidate. The mission Americans were backing George Abernethy, formerly of the mission, now a miller in Oregon City. Rather than see a mixed vote elect Lovejoy the independents switched their support to Abernethy. The final result for governor was Abernethy 228, Russell 130, Dr. W. J. Bailey (of the mission) 75, and Lovejoy 71.⁶⁷

Nesmith was elected supreme judge, Long recorder, Meek sheriff, and Marcus Ford and S. W. Moss to the newly created offices of district

⁶⁷Carey, p. 346; Brown, p. 158; and Woodward, p. 29.

attorney and assessor. Frank Ermatinger of the Hudson's Bay Company store in Oregon City beat the incumbent Philip Foster for treasurer. Foster was to contest Ermatinger's election on the grounds that he was a member of the Hudson's Bay Company and that the Company refused to participate and pay taxes to the government. A full complement was elected to the legislature: from Clackamas--Henry A. G. Lee, William Gray, and Hiram Straight; Champoeg--Robert Newell, J. M. Garrison, M. G. Foisey, and Barton Lee; Tuality--M. M. McCarver, V. W. Smith, and David Hill; Yam Hill--Jesse Applegate and Abijah Hendricks; Clatsop--John McClure. The vote on the question of calling a convention to frame a constitution failed 283 to 190 on the fears that an independent government might arise.⁶⁸

Jesse Applegate, about to spend his only year in the legislature, was clearly the leading spirit. He was a conservative who did not wish to change the Organic Laws. His friendship with the Hudson's Bay Company and John McLoughlin lost him his popularity. He had a clear and distinct mind; although not a good debater he was a good mathematician. He was always assured of two votes in the house because Abijah Hendricks followed his lead.⁶⁹

David Hill, according to Gray, was without religion or morality yet was generally respected and popular. He could generally count on the support of J. W. Smith and Hiram Straight. Straight is characterized

⁶⁸Carey, p. 346; Brown, p. 158; and Woodward, pp. 25-26.

⁶⁹Marie Merriman Bradley, "Political Beginnings in Oregon: The Period of the Provisional Government, 1839-1849," OHQ, IX (March 1908), p. 59; and Gray pp. 422-423.

as having strong prejudices but little legislative ability. He was opposed to the Hudson's Bay Company and the mission.⁷⁰

Doc Newell, a former mountain man could count on the support of the Frenchman M. G. Foisey. J. M. Garrison was called "a perfect weathercock" by Gray because "none could tell from his speeches or actions what his vote would be." John McClure was generally respected for his age but had no influence as a politician. He merely occupied a place.⁷¹

Gray described H. A. G. Lee as a man of talent, firmness, and unimpeachable character who acted with caution. He was a conclusive debater and generally correct. Barton Lee voted against mission interests from personal prejudice. He was prejudiced against and ignorant of the Hudson's Bay Company and a follower of H. A. G. Lee.⁷²

An issue of probably more importance in later years but emerging now is the character of the membership in general. It has been said that 1845 was the last year of the old guard, that the mission lost its influence, and the immigrant-Hudson's Bay Company picked up the influence. A closer look will show this to be not entirely true. The steady increase in population did bring an end to the mission influence but Peter Burnett is an example of an immigrant who spent a term in the legislature prior to the end of mission influence and was not returned. The Hudson's Bay Company was barred from participating

⁷⁰Gray, pp. 375, 423.

⁷¹Gray, p. 423.

⁷²Ibid.

before 1846. Only two members of the 1845 legislature would be returning in 1846, Hiram Straight and Robert Newell. David Hill and M. M. McCarver would be ending their political careers in 1845 and Applegate, Hendricks, Foisey, Garrison, McClure, both Lees, and Gray were to spend their only year in the legislature in 1845.

The Legislative Committee met from June 24 to July 5, 1845. The new oath of office including the portion on British subjects was offered by Jesse Applegate. McCarver was elected speaker. The rules committee met and reported and the executive message was called for and received. The message called for laws on revenue, retrenchment, claims of land, apportionment of representatives, building a new jail, Indian affairs, and the revision of the Organic Laws. Standing committees on elections, claims, judiciary, private land claims, military affairs, roads and highways, Indian Affairs, and Ways and Means were appointed by McCarver.⁷³

Before getting down to business one issue was brought up. The afternoon of Tuesday June 24 Gray suggested that morning sessions commence with a prayer. Reverend H. Clark was chosen as house chaplain. Upon reconsideration the reverends Demarse and Hill were chosen to alternate with the reverend Clark. The Wednesday session began with a prayer by the reverend Clark. The reverends Demarse and Hill had declined as chaplain so from Thursday on there were no morning prayers. In the afternoon of Monday June 30 the reverend Clark

⁷³"Journal of the Legislative Committee, June Session, 1845," OSA MSS 1539-1549.

resigned as chaplain of the house and Garrison, Straight, and Gray were dispatched to find a new one. The next morning the committee reported they could find no person to perform as chaplain. The committee was discharged and the matter was dropped. Another futile attempt was made in December.⁷⁴

On the morning of Wednesday June 25 Philip Foster petitioned the legislature to set aside the election of Frank Ermatinger as treasurer (see above). The petition was sent to the committee on elections. The committee reported the next day that they could find no reason to contest the election. The matter was referred to the committee of the whole. Robert Newell chaired the discussions which lasted the remainder of the morning and all afternoon. (Probably unknown to the house was the fact that Newell had had a good relationship with Ermatinger since 1840 when Ermatinger was Hudson's Bay Company trader at Fort Hall and Newell was a mountain man about to bring Reverend Harvey Clark, Alvin T. Smith and P. B. Littlejohn to Oregon.) Gray requested that the committee have the power to call witnesses and subpoena papers in the case. The discussion was continued with Gray as chairman. By a vote of eleven to two, Hill and Straight dissenting, the committee of the whole found no cause to contest the election.⁷⁵

⁷⁴"Journal of the Legislative Committee, June Session, 1845," OSA MS 1539-1549; and "Journal of the House of Representatives," OSA MSS 1525-1538.

⁷⁵"Journal of the Legislative Committee, June Session, 1845," OSA MSS 1539-1549; and Robert Newell, Memoranda (Portland: Champoe Press, 1959), pp. 21-23.

Before the meetings at Champoege created the Provisional Government, people of Oregon had been petitioning and memorializing Congress for action, usually to extend its jurisdiction. The strongest memorial yet started the legislative journey through the house on June 24 when William Gray called for a committee of five (Gray, Applegate, H. A. G. Lee, McClure and Hill) to draft a memorial and petition to congress setting forth the condition, situation, relation, and wants of this country. It was decided on June 27 that the memorial was to be signed by the executive committee, circuit judge, legislative committee, attested by the clerk and forwarded both by land and by water. The memorial was finished by the morning of Saturday June 28 and adopted at that time. It was resolved that Dr. Elijah White carry a copy with him when he departed later in the summer. That afternoon the memorial was signed by Osborne Russell and P. G. Stewart of the executive committee, J. W. Nesmith, supreme judge, each member of the legislature, attested by John Long and delivered to Dr. White.⁷⁶ The memorial of 1845 stated that the colony wanted protection against hostile Indians and more adequate revenue to meet emergencies. If it was inexpedient to extend territorial status at this time at least send some military protection.⁷⁷ Petitions to congress were to increase in popularity in 1846 with groups of people meeting to request such favors as the building of railroads and demanding reserves

⁷⁶"Journal of the Legislative Committee, June Session, 1845," OSA MSS 1539-1549.

⁷⁷Carey, p. 348.

of land. The issue came to a head on November 2, 1846, when a convention at Oregon City to write a petition resolved that the Oregon legislature should be the only group to memorialize Congress. They made several suggestions to the legislature for future memorials.⁷⁸

The biggest issue of the June session was the revision of the Organic Laws. The people had declined the opportunity to hold a convention to reshape the laws so, as the executive committee pointed out, it was the job of the legislature to make the necessary changes. A special committee to revise the Organic Laws and other laws was created June 25. The burden was put upon the shoulders of H. A. G. Lee, Robert Newell, Jesse Applegate, J. W. Smith, and John McClure. The next day Lee asked and received permission for his committee to have the power to call witnesses to distinguish differences between Organic Law and statutory provisions. The committee worked on the revision until July 5. On June 28 an attempt was made by Garrison to exclude taxation from the new laws. His resolution stated it was the wish of the people on July 5, 1843, and the house had no right to alter that wish without a vote.⁷⁹

The report of the revision committee was presented to the committee of the whole and discussed under the chairmanship of Robert Newell the entire afternoon of Monday June 30. The committee continued to work on the revision. On July 1 they were authorized to employ

⁷⁸Oregon Spectator, October 15, 1846; November 12, 1846; November 26, 1846.

⁷⁹"Journal of the Legislative Committee, June Session, 1845," OSA MSS 1539-1549.

a clerk, Frederick Prigg, to assist in the revision. They reported again to the committee of the whole under Garrison on July 2. It was decided thirteen to none to send copies of both the original Organic Laws and the amended laws to the people. The committee of the whole discussed the revision report again on July 3 under the chairmanship of Hiram Straight. The revision committee gave its final report to the committee of the whole on Friday July 4 and Saturday July 5. On Saturday July 5 the bill to submit both copies to the people was read three times and passed. The election was to be held July 25. After some final business, including paying Mr. Prigg as clerk to the revision committee, the house adjourned until the first Tuesday in August.⁸⁰

Only twelve bills were passed during the June 1845 session. Besides the Organic Laws Act they included: an act to amend the incorporation of Oregon City, branding of wild cattle, repealing parts of the slavery act, sittings of the legislature, issuing government scrip, repealing parts of the Ways and Means act, a ferries bill, an appropriation bill, locating a county seat for Tuality county, and two divorces. Several bills were allowed to die including a charter for the Multnomah Circulating Library, a railway around Willamette Falls, another canal, and a third divorce. Several bills were tabled because their content was covered in the amended Organic Laws.⁸¹

⁸⁰Ibid.

⁸¹Ibid.

The special election of July 25, 1845, passed the amended Organic Laws 255 to 22.⁸² The amended Organic Laws retained the preamble and first four sections of Article One then added a Section five containing the freedoms of the United States Bill of Rights and a Section six explaining the three departments of government and the separation of powers. The second article, sections one to six, covers the legislature. Changes from the original Organic Laws include increasing the size from nine to not less than thirteen nor more than sixty-one, increasing no more than five a session. Another change granted the House of Representatives, as it is officially known, the sole power of impeachment and the power to pass various laws. The House was given a definite meeting time, the first Tuesday in December annually.⁸³

The executive is covered in Article two, section seven. The major change, already anticipated, called for a governor, rather than a triumvirate. A system for vetoing and returning bills was established. The amount of pay for the governor was left blank.⁸⁴

The judicial branch is covered in Article two, section eight. The only change was in the determination of original and appellate jurisdictions.⁸⁵

The oath of office is included in Article two, section nine.

⁸²Carey, p. 346.

⁸³"Fair Copy of the Original Organic Laws," OSA MS 1583; and "A Fair Copy of the Amended Organic Laws," OSA MS 1096.

⁸⁴Ibid.

⁸⁵Ibid.

Section ten on elections is the same as in the original laws. Section eleven moves election day officially (as it was already moved de facto) from May to the first Monday in June annually.⁸⁶

The Land Law is covered in its own article, number three. The original stipulations of marking, recording, and improving within six months remain along with restrictions to 640 acre limits and no extensive town lots or water privileges. Section four allows for partnerships. The last section of the newly adopted Organic Laws provide for a system of amending the constitution that was not in existence previously.⁸⁷

AUGUST SESSION

The house met Tuesday August 5, 1845, as stipulated pursuant to adjournment in June. Roll was taken and all were present except Hendricks. A lengthy argument occurred over electing a new speaker (see below). The executive message was read and a committee to revise the rules was appointed. And the fourth session of the Oregon legislature, first as a House of Representatives under the revised Organic Laws, was off to a grumbling start. There was never more dissention within the Provisional Government than during this session with at least three major issues proving controversial.⁸⁸

In the afternoon of the second day, before any bills had been

⁸⁶Ibid.

⁸⁷Ibid.

⁸⁸"Journal of the House," OSA MSS 1550-1563.

introduced, Jesse Applegate made the following resolution which was referred to the committee of the whole:

Resolved--That the people of Oregon are not, in the opinion of this house, morally or legally bound by any acts of the officers, or agents of the people, not expressly authorized or sanctioned by the instrument, in virtue of which they had their official existence.

Resolved further--That this house cannot assume, in behalf of the people, the payment of any debt, or the refunding of any funds, borrowed, or otherwise unlawfully contracted or obtained, without first obtaining the consent of the people.

There was a motion to reconsider referring the resolution to the committee of the whole. The resolution was read again and recommitted. Three days later the committee took it under consideration and on a roll call vote accepted it eight to four. Foisey, Gray, Straight, and McCarver voted against the resolution and Newell was excused from voting. Although the resolution was adopted any member wishing to enter a protest was given until after the weekend.⁸⁹

First thing Monday morning William Gray presented the following protest in his hand:

Whereas, a resolution, with a preamble, containing a direct and positive censure upon the proceedings of the Oregon government, was introduced into this house, by Jesse Applegate, asserting that this house, and the people of Oregon, are not morally, or legally, bound for any act of said government, to the payment of any debts contracted, or unlawfully borrowed, except they had previously obtained the consent of the people; And Whereas, from the wording of said resolution, two constructions may be placed upon it, the one amounting to a repudiation of all debts heretofore contracted, or money borrowed; the other, implying a want of confidence in the agents and officers of this government; therefore,

We, the undersigned, decidedly and solemnly protest against the adoption of any such resolutions, or expressions, by this house, as they not only do no good, but

tend to great evil, in destroying the confidence of the people in the agents and officers of this government, without sufficient cause.

(signed) W. H. Gray
M. G. Foisey
H. Straight

Dated
Oregon City, Aug. 7, 1845

Officially that was the end of that matter but reading Gray's book and a resolution by Foisey (the same day as the letter of protest) some antagonisms remained. The resolution read, "That the members of this legislature, who feel guilty for not having done their duty in the house, have not the right to claim their salary for the first three days of this session."⁹⁰ A bill later passed the house adopting the laws of 1844.

On Saturday August 9 a messenger from the executive announced a communication to be read to the house. It contained information of the resignation of J. W. Nesmith as supreme judge of the circuit court. The matter was taken up in secret session by the committee of the whole and by ballot Nathaniel Ford of Yam Hill county was chosen. He was an immigrant of 1844. More than a week later on Monday August 18 another message from the Governor was received. In it Abernethy announced that Colonel Ford declined accepting the office of supreme judge. The House immediately went into secret session and elected Peter Burnett.⁹¹ Burnett stayed in office for a year and a half. The Oregon Spectator announced his retirement in January

⁹⁰Ibid.

⁹¹Ibid.

1847, the post being vacated three times by Babcock, Nesmith, and Burnett.⁹² Burnett proceeded south to California, was instrumental in its provisional government, and eventually became its first governor.

When Commodore Charles Wilkes of the United States Navy visited Oregon in 1841 he left his launch boat in the possession of the Hudson's Bay Company to be used as a pilot boat at the Columbia River bar. The boat had fallen into disuse and disrepair when on August 11 the House of Representatives formed a special committee of Astorian McClure, Smith, and McLoughlin's friend Applegate to call upon the chief factor for the purpose of seeing whether he might surrender the boat to the Provisional Government. The government promised responsibility for the safe keeping and delivery of the boat to the United States when they demanded it. McLoughlin answered the next day in the negative. The committee filed a report to end the matter officially for that session, but the issue did not help end the prejudices against the Hudson's Bay Company. On the day after the Hudson's Bay Company joined the government and before the final report of the launch boat committee, David Hill offered this resolution:

Resolved--That no person belonging to the Hudson Bay Company, or in their service, shall ever be considered as citizens of the government of Oregon; nor have the right of suffrage or elective franchise.

The resolution failed.⁹³

On December 20 the legislature passed an act authorizing Governor

⁹²Oregon Spectator, January 7, 1847.

⁹³"Journal of the House," OSA MSS 1550-1563.

Abernethy to take possession of the launch boat; refit it with a new anchor, cables, oars, sails, et cetera; and let it out to some able seaman for the purpose that it was originally designed by Lieutenant Wilkes. McLoughlin printed a letter from Commander Wilkes in the Oregon Spectator the next spring, and gave his reasons for not giving up ownership to anyone except an officer of the United States Navy. Later when Lieutenant Harrison visited Oregon McLoughlin surrendered the boat. Lieutenant Harrison should have put the launch into immediate service as his own ship, the schooner Shark, sank on the bar.⁹⁴

An issue which started in 1844 and continued in the June session of 1845 concerned moving the seat of legislature. Robert Newell suggested in 1844 that it be moved to Champoege. The June 1845 session declined to move the legislature to "a large house." On August 12, H. A. G. Lee started the issue anew when he proposed a bill to fix the places of the offices of secretary and recorder until suitable buildings should be erected by the government. Mr. Applegate formalized this into a motion that a committee of one member from each county inquire into "the expediency of locating the seat of government, and erecting public buildings thereat" and if they so desired report a bill. The bill was reported two days later. It eventually passed the house but was one of three bills returned by Governor Abernethy, stating that the Organic Law already covered portions of the act and they should not be included. By the final day of the

⁹⁴Grover, Laws, p. 32; Oregon Spectator, March 19, 1846; and "George Abernethy Papers," Oregon Historical Society Archives (OHS), MSS 929.

