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Author

Hanger, Kimberly S.

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The Frederick Hopt Murder Case: A Darker Side of Utah Territorial History

Kimberly S. Hanger

A study of the early history of Salt Lake City and Utah Territory reveals a complex duality, one side of which is often overlooked or suppressed. From one perspective, a pastoral scene of a unified, serene, devotedly religious society readily comes to view. This was the traditional image Mormon Church leaders and their adherents wished to project, and it may have been an accurate depiction during the earliest years of Mormon settlement in the valley of the Great Salt Lake. Though Utah Territory was set in the midst of a wild frontier, early leaders made a conscious attempt to mold the territory into anything but a frontier post and they propagated it as such. An often disregarded view of the Territory of Utah was that of the darker side of the society and its institutions. With the coming of the railroad and the consequent influx of non-Mormons into the society, tension and division increased in the territory. By the 1880s this turmoil had culminated in the controversy over polygamy and statehood and in the animated debate on federal versus local sovereignty. The tension characteristic of the 1880s incited mob violence and crimes of passion despite the condemnation of influential leaders.

One such crime prevalent in the 1880s was murder. Many slayings, intentional or not, went unpunished in the early days of the territory, and when captured, several murderers met a fate similar to that of their victims. During the territorial period frenzied mobs lynched at least eleven men accused of murder, five during the 1880s alone.¹ The first legal execution in the Territory of Utah was the hanging of two unidentified

Kimberly Hanger received her B.A. and M.A. in History at the University of Utah. She is currently working on a Ph.D. dissertation on the city of New Orleans under Spanish rule at the University of Florida.

Indians for murder on 8 August 1854 in Salt Lake City. A total of twelve men were legally executed by hanging or shooting during the territorial period (1849-1896):²

Two Indians hanged for murder in Salt Lake City, 8 August
1854

Thomas H. Ferguson hanged for murder in Salt Lake City, 28
October 1859

William Cockroft shot in Salt Lake City for murder, 21
September 1861

Jason R. Luce shot in Salt Lake City for murder, 12 January
1864

Chauncey W. Millard shot in Provo for murder, 29 January
1869

John D. Lee shot at Mountain Meadows for murder, 23 March
1877

Wallace Wilderson shot in Provo for murder, 15 May 1879

Frederick Hopt shot in Salt Lake City for murder, 11 August
1887

Enoch Davis shot near Lehi for murder, 14 September 1894

Charles Thiede hanged in Salt Lake City for murder, 7 August
1896

Patrick Coughlin shot in Rich County for murder, 15
December 1896

Inhabitants of Utah Territory held and expressed varying opinions on the efficacy of legal and illegal executions and life imprisonment. Questioning man's right to take the life of another, some Utah citizens opposed capital punishment and illegal executions and pleaded for a strengthening of law and order. Many Utahans, however, advocated capital punishment as an effective means to inhibit potential criminals and serve as an example or a threat to erring members of the community. At the extreme of public opinion, a few Utah residents condoned and even participated in illegal lynchings of alleged murderers. Frustrated by increasingly complex and lengthy judicial procedures, Utahans took the law into their own hands when they considered an alleged murderer obviously guilty. Officers of the law rarely captured perpetrators of illegal lynchings, suggesting that the society condoned these lynchings and protected their perpetrators. Rather than condemning the lynchers, Utah's press and public blamed the legal system, "the slowness of the courts, the appeal process, the legal loopholes exploited by defense lawyers, and the leniency of judges and parole officers."³

One such murder case and legal execution during which the Utah public

became exasperated by lengthy legal delays was that of Frederick Hopt. An important case in the history of capital punishment and the judicial system in the territory, the Hopt murder case was touted as "the most extraordinary one ever tried in the courts of Utah."⁴ The issues involved in Hopt's case reflect the emotions seething within the territory which erupted during the 1880s. A unique case, the trials and execution of Frederick Hopt, alias Fred Welcome, for the alleged murder of John F. Turner spanned a period of seven years during the 1880s and represents an important, precedent-setting entry in the log of Utah legal history. In the first five cases preceding the Hopt case the alleged murderer(s) were captured, tried, convicted, and executed without appeal within days or months of committing the crime. Wallace Wilkerson, who was executed just prior to Hopt, appealed his case to the Utah Supreme Court and to the United States Supreme Court, but even with this delay Wilkerson met his fate in front of a firing squad less than two years after committing the crime. Enraged at the seven-year delay between the alleged crime committed by Hopt and his execution caused by four appeals to the United States Supreme Court, the people of Utah demanded and got a return to the swift and speedy justice of former years. In the three cases that followed Hopt's each murderer appealed to the United States Supreme Court only once and was executed within two years after committing the crime.⁵

Indicative of the public's frustration over Hopt's lengthy murder case, five illegal lynchings took place during the seven-year period spanning commission of the crime and Hopt's execution. Organized yet angry mobs lynched Thomas Forrest in St. George on 5 October 1880, William H. Harvey in Salt Lake City on 25 August 1883, John Murphy in Park City on 26 August 1883, George Segal in Ogden on 20 April 1884, and Joseph Fisher in Eureka on 6 July 1886.⁶ These mobs had lost faith in what they considered a defective legal system; mob members were not about to let their victims add a few years to their lives at taxpayer expense or possibly gain their freedom. A majority of the Utah public supported these illegal lynchings, and many times throughout Hopt's trial cries came from the public and the press to hang Hopt from a rope and a lamppost.⁷

