Thomas Francis Meagher | "The acting-one"

James L. Thane
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THOMAS FRANCIS MEAGHER:
"THE ACTING-ONE"

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Introduction

In September, 1865, an escaped convict, under sentence in England to be hanged, drawn and quartered, became Montana's acting-governor.

Most Montana historians agree that Thomas Francis Meagher was "the most remarkable character connected with the territorial history of Montana."\(^1\) Yet many have misunderstood him and thus have been highly critical of his activities in the Territory. For example, Paul F. Sharp castigated Meagher for "playing upon public fear to rehabilitate his waning political fortunes."\(^2\) Joseph Kinsey Howard asserted that "the Territory's already badly confused political situation was hopelessly muddled by his intervention."\(^3\) Merrill G. Burlingame and K. Ross Toole referred to Meagher as "an ambitious man trying to use his position as a stepping stone."\(^4\) In a separate volume, Toole accused him of leaving the Territory "in worse shape than he had found it."\(^5\)

Dr. Toole did concede that Meagher "is not an easy subject for the historian to treat."\(^6\) This fact is due primarily to a paucity of

\(^1\)James M. Hamilton, From Wilderness to Statehood (Portland, 1957), 283.


\(^3\)Joseph Kinsey Howard, Montana: High, Wide and Handsome (New Haven, 1959), 42.


\(^6\)Ibid., 100.
primary source material. The few Meagher papers available today concern private matters rather than politics. Likewise, few of his contemporaries kept journals or diaries; those who did were similarly concerned primarily with personal matters.

The most acute shortage of source material relevant to Meagher's administration is in the area of newspapers. Indeed, only one paper of the period, the Montana Post, remains intact today, and because of its political leanings, it has served in large part to confuse rather than to clarify Montana's early territorial history.

Three political factions existed in Montana at the time of Meagher's arrival: a small but vocal group of Radical Republicans led by Governor Sidney Edgerton and his nephew, Wilbur Fisk Sanders; a smaller and not-so-vocal group of Copperhead Democrats and Southern sympathizers who had no visible head and who controlled no political offices; and the vast majority of the Territory's citizens, who were strong Union Democrats and who had little time for either of the other two groups.

The Radical Republicans of the Territory attempted to gain support for their programs by "waving the bloody shirt." This was a common post-war practice of Republicans who liked to remind the voters that while perhaps not all Democrats had been Confederates, all Confederates had been Democrats. In Montana the Republicans received ample support from the Post which, until November, 1865, was the Territory's only newspaper. With a monopoly on the market, the paper reflected the sentiments not necessarily of its readers, but of its
owners, Ben R. Dittes and D. W. Tilton, as well as its editor, Thomas
Dimsdale—all of whom espoused the Radical Republican cause. Dimsdale
and the Radicals defined Montana's political factions as two: "one
for the Union and one against it."\(^7\) For their propaganda purposes,
the Democrats were of the latter group.

Unfortunately, for lack of anything better, the Post has become
the basis for most general treatments of the period, including those
cited above. Though other, more objective papers, were later estab­
lished in the Territory, few copies of them exist today (principally
because of a fire which destroyed the contents of the original Montana
State Historical Society Library). However, the Post remains intact;
and too many historians, content to take the paper at its word without
objectively balancing it against the other sources that do exist, have
presented a distorted picture of the early Montana scene. Moreover,
they have misinterpreted Meagher, a staunch Union Democrat who naturally
came under fire from the Post and from the Republicans when it became
apparent that his allegiance lay with the Democrats. Out of spite
they termed him "the acting-one" when he became acting-governor on
Edgerton's departure from Montana.

Meagher's principle biographer, Robert G. Athearn, failed to
clarify the Montana situation and Meagher's participation in it.
While Athearn's study remains a valuable one, he considered Meagher's
Montana career as "but an epilogue" to his life.\(^8\) He was thus content

\(^7\)Montana Post, Oct. 22, 1867.

\(^8\)Robert G. Athearn, Thomas Francis Meagher: An Irish Revo-
 lutionary in America (Boulder, 1949), 165.
to accept the stock interpretation of his administration rather than to do his subject justice.

The period of Meagher's administration in Montana is a significant one, and it deserves a fuller, more objective treatment than it has hitherto received. In no instance have students of the period been sufficiently critical of the Montana Post. Few of them have balanced its accounts against the records of the early territorial legislatures, census reports or voting records to determine the actual honesty of the paper. For example, the myth of Confederate sentiment in Montana created by the Republicans and perpetuated by the Post, breaks down under a careful study of the legislative records and census reports of the period. Much of the "history" that has been written about Meagher likewise suffers from the same malady--the blind acceptance of prejudiced sources.

This thesis is not based on new material, but rather on a more critical examination of the sources which have always existed and been available. These sources are thin, and it is because of that thinness that they must be reassessed. It is because of that quality that today, one hundred years after his death, Thomas Francis Meagher remains one of the most misunderstood figures in Montana history. In light of this fact, his administration of Montana deserves a re-evaluation so that future students of the period may place both "the acting-one" and his services to Montana in their proper historical perspective.
Athearn described Meagher as "truculent, noisy, brash, verbose and belligerent. He was restless, high strung, and eager for adventure and change. In his judgement he was hasty and he thought of force before he considered reason."^9

Meagher was a forty-one year old veteran of two rebellions when he arrived in Montana. Born August 23, 1823, the son of a wealthy Irish family, he received his formal education at the hands of the Jesuits: first at Clongowes Wood, then at Stonyhurst in England. In 1844-1845, Meagher joined the "Young Irelanders" in support of Irish independence; and when the movement split in 1846, he assumed the leadership of the radical group which evolved into the Irish Confederation.

In the summer of 1848, Meagher was jailed for his participation in the abortive Irish Revolution of that year. An English court found him guilty and sentenced him to death. In 1849, the death sentence was commuted to life imprisonment on Tasmania, an English penal colony near Australia. Meagher escaped and made his way to New York, where he arrived on May 26, 1852.

Meagher immediately became a New York celebrity. Fordham University awarded him an honorary Doctor of Laws degree. For the next eight years he lived on the profits of his reputation. He gained some renown as a public speaker and was always a favorite of the Irish.

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^9Athearn, Thomas Francis Meagher, 170.
By 1860, however, the glamor had worn off Meagher's reputation, and his star was falling. Desperate to remain in the public eye, he attempted to secure an appointive office—an ambassadorship or the like—to fulfill his constant dreams of fame and fortune. With the outbreak of civil war in America, Meagher determined to embellish his reputation in the limelight of battle. He organized New York's Irish Brigade and led it to war as a brigadier-general. The unit saw action in the Peninsular Campaign, at Second Bull Run, and then at Antietam, where Meagher's horse was shot out from under him. Southern forces cut the brigade to pieces at the battle of Fredericksburg. After the 1863 engagement at Chancellorsville, less than 400 members of the Irish Brigade were still in active service.

Unable to replenish his depleted ranks, Meagher resigned from the army in May, 1863; but returned in December and was given command of the Etowah District. He commanded a provisional division under Sherman at Atlanta, then on May 15, 1865, resigned again from the army.

On leaving the service, Meagher set his sights anew on the hopes of public office. In April, 1865, he had asked James R. O'Beirne, a friend who was Special Aide to President Johnson, to intercede with Johnson on his behalf. "Could you ascertain," Meagher wrote, "if there is any Territorial Governorship vacant? Next to a Military Command, this is precisely what would suit me best. . . . It would enable me after a little, to enter Congress, and once there, I have no fear but that I should make myself the Master of the Situation—to
When O'Beirne made no reply, Meagher determined to go west on his own and seek his fortune. In late July he reached St. Paul, Minnesota and joined Capt. James Fisk's expedition to the Montana goldfields. Late that month he sent a request to President Johnson for a military escort for the expedition. On August 2, Johnson replied that the secretaryship of the Montana Territory was vacant—would Meagher accept the position? Two days later Meagher wired his acceptance and left the expedition to proceed immediately to Montana.

On the eve of his departure, Meagher wrote his father:

"I leave this evening for the far west for one of the richest of our new territories. . . . I entertain the livliest hopes that this enterprise will prove a profitable one to me and that it will enable me to pay you a visit in France next Summer."\(^{11}\)

Thus, in August, 1865, with an ambition much greater than the circumstances would later justify, Thomas Francis Meagher pinned his hopes for the future on the young Montana Territory.