August session all bills had been amended to the governor's satisfaction.⁹⁵ The issue would arise again in December.

In the late morning of Monday August 11 there was a bit of excitement created by events outside the legislature. Elijah White, not known for his pleasant personality, had said some things about Samuel Holderness that Holderness considered slanderous. Holderness called White to account for his words by challenging him to a duel. Neither Holderness nor White were known for their courage. Jesse Applegate averted injury from either party by quick action in the house. Within a half hour a bill to prevent dueling was introduced, read once for information, twice by title and passed, forwarded to Governor Abernethy at his mill by special messenger P. G. Stewart, and returned signed. Needless to say both parties were greatly relieved.⁹⁶

The resolution of Applegate condemning past actions was not the most inflammatory issue and the duelling incident was not the only one to involve White. The two principal incidents of 1845 centered around speaker McCarver and messenger White. They started on the first day of the session and ended only on the last day, sixteen days later. As soon as the house convened they proceeded to organize under the amended Organic Law. McCarver was appointed chairman, pro tem, while the speaker was elected by ballot. William Gray received eight votes to two for H. A. G. Lee and one for McCarver. McCarver, only after losing the election, questioned the propriety of having

⁹⁵"Journal of the House," OSA MSS 1550-1563.

⁹⁶Brown, p. 169; and "Journal of the House," OSA MSS 1550-1563.

an election. He considered himself still speaker of the house since it was an extension of the June session. Applegate offered a motion asking McCarver to resign. There must have been some politicking during the two hour lunch break because when the house reconvened at two P. M. the votes electing Gray speaker and asking McCarver to resign were reconsidered.⁹⁷

McCarver was back in the thick of it the next day when he appointed his committees. There was some dissension and Gray asked the speaker if he thought the house properly organized. McCarver decided in the affirmative and Gray appealed the decision of the chair to the house and the decision was reversed. The house reorganized itself. On motion of Hiram Straight, McCarver was, for the second time in two days, removed from the office of speaker. Robert Newell was elected speaker, pro tem. McCarver did not come to the session the next day, so he was not present when the house voted eleven to one (Gray dissenting) to restore him to office. McCarver did not just quietly return to the chair. The speaker, pro tem, had personally to wait upon him. He then begged permission to tender his resignation. When H. A. G. Lee moved and Gray seconded a motion to allow him to resign, McCarver decided they meant it and withdrew his resignation. The house then settled down to business and McCarver was not removed from office again for over a week.⁹⁸

White reentered the scene the afternoon of Tuesday August 12.

⁹⁷"Journal of the House," OSA MSS 1550-1563.

⁹⁸Ibid.

He had previously announced his intentions of proceeding east and had been commissioned to carry a copy of the 1845 memorial to congress. The house passed several resolutions favorable to White, one on Tuesday and more on Thursday. They thanked him for finding a passage through the Cascades and allowed him to address the house on that issue. The house voted unanimously, at White's request, to transmit a copy of the Organic Laws with him. The house further decided that their names not be signed to those resolutions since they represented all Oregonians. The house then resolved to recommend to Congress that they consider paying White for the heavy expenses incurred in discovering a southern passage through the Cascades.⁹⁹

All did not go as planned, as seen in this resolution by Barton Lee on Friday, August 15.

Resolved--That M. M. McCarver has been opposed to the organic law, as adopted by the people of Oregon; and, contrary to the voice of this house in regular session, clandestinely, and in a manner unworthy the confidence reposed in him, placed his name to a copy of those laws transmitted to the United States, thereby conveying a false impression; and did, also, sign his name to two resolutions, contrary to a direct vote of this house; therefore,

It is further Resolved--That we disapprove of the course he has pursued, and feel ourselves under the humiliating necessity of signifying the same to the United States government, by causing a copy of this resolution to accompany those documents.

The committee of the whole took the resolution under investigation.

John Long was called upon to explain his actions in attesting McCarver's signatures. Former legislator A. L. Lovejoy was called upon to state his knowledge of the facts. McCarver spoke in his own defense.

⁹⁹Ibid.

Applegate moved that a messenger be dispatched to Vancouver, where White was, and bring back all of the documents. The motion passed five to three with five excuses. The Barton Lee resolution was then laid on the table. An attempt was made to erase from the record all proceedings calculated to cast censure on the speaker but the attempt failed.¹⁰⁰

The next morning, Saturday, August 16, McClure offered a motion that stated since McCarver had signed the documents out of a mistaken sense of duty and not contempt, that he be allowed to go to Vancouver to erase his name. Applegate offered a motion to be sent to Washington making it clear that it was not the intention of the house to recommend White as a suitable person to fill any territorial office but merely to reimburse him for past activities. J. M. Garrison was elected speaker, pro tem, while McCarver was to leave. The vote requiring McCarver to step down and leave for Vancouver was reconsidered later that afternoon and McCarver was still in his seat for a roll call.¹⁰¹

McCarver was still in the chair Monday but word of the new resolution had reached White. He sent a letter to the legislature dated Sunday August 17.

To the Hon., & C.

Gentlemen,--Being on my way, and having but a moment to reflect, I have been at much of a loss which of your two resolutions most to respect, or which to obey; but at length have become satisfied that the first was taken most soberly,

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

and, as it answers my purpose best, I pledge myself to adhere strictly to that. Sincerely wishing you good luck in legislating.

E. White

The final resolution on the last day of the session was presented by Jesse Applegate. It read:

Resolved--That the secretary be requested to forward to the United States government, through the American consul at the Sandwich Islands, a copy of the articles of compact, as adopted by the people of Oregon territory, on the last Saturday of July, A. D. 1845; and that the same be signed by the governor, and attested by the secretary; also, all resolutions adopted by this house, relative to sending said documents by E. White, late Indian agent of this territory; also, a copy of the letter of E. White, directed to this house.

The July 9, 1846, edition of the Oregon Spectator, then under the editorship of H. A. G. Lee carried this article:

The following extract from the St. Louis New Era, given in the Polynesian of April 25, is copied, not because it is very late or very important, but because it is very strange.

"OREGON--Mr. Elijah White is on his way to Washington, as a delegate from the self-constituted government of Oregon, and goes to ask for a seat in congress, to represent that distant territory. He carries with him his credentials from the provisional government of Oregon, and a large petition from the inhabitants of that region, asking that the jurisdiction of the United States may extend over that territory. * * * * This delegation to congress is to induce that body to take the actual occupancy of Oregon, and on his report and success will depend the decision of the question, whether or not the people will establish a separate and independent republic on the shores of the Pacific."

With all due respect, we beg leave to correct some of the errors into which our friends abroad have, by some means or other, fallen with regard to Dr. White and his late business at Washington. Dr. White was sub-agent of Indian affairs west of the Rocky mountains; at the expiration of his term of service, he returned to Washington, not as a delegate to congress from this government, but as an agent of the United States government; not to represent this "distant territory" in congress, but to close his business with the department from which he had received

his appointment, and, perhaps, to receive a re-appointment; carrying with him not his credentials from the Oregon legislature, but a report of his proceedings as agent, and we trust, an interesting account of this country,¹⁰² together with the petition to congress for their protection.

The final resolution and laws, et cetera, reached Washington before White. He was greeted very coolly by President Polk and did not receive any territorial offices.

¹⁰²Ibid; and Oregon Spectator, July 9, 1846.

CHAPTER VI

SESSION OF THE HOUSE DECEMBER 1845

The census called for in the December 1844 session was completed before the winter session of 1845 started. It showed a total population of 2,109 (see table I). A little less than 2,000 of these persons had migrated to Oregon in 1843 and 1844. The 1845 migration was to raise the total to 5,000. There were 8,000 by 1848 and 12,000 by 1850.¹⁰³ Although new faces were showing up and new districts created, the overriding problems of isolation and neglect from the United States dominated the sessions of the legislature.

The December meeting of the House of Representatives called itself the first annual session. It was the second session of the House of Representatives as the new Organic Laws named it and the second legislative body to meet in December, but it was the first House of Representatives to meet in December as the Organic Laws specified. Absenteeism was to be a big problem at this session. Four people were absent from the initial roll call (Hendricks, Applegate, Smith, and H. A. G. Lee); three resigned or threatened to resign (see below); and the speaker had to leave in mid-session. Twice the daily sessions were delayed due to lack of a quorum. There were several ballots for speaker of the house without any choice before Robert Newell was eventually elected. The records do not state where the

¹⁰³Brown, p. 226; and Carey, p. 353.

TABLE I
OREGON CENSUS OF 1845¹⁰⁴

	CLACKAMAS	CHAMPOEG	CLATSOP	TUALATY	YAM HILL	TOTAL
HOUSEHOLDS	18	24	17	14	16	89
HEADS OF HOUSES	57	85	29	127	109	407
MALES	232	400	61	311	257	1261
FEMALES	129	305	30	229	155	848
TOTALS	361	705	91	540	412	<u>2109</u>

¹⁰⁴Brown, p. 226.

proceedings were held on the first day (December 2) but it was decided to look for a more suitable room. A special committee reported the procurement of the house of Theopolis McGruder for \$2.00 a day, fuel and light included. McGruder was elected sergeant-at-arms and the House met at his house from six o'clock that evening to the final gavel fell December 19.¹⁰⁵

The message from the governor was received and read to the house, then laid on the table until standing committees could be formed. Nine committees existed in August 1845 only with different members. Newell did not continue the committees on revision, Organic law, and education. The bills asked for by the governor were referred to committees. The part on organizing the militia was referred to military affairs; on developing a currency and the sale of spirituous liquors to ways and means; on adopting standard weights and measures to judiciary; on creating new districts to districts; on settling the issue of locating a seat of government to a select committee of five, one from each district; and other parts either referred to committees or laid on the table.¹⁰⁶

The executive message brought the news that Jesse Applegate's absence was caused by his resignation from the house. A committee of Gray, McClure, and fellow Yamhillian McClure, who had just appeared himself, was appointed to wait on Governor Abernethy and receive Applegate's resignation. They reported the next day and the governor

¹⁰⁵"Journal of the House of Representatives," OSA MSS 1525-1538.

¹⁰⁶Ibid; and Carey pp. 354-355.

stated that he would issue a writ of election to Yam Hill district forthwith. In a year and a half three of Oregon's most promising legislators had resigned or had been forced out of office, Peter Burnett, Asa Lovejoy (who would return), and Jesse Applegate. Two more able men left the public service that year. On the fourth day Governor Abernethy sent a communication to the House announcing the resignations of P. G. Stewart, former executive, and F. W. Pettygrove, businessman in Oregon City and Portland, from their positions as judges of the Clackamas district court.¹⁰⁷

Another recurring problem was the temperament of McCarver. He had a tendency to absent himself when things were not going his way. On Tuesday morning, December 9, the seventh day of the session, the roll was called and McCarver was absent. A vote was taken, but later reconsidered, to have the sergeant-at-arms require his attendance. Later that morning the sergeant-at-arms was authorized to require his attendance and a writ was issued by the house for his arrest. A few minutes later the sergeant-at-arms produced McCarver and returned the writ. McCarver was permitted to make his excuse for his absence. He was released from custody on paying the expenses incurred, which could not have been great considering he was just outside. A resolution was passed making it contempt of the house to be absent without notice or leave. A fine accompanied the contempt citation. The next morning when the roll was taken McCarver was counted absent but when a second roll was taken he answered to his name. Five days later on the

¹⁰⁷"Journal of the House of Representatives," OSA MSS 1525-1538.

fifteenth McCarver was again absent. The sergeant-at-arms was again required to fetch him. About fifteen minutes later McCarver arrived, made his excuse, and was released from paying the fine. The next afternoon, Tuesday December 16, McCarver tendered his resignation. Without giving him the opportunity to withdraw his resignation as he had done in August, the house accepted.¹⁰⁸

The legislative body of thirteen was now reduced to eleven. It would finish the session with only ten. At the evening session of Thursday December 11, Robert Newell, the speaker, addressed the house requesting a leave of absence due to the grave illness of his wife. It was granted. H. A. G. Lee was elected speaker, pro tem, but Newell stayed on for the remainder of the evening.¹⁰⁹

Gray led an effort to continue some of the business of the last session, trying to override some of the changes to the Organic Laws. This was a final effort by the last remaining legislator from the Methodist mission to roll back the clock. Gray started off by getting a resolution passed to have the supreme judge examine the laws enacted previously in 1845 to see how many were incompatible with the Organic Laws. Later he asked the rules be suspended to take up the unfinished business of last session. His motion lost. Gray then put his efforts to appealing directly to the people of the United States. He had already been given a committee of one from each district to draft a memorial giving a "brief account of the country, its soil, climate,

¹⁰⁸Ibid.

¹⁰⁹Ibid.

productions, laws, advantages and disadvantages, facilities, and difficulties attending the journey to and residence in it."¹¹⁰

This was not the only memorial proposed. McCarver reported one out of committee the next day that was read to the committee of the whole and rejected. Garrison was appointed to head another committee to draft another memorial. Garrison met once, reported unfavorably, and asked to be discharged. The house agreed then asked for a report from Gray's committee. The report was read three times, then twice more, before being laid on the table. As a result no memorials to congress came from this session.¹¹¹

The governor, in his message, stated his desire to settle the issue of finding a seat of government and cease moving from house to house. On a motion of Barton Lee it was decided to post notices and call for sealed proposals for five days for anyone wishing to make a donation towards a capitol building. After the five day period Lee reported there were several propositions. The committee of the whole took them under consideration and narrowed them down to two, those of Hugh Burns and Robert Moore. Their main concern was for the relative values of the properties. The Lee committee reported a stalemate and requested the house to vote by ballot to determine which would be chosen. Despite an effort by Garrison to quash the election, the report was accepted. Two days later Gray presented a petition signed by sixty persons asking that final action be deferred. Garrison

¹¹⁰ Ibid..

¹¹¹ Ibid.

again asked to postpone the report, and again failed, but by a much closer margin (five to six compared to an earlier two to ten). Garrison later presented a petition from Champoege district asking for a deferral. The ballot between Hugh Burns and Robert Moore was in favor of Hugh Burns. The subject of locating a seat of government was laid upon the table until the fourth of July 1846 by a close vote. The proposals were allowed to be withdrawn. Garrison tendered his resignation but he was allowed to withdraw it. That afternoon (December 15) M. M. McCarver introduced a bill to locate the capitol in Oregon City and call for sealed proposals of donations to the Governor no later than December 1846. It passed.¹¹²

Two laws badly needing revision due to the increased population were the revenue and currency laws. One act amended the several acts adopted in relation to assessing and collecting the revenue. Another was supplementary to the amending act. District sheriffs were made the tax collectors but they no longer received the twenty per cent commission. Those who chose to pay their taxes in wheat could deposit it at any of these places: the Hudson's Bay Company's warehouse at Fort George, Clatsop; the Hudson's Bay Company's warehouse at Cowlitz or Fort Vancouver, Vancouver; the Hudson's Bay Company's warehouse at Linnton or F. W. Pettigrove's store at Portland, Tuality; the flouring mills of John McLoughlin or the Milling Company at Oregon City, Clackamas; the Milling Company's warehouse at the Bute or Hudson's Bay Company's warehouse at Champoege, Champoege; and at such place as

¹¹²Ibid.; and Grover, Laws, p. 37.

directed, Yam Hill. An act relative to currency and subjecting property to execution made gold, silver, treasury drafts, approved orders on solvent merchants, and wheat legal tender. It also gave exemptions from sale due to any execution. It set limits of not less than two-thirds value on property sold at execution.¹¹³

Another issue recommended by Governor Abernethy was to create new districts. The action started on the second day when Gray presented a petition from Hugh Burns and others asking that the eastern edge of Tuality district, including his city of Robin's Nest and Pettigrove's city of Portland, be made a separate district. Later the same session Hugh Burns petitioned that the name Robin's Nest be changed to Linn City in honor of Senator Linn. Today it is called West Linn. On Friday McCarver announced his intentions to introduce legislation submitting the Tuality issue to a vote of the people, which he did. But on Saturday Mr. Gray submitted his bill to split Tuality for legislative decision. This issue led to the first two of McCarver's boycotts and his arrest. Gray's bill and McCarver's bill were indefinitely postponed. McCarver boycotted a third time (see above). On Wednesday Gray presented another bill to divide Tuality District. It was defeated on its first reading. Thursday Hugh Burns petitioned again but by a nine to three vote the petition was tabled. Hill played the role of compromiser by presenting a bill to provide additional justices of the peace and constable for Tuality which passed.¹¹⁴

¹¹³Grover, Laws, pp. 25-28, 33-34; Carey, pp. 353-354; and Oregon Spectator, February 19, 1846.

¹¹⁴"Journal of the House of Representatives," OSA MSS 1525-1538; and Grover, Laws, p. 29.

