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## Article Title: The Territorial Governorship: Nebraska Territory As Example

Full Citation: Dennis Thavenet, "The Territorial Governorship: Nebraska Territory As Example." *Nebraska History* 51 (1970): 386-409

URL of article: <http://www.nebraskahistory.org/publish/publicat/history/full-text/NH1970TerrGov.pdf>

Date: 6/30/2015

Article Summary: Nebraska's territorial governors left behind an undistinguished record. Leaders charged with great responsibilities faced resistance at home and received little support from Washington. The territory struggled to reach statehood.

### Cataloging Information:

Nebraska Territorial Governors and Acting Governors: Francis Burt, Thomas Cuming, Mark Izard, William A Richardson, J Sterling Morton, Samuel Black, Algernon Paddock, Alvin Saunders

Nebraska Place Names: Omaha, Florence

Keywords: Kansas-Nebraska Act (1854), Ordinance of 1787, pardons, veto power, slavery, census, elections, legislature, bank charters, criminal code, appointments, militia, welfare programs, statehood

Photographs / Images: second Territorial Capitol at Omaha; Francis Burt; Alvin Saunders; 1865 certificate of reappointment for Governor Saunders, signed by Abraham Lincoln the day he died



*The second Territorial Capitol at Omaha, erected in 1857-1858, served as the seat of Nebraska government until Lincoln became the capital in 1867.*

## THE TERRITORIAL GOVERNORSHIP: NEBRASKA TERRITORY AS EXAMPLE

By DENNIS THAVENET

**D**ESPITE THE popular sovereignty ploy of the Kansas-Nebraska Act, the responsibility for fashioning a state out of the Nebraska Territory devolved more directly upon the federally appointed governors than it did upon the settlers. The work of the governors is, however, only partly known. Of the five men who held the office, none has been the subject of a biography. The best tools thus far available for the study of the governorship are (1) the biography of J. Sterling Morton, a territorial secretary who occasionally assumed the duties of the governor in his absence, and (2) the interpretive state history of Nebraska, both books by James C. Olson; and (3) an article on William A. Richardson by Robert D. Holt.<sup>1</sup>

The laws which created the position of territorial governor had as their overriding purpose establishing a minimum population on the land so that Congress could authorize statehood. It became, therefore, the function of the governors to promote those interests which would lead most directly to Nebraska's admission to the Union. Certainly that was the intention of such legislators as Stephen A. Douglas and Augustus Dodge, who promoted the Kansas-Nebraska Act. Their interest in establishing a route for the transcontinental railroad precluded the settlement of the Platte Valley if Illinois and Iowa were to profit substantially from the incipient transportation revolution, because even the most ardent nationalist did not envision more than a single route to the Pacific.

Land speculators and the backwash of the Gold Rush shared a more direct interest in the rich prairies, which they desired to preempt if they could be assured of protection from the Indians. Many of the speculators became amateur politicians to promote their personal interests through

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public office, and they were joined by professional politicians who sought to speculate in public careers. These types constituted the bulk of men who managed the affairs of the territory, and they were the local leaders with whom the governors were required to work.

By the passage of the Kansas-Nebraska Act in 1854, an enormous area was assigned to the purview of the Nebraska governor — so large that it offered a formidable challenge to any administrator who undertook to organize it for settlement. The territory stretched all the way north from the southern boundary of present-day Nebraska to include all of the remaining lands of the Louisiana Purchase.<sup>2</sup> The size was undoubtedly exaggerated by the sparsity of population and the slowness of communication between this fringe of settlement and the nation's capital.

Some limitations were subsequently enacted which may have lightened the burden of the governors. Colorado appropriated a small corner in 1861, and a few months later the Dakota Territory absorbed the lands north of the forty-third parallel. This left the territory a long, narrow strip of land stretching to the Rocky Mountains until the creation in 1863 of the Idaho Territory, which absorbed all of the land west of the 127th Meridian.<sup>3</sup>

The men who presided over this vast domain for a period of almost fourteen years were guided by more than a half century of legislation, some valuable precedents, and the continuous regulation by Congress and the executive departments. The duties were first defined in the Ordinance of 1787, under which the governor was appointed to a three-year term with a one-thousand acre freehold during his tenure of office. With the concurrence of the other appointed territorial officers, the governor was permitted to adopt laws for the territory from other state codes until such time as a legislature was established. The governor was to serve as the commander-in-chief of the militia, appoint and commission all the officers of the military and civil branches of government, and when the minimum population had settled to fulfill the requirements of the Ordinance, he was to set the time and place for electing a legislature which in turn would lead toward admission to statehood.<sup>4</sup>

In the Louisiana Territory the governor and judges were further entrusted to *make* all the laws which they deemed necessary, and there was a special provision which permitted them to establish inferior courts and prescribe their jurisdiction and duties. When Louisiana became a state, the act that organized the Missouri Territory set forth the powers and

duties of the officers in far more specific terms than ever before. By this act the governor was forbidden to adjourn the assembly, but he could still veto legislation and call special sessions when he deemed it necessary. This restriction was prompted by complaints to Congress that the powers of the governors had grown too great and were easily abused.<sup>5</sup>

Two other changes developed more from practice than from law. One was the power of the governors to grant pardons for territorial offenses and to offer reprieves for federal offenses until such time as the president might act. The other was the power of the territorial legislature to override the veto of the governor by a two-thirds majority. The latter change was not well-established until the creation of the Nebraska Territory.<sup>6</sup>

The organic law of Nebraska made only very modest changes in the standard practices, but its underlying philosophy of self-determination foreshadowed a new era of territorial government. For example, for the first time the governor was appointed to a four-year term. Even then he could remain beyond the four years if the president had not appointed his successor. The salary was set at \$2,500 per year, a modest remuneration, and especially so because the additional land grant had passed into disuse, but it was in keeping with the salaries paid to the members of Congress. The governors continued the usual powers of commander-in-chief of the militia, granting pardons and reprieves with the limitations already mentioned, of making appointments and offering commissions, of preparing for the call of the legislature, and then participating in the legislative process. The veto power was written into the law, as was the power of the legislature to override the veto. The clearest indication of the influence of the popular sovereignty doctrine on the law was the excision of the governor's power to make or adapt laws for the territory until the legislature was established.<sup>7</sup>

What the law failed to adduce was also of some importance. It contained assumptions about slavery which were never written into the law. It did not, moreover, countenance any change that might develop as government moved out of the more humid regions onto the Great Plains, nor did it recognize that any changes would accrue from a significantly more heterogeneous immigrant population.