\(^{11}\) Meagher to Thomas Meagher, Aug., 1965, Thomas Francis Meagher Collection, National Library of Ireland, Dublin.
Though Montana became a territory in its own right on May 26, 1864, its history had begun in July, 1862 when John White discovered gold on Grasshopper Creek and the rush to Montana was on. Adventurers, fortune-hunters, deserters and draft-dodgers poured into the then-unorganized Territory to be followed inevitably by easy-spending, loose women, bandits, and subsequently some substantial settlers.

The arrival of Montana's first pioneers signaled an immediate source of headaches for the government of the infant Idaho Territory of which they were then a part. Organized in March, 1863, the Idaho government had barely begun to function before it had to face the problem of ruling the bawdy, enthusiastic mining population of the future Montana Territory.

The only symbol of federal authority, or for that matter any authority at all, in the eastern Idaho Territory was Chief Justice Sidney Edgerton. Edgerton, an Ohio politician-turned-judge, presided at Bannack, the site of White's original strike. He had his work cut out for him. Hezikiah L. Hosmer, later a justice of the Montana Territory, once observed that had the convicts released on Napoleon's approach to Moscow been turned loose in the new settlements, "it could not have been worse than it was with the crowd that entered and undertook to control Bannack and Virginia City in the years 1862 and 1863."  

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To cope with this congregation, Edgerton had neither a courtroom nor law books. In addition, he had no marshall to enforce any decisions that he might have made, and thus he could do little but stand by and watch as the territorial vigilantes captured, tried and executed the outlaws who plagued the Territory.

The settlers soon grew tired of waiting for the Idaho government to impose law and order on the eastern half of the Territory. Moreover, they were unhappy with the fact that they were located over six hundred miles from the territorial capital at Lewistown. Edgerton, too, was upset. Governor William H. Wallace had assigned him to Bannack and he felt that as Chief Justice he deserved to be assigned to the capitol. Thus he was only too happy to comply when a group of the eastern citizens petitioned him to go to Washington to try to secure a division of the Territory.

As a former representative, Edgerton held some sway with the Congress, particularly with the abolitionist Republicans with whom he sympathized. For example, James M. Ashley, the chairman of the House Committee on Territories, was Edgerton’s personal friend. Ashley agreed to sponsor the bill and in the process, gave the Territory its name. The bill passed the House on March 31, 1864, after little debate, but in the Senate, Edgerton’s abolitionist allies sabotaged its progress. The House had passed the bill providing, routinely, that any "white male inhabitant" could vote; but in the light of the recent Emancipation Proclamation, Senator Morton S. Wilkinson of Minnesota moved to give the vote to any "male citizen of the United
States." His colleague, Senator Reverdy Johnson of Maryland protested that, if adopted, the amendment would inaugurate a policy which he felt was "very ill-advised."^2

The battle over voting rights continued until late in May when the Senate backed down and by-passed the issue by giving the vote to all citizens and those who had declared their intention to become citizens "who are otherwise described and qualified under the fifth section of the Act of Congress providing a temporary government for the Territory of Idaho."^3 The Idaho Act had restricted the vote to white male citizens. Thus amended, the act passed the Senate and on May 26, 1864, received President Lincoln's signature.

Under the terms of the Organic Act, the executive power was given to a governor appointed by the president for a term of four years. However, the president could remove him at any time. The chief executive had to reside in the Territory and assume the duties of commander-in-chief of the militia and superintendent of Indian affairs. He could grant pardons and respites for offenses against the territorial laws and reprieves for offenses against federal law until the president could make a permanent decision on the matter in question.

The act further provided for a territorial secretary who also served at the President's pleasure subject to reappointment every four years. His duties included recording and preserving the

^2 Congressional Globe, March 30, 1864, 38 Cong. 1st Sess., 1346.
^3 U.S. Statutes at Large, XIII, 87-88.
legislative records as well as the acts of the governor. Most importantly, only the secretary could sign the warrants disbursing the federal appropriations for the Territory.

The legislative power was vested in a council of seven members who were elected to two-year terms, and a house of representatives who were elected to one-year terms. The act provided that the legislature might increase its numbers "from time to time" to a total of thirty-nine: twenty-six in the house and thirteen in the council. The governor was to take a census, apportion the members of the two houses, and determine the manner and place of holding the first election and subsequent session. The legislature was to reapportion itself at the first session and fix the dates of future elections and sessions. The governor could veto any piece of legislation, and the two houses could overrule the veto by a two-thirds majority in each house.

Finally, the act provided that the judicial power of the Territory be vested in a supreme court, district courts, probate courts and justices of the peace. The supreme court was to consist of the chief justice and two associate justices who were to be assigned to districts in which they had to reside. The Territory was allowed a delegate to Congress who had no voting power and served a term of two years.

On June 22, Lincoln appointed Edgerton to be Montana's first governor in response to a petition from a group of citizens who cited him as "a man who knows the country, the people, and their
wants--a man whom we know to be honest, and the man who would be the most satisfactory to the people of Montana.

Edgerton received the news in Salt Lake City and promptly proceeded to Bannack, which he named the territorial capitol.

By the summer of 1864, Montana's population had grown to almost 15,000 inhabitants, who came from every state and from all walks of life in search of easy wealth. The largest city in the Territory was Virginia City, located in Alder Gulch, the site of Montana's biggest gold strike. For its inhabitants life was consistently rough and tumble. Virginia City boasted eight billiard halls, five gambling saloons, three hurdy-gurdy houses, and a large assorted collection of bawdy houses, and saloons; yet, the Territory's only newspaper, the Montana Post could term it a "city of steady habits."

In the hurdy-gurdy houses the more fortunate miners could buy champagne at twelve dollars a bottle and dances at a dollar apiece. Thomas Dimsdale, editor of the Post, once described a "first-class" hurdy-gurdy dancer as "of middle height, of rather full and rounded form: her complexion (is) as pure as alabaster, a pair of dangerous-

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5 When Edgerton arrived at Bannack he took a census as directed, prior to districting the Territory. He arrived at a figure of 20,000 on which he based his apportionment. This figure was high; the actual census was probably closer to 15,000. (See "Montana's First Census," Mineral Independant, Feb. 1, 1940.) The Territory's first official census, (1870) indicated a white population of 18,306.

6 Andrew F. Rolle, The Road to Virginia City (Norman: 1960), xviii.

7 Montana Post, August 27, 1864.
looking hazel eyes, a slightly bent Roman nose, and a prettily formed mouth."  

Religion was scarce in Virginia City, and on Sunday the miners went not to church, but to town where the bars, brothels, and hurdy-gurdies ran continuously. One observer noted: "Strange to say, men who at home have all their lives been accustomed to attend church soon learn to conform to the loose morality of the country. It is even doubted whether it is possible for anyone, however previously inclined, to dwell a year among miners and escape demoralization."  

For the most part, the miners lived in huts made of alder and pine boughs, or in dugouts, tents or wagons. They had food shipped in from Salt Lake City since they were too busy mining to grow anything themselves, and consequently paid exorbitant prices for it. On the whole, family ties were informal; for most miners a good "wife" was only as far away as the nearest Indian village. 

Sidney Edgerton became Montana's governor in the twilight of his public career. He was a self-educated native of New York, forty-six years of age when he accepted the position. In 1848 he had been a delegate to the Free Soil convention and in 1856 he was a delegate to the first Republican national convention. He was elected to Congress from Ohio in 1858 and served two terms in the House as an ardent abolitionist. In 1863, President Lincoln offered him the position of 

8Thomas J. Dimsdale, The Vigilantes of Montana (Norman: 1963), 10.

Chief Justice in the new Idaho Territory and he accepted. On his return to Bannack as governor, Edgerton took a census of the Territory, apportioned the delegates according to the counties which had been authorized by the Idaho government, and proclaimed October 12, 1864, as election day.

Rallying his forces, the governor began "waving the bloody shirt" in an attempt to elect Republican majorities to the House and Council. This was a common practice of Republicans during and after the war. They attempted to capitalize on the fact that perhaps "not all Democrats were Confederates, but all Confederates were Democrats."