Also successful were attempts to divide Yam Hill and Vancouver counties. The day after the Tuality issue was settled (Monday, December 15) Abijah Hendricks of Yam Hill presented a petition for the division of Yam Hill district. The committee on districts reported out a bill which eventually passed on December 19 and Polk District was created. On Thursday December 18 Hill presented a petition to change the name of Vancouver District to Clark and divide it. The name change portion failed but Lewis District was created. In a separate action approved on the final day the title of district was officially changed to county. It can be said that Polk and Lewis Districts lasted only three days.¹¹⁵ Of the eight original "counties" five maintain their original names (Clackamas, Yam Hill, Clatsop, Polk, Lewis) and three have changed (Tuality to Washington, Champoege to Marion, and Vancouver to Clark). Linn, Benton, and Clark counties were later to be created by the Provisional Government.

The Governor had asked in his message that a new road into the Willamette be chartered by the house. McCarver asked and received permission to take testimony on the practicality of routes across the Cascades. He also received permission to memorialize Congress for an appropriation for the survey which is why that memorial failed. On Wednesday December 10 the committee had been deliberating seven days so the house gave them instructions to report a bill soon. Friday morning McCarver reported a bill to authorize Samuel K. Barlow to open a road across the Cascade Mountains. On Saturday the committee

¹¹⁵"Journal of the House of Representatives," OSA MSS 1525-1538; and Oregon Spectator, August 6, 1846.

of the whole recommitted the bill back to its special committee with instructions to report another bill on Monday. Barlow was allowed to address the house on the subject. Monday the committee reported and the house formally rejected the bill. Tuesday the committee reported again and this time the house accepted the report. The final vote Wednesday, December 17 was eight to two in favor. Thus by executive decree and legislative choice the famous Barlow Road was born. The road was called the Mount Hood Road by the Oregon Spectator because it was to be constructed on the south side of that mountain. Barlow was given a two year lease starting January 1846 and was to be finished building by September 1, 1846. He was to deposit a \$2,000 bond for the privilege and in return would be entitled to set up a tollgate to charge five dollars a wagon and ten cents an animal.¹¹⁶

Another bill of importance from the final 1845 session created a post office at Oregon City. It created the two year office of postmaster general, to be elected by the house of representatives. The postmaster was to follow the rules of the United States postal department. He was to establish routes and could charge up to fifty cents a letter, four cents for newspapers. William G. T'Vault was elected postmaster general and in the first issue of the Oregon Spectator (W. G. T'Vault, editor) he called for bids on routes.¹¹⁷

¹¹⁶"Journal of the House of Representatives," OSA MSS 1525-1538; and Oregon Spectator, August 6, 1846.

¹¹⁷Carey, p. 355; and Oregon Spectator, February 5, 1846.

CHAPTER VII

THE OREGON SPECTATOR

An invaluable source on the provisional government was the first newspaper in Oregon, the Oregon Spectator. The newspaper contributed to the political development of Oregon by keeping the populace informed of events around the world that affected Oregon, by printing the laws for all to see and comment upon, by providing a forum for the issues, and by creating public interest at election time.

At a public meeting in Oregon City, March 12, 1844, George Abernethy called together a group of fifty-five citizens. Out of this meeting was to grow the Oregon Printing Association. It took over the vacuum left by the defunct Oregon Lyceum debating society. The aim of the printing association was to promote science, temperance, morality, and general intelligence to the exclusion of party politics through a printing press and by publishing a monthly, semi-monthly, or weekly newspaper. Reverend Harvey Clark was elected president; Jesse Applegate vice-president; John Long secretary; George Abernethy treasurer; and A. F. Waller, Steven Rogers, and William Gray to the operating committee. Stocks were offered at ten dollars each and fifty-three people pledged from ten to fifty dollars for a total of \$645. The names included Abernethy, J. M. Garrison, John L. Morrison, Hugh Campbell, L. H. Judson, J. W. Pettygrove, James O'Neil, Felix Hathaway, James W. Nesmith, Clark, Long, David Leslie, Gray, Applegate,

Asa L. Lovejoy, Thomas L. Cason, George Gay, Elijah White, Medoram Crawford, Robert Newell, W. H. Willson, Ninevah Ford, John McLoughlin, David Hill, Hugh Burns, A. Husted, Abasolom J. Hembree, Theopolus McGruder, Peter S. Ogden, Joseph L. Meek, and Samuel M. Holderness. George LeBreton and Rogers both pledged money but were killed within the next few months. In a rough draft copy a pledge was received from the Catholic mission. It appears nowhere else including further subscription lists later spread around the territory.¹¹⁸

The Oregon Printing Association met once more in 1844 and three times in 1845 before its newspaper, the Oregon Spectator, went to press for the first time. Various meetings were chaired by Dr. Elijah White, Judge James Nesmith, Representative Asa Lovejoy, and Peter Hatch. Abernethy reported that he forwarded \$800 to the United States for a printing press and spent another \$800 plus a penny for paper, type, ink, et cetera. The pay for the first editor would be \$300 a year and the printers would get \$1,000 a year. The printer, John Fleming, informed the Oregon Printing Association that the size of the paper could be doubled from its four page format to eight pages for an additional \$500.¹¹⁹

Volume One, number one, of the Oregon Spectator appeared on Thursday, February 5, 1846, under the slogan "Westward the Star of Empire takes its way." The articles of incorporation of the Oregon Printing Association were printed along with its editorial policy.

¹¹⁸"Articles of Incorporation of the Oregon Printing Association," OHS MSS 950.

¹¹⁹"Oregon Printing Association," OHS MSS 950.

The first editor, William G. T'Vault, stated that the paper would not become a political newspaper and anonymous communications would not be printed. The first and fourth pages during the legislative sessions generally contained printing of the laws and at other times news of the United States. The second page carried articles of a local nature, letters to the editor, appointments by the governor, and election notices. The third page finished those items and had advertisements.¹²⁰

T'Vault received his post by being a low bidder (\$300) in a selection process held in 1845. The minutes of the January 3, 1846, meeting of the Oregon Printing Association show their acceptance. H. A. G. Lee had also proposed himself as editor. Lee's current status as a legislator probably was held against him. In a letter to the board of directors dated March 5, 1846, T'Vault acknowledged the news that the board wished a new editor and in the March 19 edition announced his resignation after the next number. H. A. G. Lee was named editor but Fred Prigg was to manage until April 16 while Lee convalesced. On August 1 Lee was notified that he was no longer needed so on August 6 he resigned as editor and returned to the occupation of laboring mechanic. A two month search for an editor left printer Fleming in charge. On October 1 George Law Curry assumed the editorship. He was to stay for a year and a half and be responsible for the growth of the paper.¹²¹ Aaron E. Wait then assumed the reigns of editor and

¹²⁰Oregon Spectator, February 5, 1846.

¹²¹"Oregon Printing Association," OHS MSS 950; Oregon Spectator, March 19, 1846; April 2, 1846; August 6, 1846; October 1, 1846; and Woodward, pp. 24-25.

changed the type format reducing the size and increasing the columns from four to six and increasing the words per issue. The Spectator ran every two weeks from February 5, 1846 to February 22, 1849 with only one break caused by the California gold rush. The Spectator reappeared in October 4, 1849, under new owners.

On December 8, 1845, H. A. G. Lee, then still in the running for editor, introduced a resolution in the legislature requiring the secretary to look into the matter of printing the laws of Oregon. The secretary reported the terms the next day. William Gray, of the Oregon Printing Association Board of Directors, presented a resolution that a law be passed to revise and publish the laws. The law passed the House December 17, 1845. Furthermore, the 1846 legislature allowed the editor to sit next to the clerk and report the proceedings. From 1846 on the legislature took advantage of the convenience of the printing press. The printing of the laws was suspended after the accidental drowning of Long but on August 1, 1846, Fred Prigg, the new secretary, renewed the contract.¹²² The work of Long and Prigg was valuable in collecting bits and pieces of laws, amendments, and riders and then publishing the entire result for the public knowledge.

Examples of articles in the Oregon Spectator that led to House action include the following:

It appears that a considerable business is going on in the territory in the traffic of land claims. The most important change of ownership we have heard of lately, is

¹²²"Journal of the House of Representatives," OSA MSS 1525-1538; "Oregon Printing Association," OHS MSS 950; and "Journal of the House of Representatives, 1846," OSA MS 1574.

that of Cape Disappointment be purchased by Mr. Ogden, one of the Hudson Bay Company.

After considerable discussion in the Spectator the land laws were amended to prevent fraud (fraud is not implied in this example). Another example of an article leading to legislation came August 6, 1846, when the Spectator reported on the need for a good law to protect ship captains from desertions. It seemed that almost every ship that even approached Oregon's shores lost some men, and without a strict law fewer ships would come. This article and recommendation caused considerable controversy for several weeks. Another article to create controversy for several issues was a letter from George Wilkes of New York stressing the need for a railroad through South Pass to Oregon. This led to several public meetings and a memorial to Congress. One article that did not lead to legislative action but more immediate action was a report in the Spectator that Lansford Hastings was deceiving the emigrants into going to California rather than Oregon. It was devised that A. L. Lovejoy, D. C. Ingles and Fred Prigg would take depositions on the quality of life in Oregon and Colonel Finley, Colonel Taylor, Philip Foster, and Samuel Parker would lead a party to proceed to Soda Springs to reeducate the emigrants. For a long period of time in 1846 it seemed that every issue of the Spectator carried a letter from McCarver complaining about something. This followed his dramatic withdrawal from politics published May 28.¹²³

Public meetings were well publicized in the Spectator. Everything

¹²³ Oregon Spectator, February 19, 1846; August 6, 1846; September 3, 1846; May 28, 1846; June 25, 1846.

from forming a militia company, to building a railroad, including election conventions and temperance society meetings, were reported to the Spectator because they were assured publication.. The Cayuse War was well covered in 1848 and the Gold Rush in late 1848 and 1849. A lecture on astronomy covered the front page for four issues.

By far the biggest story of 1846 was the settlement of the boundary issue between the United States and Great Britain. Rumors of President Polk's decision to end the treaty of joint occupation began filtering in around March and April. Then on June 11 almost the entire issue was a copy of the President's message to the British. It had been published in the London Evening Chronicle in January and was received on an Hudson's Bay Company ship only five months later. News of a Democratic majority in both Houses of Congress led to optimism in Oregon that the Provisional Government would end soon. The August 6 edition announced the arrival of the U. S. S. Shark and news that the House had passed President Polk's notice resolution but it was being delayed in the Senate. This news was six months old. Reports from other newspapers began to appear. The Spectator relied on the St. Louis New Era and the Sandwich Islands Polynesian for a majority of its world news. It was old news because reports of John Quincy Adams' speech acknowledging receipt of memorials from Oregon given January 2 and the official notice given Britain January 9 were printed August 20. Still any news from the United States was welcome.¹²⁴

¹²⁴ Oregon Spectator, June 11, 1846; August 6, 1846; August 20, 1846.

A bulletin from the St. Louis newspaper was printed September 17 that the notice bill passed April 16 and was followed on April 19 by a bill extending United States territory to the Pacific. Details of the settlement came November 12 with the arrival of the Hudson's Bay Company ship Toulon. The boundary had been settled at the forty-ninth parallel but the Hudson's Bay Company was granted free navigation on the Columbia until the expiration of its charter. The boundary was negotiated in London May and June 1846, ratified by the United States on June 15 and Great Britain July 17. It was proclaimed by President Polk August 5. The news arrived via the Polynesian in December, six months later, in time for Governor Abernethy to announce it in his executive message for 1846.¹²⁵ Thus as the House was ready to convene in December 1846 the people were elated with the news but the legislature was faced with the uncertainty of how long it would take to make Oregon a territory. Oregon did not know it but the interval would be two and a half years, a cause for more concern.

¹²⁵Oregon Spectator, September 17, 1846; November 12, 1846; Leslie Scott, p. 6; and Brown, p. 228.

CHAPTER VIII

SESSION OF THE HOUSE DECEMBER 1846

Election fever 1846 started long before the Oregon Spectator announced the June election in April. It started with voter disenchantment the last December and legislative disappointment the summer before. Jesse Applegate's priorities had his southern route to Oregon (the Applegate Trail) ahead of law making. Morton McCarver was voted out of the legislature and wisely decided to make his noise from the grandstands rather than seek re-election. The "old-timers" with the exception of the mountain men were passé. The new electorate was tiring of hearing men like William Gray always denigrating the Hudson's Bay Company and extolling the mission. The election was held June 1 and the only returning legislative veterans were Robert Newell, Hiram Straight, and, after an absence, Asa Lovejoy. Elected from Clackamas County were Hiram Straight, Asa L. Lovejoy, and William G. T'Vault. From Champoege County came Angus McDonald, A. Chamberlain, Robert Newell, and Jesse Looney. Clatsop sent George Summers. Tuality elected Joseph L. Meek, D. H. Lonsdale, and Lawrence Hall. Vancouver elected Henry Peers and Lewis elected William F. Tolmie. Yam Hill County elected Absalom J. Hembree and Thomas Jefferys but Jefferys did not attend the session of legislature. At first the Spectator reported Polk County did not hold an election but one was held, and J. E. Williams and John D. Boon were elected. Two distinct groups were

elected. The first group was a coalition of mountain men and Hudson's Bay Company personnel. The second was a larger group of farmers and businessmen.¹²⁶

The mountain men were Robert Newell and Joe Meek. They were brothers-in-law having married Indian sisters. Members of the Hudson's Bay Company were Henry Peers and William Tolmie. George Summers and Angus McDonald had in the past been affiliated with the Hudson's Bay Company at Astoria and Champoege. Leaders of the other group were Oregon City lawyer Asa Lovejoy and former editor, postmaster general William T'Vault. Lovejoy provided the brains while T'Vault provided the fire. The team of Newell and Tolmie was interesting. Newell was a mountain man who had spent eleven years in the field and Tolmie was a gentleman educated at the University of Glasgow. The partnership was explained by Tolmie, "Robert Newell, with whom, in the provisional government legislature of 1846-47, shoulder to shoulder I opposed the 'fiery' T'Vault and his following, strong in numbers if not in argument."¹²⁷

Between the election and the session of legislature the federal government had an opportunity to play a ceremonial role. Lieutenant Commander Neil M. Howison of the U. S. Navy arrived with the U. S. S. Shark. At Astoria July 18 he raised the U. S. flag, "the right of ownership of the soil being decided by treaty." Newly elected

¹²⁶ Oregon Spectator, April 2, 1846; April 30, 1846; June 11, 1846; and Brown, p. 228.

¹²⁷ Victor, p. 389; and "The Hudson Bay Company," OHS MS 266.

Representative Lovejoy and former Representative Gray and missionary Spaulding accompanied Howison from Astoria to Vancouver. At Fort Vancouver they were met by chief Factor McLoughlin and Governor Abernethy. Howison took possession of the launch off Lieutenant Wilkes' ship Peacock which McLoughlin had promised Wilkes he would hand over to an officer of the U. S. Navy. Howison then handed the ship over to Governor Abernethy, who later sold it as a pilot boat. Governor Abernethy then accompanied Howison for a sail up the Willamette to Oregon City and festivities at Abernethy's house. When the Shark sank going over the bar on her return to the Pacific, Abernethy gave assistance and provided passage on an Hudson's Bay Company ship to Astoria, then Captain Couch's ship to San Francisco. Before leaving Howison presented the stand of colors (an Ensign and Union Jack) from the Shark to the Provisional Government as a "memento of parental regard from the General Government." Abernethy promised to "fling it to the breeze on every suitable occasion."¹²⁸

Planting season passed followed by a dry harvest season and one of the most abundant harvests of the decade. It was soon time for the annual session of the House of Representatives. In announcing the election the Spectator speculated hopefully that the legislature had nothing to do but receive territorial status from Governor Atchison or whoever President Polk appointed. In announcing the meeting of the legislature they still expected a short session but had two recommendations; to ask Congress for a railroad through South Pass and a

¹²⁸ Brown, pp. 239-242; and Oregon Spectator, March 4, 1847.

steam tug to operate at the mouth of the Columbia.¹²⁹ As it was the 1846 session would be one day longer than the last session and the second longest overall. (See Table II)

The 1846 session opened Tuesday, December 1 and worked until Saturday, December 19. The session was well co-ordinated as several members, especially Lovejoy and Hall, emphasized detail. This session would not be mired down like the last session when as many as fifteen bills were being considered at the same time. Some time was added to the legislative process by the engrossing of bills before final passage and the enrolling of them afterwards. The legislature was taking advantage of Oregon's new printing press. First came the preliminaries usual to most sessions: finding a suitable room, swearing in members, writing the rules, electing officers of the house, receiving an executive message, and appointing committees.¹³⁰

The house first met at the City Hotel in Oregon City but found it too small so they appointed a committee to find a suitable room and adjourned for the day. The committee reported back that they had found two suitable rooms, one belonging to H. M. Knighton and another to a Mr. Card. The house accepted Knighton's proposal of two dollars a day rent provided he furnished the fuel. A roll call Wednesday morning (December 2) revealed that Jefferys, Williams, and Boon were absent. No action was taken to do anything about their

¹²⁹Brown, p. 232; and Oregon Spectator, April 2, 1846; November 26, 1846.