A murder case that survived many years in the court system due to an intricate use of the appeal process, the Hopt murder case gains historical significance as a precedent-setting case in the evolution of territorial Utah's judicial system. The Hopt murder case is also significant as an enlightening reflection of a darker side of the society and institutions of territorial Utah, replete with the emotions and violence of many American frontier communities. Considering the importance and contribution of this case to the history of capital punishment in Utah, very little, actually nothing, has been written on it or on any of the other executions in

territorial Utah, with the exception of the execution of John D. Lee. In March of 1926 the *Salt Lake Telegram* ran an article written by Albert F. Phillips discussing the history of executions at the Utah State Penitentiary; one paragraph was devoted to the trails and execution of Hopt. Unfortunately, Phillips was wrong on a number of particulars throughout his article.⁸ Jean Ann Walters has written "A Study of Executions in Utah," but this study merely lists and provides a few facts and dates of territorial Utah executions.⁹ In his studies of illegal lynchings in territorial Utah Larry R. Gerlach has alluded to territorial executions but provides no details on them.¹⁰ The press and public of Utah at the time of the Hopt case, though, most certainly did not ignore or overlook the event.

The Hopt murder case first gained public notice when the *Deseret News* and the *Salt Lake Herald* on 20 July 1880 announced the discovery of an unidentified male body in Echo Canyon. Upon reading the article, Sheriff John W. Turner of Provo, Utah, recognized the description of the body as that of his son, John F. Turner, who recently had gone to Park City with two of his father's teams. On the previous day a merchant in Evanston, Wyoming, had sent Sheriff Turner a telegram indicating that he had purchased one of Turner's teams from a man eager to be rid of the team for whatever money he could get. Sheriff Turner immediately suspected foul play, and he and his deputy, Thomas Fowler, hurried to Echo City.

Arriving at Echo City, Sheriff Turner identified the body as that of his son. Turner assigned his son-in-law, Silas Allred, the responsibility of taking charge of the body, while he and Fowler pursued young Turner's assassin.

From the outset, Sheriff Turner suspected one of his former prisoners, Frederick Hopt. Arrested by Sheriff Turner for horse stealing and disturbing the peace in 1879, Hopt was known to have been in Park City at the time Johnny Turner resided there, and by reason of his previous experience with the Turners, Hopt possessed no great love for the family. Before Hopt had a chance to redeem himself the press and the public passed judgement on him. Sheriff Turner did not apprehend Hopt until 23 July, yet on the twenty-second the *Deseret News* expressed a fact already well known among gossip circles; Hopt had "murdered the boy, partly for revenge on the father, and partly to rob his victim of this team and money."

Sheriff Turner and his hired detective, T. J. Carr, apprehended the declared murderer at the Cheyenne, Wyoming, train depot. En route to jail in Cheyenne, Hopt allegedly confessed to the entire crime. In a later trial, though, Hopt claimed that he had confessed "in consequence of inducements of a temporal nature held out by one in authority," declaring the confession of little consequence.¹¹ Turner maintained that he had not discussed the murder with Hopt until both had returned to Salt Lake City.

The victim's body arrived at the Salt Lake train depot 26 July 1880, the day following Hopt's return. Dr. J. M. Benedict, a friend of Sheriff Turner who was not acquainted with Turner's son, conducted the post mortem exam of the body. In the ensuing trials Dr. Benedict testified that the death blow had been delivered to the head of the body by a left-handed person. Since Hopt was left-handed, Benedict's testimony had significant bearing in the case, but the prosecution could never determine whether or not Benedict had examined the correct corpse.¹²

While in the Salt Lake City jail, Hopt admitted to having an accomplice in the alleged crime, the right-handed Jack Emerson. Almost simultaneously, Emerson telegraphed Park City's deputy sheriff, A. J. Moore. Emerson claimed that in Carbon, Wyoming, where he was working, he had read a newspaper account in which Hopt accused Emerson of committing the murder. Alarmed, Emerson wished to assert his innocence and indicated that he would remain in Carbon if Moore wanted to talk with him. Emerson willingly accompanied Moore to Salt Lake City, where city officers imprisoned him. At the preliminary hearing both Hopt and Emerson waived the right for a preliminary examination and awaited their Grand Jury investigation scheduled for December 1880.

The investigation by the Grand Jury, the statements of Welcome and Emerson, and the testimony of witnesses provide some insight into the background and murder of John F. Turner. Hopt first encountered the Turner family in the summer of 1879, when Sheriff Turner arrested Hopt for horse stealing. Fearful of bringing shame upon his family and their name, Frederick Hopt assumed the alias Fred Welcome. Few people other than Hopt himself knew of his family and background, and what accounts do exist offer conflicting particulars.¹³ Reports agree that Hopt's parents emigrated from Germany and came to the United States, giving birth to Frederick Hopt in February or April 1859 in New York. Frederick had one sister, and he may have had two brothers. At a young age Frederick accompanied his parents to Germany for one year, returning to the United States to settle in the Midwest. Here accounts begin to differ. In an attempt to defame Hopt's character, the *Deseret News* informed its readers that Hopt, unhappy with his home life and his new stepfather, ran away from home at age twelve in order to shiftlessly loaf around the countryside. Hopt traversed the Midwest and West employed as a vagrant miner, "knocking about from place to place, doing little or no work, and generally receiving kicks and curses among those with whom he associated."¹⁴

The *Tribune* gives a more objective account of Hopt's personal history. When his parents separated, Frederick and his mother moved to Illinois. At the age of seventeen Hopt began to wander westward, plying the harness trade, a skill he had acquired in Illinois. Eventually settling in San Francisco and Eureka, Nevada, for four years, Hopt worked at his chosen

profession.¹⁵ Like many restless young men of the West, Frederick Hopt migrated from town to town, his fortune dependent on chance and opportunity; he was not a shiftless miner but rather a skilled, opportunistic harness maker.