Edgerton also hoped to see his nephew, Wilbur Fisk Sanders, elected as the territorial delegate to Congress. Declaring that only two parties existed in the Territory--"one for the Union and one against it." Edgerton set the pace for the Montana Post which took up the Republican standard as opposed to the "Grand-Union-Peace-War-North and South Amalgamation Society, humorously called Democrats." "A party is organized in this Territory," claimed the Post, "under the assumed name of Democrats, whose object is to place in our councils men disaffected toward the nation." Thomas Dimsdale, editor

12 Ibid., Oct. 15, 1864.
13 Ibid., Oct. 8, 1864.
of the paper, referred to the Democratic platform as "the meanest and most heterogeneous compound ever foisted on the political world in the nineteenth century," while Sanders castigated all Democrats as "rebels and traitors . . . unfit to exercise the right of self-government."

Republican efforts had little effect, however, on a busy Montana population with little time for the war and as little time for the cause of Radical Republicanism. On election day the voters sent Samuel McLean, Sanders' opponent, to Congress, while giving the Republicans a one-vote majority in the Council, and the Democrats a similar edge in the House. The Post reluctantly conceded victory, claiming: "The balance of votes in this section were cast by secessionists openly claiming to be citizens of Dixi, and voting as citizens of the Northern states."

One of the representatives elected was John H. Rogers, a Democrat from Madison County. Rogers had fought briefly with General Sterling Price's Missouri State Guard in the early stages of the war,

14 Dimsdale was an Oxford-educated Englishman who emigrated to Canada and joined the western gold rushes in the 1860's in the hope that the mountain air would cure his consumption. In the winter of 1863-64, his health was so poor that he could no longer work in the goldfields and so he migrated to Montana and turned to teaching school. When Edgerton became the Territory's governor, he named Dimsdale Superintendent of Public Instruction. At the same time, he became editor of the Post. He continued to serve in both capacities until his death in 1866.

15 Montana Post, Oct. 15, 1864.


17 Montana Post, Nov. 6, 1864.
and thus a conflict developed when Edgerton demanded that the members of the legislature take the "iron-clad oath of allegiance" to the Union, swearing that they had never borne arms against the Union nor encouraged those who had. Rogers could not in conscience take the oath, and hence proposed one of his own promising to uphold the Constitution of the United States and the Organic Act of the Territory, and to demean himself faithfully while in office. However, Edgerton refused to accept the substitute and, rather than force the issue, Rogers resigned. He was later elected and seated in the third assembly, where his loyalty was never questioned and his service was never subversive.

On the basis of the Rogers incident and the rabid editorials of the Post, a legend has developed in Montana to the effect that the "left-wing of General Sterling Price's Confederate Army" deserted the South and retreated to Montana where its members formed the base of the present day Montana State Democratic Party. The story is false; Rogers himself was not a Confederate. He deserted the militia when Price took it into the Confederacy in the fall of 1862. Confederate sentiment was never a major factor in Montana politics.  

The legislature convened on December 12, and in his address before the two houses, Edgerton stressed the importance of the tasks that lay before them. He called for improvements in the territorial roads to the states, and noted the importance of the mining laws

which the assembly would pass. He expressed concern over congressional attempts to tax mineral lands, and over the large portion of the Territory to which the Indians still held title. He urged development of the Territory's agricultural resources, and educational institutions and the use of the national currency. He also suggested that the legislators petition Congress for a direct mail route to the Territory.

Finally, Edgerton closed the address with a brief condemnation of the south and predicted a Union victory in the offing.  

The first legislature held its meetings in a small log cabin in Bannack and concerned itself primarily with setting up the machinery of government. One observer, William A. Clark, termed the session "very interesting," but the legislators came under fire from one of their own numbers who wrote under the pseudonym "Franklin", and reported their proceedings to the Montana Post. Franklin, obviously a Republican, criticized the Democrats in the legislature as "the most ungodly pack of sinners who ever sought to do business upon the hypothesis that it was advisable to keep up a show of decency." Among other things, Franklin chastized the legislators for their lack of sobriety, and the Post commented simply: "Blessed is he who expected nothing, for he shall not be disappointed."

For the most part, the legislature passed mining laws and

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19 Edgerton, Sidney, "Governor Edgerton's First Message," Historical Society of Montana Contributions, III (1900), 341-350.
21 Montana Post, Jan. 7, 1865.
22 Ibid., Dec. 17, 1864.
charters of incorporation. However, they also passed, and more significantly, failed to pass several important measures. One of the most controversial bills of the session was a measure to locate the territorial capitol. After much debate, the legislators chose Virginia City. Where the federal congress had been hesitant, the Montana representatives showed no qualms about passing an election law limiting the vote to "white male citizens."

The assembly's reaction to Edgerton's message was favorable and during the course of the session they passed most of the measures which he requested, including a common school system. In the light of the high cost of living in Montana, the council unanimously passed a measure increasing the salaries of the governor and the justices by $2500.00 per year. They also allotted themselves a bonus of $12.00 in their per diem allowance. The House concurred and passed the measure, tacking on an extra $5.00 for the chaplin. Finally, the legislature passed a civil practice act, a law to prevent the sale of liquor to soldiers, an act to provide for the use of marks instead of signatures, and a joint resolution of loyalty to the Union. An act for the better observance of the Lord's Day failed to get out of committee.

Under the terms of the Organic Act, the legislature would redistrict the Territory and reapportion itself accordingly. A reapportionment bill passed the two houses only to be vetoed by the governor because it did not take into consideration the constant flux of the mining population and because the legislature had increased its
membership to the full limit of thirty-nine. Edgerton felt that this ran contrary to the spirit of the Organic Act which had provided for a gradual increase, "from time to time," and thus he returned the bill for reconsideration.  

The legislators closed the session by censuring Franklin, but nonetheless, he got in a last slap at the Democrats by saluting the Republican minority which he felt had "done well. ... The Territory owes them much for the evil they have prevented, if not for the good they have accomplished."  

Two major problems faced the Territory at the close of the first legislative session. The legislature had failed to reconsider the apportionment bill, and thus doubts would arise over the validity of the Territory's legislative functions. The Organic Act had provided that the governor should district and apportion the representation for the first session; the first legislature was to reapportion itself and thus provide for future sessions. The Act made no provision for its failure to do so, and without precedent to follow, many Republicans would later conclude that only an act of Congress could revive the legislative functions of the Territory.

The second and most pressing problem was money, and Montana's lack of money symbolized the federal government's lack of time and concern for the young Territory. Under the terms of the Organic Act,  

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23 Council Journal of the First Legislative Assembly of the Montana Territory.  
24 Montana Post, April 15, 1865.
only the territorial secretary was empowered to sign the warrants disbursing the federal funds designated for the Territory; yet only in August, 1865, fifteen months after Montana's creation, did the president get around to appointing a secretary for Montana. In order to keep the government moving, Edgerton supported the first legislative session out of his own pocket, expecting any day the arrival of a secretary who would repay him. As time wore on the governor's patience wore out.

In addition to the money problem, Edgerton was upset because the government had sent him to the wilderness of Montana and had not sent any laws or instructions by which he might work. In lieu of a secretary, he had been forced to assume all the secretarial duties except the most vital; that of disbursing the money. Though he had constantly petitioned the government for even a small detachment of troops as protection against the territorial Indians, the federal officials had not seen fit to reply. Finally, just as Edgerton saw relief in the offing, his hopes were dashed. In August, 1865, President Johnson appointed Thomas Francis Meagher to be Montana's secretary; however, much to Edgerton's dismay, Meagher arrived in the Territory unbonded, and thus unable even as secretary, to distribute any money.

In view of these grievances, Edgerton left the Territory less than a week after Meagher's arrival, again to take the problems of his constituents directly to Washington in a personal appeal for relief. The luck of the Irish was turning. Almost overnight Thomas
Francis Meagher had become Montana's acting-governor.
On September 30, 1865, the Montana Post noted Meagher's arrival in the Territory and indicated that he had begun his work in earnest. "Our new secretary is no partisan," the Post reported. "It is his intention to call the legislature at the earliest possible moment."

The same story cited the fact that the secretary (by then the acting governor) had asked Washington for the territorial appropriation, and that "when the answer to this communication is received, the legislature will at once be summoned to meet."