¹³⁰"Journal of the House of Representatives, 1846," OSA MS 1574.

TABLE II
 LENGTH OF SESSIONS (WORKING DAYS)¹³¹

SESSION	DAYS	YEAR	DAYS
June 1844	9		
December 1844	8	1844	17
June 1845	11		
August 1845	14		
December 1845	16	1845	41
December 1846	17	1846	17
December 1847	19	1847	19
December 1848	8	1848	8
February 1849	<u>11</u>	1849	<u>11</u>
TOTALS	113		113

¹³¹LaFayette Grover, Oregon Archives (Salem: Asahel Bush, 1853), pp. 3-318.

absences. Boon was present the next morning, was sworn in, and took his seat. Williams was present Monday morning. Jefferys never did appear. Election of officers started with the speaker of the house. Lovejoy, Meek, and Hall were nominated. Lovejoy received eight votes, Meek four, and Hall one. N. Huber was elected clerk twelve to two over George Curry. H. M. Knighton was elected sergeant-at-arms--doorkeeper--messenger by a vote of ten to two over R. K. Payne. It was his house. Noyes Smith was elected engrossing clerk nine to six over L. A. Rice (later Speaker of the House) but later resigned and was replaced by T. McGruder.¹³²

Lovejoy appointed T'Vault and Tolmie to wait on Governor Abernethy for his executive message. He wanted no argument that any group biased the report. That afternoon Newell wanted the message read. Lovejoy decided he was out of order. Newell appealed the decision. The house sustained Lovejoy's decision. Newell moved the rules be suspended. T'Vault called for yeas and nays. The vote was seven to seven so the rules were not suspended. Lovejoy was obviously testing his power early for he next called for the reading of the message. The message itself contained a report on the boundary issue and the news just arrived by Hudson's Bay Company courier that final ratification was official.

Not knowing that the notice bill took a year to take effect and then would be followed by a dispute over slavery in the United States Senate, Abernethy recommended that they choose between two courses of

¹³² Ibid.

action. The first choice was to confirm his appointments, fill vacancies, make the necessary appropriations and tend to "the unavoidable business of the session," then adjourn to the spring after more was known. The other choice was to go on with business as usual as if nothing were done. Should the legislature take that course of action Abernethy had several laws that needed revising or passage. The post office department needed altering. The ardent spirits act needed revising. He recommended postponing action on a seat of government. Commerical regulations could be improved by laws allowing river pilot and protecting captains from desertions. The old jail had been burned down and needed replacement. Something needed to be done to define the boundaries of Indian reservations to keep the races separate. Also the government needed to provide some education for the "rising generation." The message was received and later referred to the proper committees.¹³³

The adjournment issue came up first on the afternoon of the third day. Newell introduced the resolution "that the house adjourn on Saturday, the 5th day of December, 1846, to convene the first Monday in May, 1847." On T'Vault's motion it was laid on the table. The larger group had decided to go the whole route. Next Monday another attempt was made to put off business. Tolmie, a member of T'Vault's judiciary committee resolved that committee be discharged since it was expedient to reorganize the judiciary at that time. This resolution was also laid on the table. Two attempts to adjourn sine

¹³³ Ibid.; and "To the Hon. the Legislative Assembly of Oregon," OSA MS 1376.

die early were rejected.¹³⁴

The first major bill was not one suggested by Abernethy but still badly needed. It regulated weights and measures. Lawrence Hall introduced it on Friday, December 4. The next day it was read a second and a third time. Boon moved that the blank in the third section, the secretary's fee for each service, be filled by inserting "fifty cents." Straight moved that the blank in the sixth section, the appropriation for this act, be filled by inserting "fifty dollars." On reconsideration by Hall the amount was raised to one hundred dollars. Straight then had it committed to the committee of the whole where it was taken under consideration Monday. The next day it was engrossed and passed by a vote of fourteen to two. T'Vault was one to vote against the bill. The new law required the secretary of the territory to procure a set of measures for one foot, one yard, one half bushel, and one gallon; and a set of avoirdupois weights sealed with the name or initials of Oregon Territory. Any person found to be in fraud with his weights or measures would be fined twenty-five dollars. Anyone wishing to check his weights or measures could have them checked and sealed by the secretary for fifty cents a seal.¹³⁵ (See Figure 1)

The governor had predicted there would be several proposals in regard to locating the seat of government but to postpone the subject. Salem had a proposal before the house and some of last years were

¹³⁴"Journal of the House of Representatives, 1846," OSA MS 1574.

¹³⁵"Journal of the House of Representatives, 1846," OSA MS 1574; and Oregon Spectator, January 21, 1847.

Figure 1. Provisional Government Seal 1846-1848¹³⁶
created by Hamilton Campbell of the Methodist Mission.

renewed as requested in the previous legislature. On December 4 T'Vault offered a resolution to defer the matter for this session. He then put it into the form of a bill and it passed the house in the minimum time possible without suspending the rules, three days. A week later a provision was made for persons having made proposals to withdraw them.¹³⁷

John E. Long was secretary, recorder, and clerk of the Territory since the murder of George LeBreton in 1844. He had been elected to his office in 1845. Then in 1846 while fording the Clackamas River near Oregon City his horse had thrown him and he drowned. Governor Abernethy had appointed Fred Prigg, of the Oregon Spectator staff, to replace him as secretary. Prigg had previously worked with the legislature as engrossing clerk. Ironically, Prigg was also to drown in the Clackamas River. The 1846 legislature found itself with

¹³⁶Brown, p. 290.

¹³⁷"To the Hon. the Legislative Assembly of Oregon," OSA MS 1376; Bradley, p. 62; Oregon Spectator, February 18, 1847; and "Journal of the House of Representatives, 1846," OSA MS 1574.

a vacancy to fill in the separate office of Recorder. Straight introduced a bill to have the legislature hold an election to fill the vacancy themselves. Passage came on December 7. T'Vault recommended that the house then hold the election. His resolution passed. Newell recommended nominating by ballot. His resolution failed. Theophilus McGruder, S. S. White, William Bennett, L. A. Rice, Noyes Smith, and --- Harrigus were each nominated. On the third ballot McGruder received a majority and became the territorial recorder for a two year term. Prigg was elected secretary.¹³⁸

The executive message announced the arrival of 152 wagons via Barlow's road and another 100 by Applegate's southern route. The year's total was far short of that of 1845, when about one thousand migrants arrived, because of a new trail to California. Sam Barlow and Philip Foster petitioned the 1846 session for an extension of their charter due to expire in a year. Boon's committee on post-roads reported a bill to that effect Wednesday, December 9. The bill was recommitted to special committee twice before final passage, with amendments, on December 17. The original bill extended Barlow's concession from January 1848 to November 1848. The amendment appointed a commissioner, to be paid by Barlow, to inspect and approve the road before any toll could be collected.¹³⁹

¹³⁸ Oregon Spectator, July 9, 1846; November 12, 1846; and "Journal of the House of Representatives, 1846," OSA MS 1574.

¹³⁹ "To the Hon. the Legislative Assembly of Oregon," OSA MS 1376; "Journal of the House of Representatives, 1846," OSA MS 1574; Oregon Spectator, February 4, 1847.

Governor Abernethy reported that the jail erected in Oregon City had burned down August 18 as a result of arson. Should the legislature rebuild the structure, he recommended that it should be of large stones clamped together. "We have but little use for a jail, and a small building would answer all purposes. . . if we should be successful in keeping ardent spirits out of the territory." On December 8 T'Vault introduced a bill to amend the old "act for the erection of a jail." The bill would have merely replaced the first section of the old law as to the dates and type of construction. The bill was reported out of the committee of the whole Saturday, December 12, a process usually leading to passage, but the bill died there.¹⁴⁰

Abernethy further addressed the members of the legislature: [I] "call your attention to the subject of education, without which no country can be prosperous." It was up to the legislature "to provide liberally for the education of the rising generation." The legislature's idea of a liberal provision for education was the recommendation for "a memorial to congress on the subject of education." No bill, not even a resolution was passed. A memorial was sent to Congress asking for a railroad through the South Pass.¹⁴¹ Since the legislature was dragging its heels the people were forced to take matters into their own hands. The residents of Tualitin Plains created the first public school in Oregon by voting a board of trustees, agents of

¹⁴⁰"To the Hon. the Legislative Assembly of Oregon," OSA MS 1376; "Journal of the House of Representatives, 1846," OSA MS 1574; Oregon Spectator, February 4, 1847.

¹⁴¹Ibid.

superintendence, and teachers "embracing late improvements in teaching."

The school was paid for by a voluntary tax of the district. The

Spectator in announcing the move pointed out they hoped other sections of the territory would follow suit, and the Oregon Printing Association had available at a very low price the Elementary Spelling Book.¹⁴²

Two bills from Tolmie's commerce committee had a rough legislative road to follow and appeared lost more than once each. The issues were well discussed for some time in the Spectator and there should have been no delays, except T'Vault saw to it none of Newell's or Tolmie's bills were to have easy passage. On December 9 a bill was reported entitled "an act to provide for the establishment of a pilotage, at the mouth of the Columbia river, and from there to the limits of navigation on the Columbia and Willamette rivers." December 10, the bill to create positions for river pilots received its second reading and Meek introduced the other, to prevent the desertion of seamen. December 11, the seamen bill received its second reading and was referred to the committee of the whole and the pilotage bill was recommitted to the committee of the whole. The committee of the whole recommended adding a section on the protection of seamen and handed it to Tolmie, Straight, and Peers. On December 12, the seamen bill was handed back amended. The pilotage bill came before the committee of the whole that afternoon and went the same route, to Summers, T'Vault, and Hall for amendments. On December 14, the pilotage bill was back with amendments. That afternoon the seamen bill came up again and

¹⁴² Oregon Spectator, February 18, 1847.

was again committed to the committee of the whole for discussion on the amended bill that evening. On December 15, T'Vault reported an optional bill on the prevention of desertion of seamen. The rules were suspended for the T'Vault bill and it got two readings and committed to the committee of the whole, a process which took the Tolmie and Meek bills three days each. Tolmie's pilotage bill was recommitted to the committee of the whole on December 16 putting all three there. That afternoon Tolmie's pilotage bill was discussed and an interesting ploy was successful. When Tolmie asked to amend his own bill, T'Vault asked the rules be suspended, read it a third time and had it passed. December 17 the Meek seamen bill came out of committee and passed the house. The T'Vault seamen bill died.¹⁴³

The pilotage law enabled the governor to select and appoint four commissioners to examine candidates for the job of river pilot. One or more pilots could be chosen along with their deputies. They would operate from the Columbia River bar to the heads of navigation on the Columbia and Willamette (being the Cascades and Willamette Falls). The pilots were to be aboard any vessel over one hundred tons and needed to take charge only on the bar itself. The Governor was to set pilotage fees. Pilots were liable for any damage of their causing. No pilot was required outward bound. The act to prevent desertion and the recovery of seamen required justices to serve writs for the arrest of any deserted seaman in his knowledge. If the captain of the ship

¹⁴³"Journal of the House of Representatives, 1846," OSA MS 1574; "Message of the Governor of Oregon Territory, Dec. 7, 1847, (Grover's copy)," OSA MS 12189; and Oregon Spectator, December 10, 1847.

needed the seaman he was to be returned. Any person enticing, aiding or secreting a deserter was subject to a fine of twenty-five to five hundred dollars. If the crew found a ship to be unsafe they could report it to the court for repairs.¹⁴⁴ Governor Abernethy was able to report to the December 1847 legislature that the provisions of the pilot law were being effectively carried out as larger ships than previously were crossing the bar safely and drawing full cargoes. Two days later the Spectator reported the pilot, Reeve, was taking the Hudson's Bay Company barge Toulon over the bar when a squall prevented his debarking. He was to be back from the Sandwich Islands by the end of January.

When T'Vault closed the post office on September 29 he informed the patrons that the previous legislature had appropriated only fifty dollars to establish the department and then had set the postage rates so high as to prohibit mailing letters. The Governor in his message recommended lowering rates to five cents on letters and one cent on newspapers. T'Vault, still technically the postmaster general, was in an excellent position with a majority backing in the house to revive the post office department. His followers were not for postponing issues. T'Vault himself was on the postoffice and postroad committee. Late in the session (December 14) the committee reported a bill amending the post office act. It was lost in committee so Hiram Straight reintroduced it on the last day of the session which was read three times and passed. It read, "all laws relative to the Post

¹⁴⁴ Oregon Spectator, February 18, 1847.

Office Department, be and the same are hereby repealed." T'Vault defaulted on his post office position as of January 1, 1847.¹⁴⁵

At the first of the session T'Vault offered a resolution, which was accepted, permitting the editor of the Spectator to sit at the clerk's table and report the proceedings. The editor was George Law Curry, later to serve in the legislatures of 1848 and 1849. It is doubtful if T'Vault would have extended the same courtesy to H. A. G. Lee. As the session came to a close Newell offered the following resolution, which was adopted, "Resolved--That the yeas and nays, on record in the journal of this house, on the bills, resolutions, and motions, be published in the Spectator, according to the way each member voted. . . ." The intent obviously was to show the people how T'Vault wasted their time and tax money. Curry printed all of the yeas and nays in his article on the legislature. The article did not convey the idea there was an infighting at all. Newell is credited with two pieces of legislation. The first was the resolution to postpone the legislature until May. Curry commented, "the House preferred to make but one job of its legislation, and so laid the resolution on the table." The other was the annual apportionment act which this session gave Champoege, Yam Hill and Polk Counties additional representatives. Curry did not have to remind his readers that Clackamas County, where the paper was published, had always been jealous of the fact Champoege had one more representative. Newell of

¹⁴⁵ Oregon Spectator, October 1, 1846; January 7, 1847; "To the Hon. the Legislative Assembly of Oregon," OSA MS 1376; "Journal of the House of Representatives, 1846," OSA MS 1574.

Champoeg just made this two. T'Vault on the other hand was represented as statesmanlike. "The member for Clackamas" introduced "the first important measure whereon the yeas and nays were called." It was a minor piece of judiciary legislation and it failed. The Spectator put T'Vault's name in front of three other bills, all popular in Clackamas (rebuild the jail, prevent gaming, and prohibit ardent spirits). All three lost. One was "euchered." Tolmie came out looking good although two of the bills he sponsored were given no credit in the paper. His pilotage act was termed "one of the best acts of the session" but Tolmie received no credit. Another article on the same page is worth repeating:

We have had eight hundred and seventy seven dolls. worth of legislation, that is to say, our legislation for this year has cost us this sum, which we really hope will be of its full consequence to the public. The members of the House have been truly industrious, nothing occurred to disturb their good understanding, nor the harmony of the session. All the proceedings were characterised by order and decorum, and if errors were committed, we are satisfied they were not of the heart. The Speaker, A. L. Lovejoy Esq., discharged his duty promptly and well, and to the satisfaction of the House, which was expressed in a resolution of thanks, to which he made an appropriate and happy reply, upon the eve of the adjournment.¹⁴⁶

¹⁴⁶"Journal of the House of Representatives, 1846," OSA MS 1574; and Oregon Spectator, December 24, 1846.

CHAPTER IX

THE EVENTS OF 1847 AND THE DECEMBER 1847 SESSION

The year 1847 is difficult to outline. As the legislature was meeting in December three major themes were overlapping. First, the normal political year was drawing to a climax. The people were discussing among themselves the important issues of the day since the new year began and the last legislature adjourned. As May approached priorities were forming and public meetings held. Then came the June elections and its usual clamor, starting in March. A planting and harvest season lull was time for international news, the variety that could be discussed over dinner or the back fence but not requiring time-consuming meetings. As the winter months set in, local issues for discussion at the legislature became topics again. This was fast becoming the pattern as Oregon got accustomed to its orphaned status with self-government and increasing mass-media communication. A chapter on this aspect of 1847 would leave a tone of life as usual.

Yet at the same time news was being received, first in the form of rumor, then in bulletins without details, then fully detailed accounts of the bill before Congress to make Oregon a United States Territory. The bill failed. In Oregon emotions ranged from panic to an urgency for a congressional delegate. As the year drew to a close the word leaked out that Oregon's supreme judge was secretly

delegated to Washington to aid the territory's cause. The chapter covering this issue will be presented last although it started first chronologically as the events of 1847 in this matter were preliminary to those of 1848.

Then in December a third theme developed intermediate between the local issue and the international issue. An Indian war broke out after the murder of an eastern Oregon missionary. Although the actual fighting took place in 1848 the political development of the war began in 1847. The tone of this chapter is first grief, then emergency, then waiting for the news from the field.