Upon release from the Provo jail Hopt reestablished his harness and bridle business with the help of Sheriff Turner. During the summer and autumn months of 1879 Hopt also labored with young John F. Turner, performing various tasks for the Turner family. In October, though, Hopt succumbed to his youthful impulsiveness and became involved in some sort of drunken disturbance. Johnny Turner informed his father of Hopt's misbehavior; Sheriff Turner had to imprison Hopt once again. Sheriff Turner must have seen some hope in Frederick, for he paid Hopt's fine and released him the next morning.

Hopt did not forgive the Turners so easily. Treated well by Sheriff Turner, Hopt nevertheless desired revenge on young Turner for snitching on him and getting him thrown in jail. An acquaintance of the Turners and Hopt, William Carroll, testified at the trial that Hopt, while in Provo, had sworn that "if he ever met John W. or John F. away he would kill one of them."¹⁶ One of Sheriff Turner's prisoners in jail on a conviction of bigamy testified that Hopt had sold Johnny Turner a revolver, a horse, and a saddle without reimbursement. Hopt swore revenge on the swindling Turner.¹⁷ A month or two later, just before Christmas, Frederick Hopt took leave of Provo and set out to find work in Park City. Encountering a tight job market in Park City, Hopt turned to working odd jobs. In January and February Hopt hauled wood with Almand Clyde, to whom he declared that "he would have revenge on the Turner family."¹⁸

In July 1880 Frederick Hopt got his revenge. Destined for Park City, Johnny Turner left Provo in search of work on 28 June 1880. Johnny drove two of his father's teams, pulling wagons loaded with chopped barley. Arriving in Park City around the first of July, Johnny failed to find employment for the teams and commenced cavorting around town with his former acquaintance, Frederick Hopt. Hopt and his friend Jack Emerson frequented Park City's hurdy house and Creek and Dodge's saloon. Camped just outside of town, Johnny Turner occasionally joined Hopt at the saloon. On the third of July, at dusk, Hopt, Emerson, and Turner gathered at Turner's campsite to discuss plans for going to the Gunnison country in search of work. At dusk Charles Jones passed the Turner campsite on his way to Park City and saw Turner a distance away cooking dinner and Emerson and Hopt conversing near one of the wagons. The exact time could not be ascertained, but, according to the testimony of witnesses, Hopt, Emerson, and Turner were back in the saloon at about eight o'clock in the evening.

Johnny Turner sat in the saloon with W. H. Hook of Gunnison,

Colorado, discussing plans made previously to take Turner's teams to the Gunnison country. Earlier in the day Hopt had become upset over Turner and Hook's plans, possibly because he feared being excluded from them. Hopt confronted Hook, relaying the message that as Hopt had charge of the Turner teams and as the teams belonged to Sheriff John W. Turner, Johnny Turner would not be able to go to Gunnison country with Hook. Johnny Turner had no knowledge of this conversation, and he proceeded to formulate his plans with Hook.

Meanwhile, Hopt left the saloon with Emerson. A few moments later Turner noticed their absence, pursued them without luck, and returned to his campsite for the night. Later that night Frederick Hopt once again entered Creek and Dodge's saloon, this time with his white shirt front speckled with spattered blood.

From the night of 3 July until Hopt's departure from Park City on 6 July, his behavior revealed the nervousness, hysteria, and mental imbalance often occurring after violent, unpremeditated acts. When questioned about his appearance, Hopt was initially reluctant to answer but soon affirmed that he had been involved in a common fist fight. Charles E. Bates, a Park City bookkeeper, first noticed Hopt's unusual appearance. Pulling aside Hopt's vest to look at the shirt front, Bates inquired about the spattered blood, and after a moment's hesitation Hopt readily displayed his bespeckled attire. Hopt accompanied his disrobing with the explanation he consistently gave in the following days. Confronted in the saloon and on the streets by several people, Hopt explained that some "son-of-a-bitch called him across the road and he [Hopt] got away with his man."¹⁹ On two occasions Hopt forced his story on men who would not have noticed the blood had he himself not called attention to it. For some unknown, slightly insane reason Hopt wore the same blood-soaked shirt during his entire remaining stay in Park City.

Hopt's reluctance and failure to flee immediately after committing the alleged murder further indicates a mental imbalance. The murder of John F. Turner occurred on Saturday, 3 July, yet Hopt and Emerson did not quit Park City until Tuesday morning, 6 July. Sheriff William Allison of Summit Country passed Emerson and Hopt on the road going from Park City to Wanship. Driving the two teams belonging to the Turner family, Hopt and Emerson passed through Wanship and Echo City en route to Echo Canyon, where they spent the night of 6 July. In Wanship Hopt had sold William Reynolds four sacks of the chopped barley loaded in the wagons. Reynolds thought Hopt's actions strange; Hopt seemed eager to sell the barley, yet he would not let Reynolds remove sacks except from the back of the wagon, and he insisted that Reynolds return the empty sacks. Emerson, lolling in the front of the wagon apparently drunk, did not participate in the transaction, and the two men quickly departed for

Echo Canyon, where they set up camp for the night. In a drunken stupor and not feeling well, Emerson immediately went to bed; Hopt joined him a few hours later.