The paper concluded: "Not as a politician but as an American citizen, General Meagher enters this Territory, inspired with the firm determination to do justice to all men."¹

That evening at a reception given in his honor, Meagher thanked the citizens for making him feel at home. He stated that he had intended to make Montana his home even before he was appointed secretary, and he pledged "an exact attention" to his duties, "strict impartiality" in his administration of the Territory, and an "earnest endeavor" to do all in his power to make Montana the most attainable and desirable of all the territories. He observed that his pledge of impartiality was no sacrifice for him to make, for he had never been a politician and had "neither friends to reward nor enemies to punish." He concluded that the development of the Territory was "the paramount object" to which the citizens should devote their energies.²

¹ Montana Post, Sept. 30, 1865.
² Montana Post, Oct. 7, 1865.
As events developed, Meagher's promise of impartiality was more easily given than maintained. Within weeks of his arrival in Montana, the secretary had become the hottest political issue of the day. Because he was the appointee of a Republican administration, and because he had served in the Union army during the Civil War, the territorial Republicans expected Meagher to join ranks with them and refuse to recognize the validity of the Territory's legislative functions. The Republicans realized that if a legislature did assemble, it would be controlled by the Democrats. They felt, on the other hand, that if they could prevent such an occurrence they could run the Territory through the federally appointed officials, all of whom, with the exception of Meagher, were Republicans. Wilbur Fisk Sanders best summed up the Republican position when he commented that "not hankering for a repetition of the first legislature . . . the Republicans saw without acute pain the legislative functions of the Territory lapse . . . and claimed it would take congressional action to revive them."^3

At the same time, because Meagher had been a strong northern Democrat before the war, the Democrats of the Territory likewise assumed he would side with them and insist that a legislature did exist. As one student of the period has observed, even the "most judicious individual would have had difficulty in guiding administrative matters" under the circumstances.^4 Meagher was anything but the most

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^3 Sanders to James E. Callaway, May 16, 1904. Sanders Papers, Montana State Historical Society.

judicious individual. Initially he adopted the Republican position. On November 30, 1865, a group of citizens petitioned him to call the legislature into session, and two weeks later Meagher replied that since the first session had failed to pass the apportionment bill, "it is clearly my conviction that the legislative functions of this Territory have lapsed." He concluded that only a new enabling act from Congress could revive the legislature. 

In explaining his position to Secretary of State William H. Seward, Meagher stressed the need for acting in a "generous and enlightened spirit." He told the secretary that "during the war, many hundreds of disaffected and somewhat turbulent men crowded in here . . . bringing with them much bitterness of feeling and hostility of design against the Union." Moreover, these men had acquired "not only a strong majority in the territorial legislature, but the mastery of the political action in the Territory in the election of the county and other officers."

Meagher told Seward of an hostility to the Union which existed in Montana and which "finds its expression and embodiment in what is spuriously called the Democratic party. Today . . . this party stands combined in resolute and inveterate opposition to every man, and every movement in Montana that bears the decisive stamp of loyalty." Thus, if Montana were admitted to the Union as a state, "the Union cause would have to encounter in Congress equivocal friends if not

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5 Montana Post, Dec. 23, 1865.
flagrant mischief makers from her, whilst the government of the state of Montana and all the branches of that government would, I fear, be monopolized by men who in their hearts regard with aversion and vindictiveness the great triumph of the nation."

Meagher also alerted Seward to the confusion which existed over the validity of the Territory's legislative functions and noted: "The interests of the Territory would be greatly served by having a legislature." He told the secretary that many of the laws which the first session had passed urgently needed revision, and that the agricultural and mining interests of the Territory desperately needed the protection and encouragement which a legislature could provide.

Meagher arrived at these conclusions primarily because of his impulsive judgement, and secondly because he had been in the Territory for barely two months. As he later stated, when he arrived in the Territory, he fell into the hands of a "bad advisor" who had misdirected him, leading him to believe the Territory's legislative functions had lapsed without question, and that it was probably just as well because the Territory was inhabited by rabid secessionists who would have ruled the Territory had there been a legislature.

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6 Meagher to Seward, Dec. 11, 1865. Territorial Papers of Montana, Department of State.

7 (Probably Sanders), Montana Post, Feb. 24, 1866.

8 Because of such Republican propaganda, which was parroted by the Montana Post, most Montana historians have portrayed a Territory much like that which Meagher described in his letter to Seward. In his book, Gold Camp (New York: 1962), 142, Larry Barsness referred to Montana as a "Confederate-dominated Territory." Joseph Kinsey Howard stated in his book Montana: High, Wide and Handsome (New Haven: 1959), 41, that many
arriving in the Territory Meagher naturally must have sought guidance from the other territorial officials. They had used the secessionist story to try to get the voters to see things their way. No doubt they used it on Meagher, who apparently took them at their word. However, after several weeks in the Territory—time to evaluate the character of the population for himself—Meagher realized he had been duped by the Radical Republicans who sought to use him as a tool to achieve their own ends. Moreover, he concluded that because they were in a minority, the Republicans apparently proposed to do nothing about restoring the legislative functions of the Territory. Though for the time being he still concurred in the Republican view that he could not call the legislature, he was nonetheless determined not to allow the Territory to remain in a state of anarchy.

Meagher found a solution to his dilemma in January, 1866, when a group of citizens petitioned him to call a territorial convention in lieu of a legislature to give voice to the Territory’s problems. On January 19, he issued a proclamation calling a convention to meet in Helena to make known the “wants and just pretentions of the Territory,” and to take such steps as would “secure to it a political

8(continued) Montanans were “secessionist Democrats.” In an article, "Civil War Days in Montana," (Pacific Historical Review; 1960, 20), Robert G. Athearn wrote that Montanans of the 1860’s were largely "Democratic in politics and Southern in origin." However, if anything, the Southern states were greatly under-represented in Montana. The first federal census of the Territory (1870) showed a white population of 18,366, of which only 1,584 were natives of states that joined the Confederacy.
condition that will be commensurate with its growing strength and accumulating wealth." In the proclamation Meagher stated that "the resources of Montana . . . the commanding geographical position, and the facilities it presents of close and constant intercourse with many of the richest and most enterprising portions of the Union, the neglect we have suffered at the hands of the national government and the last Congress, the great influx of capital and population . . . demands that in the absence of a legislature," the people should be heard.

Meagher called the convention to assemble on March 1, 1866. Madison, Edgerton, and Deer Lodge counties were each allotted ten delegates, while Beaverhead, Gallatin, Jefferson, Missoula and Chouteau were each given five. Meagher cautioned that "best care should be taken in the election of delegates, to have the mining and farming interests represented fully and effectively." He termed them "the main and paramount interests in the Territory." Finally, he set the election date for February 7, and recommended that the delegates of each county assemble in preliminary meetings on February 10, at which time the counties could "instruct their delegates in the views and propositions it is most desirable to have submitted to the convention."9 Though Meagher made no mention of statehood in the proclamation, many of the Territory's citizens assumed that the convention might draw up a constitution and petition Congress for admission to the Union.

The proclamation had a very upsetting effect on the Republican

9Montana Post, Jan. 20, 1866.
minority. If Congress restored the Territory's legislative functions, the Democrats would once again be vying with the government's appointed officials for control of the Territory. Even worse, if Congress admitted Montana as a state, her officials would be elected rather than appointed. The Democrats would hence control all the aspects of Montana's government.

On January 20, the Post printed the call and, in an accompanying editorial, blasted both Meagher and the Montana Democrat for backing the convention. "Only one party" supported the move, the paper claimed, and "the season is most unpropitious and renders anything like a fair canvass impossible. One-third at least, of the most intelligent class of our voters are absent from the Territory."¹⁰

Doubtless the Post was concerned by the fact that two of the Territory's three federal judges, as well as the governor, were absent from Montana on one excuse or another, leaving Meagher almost totally free from official interference with his plans.