There were, of course, continuous changes and limitations upon these very general regulations. The Congress, in theory, controlled the territories at all stages through legislation and appropriations and particularly the governors through confirmation of their appointments. In actual practice,

however, the Congress put considerable stock in local determination and inclined to keep its controls in abeyance and to delegate responsibilities to the executive branch of government.

The President made the appointments of the governors, and while pieces of correspondence sent directly to the executive might indicate that he took a rather active role in territorial affairs, just the contrary was so. The answers to the letters, when there were answers, were delegated to the executive departments. Apparently there were not even any special instructions from the President to the governors at the time of their appointments. We know that none were found in the effects of the first governor of Nebraska because his successor noted that fact in correspondence with President Pierce.<sup>8</sup>

Thomas Jefferson, as Secretary of State, had established the proper channel for the governors to use in corresponding with the federal government when he ordered the governor of the Northwest Territory to direct all reports and inquiries to the Department of State. In Nebraska this channel was used mostly for the routine transmission of documents and annual reports, sometimes for influencing appointments, for seeking leaves of absence, and for registering complaints.<sup>9</sup>

There were also numerous exceptions to this rule. Presidents Pierce and Buchanan were often contacted directly by the governors. Nebraska governors, moreover, either communicated directly with the War Department or with its frontier members for support and protection from the Indians.<sup>10</sup> In the other direction the Post Office prescribed mail routes and handled its own contracts, just as the Bureau of Indian Affairs and the Surveyor General's Office handled their special functions with little reference to the governor, but they corresponded directly with him to offer occasional notices of action which they had taken.<sup>11</sup>

Governors found most the numerous occasions to write to the Treasury Department. The \$25,000-\$50,000 annual appropriation for the territory excited inquiries about the funds available for salaries, transportation and defense projects, and administrative expenses. The governor's personal contingent fund varied from \$500 to \$1,000, but it was usually too modest to do more than cover office expenses. The Department in return wrote to the governors to inquire about the status of the territorial finances, and the Comptroller General's office in the Department aided in the disbursement of monies and offered instructions for accounting procedures.<sup>12</sup>

The men whom the Presidents appointed exercised a pronounced influence upon the governorship by the way in which they administered the office. Appointments after 1860, according to Earl Pomeroy, were generally made from a file of applicants which the Department of State kept. As openings appeared, appointments were made from the top of the lists. Pomeroy cites the example of a man who applied for the embassy to Brazil and ended up as governor of the New Mexico Territory.<sup>13</sup>

This does not, however, seem to have been the case during most of the Nebraska territorial period. Appointments were neither that haphazard nor were they made by such disinterested means. The position was filled by men who had either definite connections with the Executive or a vested interest in Nebraska plus some connection with the Administration. Senator George Jones of Iowa noted quite pointedly that much of the purpose of the Democrats in creating the Nebraska Territory was to provide jobs for Congressmen who had lost their seats. The territories would make available "several fat offices . . . to bestow."<sup>14</sup>

Thus political ties appear to have been the best qualification for getting the governorship. Francis Burt had been a faithful South Carolina Democrat who was rewarded by President Pierce, while Mark Izard had been a federal marshal in the territory who successfully pleaded his own cause in Washington. William A. Richardson, an ally of Stephen A. Douglas who was defeated in his bid for the governorship of Illinois, was sought by the Buchanan Administration for the post. Samuel Black was considered a homegrown candidate, but he got his promotion through his fellow-Pennsylvanian, James Buchanan, whose cause Black had championed as a delegate to the Democratic National Convention in 1856. Alvin Saunders had likewise campaigned for his fellow-Illinoisan, Abraham Lincoln.<sup>15</sup>

The quality of the incumbents naturally bore on the conduct of their office. Unfortunately, political ties often weighed as heavily as training and experience as criteria of selection. Francis Burt had served in the South Carolina legislature and was a lawyer by profession. Had he not died immediately after arriving in the territory, he might have proved an able choice for handling the organizational functions. Izard was steady, but short on training and unimpressive, while Black's substantial legal talents were compromised by stories of his drinking.

Richardson had legal training plus state and national legislative and military experience. In fact, as chairman of the Committee on the Territories in the House of Representatives, he had helped to frame the

Kansas-Nebraska Act. Unfortunately his term was cut short by financial reverses, by political disagreements with the Administration, and by his desire to manage the Douglas campaign for the Presidency. Saunders combined the steady, positive qualities which succeeded best over a long period of time.

The secretaries of the territory were not appointed with the idea that they would assume the office of acting governor for long periods, but that is what happened. Thomas Cuming and J. Sterling Morton were both young, impetuous political novices, but not without ability. Unfortunately, older men either disregarded them or attempted to manage them. Algernon Paddock, a bit more seasoned than the others, served his entire term as secretary under the more stable leadership of Governor Saunders, for whom it was far easier for Paddock to replace from time to time.<sup>16</sup>

The men who served earliest in the territorial period of Nebraska were charged with some responsibilities which were either denied to later governors or were obviated by their original performance. Among these duties were the taking of the census and the designation of election precincts based upon the results, the establishment of election rules and issuing of election affidavits, the designation of a meeting place for the first legislature, and establishment of the judicial districts and assignment of judges to the districts.<sup>17</sup>

Governor Burt's untimely death prevented his assuming any organization functions. They devolved, instead, upon Thomas Cuming, the territorial secretary. The dispatch with which he acted demonstrated his concern that government be put into operation as promptly as possible, but subsequent events also indicated that Cuming was eager to influence territorial affairs to his own advantage before a successor to Governor Burt could be named. Five days after Burt's death Cuming issued a proclamation for a four-week period of census-taking to allow for the very considerable travel necessary to complete the work.<sup>18</sup>

With few restrictions on his actions, the acting governor was free to exercise his discretion in the use of the census. Olson has concluded that with twice as many people living south of the Platte River, Cuming violated the integrity of his office by apportioning a larger number of councilmen and representatives to those counties north of the Platte.<sup>19</sup> Cuming was certainly aware of the problems involved in taking the vote in the new territory. He directed law enforcement officials to station

themselves at points of greatest contest in the election and to offer challenges where voters were likely to be imported.<sup>20</sup> With only a few marshals at his command, Cuming cannot reasonably be held accountable for the results of the elections, but on the other hand he appears culpable again in awarding election certificates to the advantage of his special interests. The inference to be drawn is that his actions were prompted both by his views on slavery and by his desire to give preeminence to the area from which his personal political following might be drawn.<sup>21</sup>