Four days later, Leonard Phillips of Echo City found the body of John F. Turner rolled in a tent and hidden behind a large rock not far from Hopt and Emerson's campsite in Echo Canyon. The body was badly decomposed. Conducting an examination, Phillips and other men from Echo City surmised that the assassin or assassins had delivered a death blow to the victim's head from behind with an axe or a heavy board.²⁰ No shoes and only one sock were on the body, an indication that the victim had been in bed or was about to go to bed at the time of the slaying. Investigators found the victim's other sock at Johnny Turner's campsite near Park City.

By the time the body was discovered Hopt and Emerson were well on their way to possible freedom. The two men wound their way through Piedmont, Evanston, and Green River, disposing of Turner's teams and cargo now that the body was out of the way. Stopping in Green River, Wyoming for two or three days, Hopt and Emerson frequented the bars and tried to find work. When Emerson approached Hopt for his share of Turner's bounty, Hopt refused to accommodate him, and the two former friends parted ways, destined to be enemies to the end. Hopt proceeded to Cheyenne, where Sheriff T. J. Carr detected him, and Sheriff John W. Turner apprehended him. A few days later Deputy Sheriff A. J. Moore apprehended Emerson in Carbon, Wyoming.

Returned to Salt Lake City, Hopt blamed Emerson for the murder, relegating to himself the role of accomplice; Emerson claimed the reverse. Even before the body had been identified as that of Johnny Turner, Sheriff Turner and most of Utah Territory had judged Hopt guilty of the murder. No one listened to Hopt's side of the story. Identifying Emerson as the true assassin, Hopt claimed that he had merely helped Emerson hoist the body into the wagon after Emerson had slain young Turner for his wealth. According to Emerson, though, Hopt was the guilty party, and Emerson had not known of the murder until he read Hopt's accusations in the newspaper. Other than Hopt or Emerson, no one saw the murder of John F. Turner. All evidence against or for the two men was circumstantial, and the public could only judge for itself whether Hopt or Emerson committed the murder.²¹

The wrath of the people centered on Hopt. Judged a cowardly, malicious murderer throughout the territory, Hopt could entertain no hope for a fair, impartial trial. Fickle in their preferences, the people declared Jack Emerson not one "of the desperado tribe," a man "possessed of an open countenance."²² In December 1880 the Grand Jury indicted both Hopt and Emerson for murder in the first degree, and in their separate trials the juries returned verdicts of guilty for murder in the first degree for

both men. Hopt, though, received a sentence of death, while Emerson received a sentence of life imprisonment, rendered by the mercy of the court. Public opinion and influence determined each man's fate.

On 19 February 1881 a jury in the Third District Court decided the fate of Frederick Hopt. After two days of proceedings and one hour of deliberation the jury returned a verdict of murder in the first degree. The people were satisfied. "The feeling over the verdict was one of general satisfaction to all, and any other verdict would have been a great disappointment."²³ This satisfaction was not of long duration; Hopt's anxiously awaited execution was long in coming. During the next six and one-half years the Hopt murder case went through three more trials in the Third District Court, four appeals to the Supreme Court of the Territory of Utah, and four appeals to the Supreme Court of the United States. Each of Hopt's appeals was based on technical errors committed by the Third District Court and the Utah Supreme Court. Based on these errors, the United States Supreme Court reversed the decision and judgement of the lower courts three times. Only in the last decision, rendered during the October term, 1886, did the United States Supreme Court uphold judgement of the Utah courts, remanding the case back to the Third District Court for resentencing.²⁴ Of all the murder cases occurring in territorial Utah that resulted in legal execution, the Hopt murder case was the one of longest duration.

The Emerson murder case had a much shorter, less frustrating history. During the Grand Jury investigation in December 1880 Jack Emerson disclosed that his real name was John McCormick, but people continued to refer to him as John Emerson. On 25 October 1881 the jury in the Emerson trial returned a verdict of guilty of first degree murder and recommended the defendant to the mercy of the court. The judge subsequently sentenced John Emerson to life imprisonment in the Utah Penitentiary.

A little over five years later Governor Eli H. Murry, in one of his last official acts, declared Emerson innocent, pardoned him, and released him from the penitentiary.²⁵ Public opinion and influence once again worked for Hopt's undoing and Emerson's well being. A model prisoner, Emerson's good behavior earned him a position as the prison's barber. When in 1884 and 1885 Utah courts under the Edmunds Act began to convict and sentence polygamists to serve time in the penitentiary, Emerson came into close contact with these men. During their short stay Mormon polygamists exerted much influence over the morals and behavior of other prisoners. In his memoirs Rudge Clawson remarked that "the presence of so many of our brethren in the penitentiary brought about a very remarkable change. The brethren exerted a most powerful and restraining influence."²⁶ Some of the most influential brethren must have made an impression on their

barber, John Emerson. Requesting Governor Murry to pardon Emerson, several influential Mormons residing in the penitentiary sent the governor a petition in February 1886. The petition affirmed their belief in Emerson's innocence and recommended his exemplary behavior and character to the mercy of the governor. Under pressure from these determined church leaders, Governor Murry signed John Emerson's pardon on 22 April 1886, just a few days before the new Governor West replaced him. Sheriff Turner had unsuccessfully opposed the petition and the pardon, distressed by the fact that once free, Emerson could not be made to testify against Hopt.²⁷