Not all issues of concern to the inhabitants of Oregon led to some legislative action, but most did. An example of a problem that just died a natural death was the concern over business monopolies. Two meetings in Champoege county in March led to the creation of a farmers co-operative in Salem but no laws. Of course most legislators were either businessmen or lawyers, not farmers.¹⁴⁷

The impression is not to be maintained that the legislators failed to respond to the people. Due to the local nature of the government and the expectation to go out of the law-making business any day, the legislators of the Provisional Government were very responsive to the people's everyday emergencies and balked at setting long range policy. If the law-makers had made long range policy in 1843 or 1844 there would have been less need for legislation in 1847 or 1848. But then the legislators probably would have felt the urge

¹⁴⁷ Oregon Spectator, March 18, 1847.

to go on to more meddlesome matters.

Tucked away on page three of the May 13 Oregon Spectator, among minutes of public meetings to nominate candidates, notices on intent to run for office, marriage notices, divorce notices, and an ad for Fred Prigg's drugstore, is a notice entitled "PUBLIC MEETING." It is signed by "many citizens" and says there will be a meeting for citizens of Clackamas County the next evening, seven P. M., at City Hotel, "for the purpose of obtaining an expression of public sentiment relative to trespass on land claims." Theophilus McGruder had the opportunity to address the purposes of his notice before over 1500 people, mostly from Clackamas County but some coming from Champoeg, Tuality, Yam Hill, and Polk. The number of people present underlines the importance of the topic. A continuation of the meeting on May 19 outdrew the first meeting making it the largest ever in the provisional territory. Several people spoke including Supreme Judge Burnett and a resolution was passed condemning people who trespassed or claim-jumped and those people who encouraged them by advising them of loopholes in the law. It was agreed that no person advocating looser land laws would be elected to the legislature. Of the 152 people who signed the resolution at least thirty-five had at one time or would be active in influencing or writing legislation. They included A. L. Lovejoy, S. K. Barlow, P. G. Stewart, G. L. Curry, George Gay, T. Summers, S. M. Holderness, W. P. Dougherty, S. H. L. Meek, H. Burns, A. Husted, J. V. Boone, John McLoughlin, J. P. Brooks, F. Hathaway, A. McDonald, R. Moore, N. Smith, J. H. Couch, D. T. Lenox, F. C. Cason, Aaron Coole, F. X. Mathiew, and Thomas McKay. Nine people

present were at similar meetings in Champoeg in 1843. Twelve people present were elected a month later to Territorial offices including Governor Abernethy, Secretary Prigg, Recorder McGruder, Judge Burnett, and Postmaster T'Vault. Legislative consideration was assured as nearly half of the next legislature was present in J. M. Wair of Clackamas, W. H. Reese of Champoeg, George W. Rice of Yam Hill, Robert Newell of Champoeg, Medorom Crawford of Clackamas, Lewis Rogers of Yam Hill, and Joseph L. Meek of Tuality. The meeting was in the tradition of the Ewing Young funeral, Methodist mission meeting of 1841, the wolf meeting, and the Champoeg meetings of 1843 in that it drew a large number of concerned citizens together to solve a problem. It is a compliment to the earlier meetings and the Provisional Government machinery that the call for political action fit entirely within the existing system (elect good representatives and amend the land law).¹⁴⁸

The election campaign of 1847 introduced nominating conventions to Oregon (see above) and several candidates offered themselves for election. Although the citizens were carefully scrutinizing their candidates for the legislature, the race creating the most interest was that for governor. Both George Abernethy and Asa L. Lovejoy volunteered to be elected. There was lively opposition to Abernethy this year due to growing hostility towards the mission. Some people, even those who agreed with the tenets of temperance, were tired of his overzealous approach to the issue. Lovejoy was the non-sectarian

¹⁴⁸ Oregon Spectator, May 13, 1847, May 27, 1847.

businessman's candidate and was expected to draw the Catholic and Hudson's Bay Company votes as well. Election day was June 7. The Spectator reported a large and full vote; "the people are alive to the importance of the exercise of their rights in this respect." The first returns showed no reports from Polk, Lewis, or Clatsop. Governor Abernethy drew majorities of 24 in Clackamas (home for both candidates), 4 in Yam Hill, 59 in Tuality, and 30 in Vancouver. Champoege gave Lovejoy a majority of 133. A. Husted, a third candidate (also of the mission), drew 4 votes in Clackamas and would probably draw off more votes in this close race. The Champoege vote shows the discontent over the mission in its own district. The Vancouver vote shows Lovejoy was not getting enough of the Hudson's Bay Company vote. With three counties missing Lovejoy was leading by 16 votes. Polk and Clatsop counties were about evenly split for Abernethy and Lovejoy with other candidates receiving 14 votes. With only Lewis County to report Lovejoy held a 4 vote edge. Abernethy's friendly relations with McLoughlin pulled him through with 20 more votes than Lovejoy in Lewis County. George Abernethy was reelected on a plurality of 536 votes to Lovejoy's 520 and other candidates' 18. The significance of this fact that more people voted against him than for him was short-lived. The Cayuse War would bring back his popularity.¹⁴⁹

The legislature of 1847 was of a different nature. The voters had commented on the "harmony" of 1846. The business leaders were gone (Lovejoy, Straight, Hall, T'Vault). William Tolmie retired from

¹⁴⁹ Oregon Spectator, June 10, 1847; November 25, 1847; and "Election Results," OSA MSS 1724, 1726-1733.

politics but the remaining three of the mountain man-Hudson's Bay Company coalition were reelected (Newell, Meek, and Peers). A. Chamberlain and Anderson Cox from Champoege were reelected along with Absalom Hembree of Yam Hill. David Hill, the veteran from Tuality, returned after an absence. Seven members out of nineteen had legislative experience in the House. For Newell this was his seventh session and David Hill's sixth. Clackamas County sent an entirely new slate of Medorum Crawford, J. M. Wair, and S. S. White. New members from Champoege included W. H. Reese and W. H. Rector. Ralph Wilcox, from Tuality, started his long legislative career. From Yam Hill the new members were L. A. Rice and Lewis Rogers. Polk County's delegation, although new to the legislature, brought two men with records of public assistance, Judge J. W. Nesmith and M. A. Ford. Lewis County sent S. Pomondeau for his first time and Clatsop sent John Robinson.¹⁵⁰

The period of June to December was spent by all citizens in earning a living, reaping the second bumper crop in a row, and discussing what to do about the defeat of the Oregon territorial bill. In autumn a complaint was aired about the Indians raiding the emigrants' wagon trains and stealing cattle, merely a premonition of things to come from the same sources. In November talk turned again to the Provisional Government house of representatives. Suggestions were being made, especially in the Spectator and to Governor Abernethy, for items to be included. Land holders wanted their claims to be firm. Farmers wanted the businessmen's monopoly on handling currency changed.

¹⁵⁰ Oregon Spectator, November 25, 1847.

The Spectator wanted the currency law repealed entirely.¹⁵¹ Governor Abernethy's executive message reminded the legislature that its members might be superseded in less than six months or exist for several years. He recommended rebuilding the jail, an item dropped at the last session. Since gold and silver were more plentiful, he recommended repealing the portion of the currency law making treasury drafts and orders on solvent merchants legal tender yet retaining wheat (his business). He recommended altering the land law making the clerks of the county courts land claim recorders. The traditional lengthy dissertation against ardent spirits covered half a page of the Spectator, two pages in book print. As far as pacifying the Indians he recommended raising money to buy presents to keep the Indians quiet until the United States sends an agent. (The Cayuse War saw the Superintendency of Indian Affairs taken away from Abernethy and given to Joel Palmer.)¹⁵²

The House began its 1847 annual session on Tuesday, December 7. Although it normally took two days to get all of the preliminaries out of the way, this year it took five. In the afternoon of the second day news broke of the Whitman murders and for two days there was nothing else considered. The usual problem of finding a suitable room was handled first. They originally convened at the office and drugstore of Prigg but immediately set out looking for a larger room. A committee for that purpose recommended the house of Stephen Meek

¹⁵¹Ibid.

¹⁵²"Message of the Governor of Oregon Territory, Dec. 7, 1847 (Grover's copy)," OSA MS 12189; Oregon Spectator, December 25, 1847; and Brown, pp. 308-309.

which was available for \$1.25 per day. Since previous sessions had unfavorable relations with Meek after denying his requests the report to accept his house was denied. The committee settled on the school-room of Mrs. Thornton, wife of the resigned supreme judge, at the Methodist Church. A committee was later dispatched to find Mrs. Thornton a room to use as a school. At the end of the session fifteen dollars was paid to William Holmes for wood, cleaning, and repairing the house. Officers of the house were next elected. Ralph Wilcox, David Hill, and Robert Newell were nominated for speaker. Hill received one vote, two were blank, and Newell had fourteen. For the second time in three years Robert Newell took the chair. Calvin Cooke was elected clerk of the house over George Curry and J. E. Lyle. Lyle was elected engrossing clerk over Curry and William T'Vault. Holmes of the Methodist Church was elected sergeant-at-arms and door-keeper over Stephen Meek, keeping a short tradition of electing the master of the building as sergeant-at-arms. A committee to find a chaplain of the house chose the Reverend Roberts. The rules of the last session were adopted permanently and committees were filled or created only as the need arose.¹⁵³

The currency committee under Hembree reported on December 13 a bill to repeal the old currency law. It received its first reading them, its second reading the next day, went before the committee of the whole, was amended on December 16, and passed on December 17. The roll call vote was fourteen to two. The new law repealed the

¹⁵³"Journal of the House of Representatives," OSA MS 1564.

portions of the old law that made orders on solvent merchants, wheat, and treasury drafts legal tender. Except for special contracts gold and silver were the only lawful monies. Treasury drafts were still legal to pay taxes or officers of the territory. The bill took effect on March 4, 1848, in order for merchants and farmers to set their records straight. With the exception of wheat the Governor got his law.¹⁵⁴

The portion of the executive message on land claims was referred to Nesmith, Hembree, and Wair. Before they could report a bill Joe Meek announced his intentions of introducing a bill assuring that every man be given a title to his land. When the Nesmith committee reported a land claims bill, Meek apparently changed his mind because no bill was forthcoming. The Nesmith bill was entitled "an act to amend the Organic law, by establishing a recorder's office in each county." It did exactly as its title suggests. If a person's claim was in two counties he must record in both. If there was doubt as to which county it was in then the choice of which to record it in was up to the claimant.¹⁵⁵

A recurring request from the governor had been for something to be done to separate whites and Indians. Reservations had been created and marked off but that did not keep the Indians on them. Abernethy in his message of 1847, before the news of the murders, had asked for money to appease the Indians. In their reaction to the Whitman

¹⁵⁴ Ibid.; and Grover, Laws, p. 24.

¹⁵⁵ "Journal of the House of Representatives," OSA MS 1564; and Grover, Laws, p. 45.

atrocities the legislature considered two bills that would do the opposite, incite them. The first bill was introduced by Mr. Rector. It would extinguish the Indians' title to all lands in the territory. The house had the wisdom to indefinitely postpone it. The second bill, by Wair, was passed and became law. It prohibited the sale of firearms or other munitions of war to Indians. Anyone convicted of so doing could be fined between twenty-five and two hundred dollars. The Hudson's Bay Company objected vigorously that this bill would punish all Indians including friendly Indians that depended upon rifles for hunting. A futile attempt was made to repeal it the next session but the memories of Indian war were still fresh.¹⁵⁶

Other bills passed by the 1847 legislature included the creation of a new county south of Polk and west of the Willamette. The portion of the county line with Polk county was to be surveyed from the Willamette to the Coast Range. The bill proceeded through the house unnamed until its third reading when, in honor of the author of the Oregon Territory Bill, it was given the name Benton. Five days later Linn County was created out of Champoeg. A bill added to the increasing number of offices the office of county coroner. An idea that failed to even become a bill because of "the present embarrassed condition of finances," was the proposal by the Governor to erect a jail to replace the one destroyed by arson over a year previous. The Governor had again asked for some aid to education. The only action taken by

¹⁵⁶"Journal of the House of Representatives," OSA MS 1564; Grover, Laws, p. 48; and Oregon Spectator, January 6, 1848.

the house, meeting in a schoolroom, even remotely concerning education came on Saturday, December 18. Robert Greenhow of Washington, D. C., author of A History of Oregon and California had sent several copies of his pamphlet to the legislature. The house thanked Greenhow then presented one to the governor, one to John McLoughlin, one to the Multnomah circulating library, one to the speaker and each member of the house (Christmas presents). Considering that one-third of its time was spent in dealing with the Indians that murdered the Whitmans, the legislature did an admirable job in 1847.

CHAPTER X

THE MILITIA, THE CAYUSE WAR, AND THE EXECUTIVE

The difference between a militia and an army is its organization and its mission. During the Provisional Government period Oregon had both a militia and an army. A militia is made up of men, and sometimes boys, of a particular area, say a county or a city, who meet periodically to drill and are ready in case of an emergency or attack. The officers are chosen by the people through elections. An army is made up of men and boys brought together without heed to place of origin and works at defending or fighting as a full time occupation until the end of the enlistment period or mission. The officers are appointed by the government.

The 1843 legislative committee had a sub-committee on military affairs that developed a report, but the people meeting at Champoege did not see fit to include it in their organic laws. The executive committee was made the commander-in-chief. In 1844, after one drunken Indian killed an official of the Territory, a number of men came together and called themselves a militia to protect the Territory from the wave of Indian attacks. None came so the mounted riflemen rode east into the homeland of the Mollalas looking for Indians. Luckily for both sides they failed to find any. As part of their organization they drew up a charter and asked the legislature to ratify it. This was in March. By April they were getting impatient with the legislature's

inactivity. One of their officers was on the Legislative Committee and should have known it did not convene until June. The first militia eventually disbanded.¹⁵⁸

The 1844 legislature in its June session passed a military bill similar in many ways to the report of the committee on military affairs. The militia was arranged into a regiment of two battalions and several companies. Each district was to have at least one company, either infantry, light infantry, riflemen, mounted riflemen, artillerymen, or dragoons. The field officers were to be elected by the public (1844 being the only election). The enlisted men were to provide their own rifles. Any officer could order out the militia with good reason. This is the only military charter to go on the books. The executive asked in December that the legislature amend the law so that the officers hold their commissions during good behavior only and that the officers be elected by the companies rather than the general electorate. The request was never brought up and no other military bill was brought up until 1847.¹⁵⁹

Under the provisions of the 1844 law a group of Champoege citizens formed together on May 22, 1846, calling themselves the "Oregon Rangers." The President of the meeting was the same officer and member of the legislature from the mounted riflemen of 1844. Elected captain was Charles Bennett of Salem. Bennett had been a sergeant in the U. S.

¹⁵⁸ Brown, pp. 129-130.

¹⁵⁹ Rich, pp. 227-233; and "Executive Message December 16, 1844," OSA MS 1381.

Army and honorably discharged. Looking for adventure, he came to Oregon in 1845 and joined the militia in 1846. The Oregon Rangers went to eastern Oregon to settle with a group of Warm Springs Indians who were raiding emigrants. There was one engagement at Battle Creek in present day Wasco County. Bennett left Oregon in 1847 with his friend and fellow Oregonian James Marshall. Bennett was working with Marshall at Sutter's Mill when Marshall discovered gold.¹⁶⁰

THE CAYUSE WAR

In the fall of 1847 fever and dysentary swept among the Indians of the Walla Walla area. The disease came with the Oregon Trail emigrants and spread among the defenseless Indians. The disease was the worst around the America Board of Foreign Missions' house of Marcus Whitman where thirty Cayuse Indians had already died. The Cayuse accused Whitman of poisoning them. At this time the Cayuse had a ruthless chief, a man put into power by Elijah White to enforce a set of oppressive blue laws he had imposed as indian agent. The Indians' general antagonism towards white men and special contempt for Whitman led to the events of November 27, 1847. Five Indians approached Whitman, one feigning illness. Then they opened fire on the men only, not killing any women or children with the exception of Mrs. Whitman. Eleven people including the Whitmans were killed. The survivors headed for Hudson's Bay Company Fort Nez Percés at Walla Walla. The Indians that killed the Whitmans were renegade Cayuse and acted without

¹⁶⁰ Oregon Spectator, June 11, 1846; and Brown, pp. 237-238.

sanction from the tribe. Had the authorities known this fact much bloodshed might have been spared.¹⁶¹

The survivors reported to the factor at Fort Nez Percés, William McBean, who panicked and turned them away. McBean feared an attack upon his fort if the survivors stayed, and he had only five men to defend it. His report of November 30 repeats the Indian rumors of poisoning by Whitman. Another rumor stated that the Cayuse were headed to the fort to kill the Walla Walla chief. When McBean's report reached Fort Vancouver on December 7 Chief Factor James Douglas immediately sent Peter Skene Ogden to the Waiilatpu Mission where he ransomed the remaining women and children held captive. Douglas sent word to Governor Abernethy recommending that he take measures to protect the reverend Spaulding at his Clearwater Mission in present day Idaho. Abernethy conveyed the two Hudson's Bay letters to the legislature which was in its second day at Oregon City. He asked them to take prompt action. He advised them to apply to the Hudson's Bay Company and local merchants for a loan to carry out any plan they may fix upon.¹⁶²

The House received the message at two o'clock Wednesday December 8. A resolution by James Nesmith was adopted requiring the Governor to raise arms and equip a company of riflemen, not to exceed fifty. They were to proceed to the Dalles Mission and wait for further instructions. Abernethy called an immediate public meeting for that evening.