The obvious misuse of his power was to create stumbling blocks to his work as the acting governor. When he exercised his prerogative in proclaiming Omaha the meeting place of the first session of the legislature, he heaped insult upon injury and provoked a controversy that was not resolved until the term of Governor Richardson.<sup>22</sup> Cuming had clearly acted within the letter of the law, but the *Nebraska Palladium* saw it as a violation of the spirit of the law and attacked the action with arguments framed from the popular sovereignty doctrine:

The government at Washington never intended the Capitol to be *located* by the Governor, but by the PEOPLE, the true and only sovereigns. It was for the Governor to confirm the will of the people and not to defeat it.

But we have ample evidence to show that it is the design of the Governor to control the people, and not allow them to carry out their purposes according to their own sense of propriety and Justice. <sup>23</sup>

The designation of the three judicial districts could conceivably have had some importance, as could the assignment of the three judges, but no opposition was recorded in the newspapers. The designation of the first counties was also left to the discretion of the governor who directed the territorial marshals in establishing the boundaries. On occasion they were reestablished by the governor, and the implication is that the vote was being gerrymandered to suit someone's purposes.<sup>24</sup>

Once the organizational duties of the governor had been completed, the territorial legislature met and the governor assumed his functions in the legislative process. The language of the Organic Act made the legislative process a coordinate function of the governor and the legislature by stating very specifically that the power was "invested in the Governor and the Legislative Assembly."<sup>25</sup>

Every governor availed himself of the opportunity to address the opening session of each new legislature to make proposals for its

consideration. Many of the speeches tended to curry favor in the territory and back East by propagandizing the virtues of the land, but they were so unrealistic that the legislature (perhaps) tended to gloss over the more serious suggestions contained in the speeches. Governor Izard, for example, forfeited serious consideration of his proposals when he proclaimed that within two short years, the Nebraska Territory had been so completely transformed from an unsettled and uncivilized region to one of stability that its condition almost justified the assumption "that the hand of magic, rather than the enterprise of the pioneer, has wrought the change."<sup>26</sup>

In the early years in the territory, the most accurate picture of the legislative proceedings were drawn by the youthful but astute Lyman Richardson in a letter to his mother: Every man "is legislating for his own personal interest — and the scheming and 'log rolling' that is going on would astonish you."<sup>27</sup> In such a situation it was also unlikely that serious attention would be devoted even to sound legislative proposals for the territory. On the other hand, when a more prestigious figure held the governor's chair, he tended to instill a deeper concern in his fellow citizens, and they took greater note of his suggestions, duly referring the major items to legislative committees for their study and action. Ruth Pinney, in her study of the Saunders period, found that the governor's suggestions were followed very closely. She concluded that "the laws and memorials seem to correspond to his suggestions."<sup>28</sup>

From time to time a governor would urge the legislators to greater action if they began to bog down. Governor Black chided them for not getting laws enacted until the last minute when he had little time to study them. Black also rebuked them for meddling with areas of legislation which he felt were none of their concern, and in one curt statement he castigated them for reducing a jury sentence for manslaughter to ten days' confinement. In still another he tried to warn them away from involvement in the slavery question. Clearly these are all examples of the conflict between the federal appointee and the notions of self-determination which abounded in Nebraska.<sup>29</sup>

A far more serious difficulty between the governor and the legislature emerged when a rump session of the legislature moved to Florence for its meeting place in objection to what the members called the undue pressures from Omaha. This was the culmination of a long-standing feud with Cuming because of his predilection for all things north of the Platte. As acting governor once again, he refused to recognize the validity of the

rump and clung tenaciously to his position until the arrival of Richardson, whose influence and prestige carried considerable weight in settling a dispute that was all too reminiscent of Kansas' problems.<sup>30</sup> One should note that Cuming probably had been as successful as he had in standing off the group because he held the purse strings. He refused to pay the expenses of the Florence group, and his appeal to the Treasury Department was sustained.<sup>31</sup>

Another way for the governor to check the legislature was through the use of the veto power which was authorized by the Organic Act. A wide range of bills was disapproved, and wisely so in most cases, because the legislation often was hastily and carelessly drawn or it offered favors to vested interests. Quite naturally the disappointed supporters of bills made self-righteous charges of bribery, corruption, and undue influence. When Governor Izard was faced with the removal of the capital from Omaha to Douglas, for example, he refused his assent to it because there were two towns by that name in the same county. He interpreted it as an attempt to get support from the citizens of both communities, and he also noted that the lobbyists were trying to railroad the bill through the legislature.<sup>32</sup>

Another highly disputed dissent by the governor was in regard to bank charters which were drawn indiscriminately for towns where no need existed and which were drawn for corporations which had no financial assets. Izard incurred the wrath of bank promoters for his wholesale veto of the charters. In still another case he refused to sanction a bill which repealed the criminal code of the territory without offering any substitute for it, but in that case the veto was overridden.<sup>33</sup>

Richardson, the experienced legislator, and Black, the former judge, scrutinized bills very closely for legal defects and vetoed them on that basis. Franchises, which were awarded to different parties for the same project, caused Richardson much chagrin. Black's veto of a bill to prohibit slavery is the longest and most legalistic on record. He argued that not until Nebraska became a state could it expect to regulate slavery. Black also appears to have nipped in the bud an attempt by a corporation to acquire and hold land tax-free under the guise of operating a seminary.<sup>34</sup>

Alvin Saunders checked an attempt by the legislature to limit the appointive powers of the governor by vetoing a bill for appointing masters in chancery at the district court level. Saunders also squelched a package franchise for the *Credit Foncier of America* which "included in its scope and privileges almost every kind of trade, business and speculation known to the business world."<sup>35</sup>