In 1884 Sheriff Turner and the people of Utah Territory almost made Emerson's testimony against Hopt unnecessary. On 5 May 1884 the jury returned Hopt a verdict of guilty of first degree murder for the third time, and the judge sentenced Hopt to be executed on Friday, 13 June 1884. Hopt appealed to the Utah Supreme Court, which on 6 June affirmed the judgement and sentence of the Third District Court. Appealing his case to the Supreme Court of the United States on a writ of error, Hopt asked the Utah Supreme Court for a stay of execution pending the decision of the United States Supreme Court. On the same day the United States Supreme Court had accepted the Hopt appeal. In the two previous trials the Utah Supreme Court had granted stays of execution after the United States Supreme Court had accepted Hopt's appeal. On the ground that they had no jurisdiction in the case since it had been removed to the jurisdiction of the higher court, this time the Utah Supreme Court denied a stay of execution. Frantic, Hopt and his defense begged Acting-Governor Arthur Thomas to grant a reprieve until the Supreme Court of the United States could decide on Hopt's appeal. On the day prior to the execution Acting-Governor Thomas, not wishing to assume duties allocated to the judicial branch of the government, denied the reprieve.²⁸

The ensuing battle over the reprieve pitted lawyers and judges horrified at the contemplation of witnessing an unprecedented judicial murder, against hundreds of outraged citizens impatient with already lengthy legal delays. Outraged citizens had already illegally lynched the accused murderers Thomas Forrest in October 1880, William H. Harvey in August 1883, John Murphy in that same month, and George Segal in April 1884. Two years after Hopt's reprieve in June 1884 mobs would lynch Joseph Fisher.²⁹ As for the lawyers, "a great deal of discussion was taking place on the streets among attorneys, and many went so far as to say that if the execution took place it would be nothing more than 'judicial murder'."³⁰ Shocked at the thought that a prisoner might receive his sentence of death pending proceedings in which his innocence still might be declared, legal authorities placed their protestations before a tribunal of the Utah Supreme Court. Succumbing to the persuasion and reasoning of these experts, the

justices of the Supreme Court of the Territory of Utah recommended to Acting-Governor Thomas that he grant Hopt a reprieve until the higher court could decide on the case.

Despite the doubtful legality of the scheduled execution, the public and the press, outraged at the thought of a possible further delay of what they considered justice, clamored for Hopt's end. On the night of 12 June hundreds of territorial citizens gathered at the Walker Opera House to vent their fury and formulate a petition to Acting-Governor Thomas in protest of a reprieve. Sheriff Turner headed this mass meeting. Deprecating "any interference on the part of the executive which would cause any further delay in this notorious case," the people of Utah Territory asserted that the judicial system had given Hopt his due process of law and that a further delay would not prove Hopt's innocence. The Walker House petition declared that "any reprieve, respite, pardon, delay or stay of execution would be prejudicial to the welfare of society and the good order of the community."³¹

In the midst of the battling petitions and recommendations stood Acting-Governor Thomas. Placed in an unenviable position, Thomas "on the one hand . . . knew that five hundred men on the street would applaud his act, and on the other . . . knew that there would be bitterness and complaint."³² Moments before the anticipated execution, Thomas, who actually was bound from the first by the recommendation of the court, had no choice but to grant the reprieve. On the morning of 13 June Thomas announced his decision to "bow to the law and the interpretation of it by its courts, lamenting as I do with infinite sorrow a further putting off of justice."³³ Thomas' decision relieved the lawyers and disappointed the people. Advising the people of the Territory to remain patient and to curb their violent impulses, the *Deseret News*, *Herald*, and *Tribune* assured their readers that justice would finally assert itself to bring about Hopt's demise. Although undoubtedly guilty, Hopt was entitled to every right provided by law; a spirit of vengeance and mob violence would lower the usually law-abiding people of Utah to Hopt's level.

Arousing public sentiment, the court's refusal to grant Hopt a stay of execution and the issue of the reprieve set a precedent in Utah legal history and brought the wrath of the Territory on the judges. Focused on the powers of the judiciary and the executive, the dilemma involved the decision of how far these powers could overlap each other. Many people in the Territory, including the acting-governor, believed that the granting of a stay of execution was a matter for the courts, and the executive lacked power in what was considered the judicial realm. "The power is undoubtedly in the Court to grant the stay, for it has exercised it many times, and there is ample indirect authority for it in the laws of the United States."³⁴

The Utah Supreme Court, however, forced the decision upon the executive. The reasons for the court's action, or lack of action, can only be surmised; a fear of the possibility of another reversal on its rulings and a weakening to the demand and impatience of the populace seem the most reasonable. According to the *Deseret News*, "by far the great majority of cases that have been appealed to the Supreme Court of the United States from this Territory have been reversed."³⁵ The justices hoped to place responsibility for Hopt's execution or stay of execution on the executive. Burning the cowardly justices in effigy, the people and the press encouraged Acting-Governor Thomas to refuse the reprieve and return the responsibility for a judicial murder to the courts. Thomas' final decision to grant the reprieve set a precedent in Utah, establishing the power of the executive to interfere in judicial matters.