¹⁶¹ Oregon Spectator, December 25, 1847; and Brown, 317.

¹⁶² Oregon Spectator, December 25, 1847; and Brown, pp. 321-322.

Judge Nesmith, H. A. G. Lee, and Sam Barlow presented "forcible and earnest" remarks. Forty-two men signed up to join the First Company of Oregon Riflemen. H. A. G. Lee was elected captain. At two o'clock the next afternoon the company assembled and was presented a flag sewn by the women of Oregon City. It took them two hours to start off amid cannon fire and citizens' cheers. The Governor missed the ceremony as he had proceeded at ten o'clock that morning for Fort Vancouver with the loan commissioners.¹⁶³

The loan commission was created by the fifth section of a bill introduced on the floor of the house only minutes before the commissioners departed. The bill was to organize a regiment of volunteers. It passed the house in one day even after being sent back to committee for amendment. In rushing it through the house it was imperfect. The Governor returned the bill with his objections after having read it Thursday night late upon returning from Vancouver. Final passage and approval came Friday December 10. The bill, now law, called on the governor to raise an army of not more than five hundred men. They were to assemble at Oregon City December 15 then proceed to the Walla Walla Valley for the purpose of "punishing the Indians . . . who may have aided or abetted in the massacre." The legislature gave itself the duty of appointing one colonel, one lieutenant-colonel, one major, one commissary general, and a quartermaster general. A loan commission of Jesse Applegate, Asa L. Lovejoy, and George L. Curry was created

¹⁶³"Journal of the House of Representatives," OSA MS 1564; Oregon Spectator, December 10, 1847.

to negotiate a loan of not more than \$100,000 to carry out the act, payable within three years or by the United States Government.¹⁶⁴

The next day the House elected the officer. Cornelius Gilliam was elected colonel; James Waters, lieutenant-colonel; H. A. G. Lee, major; and Joel Palmer, commissary-general. Meanwhile the loan commission returned from Fort Vancouver with empty pockets. James Douglas reportedly had not authority to grant loans to the government. The commission had better luck in Oregon City. The commission itself sponsored a note for \$999.41, Abernethy signing for the financially unstable Curry. Various merchants and citizens promised \$1,000 which was matched by the reverend Roberts of the Oregon Mission. During the course of the war two more notes, \$1,000 from "Uncle" Dan Waldo and Jesse Applegate and \$800 from Neil Gilliam and Joel Palmer were signed. When the United States assumed the debts of the war none of the notes had been called upon for payment. On December 14 the loan commissioners made their report and Applegate and Curry resigned their commissions. They were replaced by Hugh Burns and W. H. Willson on December 22.¹⁶⁵

A resolution by Medorum Crawford passed the House the afternoon of December 14. It appointed three persons to proceed immediately to Walla Walla and counsel with the chiefs and leaders of the friendly tribes on the Columbia. Their aim

¹⁶⁴"Journal of the House of Representatives," OSA MS 1564; and Grover, Laws, pp. 49-50.

¹⁶⁵"Journal of the House of Representatives," OSA MS 1564; Brown, pp. 328, 330-332; and Grover, Laws, pp. 52-53.

would be to prevent those tribes from joining up with the Cayuse. The commission did not depart until February, carrying with them a plea from the governor. The commissioners, Messrs. Newell, Palmer (Indian Superintendent), and H. A. G. Lee, used a fear of the wrath of God approach when they spoke to the Nez Percés at Waiilatpu in March, 1848.¹⁶⁶

As the army gathered in Oregon City on December 15 the legislature continued to do everything they could think of to help. Joe Meek was already being sent to Washington, D. C., to counter the efforts of J. Quinn Thornton (see below) so the house voted to send a memorial along with him. The memorial pleaded with the government to send aid. They had heard the more powerful tribes were forming an alliance against the whites and their men fighting on desire alone. It was further resolved that day that the house solicit the aid of the United States Navy in the Pacific to send a vessel of war into the Columbia to protect the settlement. This was altered on Christmas Eve to request Governor Mason in California to send both land and naval forces to the Willamette. Governor Abernethy mentioned that a naval vessel was arriving in his letter to the friendly chiefs. As it was, the special messenger to California, Jesse Applegate, was delayed by foul weather in the Siskiyous and by the time he could depart the war was over. Besides sending Joe Meek to Washington and dispatching Jesse Applegate to California the legislature also ordered James Nesmith to draft a letter on the situation to be forwarded to the

¹⁶⁶"Journal of the House of Representatives," OSA MS 1564; Oregon Spectator, April 6, 1848; and Newell, pp. 128-131, 137-139.

American consul in the Sandwich Islands.¹⁶⁷

Christmas was on a Saturday in 1847 but there were few family festivities that year. The heads of forty families were at The Dalles and many more were assembled at Oregon City ready to leave. The legislature met the entire morning and most of the afternoon in secret session with Colonel Gilliam, Lieutenant-Colonel Waters, Commissary-General Palmer and Governor Abernethy. Major Lee was in the Dalles. Governor Abernethy walked out of the meeting with full power to take any necessary measures to fight the war including conscripting up to five hundred men. The house, in public session, approved the war powers resolution on a unanimous roll call vote. The house later voted H. A. G. Lee adjutant-general and passed a bill defining his duties. With the exception of paying the army the war was now in the hands of the executive department.¹⁶⁸

The bill to pay the army passed the house on the last day, December 28, and was approved immediately by Governor Abernethy. It was decreed that each private and non-commissioned officer who volunteered and furnished his own horse and equipment would be entitled to \$1.50 a day for the period of his enlistment. Any person leaving service before his discharge would not be allowed any pay.¹⁶⁹

The war was followed with great interest by the citizens of the

¹⁶⁷"Journal of the House of Representatives," OSA MS 1564; Oregon Spectator, December 25, 1847; and Victor, pp. 430-431.

¹⁶⁸"Journal of the House of Representatives," OSA MS 1564.

¹⁶⁹Ibid.; and Oregon Spectator, January 6, 1848.

Willamette Valley through the pages of the Oregon Spectator. Many letters were received and each battle was covered from several points of view. It was very easy to get the impression that there was much more fighting going on than in actuality. H. A. G. Lee arrived in the Dalles on December 21 to find that the renegade Cayuse (the original five) had picked up support from other Cayuse, not the entire tribe, and were scavenging the Walla Walla area generally making trouble. Young Indians in other tribes hearing of the exploits of the Cayuse took advantage of the situation to make minor forays against settlers' animals. None of the leaders of the major tribes sanctioned warfare. Colonel Gilliam left Oregon City on January 14, 1848, with four companies numbering two hundred thirty men. Two days later they left Fort Vancouver. Two of the peace commissioners appointed by Governor Abernethy, Speaker of the House Robert Newell and Superintendent of Indian Affairs Joel Palmer, left Oregon City on February 3. On February 9 they arrived at Fort Lee (The Dalles) having passed the army portaging the cannon around the Cascades. There they met the third Peace Commissioner Adjutant-General Major H. A. G. Lee. The commission went with the army into the field on February 15. A meeting with the Umatilla Indians was held on February 23 and they expressed a desire to be friendly with the Americans. On February 25 there was a minor engagement with the Cayuse, and one Indian was wounded. On February 28 the army reached Walla Walla. There was some disunity among the soldiers. Some were content to talk to the Indians but others, including Colonel Gilliam, wanted to fight. A council was

arranged with the Nez Perces to be held at Waiilatpu on March 7. The council generally settled the war. The Indians agreed to return the animals they had stolen and return to their tribes. The Peace Commission headed home with the advice to Governor Abernethy to recall all of the troops except a handful at Waiilatpu and the Dalles. Colonel Gilliam, an impatient man, decided that he was to get in some licks before coming home and attacked the band of renegade Cayuse that had been watching the council from a safe distance. There were few injuries and only one fatality. Colonel Gilliam was killed when his own rifle exploded and he became an instant war hero. Lieutenant-Colonel Waters became full colonel and the fort erected at Waiilatpu bore his name. Major Lee was promoted to lieutenant-colonel. Governor Abernethy recalled the troops in June and the army disbanded in July. Although the murderers of the Whitmans were not captured the settlement was put at ease that the Indians had been taught a lesson without much bloodshed. The remainder of the troops were called in from Forts Waters and Lee in September after the migration of 1848 (177 wagons) had safely passed through without a single incident.¹⁷⁰

The five Indians responsible for the murders were turned over to the Territorial Government by the Cayuse tribe in 1850. Their trial was reported in the Spectator. The Indian defense pleaded that the laws of the United States did not cover Oregon at that time but this was overruled because the area in question was Indian Territory by act of Congress and the United States had legalized almost all of the

¹⁷⁰ Oregon Spectator, January 6, 1848; January 20, 1848; October 12, 1848; and Newell, pp. 98-99, 105-114.

actions of the Provisional Government. Survivors of the incident testified for the prosecution as eye witnesses while the defense called Dr. McLoughlin, the Reverend Spaulding, and a Cayuse chief who testified that Dr. Whitman had several warnings of danger and chose to stay. On May 24, 1850, after one hour and fifteen minutes of deliberation the jury brought a guilty decision. The five were sentenced to hang on June 30, 1850. A jailhouse confession determined that Telokite had stabbed Dr. Whitman, Tomohas (the Murderer) had shot Dr. Whitman, Isiaasheluckas had shot Mrs. Whitman, Clockamas had killed Sager, and Liamasumkin had been present but took no part. Governor Lane signed the death warrant and gave it to Marshall Meek. Lane resigned and Secretary Prichett as acting governor thought of pardoning the five. Meek would have none of it and the five were executed as scheduled.¹⁷¹

¹⁷¹ Brown, pp. 429-431.

CHAPTER XI

J. QUINN THORNTON AND JOE MEEK, MESSENGERS TO WASHINGTON

The United States House of Representatives passed in January of 1847 the bill to make Oregon a territory. Senator Thomas Hart Benton, who with the late Senator Linn (also of Missouri who died in 1843), had been fighting for the incorporation of Oregon since before joint occupancy, introduced the bill before the Senate. The bill was sent to Senator Calhoun's committee where an amendment was added which proposed to abrogate the part of the Organic Law prohibiting slavery. Calhoun wanted Oregon to become another slave state. The bill suffered through many delays and was finally laid on the table for that session. President Polk sent his regrets to the people of Oregon through Secretary of State James Buchanan. This news hit the front pages of the Spectator after election. Later that summer a letter from Senator Benton contained assurances that the bill would be presented again at the next session.¹⁷²

Oregon was despondent over the failure of the bill and confused about what they could do to help. Rumor mills produced word that President Polk had already appointed an entire slate of non-residents to territorial office, the Hudson's Bay Company was going to get to keep all of their claims and continue in business, the federal

¹⁷²H. O. Lang, History of the Willamette Valley (Portland: Himes and Lang, 1885), pp. 320-321; and Victor, pp. 394-396.

government was about to build a railroad to Oregon, claim-jumpers were in the 1847 migration to seize all the valuable land to sell to the railroad, and the government was to take away all land claims that did not conform to section lines and subdivisions. A public meeting was held September 26 to air the rumors. Asa Lovejoy ran the meeting although someone else was in the chair. The meeting called for a convention November 1. Each county was to send delegates. At this convention one person would be chosen to represent Oregon in Washington, D. C. November 1 came and only three counties sent delegates. The session lasted only a few stormy hours. It was argued that Oregon had no law allowing for a delegate, there was no time to get the authority because the last boat leaving to get there on time was about to leave, Oregon was not a territory and Congress would not receive a delegate, and Congress was about to act anyway giving Oregon a seat in the House. It was decided that it was impractical to send a delegate. The citizens did not realize that a delegate was already more than a month underway.¹⁷³

J. Quinn Thornton, supreme judge, had been urged for some time that summer by the executive about sending a delegate to Congress. At one point Thornton even asked Peter Burnett to go, but he declined, being on his way to California. An increase in the Indian problem around the Dalles finally caused Governor Abernethy to call a private meeting between himself, M. M. McCarver, and Samuel Parker. Since

¹⁷³ Brown, pp. 297-298; Carey, p. 357; and J. Quinn Thornton, Oregon and California in 1848 (New York: Harper, 1849), p. 38.

the governor could not leave it was decided Thornton would have the best reception in Washington due to his high rank. The trip was to be paid for by Methodist mission funds banked in New York. Abernethy wrote a personal letter to President Polk explaining the nature of Thornton's visit. The letter was personal because the trip was not an official visit authorized by any existing law or act of legislature. Thornton resigned October 18 as supreme judge and debarked on the brig Whiton that same morning. On December 12 he left San Francisco for Boston on the U. S. S. Portsmouth.¹⁷⁴

Rumor had it that Thornton was headed east to convince the president he should have a high territorial office. Thornton had in the past spoken out against Jesse Applegate and had so earned the hatred of both Applegate and James Nesmith. Nesmith offered a resolution on the floor of the house that asked President Polk not to appoint Thornton to any territorial office. The resolution was adopted then later reconsidered and lost as a personal matter. The resolution was stricken from public record. On Christmas Day George Curry published the resolution in the Spectator along with the roll call vote that withdrew it. Abernethy protested to the board of directors of the Oregon Printing Association and Curry was fired. In his final edition Curry blasted Abernethy as an autocrat who insisted on absolute control of every situation even if it included censorship of the press.¹⁷⁵

¹⁷⁴Lang, p. 321; Brown, pp. 300-301; Thornton, p. 38, 42-45, 47-49, 248; Woodward, p. 24; and Victor, p. 397.

¹⁷⁵"Journal of the House of Representatives," OSA MS 1564; Oregon Spectator, December 25, 1847; January 20, 1848; and Brown, p. 302.

A communication by Jesse Applegate prompted Nesmith to make a resolution before the house to send a special messenger to Washington to work on securing territorial status, especially in the light of the problems with the Cayuse. This was made into the form of a bill the day after Thornton left San Francisco. Joe Meek was to be this messenger. Meek resigned the house on December 17. The bill authorizing him to be the messenger passed the house on December 20 along with a companion bill appropriating him \$500 for the journey. Meek left Oregon City on January 4, 1848, while Thornton was off the coast of South America. Although the bill authorizing his trip dispatched him by way of California, the ex-mountain man retraced the Oregon Trail. Meek paid his respects to the peace commissioners and received an escort through the zone of hostilities. While Thornton enjoyed a cruise along the sunny waters of the southern hemisphere, Meek set off across the continent in the dead of winter with nine former mountain men as companions.¹⁷⁶

Thornton arrived in Boston May 5 and proceeded to Washington where he arrived May 11. The following day Stephen A. Douglas introduced him to President Polk. Thornton delivered Abernethy's letter and was afforded a private discussion with the President the next day. Thornton then began using his influence among the high society of Washington. At this time, two weeks after Thornton's arrival, Meek reached Washington. His journey of four and a half months was the fastest trip cross-country in any season up to that time. Meek carried

¹⁷⁶"Journal of the House of Representatives," OSA MS 1564; Grover, Laws, pp. 9, 11; Victor, p. 431; and Newell, p. 106.

news three months fresher than Thornton's including word of the Whitman murders, the Cayuse War, and a personal report of the peace council. Just having come off the trail and still dressed in buckskins Meek, the former mountain man, assumed the title Envoy Extraordinary and Minister Plenipotentiary of Oregon. But his experience in Oregon politics and the fact he was a relative of the president enabled him to assist Thornton in their now joint effort to secure desired legislation in Congress.¹⁷⁷

The Oregon Bill of 1848 was not identical to other territorial bills up to that time. This was because of the existing machinery of government in Oregon and the two delegates' insistence on maintaining a smooth transition. The bill was introduced in the Senate first. Five southern Senators (Davis, Foote, Butler, Calhoun, and Mason) lead a campaign to exclude the anti-slavery clause but Thornton insisted the people of Oregon had twice voted on the issue. The bill passed the Senate in a close vote. The bill seemed doomed in the House as a group of Southerners began a filibuster which threatened to last until adjournment. Then suddenly the day before adjournment the filibuster stopped and the vote was taken. The bill to create Oregon Territory passed Sunday August 13 and would take effect as soon as the new territorial governor received his appointment and reached Oregon. Within a few hours President Polk had signed the bill.¹⁷⁸

The bill carried a stipulation that the Hudson's Bay Company

¹⁷⁷ Thornton, pp. 248-249; and Lang, pp. 323-324.

¹⁷⁸ Brown, pp. 305-306; and Lang, pp. 324-327.

get three million dollars for its property in Oregon. Thornton was supposedly offered \$10,000 by friends of the mission for his efforts and not being above making a profit tried to make a deal with Governor Simpson of the Hudson's Bay Company. Meek made the deal public by writing a letter to the New York Herald. Public outrage cancelled any money for both Thornton and the Hudson's Bay Company.