The Montana Radiator reported the proclamation routinely, then stated: "We understand . . . that in the absence of a legislature through which to invoke Congress and to which and through which the governor by message can make known to the people the condition of the Territory, has made it necessary to improvise a substitute, in the shape of a convention which it is believed will accomplish these ends as effectively as would a session of the legislature itself . . . It is in contemplation, if the convention so decide, to form a constitution

¹⁰ Montana Post, Jan. 20, 1866.
and petition Congress for admission as a state."\textsuperscript{11}

While the Republicans rallied against the proposal, the Democrats enthusiastically supported it. In Helena, Edgerton County Democrats assembled to nominate delegates to the convention, and drafted a resolution in support of Meagher. They cited him as a gentleman of eminent abilities as an executive officer, a scholar of high appointments, and an orator of splendid gifts." The resolution criticized the national government for overlooking the Montana population, and labeled "some of the federal officials appointed for the Territory" as "incompetent for the high positions that they fill." The delegates chastized them for often being absent from the Territory and being vigilant only in the matter of drawing their salaries. They concluded with a recommendation that the convention draw up a constitution and petition Congress to admit Montana as a state so that the citizens could "do by authority that which we have been doing by the sufferance of the General Government--and that is to take care of ourselves."\textsuperscript{12}

Because of the difficulty of winter travel, Meagher postponed the convention until March 26, but before it could meet he did an abrupt about-face and called the legislature into session. In a speech in early February, Meagher confessed to a Helena audience that he had erred in his original decision that he could not call the legislature. However, after consulting with "eminent lawyers" he realized he had "been imposed upon" by "political rascals" who

\textsuperscript{11} \textit{Montana Radiator}, Jan. 27, 1866.

\textsuperscript{12} \textit{Montana Post}, Feb. 3, 1866.
Brigadier General Mencher, 1864
sought to use him as a tool to achieve their foul ends. However, now satisfied that he did have the power, he intended to call the legislature.  

Shortly thereafter, Meagher acknowledged that he had been "mistaken" in thinking he did not have the power to call the legislature into session. He stated that under the eleventh section of the Organic Act, the third section of the territorial act "relative to elections," and under the second section of the territorial act, "creating certain offices in the Territory of Montana," he did have the power. Therefore, he summoned the Council (of October 4, 1864), and the House of Representatives (elected September 4, 1865), to meet in Virginia City on March 5, 1866.

Section eleven of the Organic Act established an annual session of the legislative assembly, while the second section of the territorial act ("creating certain offices") provided that members of the House and Council would be elected by the qualified voters of their respective districts. The third section of the territorial act ("relative to elections) required that a general election be held in the Territory on the first Monday of each September, beginning in 1865. Apparently Meagher reasoned that the Organic Act's provision for annual sessions was more compelling than was its ruling that the first legislative assembly reapportion itself. In addition, he felt

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13 Ibid., Feb. 24, 1866.
14 Montana Post, Feb. 3, 1866.
that the first assembly had provided for future sessions, which was the intention of the Organic Act, by passing the acts "relative to elections," and "creating certain offices."

In this regard, the question arises as to why Edgerton allowed the 1865 election of representatives to take place if he actually intended to insist that the Territory's legislative functions had lapsed. Moreover, though the Republicans contended that the second session would be invalid because of the first session's failure to reapportion itself, a more logical argument would have been that the first session was invalid because it failed to fulfill the terms of the Organic Act. It follows that Meagher then could legally have called a session to pass an apportionment bill, thus fulfilling the provisions of the act. However, legitimate or not, in this case, the ends would have seemed to justify the means. As one historian has pointed out, "legislation in a multitude of subjects was urgent."\(^{15}\)

Meagher had indicated in his letter to Seward that the Territory was in desperate need of a legislature. It was apparent that the Republicans were content to let Montana remain in a state of anarchy, since they could not govern its course of action. Thus Meagher took the bull by the horns and called the legislature into session.

Immediately upon Meagher's action, the Post attacked it as "the mad scheme of a few hungry Democratic aspirants for office."

\(^{15}\)Tom Stout, Montana (Chicago: 1921), I, 298.
Dimsdale described the action as "a mockery, a delusion, and a snare," and encouraged "every man in the Territory who has its good at heart, to appeal to the courts, that they may at once put the foot of authority on these mad schemes." However, his hopes for such an occurrence must have been rather slim. In the same issue, Dimsdale ran an ad: "Wanted--our old correspondent Franklin to watch the legislative body as of yore. The compensation will be according to the old contract."

Other Republicans were equally upset, and some took their cases to Washington. George Chumasero, a lawyer, wrote to Secretary Seward about the "unfortunate condition of affairs in the Territory." He claimed that when Meagher had arrived in the Territory, the Republicans had hoped he would join with them in their opposition to "the overwhelming number of Missouri bushwackers and secessionists with those presence the Territory is so cursed."

Chumasero complained that in complete opposition to their expectations, Meagher had made his "principal friends and advisors of the leading rebels." He termed Meagher's habits "beastly and filthy in the extreme," and asserted that on his arrival in Virginia City Meagher had become intoxicated "and had remained so for a number of days . . . and has in fact been drunk nearly every day since he has been in the Territory." Chumasero claimed that "in Virginia (City) it is publically stated in the streets that the executive office is a

16 Montana Post, Feb. 24, 1866.
place of rendezvous for the vilest of prostitutes and they state the
fact publically and boast of their profitable intercourse with him."

Chumasero protested further that Meagher had called the legis­
lature into session at the insistence of "a few outspoken traitors,"
and had lavishly furnished rooms for them over two of the city's liquor
stores. Chumasero characterized Meagher's "whole conduct since his
arrival here," as "that of a drunken madman, a disgrace not only to
us here but to the government which sent him." 17

Had Meagher been a more astute politician, he would not have
acted as impetuously in his initial decision that he could not call
the legislature. Merril G. Burlingame noted in his book, The Montana
Frontier, that "much may be explained by merely saying that he was
Irish with all the dominant traits of that militant people." Burlin­
game attributed Meagher's hastiness to the fact that "his impetuous
nature clouded his judgment at times." 18

In reality, Meagher was simply in too much of a hurry to
impress his superiors, particularly Seward. He failed to take a
coldly objective view of the situation when he arrived in Montana;
instead he took the Republicans at their word. No doubt the Repub­
licans would have been just as upset had Meagher originally called
the session rather than accepting their view, yet he seriously damaged

17 Chumasero to Seward, March 12, 1866. Territorial Papers of
Montana, Department of State.

18 Merril G. Burlingame, The Montana Frontier (Helena; 1942),
160, 165.
his own reputation by having to reverse his position when he realized
that he could call the legislature. Because of this "switch" from the
Republican to the Democratic point of view, many historians have
accused Meagher of being a political opportunist who realized he would
never get anywhere as a Republican in a Democratic territory. For
example, Larry Barsness asserted that Meagher changed his mind because
being a Republican "would hardly gain him quick prestige."^{19}

However, it must be remembered that Meagher never actually
joined the Republicans. Had he, for example, really allied himself
with them, he would never have called the convention. Meagher was
"Republican" only to the extent that he initially accepted their view
regarding the validity of the Territory's legislative functions. While
the Republican position was to keep the legislature from assembling,
Meagher's own opinion from the time he entered the Territory was that
it should be revived as soon as legally possible.

In defense of his actions, Meagher explained to Seward that
since he last reported (December), he had had time to consider the
situation carefully and realized that he had been mistaken in his
earlier evaluation of the Territory's political alignment. He told
Seward: "I have frankly to confess, I was greatly in error," and
attributed the conflict between the Democrats and the Republicans in
the Territory to the "unrelenting bitterness with which the Republicans,
headed by some of the more prominent and authoritative of the federal
officials, had assailed it and attempted to ostracize it." He told

Seward that "on more maturely considering" his powers he had concluded he could call the legislature.

Meagher also informed Seward that he had called a convention because it was desirable "that the peoples of Montana should give emphatic expression to the loyalty that motivates them, their hearty concurrence in national sentiment with the administration and its supporters . . . and their views in relation to other matters such as the Northern Pacific Railroad and the sale of mineral lands that are outside the proper sphere of legislative considerations."

Meagher admitted it was "very probable that this convention will adopt a petition to Congress, praying for the admission of Montana as a state at an early date." He estimated the Territory's population at 25,000, and admitted to Seward that while "Montana would not . . . dress up with the Republican line," it would take rank among the staunchest of the President's Democratic supporters.

He concluded that "everything, in a word, is delightful to me with the exception of the malignity of those ill-bred bigots, who, as I have said, disappointed in their factious design by the just and liberal course, I have considered it my duty to pursue, vent their vexation against me in vulgar and infamous detractio..."20

No sooner had Meagher declared his independence of the territorial Republicans than he widened the gap in an area where he would desperately need support: the territorial judiciary. On November 29, 1865, a dispute had arisen over a poker game in a Helena saloon. One

20 Meagher to Seward, Feb. 20, 1866. Territorial Papers of Montana, Department of State.
James B. Daniels leaped at Andrew Gartley, pistol in hand. As they struggled over the gun, Daniels pulled a knife and stabbed his opponent to death. A Helena jury convicted him of manslaughter and federal judge Lyman E. Munson sentenced him to three years in prison and fined him $1,000.00.