The Hopt murder case set other precedents in the Territory of Utah and influenced the course of Utah legal history. The case reflected the development of the judicial system in the Territory. In earlier Utah murder cases the defendant was tried and executed without appeal within weeks or months of committing the crime.³⁶ The prosecution and the counsel for the defense were not trained, polished, established attorneys, and they failed to exhibit a deep concern for the plight of the defendant. By the 1870s the territorial appellate system had established itself. Under the Poland Law passed by Congress in 1874 all criminal cases involving capital punishment or polygamy and being appealed on errors committed by the Supreme Court of the Territory were required to be heard by the United States Supreme Court. Passed to save the accused from punishment until the court of last resort had reviewed the case, the Poland Law directly and exclusively applied to the Territory of Utah, where some inhabitants practiced bigamy and polygamy.³⁷ After 1874 counsels for the defense appealed to the Utah Supreme Court and the United States Supreme Court on writs of error with more frequency, and the time span between the date of the crime and the date of the execution lengthened.

The length and duration of time over which the appellate system could extend reached a peak in the Hopt case. Taking advantage of every technical error the lower courts committed, Hopt and his defense counsel extended the time from the alleged murder on 3 July 1880 until the execution on 11 August 1887. Frustrated by frequent technical misdemeanors, the developing Utah judicial system received constant reprimands from shrewd, able lawyers, justices of the United States Supreme Court, and the Utah public. The fact that in the Hopt case the United States Supreme Court reversed the decision of the Utah courts three times "does not speak very highly for the learning and judgement of the judiciary in Utah."³⁸ The *Herald* surmised that after completing their terms, the Utah justices would return to their law practices or "in other

words to engage in something they know nothing about."³⁹

Despite the frequent ineptitude of court officials, the judicial system in Utah had developed into a more sophisticated, and consequently more complicated, apparatus by the 1880s. No longer did juries, judges, and lawyers determine the guilt of an accused murderer long before he had had the opportunity to prove himself innocent. In the territory public opinion continued to determine the fairness of a trial, but now the accused could assert his legal rights and take full advantage of the legal process. For seven years Hopt and his defense counsel exercised every guaranteed legal right and searched for every possible loop-hole in the law in the hope of securing Hopt's release, despite popular clamor for his death by illegal lynching.

Frederick Hopt's hopes ended abruptly in March 1887, when the Supreme Court of the United States, hearing his appeal for the fourth time, finally upheld the judgement and sentence of the Territorial Supreme Court. The higher court remanded Hopt's case to the Territory. On 22 June the Territorial Supreme Court sentenced Hopt to death by firing squad and set the date for Thursday, 11 August 1887, between the hours of ten o'clock in the morning and two o'clock in the afternoon. Hopt's lawyers once more clamored for an executive reprieve, this time without success. On the day of his execution, Hopt quietly passed the morning writing letters to his sister and friends, bidding last farewells to fellow prisoners and guards, and attending a Roman Catholic mass held in his honor.⁴⁰ During the last two years Hopt had renewed his childhood faith in Christianity and the Roman Catholic church. Refusing to convert to the Mormon church, Hopt claimed that "the Mormons were responsible for his death, that they had won over Emerson and made a tool of him to prosecute the defendant."⁴¹ In or out of prison, Mormons exerted tremendous influence over the political and social activities of Utah Territory, and Emerson, sincere or not, accepted the help of influential Mormons.

Although he rejected the political influence and power of Mormon leaders, Hopt did gain the respect and affection of several guards, prisoners, and federal officials. During his last moments Hopt distributed his remaining personal items to the men who occupied and guarded the penitentiary. United States Marshal Dyer declared that he himself would finance a casket for Hopt if the federal government did not.⁴² From the first days of the case the people of Utah Territory had judged and condemned Hopt as a malicious, cold-blooded, cowardly assassin, yet the people who had had time to get acquainted with Hopt, including Sheriff Turner, displayed deep affection for the accused. An intelligent, technically skilled man, Hopt presented a complex, often conflicting personality, his true thought and traits never disclosed.

With consistency, though, Hopt asserted his innocence to the end.

Voicing his last words, Hopt declared, "I have come to meet my fate. Had justice been done me at my first trial, I would not be here to-day for this purpose. I have no ill-will toward any man living, and am prepared and ready to meet my God."⁴³ Before the execution Hopt described the several injustices committed in his first trial. Authorities had failed to summon witnesses Hopt had requested for his defense; the legislature of the territory had allocated funds to the prosecution to investigate the case but had failed to provide any money to the defense; the defense could not summon in the subsequent trials witnesses who had testified in the first trial because they had moved to the East.⁴⁴

Guilty or innocent, Frederick Hopt was executed by firing squad within the Utah penitentiary at 12:40 p.m. on 11 August 1887. Viewed by several hundred satisfied Utahans, Hopt's body rested at Skewe's mortuary for the night, and the next day Catholic officials buried his remains at the Roman Catholic cemetery in Salt Lake City.