CHAPTER XII

THE GOLD RUSH, DECEMBER 1848 AND FEBRUARY 1849 SESSIONS

Most citizens returning from the Cayuse War returned to a land still uncertain about the future. The Oregon Bill had failed but Senator Benton promised it would pass in 1848. Business was returning to normal. Some hurried planting was necessary for those in the army if they intended to get any crops at all that year. A new legislature had been elected on June 5. This being an off year the only territorial offices filled were legislative and two replacements. Otherwise the vote was for recorders, judges, and the new office of county coroner. By a large majority the Organic Law had been amended to make the county clerks also land claims recorders. By a narrow margin of 700 to 683 the controversial word "regulate" had been replaced by "prohibit" in the part of the Organic Laws covering ardent spirits.¹⁸⁰

By July the political arguments over land claims had resumed. A public meeting on July 22 resolved that if the United States was going to do nothing about the issue then the people would form themselves "into an association for the protection of land claims in Oregon." Twelve men were appointed arbitrators for Clackamas County, any three of which could decide a case. Clackamas County recommended that other counties follow suit, then publicized the meeting in the

¹⁸⁰ Oregon Spectator, May 4, 1848; Carey, p. 359; and Brown, p. 448.

Spectator and George Curry's Free Press. A letter from seven of the arbitrators accompanied the Spectator article to dispell some rumors of autocracy.¹⁸¹

Then the bombshell hit. A ship from California at the last of July announced that two former Oregonians, James Marshall and Charles Bennett, had discovered gold. Oregonians were off to the mines. Every passing ship brought new stories. The Spectator could not print from September 7 to October 12 because the entire staff except for the editor went south. Why cultivate the ground when \$10 to \$100 a day could be made in the mines? Then new rumors. Thomas Keizur of Salem found gold in the Willamette. David Douglas, a Hudson's Bay Company botanist, found gold north of The Dalles. Idaho was all gold. By February of 1849 men were still heading south.¹⁸²

Gold was to be discovered in Oregon, Washington, and Idaho but not for a few years. Those who stayed in Oregon found business quite golden indeed. Oregon's grain crop was abundant. Wheat brought sixty-two cents a bushel at the mill and sold for nine dollars a bushel in California. Pork, beef, crockery, hardware, iron and steel prices showed similar increases. Ships were at a premium. Almost overnight fortunes to last a lifetime were made by men like Captain John Brown--ship owner, Francis Pettygrove--merchant, and Lot Whitcomb--ship builder.¹⁸³

¹⁸¹Oregon Spectator, August 10, 1848.

¹⁸²Oregon Spectator, August 10, 1848; September 7, 1848; October 12, 1848; February 8, 1849.

¹⁸³Oregon Spectator, October 26, 1848.

Oregon was not exactly a country of ghosttowns but many of her more ambitious men had departed. It will never be known how many people left, for a census authorized in 1847 was complete before the discovery and by the next census in 1850 many hard luck prospectors had returned. Regardless, many of the people who put considerable effort into opening up Oregon, wresting it from the British, and operating a provisional political system were away when news arrived of the gold rush. The first rumor of territorial status reached the press in October when a friend of Francis Pettygrove in New York sent him a letter predicting passage that session. A December report in the Spectator said Congress had adjourned without passing the bill. Then on January 25, 1849, under the banner headline "News--News--News" came the official word. Oregon was a territory. Pratt of Illinois had been appointed Supreme Judge by President Polk and had arrived on the ship Undine. General Joseph Lane of Indiana had been appointed governor and Joe Meek was named United States marshall. They were headed overland and would winter at Fort Hall. No word was received as to a land law for Oregon.¹⁸⁴

1848 LEGISLATURE

The opening of the 1848 legislature brought considerable confusion. At the June 5 election twenty-two men were elected. They included: from Clackamas, Asa L. Lovejoy, George L. Curry, and J. S. Snook; from Twality, Samuel R. Thurston, Peter H. Burnett, and Ralph

¹⁸⁴ Oregon Spectator, October 26, 1848; January 25, 1849.

Wilcox; from Champoeg, Albert Gains, Robert Newell, William J. Bailey, and William Portius; from Yam Hill, Absalom J. Hembree, L. A. Rice, and William Martin; from Polk, Harrison Linville, James W. Nesmith, and Osborne Russell; from Linn, Henry J. Peterson and Anderson Cox; from Lewis, Levi L. Smith; from Clatsop, A. H. Thompson; from Vancouver, Adolphus L. Lewis; and from Benton, J. C. Avery (of two apportioned). With the discovery of gold many men left including twelve representatives. Seven took the time to write their resignations. Elections had been held in five counties for replacements. Medorum Crawford and A. F. Hedges were elected to replace Lovejoy and Snook in Clackamas. In Twality David Hill replaced Burnett. In Champoeg Samuel Parker succeeded Robert Newell. In Polk Jesse Applegate was elected to replace Nesmith but nobody was elected to replace Russell. In Clatsop John Hudson was elected to replace A. H. Thompson although he had not sent in his resignation. No election was held in Lewis County to replace Levi Smith. At the beginning of the session it was to be discovered that four more (Gains, Linville, Cox, and Avery) had departed. There was no time to replace them so their constituents (probably also departed) were unrepresented. Two of the replacements (Applegate and Hudson) also did not attend.

On the fourth day of the session arrest warrants were issued for most of the missing members who had not resigned. The legislature itself did not know who had departed south since the report of Secretary S. M. Holderness as to who was elected, who resigned, and who was previously elected was incomplete. The arrest warrants produced

two originally elected members (Bailey and Portius). Fourteen of a possible twenty-three members appeared. Ten were elected on June 5 and four since. Never during the eight day session from December 5 to December 13 were all of them together. The two arrested members showed up the final day but George Curry was absent on account of illness. No legislation was passed or even introduced. The members had resolved not to do business until at least two-thirds were present and after the arrest warrants were still two shy. The house adjourned until the first Monday in February, 1849. Governor Abernethy issued a proclamation to the effect that the legislature was ordered to convene on the fifth of February to attend to business it was unable to meet in December.¹⁸⁵

The Spectator rebuked the legislature for its failure to do its job. In an article reporting the formation of a provisional government in California it commented:

There is an old saying that--"They who learn from their own experience are wise; they who learn from the experience of others are happy; and they who learn neither from their own nor the experience of others are fools." The Provisional Government of Oregon is inadequate to the growing interests of the country; from which fact California may learn, that in the organization of her contemplated Provisional Government, it is important to provide (as far as government can do it,) for the protection of every right, and the punishment of every wrong.¹⁸⁶

¹⁸⁵"Journal of the House of Representatives," OSA MS 1565; Oregon Spectator, November 30, 1848; December 28, 1848; Carey, pp. 359-360; and Brown, pp. 448-449.

¹⁸⁶Oregon Spectator, January 25, 1849.

1849 LEGISLATURE

The 1849 session of the house, actually an extension of 1848, met at the house of Walter Pomeroy in Oregon City on February 5. There was no quorum that day. In fact, there were fewer than the previous December. But on Tuesday, the following day, several more members appeared to make a total of seventeen. These included all of the members from the last December plus Jesse Applegate, Anderson Cox, and John Hudson. J. C. Avery of Benton would arrive later. Ralph Wilcox was elected speaker of the house to continue from December but he declined accepting. So L. A. Rice was elected on the third ballot. W. G. T'Vault was elected clerk and Stephen Meek sergeant-at-arms. In three ballots Wilson Blain was elected chaplain.¹⁸⁷

Governor Abernethy's last executive message was received and read to the house. He informed the house of the new territorial officers about to arrive. In Abernethy's opinion the most important issue would be connected with the past Indian difficulties. The pay due the enlisted men was \$109,311.50 and some arrangement needed to be worked out for the officers. He recommended a law authorizing the issuance of scrip to pay the men. There was a section on ardent spirits. He recommended amending the act to prevent selling firearms to Indians to permit the sale to friendly Indians. He also recommended looking into the industry of mining coal to supply ships. After passing the indispensable business, the house should then adjourn.¹⁸⁸

¹⁸⁷"Journal of the House of Representatives," OSA MS 1566.

¹⁸⁸Oregon Spectator, February 8, 1849.

On February 8, the fourth day of the session, an interesting exchange started that raised some fundamental questions. George Curry presented a petition from John McLoughlin similar to most petitions presented for the last six years. McLoughlin was asking for a charter to construct a breakwater at the Willamette Falls. Samuel Thurston moved a point of order that the petition did not comply with the Iowa statutes. The speaker had no choice but to deny the receipt of the petition. Curry appealed the decision and the house backed the chair, eleven to five. Applegate moved that the petitions received so far be returned to the persons who presented them. Applegate attempted to force the issue with a resolution pointing out that all previous legislatures had ignored this point. Thurston amended the resolution by agreeing but saying that was their option. Both resolution and amendment failed. The next day Hill tried to end the issue by abrogating that section of the Iowa statutes. He was voted down fifteen to one. The vote was reconsidered and Wilcox amended the resolution by saying any and all petitions should be accepted despite the Iowa law. The resolution passed and all petitions were reintroduced. Tradition carried over the letter of the law.¹⁸⁹

As predicted by the governor the biggest concern of the legislature was the settlement of the Cayuse War debts. The house called for all claims, reports from the adjutant-general and commissary-general on expenses, the loan commissioners expenses, claims from the party to reach California, the Governor's report, and the report

¹⁸⁹"Journal of the House of Representatives," OSA MS 1566.

of the Superintendent of Indian Affairs. A resolution was passed discharging the heirs of Cornelius Gilliam of any responsibilities for his war debts. The house ordered the enlisted men to be paid according to the bill of 1847, passed a law setting pay schedules for officers, established a commission to settle the war debts, paid the individuals who proceeded to California, and paid Governor Abernethy \$500 for his efforts. The commissioners were Thomas McGruder, Samuel Burch, and Wesley Shannon. They were to go through the books of the commissary-general and adjutant-general and ascertain the actual cash value of articles loaned or sold to the army, then submit pay vouchers. Any claims not found on the books were forever barred. The house denied the Governor's request to pay the volunteers in military scrip which would hopefully be redeemed by the United States government.¹⁹⁰

An article in the Spectator prompted one piece of legislation. It was pointed out that there was already nearly one-half million dollars worth of gold dust in Oregon from the few miners who had returned. It was predicted that by the next August there could be up to two million dollars worth in the territory. The going rate of eleven to twelve dollars an ounce was only two-thirds its real value. If Oregon could establish a mint and coin this gold it could make a half-million dollars. After discussing the numerous bills to pay off their war debts the bills "to provide for weighing and stamping of gold" looked good. The bill passed Thursday February 15 by a roll call vote of sixteen to two. The two negative voters, Medorum Crawford of

¹⁹⁰ Ibid.; and Grover, Laws, pp. 56-58.

Clackamas and William Martin of Yam Hill, both filed similar protests. Both pointed out that it was contrary to the United States Constitution for anyone except the federal government to print money and Oregon would be part of the United States at any time. Crawford pointed out it would be a waste of money to buy the machinery just to discontinue immediately upon the arrival of Governor Lane. Martin thought it immoral for Oregon to mint money at a discount of its value. Nevertheless the governor signed the bill. The Spectator then reentered the picture picking up the arguments of the two dissenters and reversing its stand of less than one month earlier. The bill called for the establishment of a mint in Oregon City and for the house to elect a director of the mint, an assayer, a treasurer, a melter, and a coiner. It directed the personnel in their duties which basically was to produce five and ten-dollar gold pieces stamped Oregon Territory. James Taylor was elected director, Truman Powers treasurer, W. H. Wilson melter and coiner, and George Curry assayer. Thomas Powell received \$60 to smith the machine. In the less than two weeks the mint operated it coined \$58,500 worth of fives and tens. One set of dies was incorrectly stamped T. O. rather than O. T. and were ordered destroyed by flinging them on the rocks below Willamette Falls. This was not done because they were later found in an attic and given to the state. The coins were purchased by the United States mint in San Francisco after Governor Lane closed the mint. The Oregon "Beaver money" drew top price because unlike most gold coins it contained no alloys.¹⁹¹

¹⁹¹ Oregon Spectator, January 25, 1849; February 22, 1849; "Journal of the House of Representatives," OSA MS 1566; Grover, Laws, pp. 58-60; and Brown, pp. 456-457.

Two separate bills on land claims and the oath of office were combined for passage but Jesse Applegate objected. He stated that he did not object to either bill but to the fact they were united. So they were separated and passed. Governor Abernethy, who threatened to veto the combined bill, signed the change to the oath of office (removing references to Britain) but sent back the land law bill unsigned. The house passed the bill over the Governor's objections by a sixteen to two vote. The land law bill made it a part of the Organic Law that county clerks were also recorders. Other major bills to pass included a bill allowing partnerships to be created and regulated and a bill preventing gambling and assuring the recovery of gambling losses. A bill requested by Governor Abernethy to repeal sections of the law preventing the sale of firearms was lost in committee. Another action by the legislature was to replace various territorial vacancies created by the gold rush and other assorted reasons. Asa Lovejoy was elected supreme judge to replace Thornton. William J. Matlock was elected circuit judge. Thomas McGruder was elected secretary on the sixth ballot to replace the late Fred Prigg. William K. Kilborn was elected treasurer. J. G. Campbell was elected auditor of public accountants. William H. Bennett was elected marshall and A. Lee Lewis was elected superintendent of indian affairs.¹⁹²

February 1849 was an end of an era for Oregon. On February 16 the Provisional Government House of Representatives adjourned sine die for the last time. On February 22 the Oregon Spectator printed what

¹⁹²"Journal of the House of Representatives," OSA MS 1566; Grover, Laws, pp. 66-67, 61-62, 64.

was believed then to be their last number. The printer was going to the mines and no substitutes were to be found. (The Spectator would be resurrected eight months later.) On March 2 General Joe Lane entered Oregon City. The next day Governor George Abernethy, Supreme Judge Asa Lawrence Lovejoy and Speaker of the House L. A. Rice made a ceremony of turning power over to Lane. The Provisional Government was out of business.¹⁹³

The Oregon bill had assured the people of Oregon the laws of the Provisional Government would be continued. This was a relief to those people concerned about losing their land. Governor Lane evaluated the laws and ordered struck the law creating a mint and various laws in relation to Indians. He accepted all others. The territorial legislature agreed and no controversy was sent to the United States Supreme Court. President Polk had said in 1847 (before news of the Cayuse War) the Provisional Government was "wholly inadequate to protect them in their rights of person and property. . ." Jesse Applegate said in 1877, "we made a bungle of carrying out the high function of an independent sovereignty," except the Indian war. Epitaphs to the opposite effect include remarks by J. Quinn Thornton. Oregon was "strong without an army or navy; and rich without a treasury, property was safe, schools established and supported, contracts enforced, debts collected, and the majesty of the law vindicated." William Strong: "Oregon owes by far the most of its prosperity and rapid progress to the early formation of its provisional government,

¹⁹³Oregon Spectator, February 22, 1849; Carey, p. 360; Brown, p. 458.

the wise laws . . . and the inflexible justice" George H.

Williams: "The provisional government was a government de facto . . . and a government de jure . . ." Messrs. Strong and Williams were on the Territorial Supreme Court. Perhaps the most fitting epitaph was presented by Governor Lane reflecting on the day he assumed control.

Peace and plenty blessed the hills and vales, and harmony and quiet, under the benign influence of that government, reigned supreme throughout her borders. I thought it was almost a pity to disturb the existing relations, to put that government down and another up. Yet they came out to meet me, their first Governor, under the laws of the United States. They told me how proud they were to be under the laws of the United States, and how glad they were to welcome me as holding the commission of the general government.¹⁹⁴

In the less than six years from the time a handful of settlers congregated to write a constitution to protect their land rights the population had grown from two hundred to almost nine thousand. (See Table III)

¹⁹⁴ Brown, p. 329; Leslie Scott, p. 7; Robertson, pp. 39, 48-49, 52-53.

TABLE III
CENSUS OF 1850¹⁹⁵

	Males	Females	Foreigners	Total
Clackamas	791	585	17	1393
Twality	639	468	35	1142
Champoeg	923	647	112	1682
Clatsop	149	75	3	227
Yam Hill	796	557	15	1368
Polk	664	509	1	1174
Lewis	72	37	36	145
Linn	564	359	0	923
Benton	500	370	0	870
Vancouver	<u>26</u>	<u>20</u>	<u>79</u>	<u>159</u>
TOTALS	5124	3627	298	9083

¹⁹⁵Lang, p. 329.

CHAPTER XIII

ARDENT SPIRITS AND THE TEMPERANCE MOVEMENT

It is hard to say which issue, land claims or ardent spirits, created the most interest during the Provisional Government years. Land claims was the *raison d'être* for the formation of the Organic Laws in 1843, the impetus for changing it in 1845, and the term of concern in 1847 at the end, but ardent spirits was the most consistent issue from the discovery of the first still in February 1844 up to the very end of the Provisional Government. Whereas the people were satisfied with actions taken to remedy the land laws never was a large majority satisfied with the legislation concerning ardent spirits. The various pieces of legislations on land claims are covered in the appropriate chapters but the ardent spirits issue would lose its continuity if broken up into seven parts so it must be dealt with separately. The court system will also receive a separate chapter.