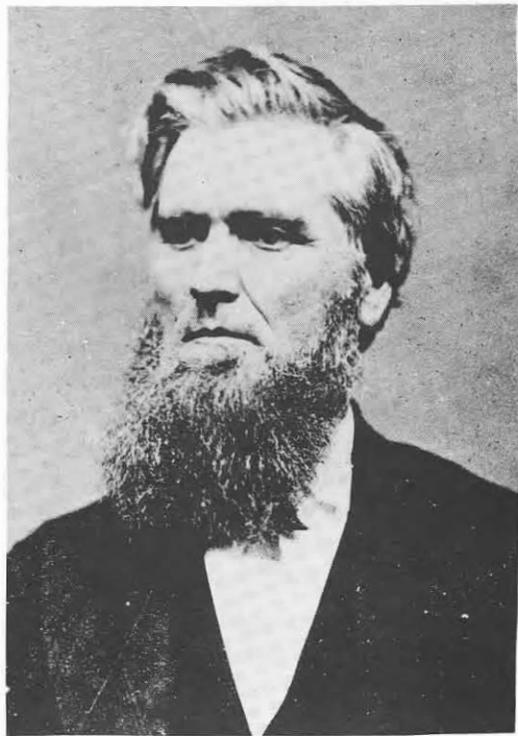
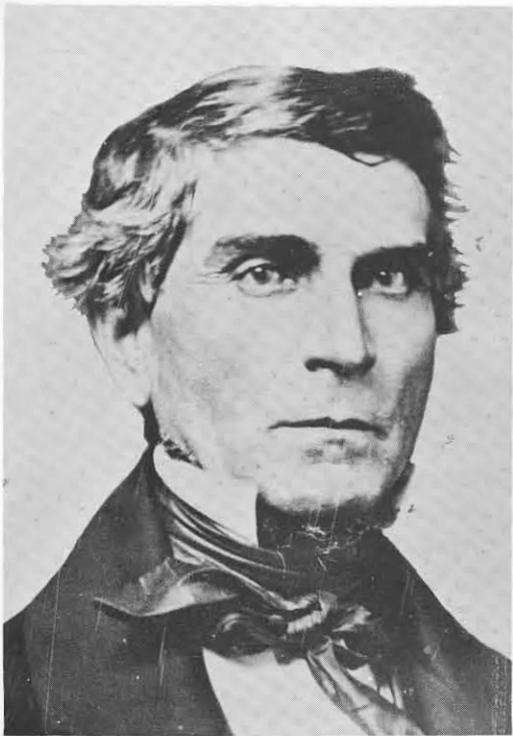
Paddock was the only acting governor to veto a bill. Most of his vetoes were of the nature already mentioned, but one is interesting in the light of national events. In 1867 Paddock returned unsigned a bill providing for integrated schools for the youth of the Nebraska Territory. His recommendation was for the separation of the races in order to prevent the risk of violence.<sup>36</sup>

There is no readily apparent pattern of vetoes, but some interesting observations are pertinent. Black, the former judge, vetoed thirteen bills in about two years. Richardson and Saunders, who were strong governors, had only one veto in one year and eight in six years, respectively. Those young activists, Cuming and Morton, who stood to gain the most from a friendly following in the territory, did not veto a single bill even though they were acting governors during legislative sessions.<sup>37</sup>

If the general rule was that the legislators used popular sovereignty arguments to try to gain power at the expense of the federally appointed executive, it was also true that they sometimes awarded him small additional discretionary powers. Governor Saunders was created head of a board which was authorized to publish propaganda and hire agents to promote immigration into the territory. Numerous positions were created by the legislature which enhanced the governor's appointive powers. He was also charged with the sale and discount of bonds for financing the territory's part in the Civil War.<sup>38</sup>

On rare occasions the governor was asked to represent the legislature in communication with the delegate or the Congress. In 1855 the governor was asked to transmit a petition for free lands sought by the second legislature.<sup>39</sup> At another session Morton was asked to communicate with Senator W. K. Sebastian, the chairman of the Committee on Indian Affairs, about reimbursement for Pawnee depredations in the territory.<sup>40</sup> Governor Black announced on one occasion that he was traveling east to urge congressional approval of appropriations requested by the legislature.<sup>41</sup> There is no record that the governors communicated with the president on behalf of the legislature although they would have appeared free to do so.

While the power to call special sessions of the legislature was intact, it was used only twice during the territorial period. Governor Richardson found upon his arrival in Nebraska that the previous session of the legislature had repealed the criminal code over Governor Izard's veto, so that there was no effective way to instigate criminal proceedings. The



*Francis Burt (left), first Territorial governor, served but two days in 1854. The last Territorial governor, Alvin Saunders (right), occupied the office between 1861 and 1867.*

governor was forced to resort to the common law, but it was unwieldy and so poorly adapted to the situation that Richardson pressured the legislature into adopting the criminal code of Illinois. The second and only other call for a special session was the proclamation of Governor Saunders to arrange for statehood.<sup>42</sup>

Certainly as important as his legislative functions were the administrative duties of the governor. By law and by precedent, the governor possessed a fairly wide latitude of duties. The fact that the legislation was often vague made it possible for him to arrogate powers which existed neither in law nor in precedent, but the official records of the office indicate that the governors did not aggrandize their powers. What they did unofficially is not as clear because of a lack of data.

The power of direct appointments covered a number of positions, and the legislature from time to time increased the number. At the organization of the new counties, the governors appointed the judges, sheriffs, treasurers, justices, and commissioners until elections could be held.<sup>43</sup> Militia officers got prestige appointments through the governors, and occasionally these paid *per diem* expenses.<sup>44</sup> The Saunders manu-

scripts are full of requests for appointments to the office of notary public in 1866 after the office was created, and occasionally neighbors and friends petitioned the governor for a specific candidate for office.<sup>45</sup>

Governor Izard made a special point of calling at the *Palladium* office to give notice that his appointments were available to any suitable person, but that does not indicate how impartial he was in practice.<sup>46</sup> Another interesting sidelight on these appointments is found in the Morton papers in a letter from Robert W. Furnas to the acting governor asking appointment as a notary public while Governor Black was absent because he was almost certain Black would never appoint him.<sup>47</sup> Morton's intense concern over the printing patronage would indicate that his other appointments would have been on a strictly partisan basis.<sup>48</sup>

No one was deceived by the importance of the appointments or the fact that they were offered for personal profit. Young Lyman Richardson put it this way:

Soon after my arrival I was introduced to the worthies all round and among the rest – to Gov Cuming who immediately appointed me County Clerk and Register of Deeds for Douglass Co. – His Secy then gave me a great commission – big enough for a bed quilt – saying “I Thomas B. Cuming – on account of integrity” Re! – it's so very heavy and the honor so extensive that I get quite fatigued at times! – I was also appointed Asst. Clerk and special Clerk for the Council Committees and moreover expect to be Private Secy to Gov Izzard [*sic*] when he arrives. – So you can see I am completely borne down with honors though some of the offices have more of honor about them than emoluments at present. But father who is chairman of the judiciary is to have a law started soon establishing the office of Register of Deeds and Claims so that I shall have some work that way. From them all I hope to make a living, if not more.<sup>49</sup>

The influence of the governor was less direct, but sometimes he was able to use his office to influence federal appointments. We know for certain that Cuming sought appointments for acquaintances in the Surveyor General's service and that he was offered the opportunity to nominate candidates for positions. Surveyor General John Calhoun of the Leavenworth district made it clear that personal considerations would provide the basis for filling any vacancies in the future.<sup>50</sup> A sharp criticism of Cuming suggests that he had access to a good many other appointments, but only part of the data can be verified:

You promised offices in and out of your gift – seats in the Legislature, Clerkships of divers kinds, even appointments at the

disposal of the General Government, such as Receivership and Registership of the Land Office, to be established, and above all, the Secretaryship of the Territory, should you succeed in disgracing the Gubernatorial Chair, by attaining to it. You offered to dispose of situations under Mr. Calhoun, the Surveyor General, and he five hundred miles away.<sup>51</sup>

We know further that after Cuming's death, William A. Richardson intervened with the Secretary of State in behalf of Morton's appointment to the secretaryship of the territory, and Olson acknowledges that Richardson's role was decisive.<sup>52</sup>

The influence of the governor was less direct, but perhaps the propitious time of the call for a special election in the territory might have helped to determine the outcome. The governor's additional power to issue affidavits to the victorious candidates gave him a fairly important power. On one occasion Governor Black first awarded an election to J. Sterling Morton, but when he became estranged from Morton, he withdrew the certificate and gave it to Samuel G. Daily. Despite Richardson's advocacy of the Morton cause in the House of Representatives, Daily was seated as the Nebraska delegate because the House put great stock in the governor's right to determine the outcome of an election.<sup>53</sup>

Beyond being able to suggest some local surveyors, the relationship of the governor to the survey was very indirect. He was kept abreast of the work in order that he might have data available on which to organize new counties or change their boundaries, which was one of his prerogatives.<sup>54</sup>

A source of greater concern was the relationship between the settlers and the Indians. Often without inquiring into the blame for the troubles, the governor occasionally called upon the Army for aid, and if it was not forthcoming, he was forced to try to organize militia units for protection. The Army was not optimistic about the use of militia in dealing with the Indians, but neither was it always able to offer aid.<sup>55</sup> Governor Izard, for one, tried diplomacy in dealing with the Indians when he commissioned General John Milton Thayer to treat with the chief of the Pawnees in 1855. Izard wanted the interpreter to be certain to tell them of his desire for friendship and his determination to punish breaches of conduct.<sup>56</sup> Governor Black used a more direct approach when he accompanied General Thayer into the field, but the result was ludicrous. Black got exceedingly drunk, and when he ordered the troops to chase down "twenty barrels of whisky and four sacks of flour" for him rather than

chase Indians, Thayer arrested him and kept him prisoner until he sobered up. In the summer of 1862, Paddock, as acting governor, again had to take the field to help subjugate the Indians in the territory when federal troops were unavailable.<sup>57</sup>

When Alvin Saunders arrived in the territory, he was asked by President Lincoln through the Secretary of War to raise troops both for home and national defense. The governor responded with a proclamation drafting all white males in the territory between the ages of eighteen and forty-five into the state militia from which the volunteer regiments could be drawn. Recruiting was not without its problems for Governor Saunders. Agents from other states were crossing into the territory to enroll Nebraskans for their states. Saunders ordered them to stop immediately on pain of prosecution.<sup>58</sup>

A variety of legal matters was entrusted to the governor. Most numerous among these matters as seen in the collected papers was the responsibility for extraditing criminals wanted for felonies in neighboring states. Orders were sent to sheriffs to apprehend the criminals, and occasionally a reward was offered by the governor for the capture if the crime was serious enough. Pardons for crimes were far less numerous. In fact, only Saunders and Paddock have left any records at all of pardons, and those came quite late in the territorial period.<sup>59</sup>

In all fairness to the governors, it should be noted how difficult their law enforcement functions were made for them. Legislators abetted criminals by repealing the criminal code of the territory in 1857, so that Richardson found only the English common law under which to act when he arrived. Where the civil law existed, it was often as troublesome. Writing to the legislature, Richardson called attention to the fact that he had approved a divorce, but that he seriously questioned the legality of his actions or that of the legislature in authorizing divorces without provisions for their trial in an equity court. In cases where lawbreakers were apprehended, their detention was equally difficult because no provision had been made in the territory for a penitentiary.<sup>60</sup>

Some governors of the earlier territories had been given the responsibility for administering federal welfare programs in their areas, but no such need prompted appropriations for the governors of the Nebraska territory. The governors had only their contingency funds of from \$500 to \$1,000, but most of it had to be spent on office supplies and incidental expenses.<sup>61</sup>

On the territorial level two social welfare programs were developed in which the governor participated. The first was the arrangement Saunders made for the care of the insane. He had suggested and was authorized by the legislature to complete arrangements with the state of Iowa to care for citizens of the territory at the Mount Pleasant asylum when they were committed by the courts. Governor Saunders also dealt with a bill which provided for the education of the blind, deaf, and dumb. While he was favorable to the general provisions of the program, the legislature failed to provide funds for implementing the program so he vetoed it.<sup>62</sup>

The governor's role was similarly limited in dealing with internal improvements. Without exception the executives promoted the case of the transcontinental railroad, urged memorials for the construction of roads, bridges, and a penitentiary, but there was little actual involvement in the implementation of these projects. Perhaps the ridiculous complications on the building of the capitol had taught them to leave well enough alone. The first appropriation of \$50,000 provided little more than plans and a basement. The city of Omaha advanced another \$60,000 to complete the building, but it was never more than a shell. For that very reason the inaugural ball which was planned for Governor Izard turned into a fiasco. When the floor of the main room was washed in preparation for the festivities, ice formed and could not be removed in time for the ball because the building was impossible to heat. Furthermore, the windows sometimes blew in from strong gales that lashed the hilltop structure.<sup>63</sup>