The historical significance of the Hopt murder case was not buried with his remains. The case set two precedents in Utah legal history: first, the precedent of using the appeal process to the utmost in order to safeguard the rights of the accused and to make sure he received a fair and impartial trial; and second, the precedent of establishing the power of the executive to interfere in judicial matters. Unique in its contribution to Utah legal history, the case also reflects a darker side of Utah territorial history; Utahans experienced emotions felt by citizens of other parts of the country.⁴⁵ In the 1880s Utah society not only accepted but also condoned and advocated capital punishment. When the people felt that capital punishment adequately would not bring justice upon the accused person or persons, they resorted to extralegal means of punishment. Utahans and other Americans justified illegal lynchings as a means to maintain law and order when legal judicial processes seemed to be proceeding too slowly. Many times during the long history of the Hopt case, courtroom and street crowds vowed to administer justice to Hopt with a rope and a lamppost. Utah crowds actually carried out their threats in five other instances during the lengthy proceedings of the Hopt case. Frustrated by the delays of the judicial system and an unprecedented use of the appellate system, angry citizens demanded Hopt's immediate execution so that justice finally would be done. They created a martyr out of the long-suffering Sheriff Turner and crucified with words the ambitious, money-hungry attorneys and the ineffectual, blundering justices.

To soothe the rage of the public, newspapers and leading officials assured their audiences that justice would prevail. Lynching Hopt would only lower the perpetrators to the level of base criminals and murderers; Hopt's murder would solve nothing. The *Deseret News* urged its readers to "let patience and common sense prevail . . . and let no mob feeling be

encouraged."⁴⁶ Eventually the law would work exact justice for both the accused and the society. Advocating law and order, the *Tribune* affirmed that "American citizens are long suffering and patient and that while they are liable to become exasperated by passion, they are nevertheless always ready to be convinced by good logic and sound reasoning."⁴⁷

Influenced by logic and reason, the more civilized elements of society advocated the legal method of execution, capital punishment. Throughout history societies have employed the use of capital punishment as a deterrent to crime. "The strongest argument in favor of public executions and of cruel methods of inflicting the death penalty was that such procedures greatly increased the deterrent effect."⁴⁸ In the eighteenth and nineteenth centuries many humanitarian reformers in the United States and Europe began to question if capital punishment really did inhibit potential criminals. Those reformers opposed to capital punishment argued that juries and jurists are only human and are susceptible to error, that the abolition of capital punishment never has initiated an increase in the number of criminal acts, that capital punishment lowers public respect for human life, and that criminal reform, rather than capital punishment, improves the society.⁴⁹ In response to the criminal reform movement lawmakers in the eastern United States restricted the crimes punishable by death to murder and treason, and in 1876 lawmakers in the Territory of Utah passed legislation defining only murder in the first degree as punishable by death.⁵⁰

Federal officials, jurists, attorneys, and leading citizens wished to civilize and reform the rough Utah territory. In so doing, they advocated the utilization of judicial processes and legal executions over barbaric, extralegal forms of law and order. Eventually, legal justice would bring about the demise of the person who failed to heed the supremacy of law and order. The legal-minded touted the Hopt case as an example of the slow but sure righteousness of justice. "The evil minded, familiar with the case, will hesitate long before deliberate and willful murder with the expectation of finally defeating justice and cheating the executioner."⁵¹

In the 1880s most Utahans were familiar with the extraordinary, precedent-setting Hopt murder case, and some people even recognized the historical significance of the case. The "paper of the prophets," the *Deseret News* proclaimed that "the case of the murderer Frederick Hopt will be celebrated in the judicial annals of this Territory."⁵² Not only is the Hopt case significant as a development in the territorial judicial process, but it is also historically significant as a reflection of the complex duality of territorial Utah society, a society portraying both the religious, unified, law-abiding image propagated by community leaders and the suppressed, often ignored aspect of an emotional, impetuous, occasionally violent, and diverse frontier community. The territory's diverse and very

human inhabitants contributed to the character and personality of Utah society.

Only Hopt and Emerson, men ruled by their passions, knew which one, if either, of them actually murdered Johnny Turner. The people and the courts of Utah Territory determined Emerson's innocence and Hopt's guilt based on circumstantial evidence. Available evidence indicates Hopt's guilt but does not preclude Emerson's involvement and possible partnership in committing the crime. John Emerson knew the right people and Frederick Hopt did not. At the time people did not question Hopt's guilt, and even historical perspective cannot determine "the Truth." Though it may never reveal the true murderer of John F. Turner, historical analysis should not accept without question the guilt of a man whose fate was decided by biased, emotional juries basing their decisions on circumstantial evidence. The role of the historian is not only to shed light on the past but is also to cast doubt upon facts accepted without question.

Hopt's guilt or innocence aside, his case left its mark upon Utah's complex, often unexplored history. The case represents a peak in the evolution of territorial Utah's judicial process, a watershed before which men were tried and executed almost immediately, without due process of the law. Though the people and judicial system of the territory, frustrated by lengthy delays in what they considered the execution of justice, subsequently relapsed into their old extralegal habits of meting out speedy death to accused murderers, the Frederick Hopt murder case became the precedent for the more strictly legalistic approach established after statehood in 1896. The case also reveals the varying points of view different elements within the community held regarding the advantages and disadvantages of capital punishment, life imprisonment, and illegal lynching. Not unique to territorial Utah, the questions of what constitutes due process of law and whether juries, judges, or frustrated mobs can deprive a human being of his life, no matter what his crime, have been debated worldwide for many centuries. The Hopt murder case portrays how territorial Utahans dealt with these puzzling questions.