Late in February, 1866, a group of Helena citizens petitioned Meagher to reprieve and pardon Daniels. The circumstances under which the homicide occurred, the citizens stated, "were most provoking and outrageous, placing said Daniels . . . in great danger of receiving bodily harm . . . while Gartley's friends were doing everything to urge him to inflict serious bodily harm and injury upon said Daniels."21

Meagher granted the reprieve "while under the influence of an unfortunate habit,"22 proclaiming that it was clear "from the petition of numerous good citizens of the County of Edgerton . . . including several jurymen who, by their verdict contributed to the conviction, that the circumstances under which the aforesaid offence was committed were most provoking upon the part of the deceased."23

In reality, Meagher exceeded his power of reprieve by ordering the sheriff to release Daniels. Under the terms of the Organic Act, he could only stay an execution until the President could reach a decision in the matter. Under no provision of the Act could Meagher release the prisoner.

When informed of Meagher's action, Munson retorted that the

21 Montana Radiator, Mar. 17, 1866.
22 Lyman E. Munson, "Pioneer Life in Montana," Historical Society of Montana Contributions, V (1904), 211.
23 Montana Post, Feb. 24, 1866.
governor's powers of reprieve were not as extensive as Meagher apparently thought they were. Munson asked him to revoke the pardon and have Daniels returned to jail. Meagher refused; whereupon Munson denounced him for assuming a power which did not belong to him and ordered the prisoner returned.

During the exchange between the Secretary and Judge Munson, Daniels returned to Helena "to attend to one or two jobs of men who had testified against him." A few hours after his arrival in that city, Daniels was swinging from a tree, the victim of vigilante justice. Thus, by early March, 1866, Meagher had alienated both the territorial Republicans and the territorial judiciary. The struggle for political control of Montana had begun in earnest.

\[24\] Montana Post, Mar. 10, 1866.
On March 5, 1866, Montana's second legislative assembly convened in Virginia City. Although it had heatedly contested that session's legality, the Montana Post commented: "The legislature is in full session and everything is carried on according to strict form . . . . The Speaker of the House, Alex E. Mayhew of Deer Lodge, is thoroughly posted on the rules of procedure, is a good logical debator, and runs his machine on time. . . . The Hon. Anson S. Potter, President of the Council, is also up to his work and keeps his engine on the track with a quiet precision." The paper added: "The furniture and appointments of the two houses are very thorough and complete. However, Dimsdale could not resist commenting: "When a legislature fairly representing the people of the Territory shall meet, we presume these rooms will be ready for their reception."\textsuperscript{1}

In reality, the Post had little about which to complain; in 1865 the Republicans and not the Democrats were over-represented in the legislature. For example, Beaverhead County cast only 4% of the popular vote in the 1865 elections, yet their delegates to the session—all Republicans—made up 17% of the total representation in the House and 28% in the Council. On the other hand, Deer Lodge County, which had been solidly Democratic in the election, cast 27% of the popular vote and yet made up less than 8% of the House and 14% of the

\textsuperscript{1}Montana Post, Mar. 10, 1866.
Council. However neither party nor county lines were a factor in Montana's second legislative assembly. Indeed, the members worked in a spirit of apparent harmony. They voted for and against the measures and left no discernable evidence to indicate that any type of voting or power blocks existed during their deliberations.

On March 6, the two houses organized; later that week Meagher addressed them in joint session. He cautioned the legislators to use prudence in reviewing the laws of the first session and asked that those laws "not be disturbed, unless in such instances as demand the abatement of positive mischiefs." He requested that the legislature petition Congress for $50,000 to be used for territorial buildings, improvement of the Missouri River at Fort Benton, and improvement of roads and lines of communication into the Territory. Meagher also suggested that the legislators protest any attempt to return part of Montana to Idaho. He explained that "the silence in which our Territory has lain for months, and in which some excellent gentlemen, for their own wise purposes, would have it to persist, encourages no doubt, our neighbors over the range to push their pretentions against our Territory. . . . Now that Montana has the opportunity to speak and act with energy, I trust that all such attempts against its rich and rare domain as Idaho has undertaken, will be so effectively resisted, as to prove that the spirit of its people is proportionate with the

wealth of its soil and waters, and the grand stature of its guardian mountains." Finally, he recommended that the legislature protest proposed action by Congress to tax or to sell mineral lands in the Territory.

Meagher attributed his delay in calling the legislature together to the failure of the apportionment bill of the first session. He explained: "The construction put upon the Organic Act, in that particular, by parties who desired and were determined to incapacitate and gag the Territory until the time came when they could rule it, and who seemed to claim for themselves exclusively the correct interpretation of its provisions, led my mind to the conclusion that the legislative powers of the Territory were entranced, and that an enabling act from Congress could alone break the spell." He noted that the acts "relative to elections" and "creating certain offices" led him to believe he could call the legislature, and that inasmuch as I was enjoined by the constitution of the Territory faithfully to execute the laws thereof, it was my sworn duty to effect the laws just cited . . . which was done solely by the proclamation calling the legislature I now have the honor to address."

Meagher admitted the legislature was not apportioned as perfectly as it might have been and in that vein noted that a bill to provide "a full and equitable representation for the Territory should be one of the first duties this legislature takes in hand."

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\[3\text{Montana Post, Mar. 10, 1866.}\]
The Post, commenting unfavorably on the address, defied any man "to say that one point was made by it, one justification produced in it, or one argument of his opponents answered by it. Yet the Montana Radiator termed it a "full, comprehensive and able document." ⁴

The legislators themselves responded favorably to the message and, in their committee reports on the address, recommended the adoption of all of the acting-governor's proposals. For example, Charles Bagg, chairman of the Council Committee on Mines and Minerals, seconded Meagher's proposal that the legislature protest congressional sale of mineral lands. He cited such attempts as "detrimental to individual enterprise, subversive of our rights as pioneers, and destructive of the best interests of all." ⁵

Howard's assertion that the legislators "didn't like the lecture (Meagher's address)" is without foundation. ⁶ Howard claimed that Meagher was ready to enforce martial law in Virginie City, and that he threatened to keep all food from the legislators until they did his bidding. That story too is without basis. Certainly no evidence exists to justify Howard's assertion that Meagher was "Montana's first dictator." ⁷

Introduced during the session were a total of 138 bills--78 in the Council and 60 in the House. Fifty-six became law. Madison County, the largest in the Territory, was the most active of the session;

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⁴ Ibid., Mar. 24, 1866; Montana Radiator, Mar. 17, 1866.
⁵ Council Journal of the Second Session of the Legislative Assembly of the Territory of Montana (Helena, 1870), 42.
⁶ Howard, Montana, 43.
⁷ Ibid.
its representatives introduced 35% of the bills. The most effective delegate of the session was Charles S. Bagg, a Democrat from Madison County. He introduced twenty bills of which nine passed. Of the 138 measures introduced, 64 survived debate and were presented to Meagher. He signed 48 and vetoed 16. Eight later became law over his veto.

Politically, four Democrats and three Republicans composed the seven-man Council, while eleven Democrats and two Republicans comprised the thirteen-member House. In the Council, Beaverhead County had two representatives: Ephriam F. Phelps, and E. D. Leavitt, both Republicans. Choteau, Deer Lodge, and Missoula Counties combined had one delegate, Washington J. McCormick. Nathaniel Merriman, the other Republican in the Council, represented Jefferson County, while Anson S. Potter, James G. Spratt, and Charles S. Bagg represented Madison.

In the House, Madison County had six representatives: Andrew V. Correy, Levinius Daems, George H. Hanna, John S. McCullough, James McElroy, and J. N. Rice. The lower chambers only two Republicans, Andrew J. Smith and a man identified only as "Weed", who represented Beaverhead County. Alex E. Mayhew served for Choteau and Deer Lodge counties. Robert W. Mimms and R. B. Parrott represented Gallatin and Jefferson counties, while the voters of Edgerton elected A. S. Maxwell. Missoula's delegate, James La Fontaine, failed to appear for the session.