But no governor of the territory could afford to let such small obstacles stand in the way of his enthusiastic promotion of settlement. It was his job to get the territory peopled, and so in addition to his laudatory addresses to the legislature which were reprinted as official state propaganda, an occasional governor took a somewhat larger interest. Thomas Cuming, for example, regretted in a letter to the editor of a newspaper at Kickapoo City, Kansas, that he had found no funds available for publicity work but that he was happy to send copies of proclamations and other items of interest to editors as a matter of news.<sup>64</sup>

Toward the end of the territorial period, the legislature provided the governor with funds and charged him with forming a committee under his direction to prepare a brochure in both English and German for distribution to prospective immigrants. A general agent was hired at the New York immigration center to encourage migration to Nebraska Territory. The governor in his progress report recorded the completion of

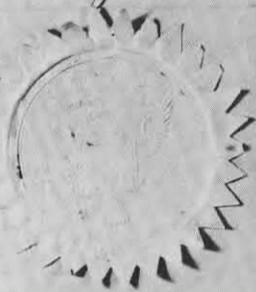
*Abraham Lincoln,*

*President of the United States of America:*

*To all who shall see these Presents, Greeting:*

*It now Remains That reposing special trust and confidence in the Integrity and Ability*  
*of Alvin Saunders, of Iowa,* \_\_\_\_\_ *I* \_\_\_\_\_

\_\_\_\_\_ *do appoint him to be Governor of the Territory of Nebraska;*  
*and do authorize and empower him to execute and fulfil the duties of that Office according to Law*  
*and to have and to hold the said Office, with all the powers, privileges and emoluments* \_\_\_\_\_ *thereunto of right*  
*appertaining, unto him, the said Alvin Saunders, during the pleasure of the President of the United States*  
*for the time being, and until the end of the next session of the Senate of the United States, and no longer.*



*In Testimony whereof, I have caused these Letters to be made patent*  
*and the seal of the United States to be hereunto affixed.*

*Given under my hand, at the City of Washington, the Thirteenth*  
*day of April, in the year of our Lord, one thousand eight hundred*  
*and Sixty-five, and of the Independence of the United States of*  
*America, the Eighty-ninth.*

*Abraham Lincoln*

*By the President:*

*Wm. H. Seward*

*Secretary of State.*

Governor Alvin Saunders was reappointed Territorial governor in 1865 by President Lincoln. At the foot of the document Governor Saunders wrote the following: "The signature of President Lincoln attached to the commission, was evidently the last official signature made by him. He signed it just before leaving for the Theatre, where he was assassinated, and left the commission on the desk without stopping to fold it, and where it was found when the room was opened after his death. These facts were communicated to me by one of the clerks. Alvin Saunders." Lincoln was shot the evening of April 14, 1865, indicating that the above document had taken a day to reach his desk.

his assignment and asked for more money to continue the program because the work had led him to conclude that each immigrant added about one-thousand dollars in capital to the territory.<sup>65</sup>

Income became increasingly important as the functions of government increased in the territory. The governors became involved in finances in several ways. First, they were active in urging memorials for whatever federal funds were available. Their messages to the legislature constantly called for requests to Congress for aid. Governors also concerned themselves with collecting local taxes which was a particularly haphazard process in the territorial years. To reduce the exploitation of the citizens of the territory, bank charters were carefully scrutinized and defaulting banks were prosecuted to try to secure redemption of their notes. On at least one occasion the governor was called upon by the Secretary of the Treasury to report on the condition of the banks in the state so that legislation could be drafted or adopted to deal with the problems.<sup>66</sup>

Not all the concerns of the governors, however, were of a local nature. Several major national issues affected the territory and the governors as representatives of the administration were expected to deal with them on the local level. On specific issues, the governors were sometimes hard put to defend the administration. Izard tried to ease the tension created by the Buchanan administration when it decided to put the public lands on sale in 1858. His lack of success prompted a Nebraska delegation to travel to Washington to apply more direct pressure to get the order rescinded.<sup>67</sup>

The early addresses of the governors were concerned with the even more emotional issue of slavery. The creation of the territory had virtually guaranteed that the question would arise on the exclusion of slavery, and the pressures grew with each succeeding administration. Cuming used an address to the legislature to try to smooth over the problem, while Richardson and Morton worked behind the scenes to stop an anti-slavery movement in the legislature before it got off the ground. Black mounted a frontal attack on the problem with his veto of a bill to prohibit slavery. In his long message he expounded the administration view that only after statehood could slavery be prohibited and then by the people in a referendum on the state constitution.<sup>68</sup>

When the war came on, Governor Saunders, as has been noted, was charged with raising troops for both a federal and home force. He, of course, had no responsibility for directing the federalized units, but he was

always interested in bolstering the war effort by provisioning the troops and encouraging them through resolutions. At home, however, he did encounter a problem which was a sidelight of the war in which he was almost forced to use troops. Jayhawkers used the conditions of war as a pretext and diversion for crossing into Nebraska in 1862, thus causing destruction along the southern border. Saunders ordered them to stop and threatened to mobilize the militia to join the civil law-enforcement officers if necessary to stop their illegal activities.<sup>69</sup>

Many problems were aggravated by the national political battles which tore at the fabric of the territory. Organized by the Democrats, the territory held a natural allegiance to that party, a condition which was enhanced by the founding of a state party by Richardson and Morton. Among other things, land problems and an affinity for the anti-slavery policies of the Republican party swung the territory behind the Lincoln Administration, and Lincoln reciprocated by removing the Democratic governor and appointing a Republican in his place. The presence of Governor Saunders helped to assuage further strong political feelings during the Civil War.<sup>70</sup>

The culmination of the work of the governors came in the creation of statehood for the territory. All of the governors spoke about and encouraged work toward that end. Morton canvassed for and against statehood in early 1860 and found that it lost by a very small margin.<sup>71</sup> The movement received a major impetus when Saunders became governor. It was at his behest that a constitutional convention was called in 1864. When by 1866 little further action had been taken at the territorial level, Saunders stumped harder for statehood in his address to the legislature and then even though — or perhaps because — he got little response, he assumed the initiative and formed a committee to draft a constitution. The committee was of doubtful legality, but it produced a document for submission to the Congress. Saunders then called a special session to deal with the congressional stipulations for statehood.<sup>72</sup>

With the ratification of the constitution, the work of the territorial governor came to a rapid close. As a final act, Saunders helped to arrange the election of the new state officers and for the meeting of the new state legislature, then turned the reins of government over to David Butler, the first governor of Nebraska.