NOTES

¹Larry R. Gerlach, "Ogden's 'Horrible Tragedy,' The Lynching of George Segal," *Utah Historical Quarterly* 49 (Spring 1981): 160.

²Jean Ann Walters, "A Study of Executions in Utah," Salt Lake City, 1973.

³Gerlach, "Ogden's 'Horrible Tragedy,'" pp. 167-70.

⁴*Salt Lake Herald*, 6 May 1884.

⁵Albert F. Phillips, *Salt Lake Telegram*, 14, 21, and 28 March 1926.

⁶Gerlach, "Ogden's 'Horrible Tragedy,'" p. 160.

⁷*Deseret News*, 13 June 1884 and *Salt Lake Tribune*, 14 June 1884.

⁸Phillips, *Salt Lake Telegram*, 14, 21, and 28 March 1926.

⁹Walters, "A Study of Executions."

¹⁰For more information on illegal lynchings see Larry R. Gerlach, "Ogden's 'Horrible Tragedy,'" and his soon to be published study on the lynching of William H. Harvey.

¹¹Supreme Court of the United States, *United States Reports* (New York, 1885), 114:574.

¹²Supreme Court of the United States, *United States Reports* (New York, 1884), 110:574.

¹³*Deseret News*, 11 August 1887 and *Salt Lake Tribune*, 12 August 1887.

¹⁴*Deseret News*, 11 August 1887.

¹⁵*Salt Lake Tribune*, 12 August 1887.

¹⁶*Salt Lake Herald*, 19 February 1881.

¹⁷*Salt Lake Tribune*, 19 February 1881.

¹⁸*Salt Lake Herald* and *Salt Lake Tribune*, 19 February 1881.

¹⁹*Salt Lake Herald* and *Salt Lake Tribune*, 19 February 1881.

²⁰*Deseret News* and *Salt Lake Herald*, 20 July 1880.

²¹For more information on Emerson and his claim to innocence look at the Utah Territorial Papers, numbers 7927 and 9645, Utah State Archives, Salt Lake City.

²²*Deseret News*, 3 August 1880.

²³*Salt Lake Tribune*, 20 February 1881.

²⁴For more details on the errors assigned by the defense, the opinions of the court, and the decisions of the court look at *Utah Reports* (cases heard by the Supreme Court of the Territory of Utah), volumes 3 and 4, and *United States Reports* (cases heard by the Supreme Court of the United States), 104 US 631, 110 US 574, 114 US 488, 120 US 430.

²⁵On pages 509 and 510 in Executive Record Book C, Utah State Archives, Salt Lake City, Governor Murry outlines his reasons for pardoning John Emerson.

²⁶Rudger Clawson, "Memoirs of the Life of Rudger Clawson Written by Himself," typescript, Utah State Historical Society, Salt Lake City, pp. 186-188.

²⁷H. B. Clawson and John Nicholson's letter to the governor (#9870), Marshal E. A. Ireland's letter to the governor (#9886), John W. Turner's letter to the governor (#9879), and the petition to the governor (#9644) are included in the Territorial Papers, Utah State Archives, Salt Lake City.

²⁸Executive Records, Book C, Utah State Archives, Salt Lake City, pp. 420-432.

²⁹Gerlach, "Ogden's 'Horrible Tragedy,'" p. 160.

³⁰*Salt Lake Tribune*, 13 June 1884.

³¹*Salt Lake Herald*, 14 June 1884.

³²*Salt Lake Tribune*, 14 June 1884.

³³Executive Record Book C, p. 431.

³⁴*Deseret News*, 13 June 1884.

³⁵*Deseret News*, 13 June 1884.

³⁶In the first legal executions in the Territory of Utah, two unidentified Indians in 1854 and Thomas H. Ferguson in 1859, the accused murderers were tried, convicted, and executed within a few weeks after committing the alleged murder.

³⁷*Deseret News*, 13 June 1884.

³⁸*Deseret News*, 13 June 1884.

³⁹*Salt Lake Herald*, 15 June 1884.

⁴⁰*Deseret News*, 11 August 1887; *Salt Lake Herald* and *Salt Lake Tribune*, 12 August 1887.

⁴¹*Salt Lake Tribune*, 12 August 1887.

⁴²*Salt Lake Tribune*, 12 August 1887.

⁴³*Salt Lake Tribune*, 12 August 1887.

⁴⁴*Salt Lake Tribune*, 12 August 1887.

⁴⁵For a discussion of the trial history of the United States see Richard B. Morris, *Fair Trial: Fourteen Who Stood Accused, From Anne Hutchinson to Alger Hiss* (New York, 1967).

⁴⁶*Deseret News*, 13 June 1884.

⁴⁷*Salt Lake Tribune*, 14 June 1884.

⁴⁸Hugo Adam Bedau, "Evolution of the Death Penalty in America," in *The Death Penalty*, ed. Irwin Isenberg (New York, 1977).

⁴⁹Marc Ancel, "The Problem of the Death Penalty," in *Capital Punishment*, ed. Thorsten Sellin (New York, 1967).

⁵⁰Utah Legislative Assembly, *Laws of Utah*, 1876 (Salt Lake City, 1876), pp. 585, 586.

⁵¹*Salt Lake Herald*, 12 August 1887.

⁵²*Deseret News*, 13 June 1884.