On March 6, A. J. Smith introduced into the House the first and most controversial bill of the session: "An Act to Repeal An Act Concerning Extra Compensation." The first session had passed an act increasing the salaries of the federal officers of the Territory $2500.00 a year, and the per diem allowances of the legislators by $12.00. Smith's proposal to repeal the extra compensation did not visibly upset his fellow legislators or the acting-governor (who always needed money), but it did unnerve the Helena Bar, which felt, for some inexplicable reason, that the bill represented a personal attack on Judge Lyman E. Munson.

Therefore, on March 24, a group of Helena's lawyers gathered to protest Smith's proposal and to recommend that the legislature pass an act granting Munson extra pay. "The present salary," they argued, "is totally inadequate to compensate a lawyer of character and ability for discharging the onerous duties of the office."  

In an editorial of the same date, the Post criticized the bill because "it will necessitate the employment of inferior talent." The paper did concede that "as the legislators have cut down of their own salaries they may claim credit for fairness," but it decried the policy itself as "penny-wise and pound foolish."  

On March 27, the lawyers' resolution was introduced in the House and Representative Parrott countered it with a resolution of

9Montana Post, March 31, 1866.

10Ibid., Mar. 24, 1866.
his own. He proposed the Helena resolution should be indefinitely postponed because many members of the bar had complained of the enormous expense to the Territory caused by such an increase as the first session had passed, and because the legislators felt that Smith's bill reflected the will of the people. Parrott also observed that "legislation, passed upon resolutions of attorneys . . . would be unwise and dangerous, especially when there is a possibility of their being influenced by a desire to out-do one another in an attempt to court the favor of the judge or judges before whom they may be called to practice."

Parrott's resolution passed the House by a unanimous vote. The Council referred the lawyers' petition to a select committee. On March 29, Chairman Bagg reported in the opinion of the committee that "said judge is not entitled to any extra compensation." 12

When Parrott's resolution appeared in print, a storm of Republican abuse rained upon him. Helena lawyers assembled again and castigated his inferences as "false and slanderous . . . unmanly and dishonorable," and they added that "such a contemptable expression could never have eminated from man who possessed the sentiments of honor and courtesy." 13

The Post sided with the lawyers; the other two papers of the

13 Montana Post, Apr. 11, 1866.
Territory rallied behind Parrott and the other legislators. John P. Bruce, editor of the Montana Democrat, termed Parrott's resolution as a "masterly speech . . . one of those efforts which to be appreciated should have been heard," while T. J. Favorite of the Montana Radiator stated that "having the pleasure of personal acquaintance with Mr. Parrott . . . we can vouch for his vigilance in promoting the interests of his constituents and of the Territory at large." On March 26, Meagher signed the measure repealing the extra compensation.

Meagher's principle biographer, Robert G. Athearn, inferred that the legislature's action was motivated by a desire for revenge because Munson had declared the session invalid. However, Athearn confused his chronology. The legislature acted in March, three months before Munson declared the session null and void. If either of the actions was motivated by a desire to secure revenge, it would logically have been Munson's.

On March 19, Representative Mimms of Madison introduced H. B. 27: "An Act Prohibiting the Marriage and Cohabitation of Whites with Indians, Chinese, and persons of African descent." The bill was referred to the Committee on Judiciary, which recommended that the word "Indian" be stricken from the title. The resolution was adopted and the measure was then referred to the Committee on Indian Affairs— even though by then, it not apply to Indians. The Post agreed that "marriage or cohabitation of whites with blacks is an evil and most
disgusting violation of natural law." Yet, it added: "The direct
effect of the act will be to increase fornication and decrease marriage
. . . and it is better to have lawful children than bastards."\(^{16}\)
Perhaps in deference to the Post's logic, or more likely because of
the law's impracticability on the Montana frontier, the House postponed
indefinitely action on the bill.

Early in the session the two houses formed a joint committee
on apportionment; and on March 24, W. J. McCormick, chairman of the
committee, introduced an apportionment bill increasing the legislature
to its full limit of thirty-nine. The bill easily passed both houses.
On March 31, Meagher signed it into law.

Divorce bills took much of the legislators' time, principally
because in 1866 Montana had no law relegating divorce suits to the
courts. Eleven divorce bills were introduced during the session.
Three were approved; one was lost in the Council, five in the House,
and two were killed by executive veto. Meagher explained that he vetoed
the bills because he considered the courts a more appropriate place for
such acts, and because "these divorce bills are multiplying in such a
manner as to bring our social condition into grave disrepute and to
give to strangers the impression that Montana is a paradise for all
belligerent wives and husbands, where matrimony and its obligations
for better or worse, is absolved of sanctity and force with the most
abundant facility."\(^{17}\)

\(^{16}\) Montana Post, Mar. 24, 1866.

\(^{17}\) Council Journal, Second Session, 218.
Late in the session, on April 4, Councilman Spratt introduced an act to give the courts sole jurisdiction over divorce cases. The Post praised the bill as "laudable," and on March 10, Meagher signed it into law.

The most time-consuming bills of the session were charters of incorporation. In all, these acts constituted 36% of the legislation introduced. In 1866, Montana had no general incorporation law to provide for the formation of companies. Hence each individual charter had to be approved by the legislature. Most of the acts provided for the chartering of toll roads, bridges, or ferries. This was an indication of another of Montana's most pressing problems. In 1866, neither the federal nor the territorial government could afford to build roads or bridges in Montana. Such endeavors were left to private companies. A group of citizens would band together, form a company, and try to secure a charter sanctioning the venture from the local government. If the legislature was not in session at the time, they usually went ahead without sanction (hoping to get it later) and constructed a road or bridge. They then charged travellers who used the median in order to secure a profit on their investment.

Fifty such ventures were introduced into the second session; twenty passed. Meagher vetoed twelve of the bills, but the legislature passed seven of them over his veto. For the most part, the second legislature was more critical of such measures than was the first. The Post considered the Council's conduct in regards to private bills and charters as "commendable. There is a strict scrutiny of
the schemes and a general abatement in the allowed rate of tolls.\textsuperscript{18}

Meagher remained ever wary of private bills. He returned several measures for varied reasons; the tolls allowed were too high; he personally saw no necessity for such a road or bridge; the bill did not protect against possible monopoly; or the bill contained no penalty clause to insure that the road was maintained in good condition. As an example, on April 10, he vetoed an act to incorporate the Prickly Bear and Missouri River Ferry Company because he could "see no necessity whatever of establishing such a ferry." He stated that the bill "leaves rates undefined and to be determined by the county commissioners of Edgerton County,\textsuperscript{19} and that he would not grant such an "indefinite power to said commissioners." He felt then, "that I would be acting blindly towards the public interest were I to concede such a privilege."

The legislators made two attempts to pass general incorporation acts. Meagher vetoed both of them. He disallowed the first, S. B. 56, "because it involves interests of such a vital character to the industry and enterprise of the people of our territory, as should not be touched until the Territory is more matured." He added "I have kept steadily and clearly in view the fact that the legislature now in session, intelligently and patriotically acting as it has done, is, owing to an imperfect apportionment and other circumstances, over which

\textsuperscript{18}Montana Post, Mar. 24, 1866.

\textsuperscript{19}Council Journal, Second Session, 251.
it had no control whatever, somewhat defective in its representative character." Thus, "I have considered it my duty to approve of no bill which the immediate necessity of the Territory does not demand . . . . The bill I now return disapproved is too permanent in its designed operation for me to do otherwise." The Council passed the bill over Meagher's veto; but the measure died in the House--five in favor of passage, and seven against.