Any fourteen-year period in the life of an institution is certain to reflect a record of some problems, some achievements, and some failures.

The territorial governorship of Nebraska, which was held by eight different men, was certain to produce that variegated pattern. Some of the men were too young and too inexperienced to provide respected leadership and able administration. Others had disabilities such as drinking, poor grasp of the situation, and personal ambitions that stymied the use of otherwise considerable talents. Two of the eight incumbents were men of experience and prestige, and their periods of leadership were highly beneficial to the territory. Unfortunately one of them served only one year of his term.

One of the problems in finding suitable men was that the remuneration was too low to attract most men of ability unless they were interested in a dubious kind of prestige or opportunities for aggrandizement for themselves or their friends. Cuming and Izard were forthrightly charged with fraud in connection with the location of the capital, and Izard's integrity was called into question when he vetoed a large number of bank charters. His opponents figured out and printed in newspapers the amount of money per word that he received for his veto.<sup>73</sup> There is an implication in the *Peoples' Press* that Governor Black's veto of a bill to prohibit slavery was the price of saving his job with national Democratic circles.<sup>74</sup> But accusations are not convictions and especially so when prompted by political antagonisms. About the only convincing case of culpability rests with Cuming on his designation of legislative districts and the apportionment of the first legislature.

The problem which all of the governors shared in common was that they represented federal authority and derived their power and remuneration from beyond the limits of the territory. Any disagreement on the part of the governor, no matter how honest, was likely to be misconstrued as an attempt by the governor to thwart the will of the people and violate the spirit of the popular sovereignty doctrine. While they came to naught, scurrilous attacks on the governors must have made their work much more difficult. Washington's meager support of its agents could hardly have encouraged the governors. While the foregoing is true of Saunders almost as much as the others, he received the distinction of having the legislature seek his reappointment in 1867 when his first term expired.

We may assume that the problems between the governors and the people or their representatives might have been far greater if the governors had chosen to expand their powers. The laws and precedents were often vague enough and the controls from Washington so lax that this was completely possible. That they did not was probably an indication that the governors sought higher office on the basis of their work. Statehood gave

promise of two senate posts and some congressional ones toward which they might aspire if they satisfied the people. A still further consideration might be that they did not find the work important or challenging enough to demand the best of them. Some time after he had left the state and returned to Congress, Richardson remarked in the course of debate that his time in Nebraska was one of his earlier indiscretions.<sup>75</sup>

So for various reasons the final record lacks genuine luster. It is the story of men charged with great responsibilities but hamstrung by resistance at home and little support from Washington. Only one man finished his full term in office. Muddling through often passed for innovation, while machinations often made problems loom much larger than they were and consequently far more difficult to resolve. But in the final analysis, the territory struggled through to statehood, which was, after all, its most important goal. If the governors did not complete the work more rapidly, there were also mitigating factors. They cannot be held responsible for directing the great national affairs which swept Nebraska aside temporarily.

#### NOTES

1. James C. Olson, *J. Sterling Morton*, (Lincoln: Nebraska University Press, 1942), and *History of Nebraska*, (Lincoln: Nebraska University Press, 1955); Robert D. Holt, "The Political Career of William A. Richardson," *Journal of the Illinois State Historical Society*, Vol. 26, (1933-1934).

2. *Laws of Nebraska*, Sess. 1-3, (1854-1857), 21, hereafter cited simply as *Laws of Nebraska*.

3. Jay Barrett, *Nebraska and the Nation*, (Lincoln: J. H. Miller, 1898), 41.

4. Max Farrand, *The Legislation of Congress for the Government of the Organized Territories of the United States, 1789-1895*, (Newark: William A. Banker, 1896), 10-19.

5. *Ibid*, 21 and 27.

6. *Ibid*, 36-37.

7. *Laws of Nebraska*, 23-28.

8. Thomas B. Cuming to Franklin Pierce, October 19, 1854, copy in Nebraska Territorial Governors' Papers, hereafter abbreviated NTGP. These and the other manuscripts are in the Nebraska State Historical Society.

9. Earl S. Pomeroy, *The Territories and the United States, 1861-1890*, (Philadelphia: The University of Pennsylvania Press, 1947); see the letter book from NTGP.

10. See Note 8 and J. Sterling Morton to James Buchanan, September 15 and November 16, 1858, and J. Sterling Morton to Colonel Charles May, July 3, 1859, copies in Morton Papers.

11. See for example William Manypenny to Thomas B. Cuming, November 15,

1854, and Robert L. Ream to Thomas B. Cuming, December 27, 1854, NTGP.

12. A. S. Paddock to Salmon P. Chase, October 12, 1861; Thomas B. Cuming to E. Whittlesey, July 16, 1855; Thomas B. Cuming to J. W. Ramsey, November 1, 1854; Thomas B. Cuming to James Guthrie, November 21, 1855; William Medill to Thomas B. Cuming, December 26, 1857, copies all from NTGP; and J. Sterling Morton to Howell Cobb, March 10, 1860, copy in Morton Papers.

13. Pomeroy, *op. cit.*, 7.

14. George W. Jones to Howell Cobb, February 11, 1853, printed in Ulrich B. Phillips (ed.), *The Correspondence of Robert Toombs, Alexander H. Stephens, and Howell Cobb*, American Historical Society Annual Reports, 1911, (Washington, 1913), II, 324.

15. J. Sterling Morton, et al, *Illustrated History of Nebraska*, Vol. I, (Lincoln: Jacob North and Company, 1905), 160, 211, 372, 457, 551; Thomas W. Tipton, *Forty Years of Nebraska*, in *Publications of the Nebraska State Historical Society*, Vol. 9, p. 1 ff. Also see Holt, *op. cit.*, and *Official Proceedings of the National Democratic Convention of 1856*, (Cincinnati: Enquirer Company, 1856), 58-59.

16. For the above description, I have followed rather closely James C. Olson, *History of Nebraska*, 124-125, which modifies and corrects the more subjective estimates in Morton and Tipton cited above.

17. *Laws of Nebraska*, 22 ff.