The original Organic Laws said nothing about the ardent spirits issue. Like a number of other things it was an unwritten law. The Methodist mission had control over the American sector of the tiny community and its precepts made it a moral issue. The Hudson's Bay Company had a very strict policy about liquor—they were the sole importer and retailer of the product and absolutely none was to go to Indians. Laws are written to alleviate problems; if there is no problem, then no law. The men assembled at Champoege could not foresee

a problem. Then in February of 1844 James Connor erected a distillery at Willamette Falls. There was no law to prevent him and the executive committee was scattered. By the power of the people Dr. Elijah White was vested with temporary executive power. Using his office as sub-Indian agent and citing the possibility of Indians getting the product White authorized Sheriff Meek to destroy the still. Connor was released on a \$300 bond.¹⁹⁶

The June 1844 legislature unanimously passed a bill to "prevent the introduction, sale and distillation of Ardent Spirits in Oregon." Any person selling liquor would be fined one hundred dollars and have his still destroyed. All officers of the government must turn in offenders and all fines were to go to the general treasury.¹⁹⁷

On July 26, 1845, the amended Organic Laws passed the special election and were adopted by the people of Oregon. The concern was over separating constitution from statute and not ardent spirits. One clause in the amended laws was to be a thorn in the side of all temperant Oregonians. Article two, Section six, lists a number of items which were statutory including "to pass Laws to regulate the introduction, manufacture or sale of Ardent Spirits." The August 1845 session attempted to pass a bill to regulate liquor but Hudson's Bay Company influence killed it. The final vote was five in favor and eight opposed.¹⁹⁸

The December 1845 session passed an act tightening up the 1844

¹⁹⁶Victor, pp. 341-343.

¹⁹⁷"Monday June 24, 1844," OSA MS 1128; Grover, Laws, pp. 94-95; and Rich, pp. 242-243.

law prohibiting ardent spirits, in spite of an attempt to reconsider that failed on a tie vote. The law as amended made gifts illegal and gave half of the fines to the informant who turned in the offender. The final section called for the publication of the law in "the first newspaper in Oregon." Volume One, number one, of the Oregon Spectator had the liquor law on page one.¹⁹⁹

The first temperance meeting in Oregon was held in March of 1846. The meeting was run by Samuel K. Barlow, Medorum Crawford, and William H. Gray. The object of the meeting was to complain of the almost daily violations of the ardent spirits act and to insist on enforcement or tightening of the legislation. The system of giving the informant half the fine was not working. In his executive message of December 1846 Governor Abernethy, with mission ties, pointed out flaws in the law, followed by a long dissertation on the evils of drink and what it could do to Oregon. An amendment to the Organic Act to replace the word "regulate" with the word "prohibit" failed to get the necessary two-thirds majority. The legislature, working on the theory if they could not abolish liquor then the territory should profit by its manufacture, passed an act "to regulate the Manufacture and Sale of Wine and Distillled Liquors." Governor Abernethy vetoed the bill saying if the people say "no liquor" at the ballot box then abolish it, if

¹⁹⁸"A fair copy of the Amended Organic Laws," OSA MS 1096; "Journal of the House," OSA MSS 1550-1563.

¹⁹⁹"Journal of the House of Representatives," OSA MSS 1525-1538; Grover, Laws, pp. 34-35; Oregon Spectator, February 5, 1846.

they say "we wish liquor" then let it in free, but until then try to keep it out. The house, under the powerful T'Vault faction, passed the law over the Governor's veto. The bill became known as the license law due to its main design to license those who import, distill, or sell liquor with fines of twenty-five to one hundred fifty dollars to violators, double if sold to Indians.²⁰⁰

Protests came in loud and continuously during 1847 especially from the mission circle. One edition of the Spectator devoted its entire front page to a letter from W. H. G. (William Gray) asking a number of questions about "Is this what you want in Oregon?" and pointing out the evils of drink. The Washington and Jefferson Temperance Union held several meetings. The incidence of crimes was increasing in the territory mostly due to the increase in population, but the influence of liquor could be tied to several shootings and brawls.²⁰¹

Abernethy's executive message for 1847 contained his longest essay yet on the subject. After dispensing with the immediate problems of the Cayuse War the legislature brought up the spirits issue. A bill to revert to the 1844 prohibition law floundered in committee and the issue appeared dead for that year when the ladies of Oregon City launched a campaign. Their march on the house and the petition they presented spurred a new effort. By a two-thirds majority the house

²⁰⁰ Oregon Spectator, March 19, 1846; December 24, 1846; "Executive Message, 1846," OSA MS 1376; "Journal of the House of Representatives, 1846," OSA MS 1574.

²⁰¹ Oregon Spectator, May 13, 1847.

agreed to let the people vote on an amendment to the Organic Law substituting the word "prohibit" in the place of "regulate." The vote would be on June 5, 1848, and on each ballot the voter would write the word "regulate" or "prohibit."²⁰²

The campaign to pass the amendment would be uphill. Only three years before the electorate had not seen the issue strong enough to defeat the amended Organic Laws including the word regulate. This time it would take a two-thirds majority to pass. On the other side, the issue this year was isolated and nothing else would be lost should the amendment be passed. Besides most of the adventurous young men were off fighting the Indians. The campaign came to a climax four days before the election when a letter from John McLoughlin was published in the Spectator. Dr. McLoughlin was listened to and admired by the people who did not trust the mission. Between Abernethy and McLoughlin most segments of the population were reached. The aging former chief factor, now a resident of Oregon City, pointed out the strong probability of further Indian wars if liquor was legalized in the territory. As the early returns began to come in the Spectator congratulated Clackamas County, "the place where the evils of intemperance are most sensibly seen and felt," for their noble efforts. The vote in Clackamas was 235 to prohibit and 38 to regulate. But the outlying counties saw the evils of drink differently. The final vote was 700 to prohibit and 683 to regulate. A slim seventeen-person

²⁰²"Message of the Governor of Oregon Territory, Dec. 7, 1847, (Grover's Copy)," OSA MS 12189; "Journal of the House of Representatives," OSA MS 1564; and Grover, Laws, p. 44.

majority wanted liquor prohibited but not enough people wanted the Organic Law altered.²⁰³

To Abernethy the decision was clear. The people wanted the legislature to prohibit liquor by statute. Anticipating special elections to fill vacancies created by the Gold Rush the Spectator urged the 1848 legislature to prohibit liquor. But the 1848 session failed to gather a quorum to do business. Meanwhile the Temperance Society was still holding its monthly meetings with the Reverends Leslie, Atkinson, Blain and Johnson and McLoughlin the most active members, according the published accounts. As the time drew near for the legislature to meet again the Spectator called upon its members to pass a prohibitory law.²⁰⁴

Governor Abernethy repeated his standard appeal, minus the lecture on the evils of drink, when the house convened. He referred to several proposed amendments to the Organic Law.

The last amendment came before the people for a direct vote, and I am happy to say that the people of this territory decided through the Ballot box, by a majority of the votes given, that the word "prohibit" should be inserted; this makes the question a very easy one for you to decide upon.--I am fully satisfied that if ardent spirits could be kept out of this country, it would tend very much to promote the prosperity and welfare of the territory. This is destined to be a very wealthy portion of the United States, if to this we can add the most temperate, nothing will prevent our rising, and becoming a valuable acquisition to the Union. Much power now lies in your hands, and I sincerely hope we may commence our new career with a law on our statute books, prohibiting the manufacture and sale of ardent spirits in Oregon Territory.²⁰⁵

²⁰³ Oregon Spectator, June 1, 1848; June 15, 1848.

²⁰⁴ Oregon Spectator, November 9, 1848; January 25, 1849.

On the sixth day of the 1849 session Samuel Thurston, a promising young politician destined to make a name for himself in territorial and state politics, reported a bill to amend the Organic Law by inserting the word "prohibit," et cetera. On a motion by Jesse Applegate, experienced politician, roadbuilder, and the "Sage of Yoncalla," the bill was rejected ten to seven. The attempts to decide the issue constitutionally were over for good. The following day Thurston tried a different approach. He introduced a resolution that the house had the power to tax liquor and to control the amount. Two attempts to kill the resolution by George Curry and Samuel Parker failed. The house decided to vote on the resolution clause by clause. They voted affirmatively on their power to tax and to control. They decided against levying a liquor tax at this time but said yes to control at this time. This left the resolution with the effect of saying, "We cannot prohibit the introduction, distillation, and sale of liquor but we can regulate it out of existence." The following day Thurston introduced a bill for the regulation of ardent spirits. A motion to lay it on the table passed nine to eight. Two days later the bill was taken from the table and indefinitely postponed. The only bill to pass the legislature that final year was an amendment to the liquor license law making persons applying for licenses swear they would not deal in liquor to any Indians.²⁰⁶

²⁰⁵Oregon Spectator, February 8, 1849.

²⁰⁶"Journal of the House of Representatives," OSA MS 1566; and Grover, Laws, pp. 62-63.

CHAPTER XIV

THE COURTS

The Organic Laws of 1843 contain a bill of rights in the first article. These include the benefits of habeas corpus, trial by jury, common law, and judicial proceedings. All persons were bailable, fines were to be moderate, and there were to be no cruel and unusual punishments. Article two, section three created a supreme court and a system of justices of the peace. The supreme court would be on a circuit in each county with the supreme judge presiding assisted by the county justices of the peace. The supreme court had original jurisdiction for major cases and the county justices of the peace had original jurisdiction for minor cases. The supreme court held appellate jurisdiction.²⁰⁷

The proceedings leading up to the first court case under the Provisional Government started January 15, 1844, in Twality. Anderson Smith obtained a writ of replevin against Ninevah Ford for a yolk of oxen. He had left the oxen with Ford and Ford refused to return them. The second sitting of the first session was on April 16, 1844, with Justice of the Peace Osborne Russell presiding. The case of Smith versus Ford was heard by the jury who retired for an hour and found in favor of the plaintiff Smith for his property and the cost of the

²⁰⁷"Fair Copy of the Original Organic Laws," OSA MS 1583.

suit. The first session also appointed the first grand jury of George Abernethy (foreman), Francis Ermatinger, P. H. Hatch, F. W. Pettigrove, John McLalldeu, Hiram Straight, John C. Couch, A. E. Wilson, J. L. Morrison, Richard Goodman, James W. Nesmith, and William H. Gray. The first petit jury had twenty members including P. M. Wair, S. M. Holderness, Frederick Prigg, and P. B. Brooks. One member of the petit jury already had an experience with the law. A month earlier James Connor had his still destroyed. Asa Lovejoy was appointed Oregon's first district attorney.²⁰⁸

The June 1844 legislature passed a law formalizing most of the actions of the first session, clarifying the Organic Law, and providing for Clatsop County. There were to be two circuits a year in April and October with the exception of Clatsop which met in March and September. Sessions could not last more than a week without overlapping on another county's session. The 1845 session was highlighted by an assault case in which the plaintiff won \$160 in damages. Peter Burnett was much admired for the speech he gave in conducting the prosecution.²⁰⁹

The revision of the Organic Law provided for the increased case loads. The Supreme Judge was removed from the circuit and given appellate jurisdiction only. A circuit judge was to make the two circuits annually. Each new county added to the territory added to the length of the circuits. In 1846 when Oregon had eight counties

²⁰⁸"Court Records of Oregon Territory," OHS MS 1226.

²⁰⁹"Judiciary Committee Report," OSA MS 1207; and Rich, pp. 223-226, 190.

the circuits were in April to May and July to August. Records of the May session in Clackamas show ten cases entered, five decided by juries, three continued to the next session, and two settled out of court. Two of the cases were for violations of the ardent spirits law.²¹⁰

The 1846 legislature made the last major alterations in the judiciary. They took some of the load off the courts by creating boards of county commissioners to do county business. The circuit courts held a circuit from March to May and then September to October. The Supreme Court held a session in June and was scheduled again for November but never met because Judge Thornton had resigned. In his June session Thornton decided twenty points of law in six cases appealed to him. The case of Henry M. Knighton versus Hugh Burns over breach of contract led to the 1849 law concerning partnerships. There were very few cases adjudicated in 1848 or before March 1849 due to the confusion over the Cayuse War and the Gold Rush. Oregon was without the services of a Supreme Judge from October 1847 to February 1849 and without a circuit judge from August 1848 to February 1849.²¹¹

²¹⁰"A fair copy of the Amended Organic Laws," OSA MS 1096; Oregon Spectator, February 19, 1846; June 10, 1846.

²¹¹Oregon Spectator, January 7, 1847; January 21, 1847; June 24, 1847.

CONCLUSIONS

Was Oregon, under the Provisional Government, conservative or liberal? Was it guided by a sense of duty or a sense of emergency? Was there a long range plan leading up to the day it merged with the United States or was it merely a day by day existence? Did Oregon intend to become a part of the United States from its beginning or did it tender thoughts of being an independent sovereignty? The answers: all of the above. The Provisional Government period had the character and flavor of each of the persons who participated in its operation. There were those individuals who wanted radical changes made or even had visions of creating a power on the Pacific. And at some time each had his day. Yet the overall tone was conservative. Take whatever actions are necessary to solve the problems and no more. And always remember the intentions of the founding fathers back in 1843. Change came only when absolutely necessary, then with extreme caution.

There were several men with long range goals for Oregon but they always pointed toward territorial status. In the courts and legislature it was a day by day affair. Only one law, prohibiting Negroes, had a delay factor. All other laws went into effect within sixty days after passage. No laws had cutoff dates on them because of the uncertainty when their jurisdiction would terminate. Nobody made a career of government office yet their work was not amateurish. Reading

the laws or court decisions points out the high degree of skill involved. Nobody lasted the full six years in office. Robert Newell could have but he put the mines ahead of lawmaking. David Hill sat out one year due to frustration and was brought back only by popular demand. Jesse Applegate and Asa Lovejoy appeared in various offices. Governor Abernethy was behind Newell and Hill in service yet always put his mill ahead of his office.

What if the Provisional Government had not been created in 1843? Could Oregon survive without one? Yes and no. If Oregon remained as it was before 1843 it could have survived without any government. But even that last statement is incorrect because of the existence of British law under the Hudson's Bay Company. But, again, Oregon was not staying the same. It was fast filling up with Americans fresh from the Oregon Trail. As honest as the immigrants could be, their increase in population brought an increase in crime; drunkenness, claimjumping, and swindling. These conditions started even with the existence of a government. With no organized system of laws and law enforcement there would be mob control and power to the strongest. The Hudson's Bay Company was too small and powerless to control all those Americans, who would probably attempt to ignore the Hudson's Bay Company authority. The Hudson's Bay Company would probably have increased their economic control unless the American business community united. Without a Provisional Government some other similar political system would have probably evolved.

Would Oregon have become a part of the United States any sooner without the Provisional Government? The slavery clause of the

Organic Law delayed Oregon's entrance as a territory for one year. Had a government not existed President Polk might not have pushed for sending notice on breaking joint occupation when he did. Seeing all those Americans settling in Oregon the Hudson's Bay Company home office might have changed their policies towards allowing settlement of Oregon and delayed actions even longer. Without a Provisional Government Oregon would have had to settle for whatever restrictions the United States Congress wished to impose. As it was the Oregon Bill was unique among territorial bills and almost all of her laws were extended. The Provisional Government gave the people of Oregon a head start over other territories.

What did the Provisional Government accomplish? Aside from the head start on territorial status it provided security, both economically and politically. There was little concern that what was started one day could still exist the next. The Provisional Government also provided the Americans peaceful co-existence with the Hudson's Bay Company when they joined the government, with the Indians after being showed the "Bostons" were not "old ladies," and among themselves with the court system to settle disputes. The government also provided a system to vent frustrations and actually see some action. What if there were no Provisional Government? Someone would have created one.

NOTES ON SOURCES

The Oregon City Public Library has a very extensive Oregon collection second only to the Oregon Historical Society. It also has a complete collection of the Oregon Spectator on Microfilm.

The Oregon Historical Society Library has a complete Oregon collection. Their manuscript collection contains some items not found in the State Archives. It also has a copy of the State Archive's Provisional Government Papers and the Oregon Spectator on Microfilm.

The Oregon State Library has a complete set of works on Oregon history, some of which are not found at either the Historical Society or Oregon City. They check out most of their books through any public library including some which cannot be loaned from the Historical Society or Oregon City.

The Oregon State Archives, no longer in the same building as the State Library, contains the original documents of the Provisional Government and some books found nowhere else in the state.

Two books of value to the historians of the Provisional Government were both written by LaFayette Grover in 1953 on commission from the territorial government. One is his Oregon Archives. It is a compilation of the journals of the legislatures and executive messages. It is incomplete, although many of the sections marked lost from archives have been subsequently found. Although not a substitute for the original documents, what it contains is accurate. One copy

is in the Historical Society and another at the State Archives. His other book, Laws of a General Nature, et cetera, is a compilation of all the laws passed from 1843 to 1849. It is far from complete. Some entire years are missing, and not in any order, but it is more convenient than searching the Provisional Government papers considering Grover has indexed it. The book is an unpublished ledger of legislation, and unabridged unlike Deady's later collection of the laws of Oregon. A little over half of the laws passed can be found recorded in the archives, Grover, or the Oregon Spectator.

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