18. Thomas B. Cuming to Franklin Pierce, October 18, 1854, copy in NTGP; *Messages and Proclamations of the Governors of Nebraska, 1854-1941*, Vol. I, 15; hereafter shortened to *Messages*.

19. Olson, *History of Nebraska*, 86-90.

20. Thomas B. Cuming to Jesse Lone, December 6, 1854, copy in NTGP.

21. Olson, *History of Nebraska*, 89-90.

22. *Messages*, 18; William A. Richardson to James Buchanan, January 15, 1858, in *Nebraska Territorial Papers* (Microfilm).

23. *Nebraska Palladium* (Bellevue), December 27, 1854.

24. *Messages*, 18-19; Thomas B. Cuming to Captain Henry Bradford, November 30, 1854, copy in NTGP; Proclamation of Thomas B. Cuming, January 29, 1855, NTGP.

25. *Laws of Nebraska*, 24.

26. *Messages*, 43.

27. Lyman Richardson to Mrs. O. D. Richardson, February 4, 1855, copy in Cuming Small Manuscripts.

28. *Journal of the House of Representatives, Nebraska Territory*, 8th Sess. (1861-62), 73-74; and Ruth B. Pinney, "A Political History of Nebraska during the Period of the Civil War," University of Nebraska, Unpublished MA Thesis, 1930, pp. 68-69.

29. *Messages*, 126, 136, 148.

30. Albert Watkins, "Neapolis, 'Near-Capital'," *Nebraska State Historical Society Publications*, Vol. 18 (1917), 319-322; William A. Richardson to James Buchanan, January 15, 1858, in *Nebraska Territorial Papers* (Microfilm).

31. *Messages*, 77, 89; Thomas B. Cuming to William Medill, January 29, 1859, copy in NTGP.

32. *Messages*, 53-55; *Nebraska News*, February 21, 1857.

33. *Messages*, 36-37.

34. *Messages*, 92, 130-135, 143-145.
35. *Messages*, 210-212.
36. *Messages*, 246-250.
37. See Table of Contents of *Messages*.
38. *Messages*, 74, 206-208.
39. *Journal of the House of Representatives, Nebraska Territory*, 2d Sess. (1855), 94.
40. J. Sterling Morton to W. K. Sebastian, June 2, 1860, copy in Morton Papers.
41. *People's Press*, (Nebraska City), February 28, 1860.
42. *Messages*, 93-94; Proclamation of Alvin Saunders, February 14, 1867, NTGP.
43. *Messages*, 99; I. E. Boyd to Alvin Saunders, August 6, 1866, NTGP.
44. *Messages*, 99-100; A. S. Paddock to John L. Bowen, August 12 and 31, 1861, copies in NTGP.
45. Saunders papers in NTGP.
46. *Nebraska Palladium*, April 11, 1855.
47. R. W. Furnas to J. Sterling Morton, April 23, 1860, Morton Papers.
48. J. Sterling Morton to William Medill, August 13, 1858, copy in Morton Papers.
49. See Note 27 above.
50. Thomas B. Cuming to Robert S. Ream, December 31, 1854; John Calhoun to Thomas B. Cuming, July 24, 1855; Thomas B. Cuming to G. A. Manypenny, May 27, 1856, copies and originals in NTGP.
51. *Nebraska Palladium*, December 27, 1854.
52. William A. Richardson to J. Sterling Morton, April 22, 1858, Morton Papers; William A. Richardson to Lewis Cass, May 17, 1858, in *Nebraska Territorial Papers* (Microfilm); Olson, *J. Sterling Morton*, 77.
53. James C. Olson, *History of Nebraska*, 121; *Congressional Globe*, 37th Cong., 1st Sess. 10 ff.
54. Robert L. Ream to Thomas B. Cuming, January 19, 1855; John Calhoun to Thomas B. Cuming, July 24, 1855; Proclamation of Thomas B. Cuming, January 29, 1855, all in NTGP; *Messages*, 150-151.
55. J. Sterling Morton to Colonel Charles May, July 3, 1859, copy in Morton Papers; *Messages*, 19-20, 154; Edgar S. Dudley, "Notes on Early Military History in Nebraska," in *Transactions and Report of the Nebraska State Historical Society*, Vol. II, (1887), 166-185.
56. *Messages*, 58.
57. John M. Thayer, "The Pawnee Way of 1859," *Proceedings of the Nebraska State Historical Society*, Vol. 10, (1890), 238; Tipton, *op. cit.*, 56-60.
58. *Messages*, 159, 216, 219, 220.
59. *Messages*, 78, 100, 101, 150; Proclamation by Alvin Saunders, April 18, 1866; Pardon by Alvin Saunders, November 21, 1865; Pardon by A. S. Paddock, April 3, 1866, all from NTGP.
60. *Messages*, 85, 91, 186; Proclamation of Alvin Saunders, April 18, 1866, NTGP.
61. See Note 12.
62. A. S. Paddock to F. T. Davis, December 18, 1866, copy in NTGP, and *Messages*, 214.
63. *Messages*, 31-32, 113; and Tipton, *op. cit.*, 9-16.

64. Thomas B. Cuming to Editor of *Kansas Pioneer*, January 31, 1855, copy in NTGP.

65. *Messages*, 207-208.

66. *Messages*, 34, 45, 86, 207-208; J. Sterling Morton to Howell Cobb, March 10, 1860, copy in Morton Papers; W. A. Richardson to James G. Chapman reprinted in *The Nebraska Advertiser*, June 10, 1858.

67. Olson, *History of Nebraska*, 96-97; *The Nebraska Advertiser*, September 9, 1858.

68. *Messages*, 130-141; J. Sterling Morton to James Buchanan, November 16, 1858, copy in Morton Papers.

69. Alvin Saunders to General Hughes, February 1, 1865, copy in NTGP, and *Messages*, 205-219.

70. Ruth B. Pinney, *op. cit.*, 21 ff; W. A. Richardson to William Medill, November 6, 1858, copy in Morton Papers.

71. 101-102.

72. Proclamation of Alvin Saunders, May 2, 1864, NTGP; Olson, *History of Nebraska*, 129; Proclamation of Alvin Saunders, February 14, 1867, NTGP; *The Omaha Republican*, March 1, 1867.

73. *Nebraska News*, February 21, 1857.

74. *People's Press*, December 22, 1859.

75. *Congressional Globe*, 37th Cong., 2d Sess., 1975.