Meagher vetoed the second bill, C. B. 76, because he felt that it restricted individual enterprise. "Possessed as I am," he told the Council, "with a full faith in the individual intelligence and physical activity of the American citizen, I shall not, until I lose that faith, approve any bill or proposition which substitutes corporations or monopolies for the personal impetus and power which have been the grand feature of the American character . . . the vitality of the nation." 21

Like its predecessor, C. B. 76 repassed the Council only to die in the House. The Post, which had originally backed the bill as "a very useful measure," 22 agreed with Meagher that had it passed, there would not be free ground enough left to sod a thrush . . . It is in advance of our requirements." 23

On April 13, the House adjourned after passing a resolution of thanks to Speaker Alex E. Mayhew "for his course in pursuing the

20 Ibid., 251-2.
22 Montana Post, Apr. 7, 1866.
23 Ibid., Apr. 14, 1866.
arduous duties devolving upon him without fear, favor, partiality, or effect." \(^{24}\) The Post seconded the motion, citing Mayhew "for his uprightness, impartiality, and ability in the discharge of his duties as presiding officer." \(^{25}\)

The Council in turn, thanked Anson S. Potter for the "kind, able, and impartial manner in which he has presided over the deliberations of this body." \(^{26}\) Both Houses passed a joint resolution of thanks to Meagher, who acknowledged it by stating: "I called the legislature of the Territory together for the reason that I found Montana in a state, politically speaking, of imbecility and stagnation ... American communities are not properly and successfully developed unless their intelligence is let loose and given a full and authoritative position to illustrate and express itself." He concluded that "The legislature have (sic.) confirmed my faith in their good faith and intellectual ability, and I have to thank each member ... for the personal courtesy and cordiality I have experienced from them every day of the session." \(^{27}\)

Though the Post had been rabidly critical of the legislature before it convened, and though it would be just as critical of it once it had adjourned, the paper had no qualms about lobbying for measures it deemed important while the legislature was in session. For example,

\(^{24}\) House Journal, Second Session, 122.

\(^{25}\) Montana Post, Apr. 14, 1866.

\(^{26}\) Council Journal Second Session, 281.

\(^{27}\) Ibid.
it could term the new license law "a very useful bill," and claim that the Territory was "justly indebted" to Mimms and McCullough for their amendment to the Common School Act.\textsuperscript{28} It could describe the school situation in the Territory as "critical," Parrott's Estray Law as "A most necessary act," and Merriman's bill requiring court clerks to post bond as "much needed."\textsuperscript{29} It could petition the legislature that "not an hour is to be lost" in amending the quartz mining law, which desperately needed attention.\textsuperscript{30} Yet it never attempted to explain how these emergencies would have been met had Meagher not summoned the legislature into session. Once that session ended, once the laws were in force and the crises alleviated, the Post then returned to its diatribes. With no show of conscience, it made political hay out of the fact that it was an "invalid session." At the same time it reaped the harvests of that session's accomplishments.

On April 13, 1866, the Council passed a resolution of thanks to the Post "for the labor and care they have bestowed and the faithfulness they have shown in preparing for our convenience and the public interests, an accurate record of the legislative proceedings that have taken place in our chambers during the present session."\textsuperscript{31} The \textit{Montana Post} was not returning any favors.

\textsuperscript{28} \textit{Montana Post}, Apr. 14, 1866; Mar. 31, 1866.
\textsuperscript{29} \textit{Ibid.}, Apr. 7, 1866; Mar. 31, 1866.
\textsuperscript{30} \textit{Ibid.}, Mar. 17, 1866.
\textsuperscript{31} \textit{Council Journal}, Second Session, 281.
On April 9, while the legislature was still in session, the territorial convention assembled in Helena. The Post's correspondent caustically wrote that "the convention, sired by the acting-one, and damned by the people, having been helped along by a number of proclamations, is finally born."\(^{32}\)

In reality, the convention was doomed before it even began its work. Only twenty-four of the fifty-five delegates arrived for the convention—four less than a quorum. The meeting adjourned until 7:00 p.m. in the hopes that delegates would appear. When the stage from Virginia City arrived that afternoon without any remaining delegates, the conventioners proceeded to fill their ranks by allowing delegates present from counties which had absentees to appoint replacements. In this manner, the convention put together a quorum and elected R. C. Ewing as president. After thanking the delegates for the honor, Ewing informed them of their duty to decide whether Montana was ready for statehood. The convention then adjourned until the following morning.

On April 10, the group assembled and appointed various committees to consider resolutions to the national government. A delegate named Shober moved that the convention frame a constitution for approval by the people at the next general election. After some debate, a committee was appointed to frame a constitution; on the fourth day, April 12, it submitted a document based largely on the constitution

\(^{32}\) Montana Post, Apr. 14, 1866.
of New York, California, and Colorado. The Committee of the Whole quickly approved the document. During the afternoon session, H. N. Maguire was elected printer and instructed to have the constitution in pamphlet form by July 1.  

The convention also adopted a resolution to Congress that stated that the people were proud of their allegiance to the federal government and were thankful for the favors they had received from it. It explained that the Territory was without representation in either branch of Congress and thus they had gathered to protest the sale of mineral lands by the national government which would "entail great hardships upon the peoples of this Territory." They also petitioned Congress not to return part of Montana to Idaho, and they endorsed the Northern Pacific Railroad. Finally, they asked for improvements in the territorial roads and public buildings, and for a branch mint in the Territory. The delegates closed the memorial by stating: "The seeds of republican institutions have been sown in and are a part of the solid foundation of the Territory of Montana . . . and the day is not far distant when we will ask to be admitted as a state."  

On April 14, after six days of deliberations, the convention adjourned.  

For all intents and purposes, the convention was an abysmal failure. This is attributable in large part to the fact that in the

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33 Montana Post, April 21, 1866.
34 Montana Post, April 28, 1866.
interim between the calling and the first session of the convention, Meagher decided that he did have the power to call the legislature into session. Initially convinced that he did not have the power, Meagher's decision to call the convention was an appropriate one; in lieu of a legislature, a convention could have given voice to the problems besetting the Territory. It could have passed a memorial to Congress explaining the problems and requesting a new Organic Act, or it could have adopted a constitution and petitioned Congress for admission as a state.

In 1864, Edgerton estimated Montana's population at 20,000 inhabitants. On that basis, a figure of 25,000 two years later would not have been greatly in error. As the *Montana Radiator* pointed out, with 25,000 people Montana had a greater population than either Kansas or Oregon possessed when admitted to the Union. Thus, numerically speaking, no reason existed to keep Montana out of the Union in 1866. However, it was unrealistic for the delegates to think that the Congress then in session would have welcomed a new state which would have counted itself among the President's "staunchest Democratic supporters."

Once Meagher called the legislature into session, Montanans simply lost interest in the convention. By the time the convention met, the legislature had almost concluded its work and had already acted on most of the pressing problems that originally gave rise to the convention. With the legislature back in session, the Territory once again had a voice, and few citizens felt that the advantages of forming a state government would justify the extra expense involved.
The constitution of 1866 was never presented to the voters. Today, Montanans know it simply as the "lost constitution." No copy of it exists, and no one knows for sure what provisions it contained. One Republican whose name remains lost to history, saw the document and termed it a "good constitution," yet he never elaborated.35

Legend has it that Thomas Tutt, a delegate to the convention, took the final version of the constitution to St. Louis for printing and lost it en route.36 No evidence substantiates this claim and the story seems unlikely. The convention had appointed its Secretary, H. N. Maguire (a Helena printer), to publish the document for circulation to the public, but it had no money to pay him. Most likely, Maguire never completed the task because no one ever offered to compensate him for his efforts. A few years after the convention, a fire destroyed Maguire's personal effects. These probably included the constitution. In any event, Montana in 1866 simply was not ready for statehood.

35Montana Post, Apr. 21, 1866.

36This story appears in Barsness Gold Camp, 146; James M. Hamilton, From Wilderness to Statehood (Portland, 1957), 292; and Helen Fitzgerald Sanders', A History of Montana (Chicago, 1913), 354.
IV

On June 4, 1866, Judge Lyman E. Munson, presiding over the court of the Third judicial district of the Montana Territory, handed down his decision in the case of Townsend and Baker vs. Amos T. Laird. He ruled that "all of the public acts and doings of that so-called legislature (the second) are null and void."¹

Two weeks later, on June 20, Meagher told a Helena meeting that he would "call upon the entire force of the Territory, if necessary," to compel observance of the acts of the second session.² The next day, another Helena meeting (featuring Wilbur Fisk Sanders as the principal speaker) lauded Munson for having "faithfully, honestly, intelligently discharged the duties of his high office unawed by threats nor swarved by friendship."³ However, undaunted by the judge's decision, Meagher issued a proclamation announcing that the territorial elections would be held on September 3, 1866. The delegates to be elected were apportioned according to the act passed by the second legislative assembly.

The Montana Democrat claimed that Congress had overruled the judge regarding the legality of the second session because it had

1. Montana Post, June 9, 1866. Townsend and Baker vs. Amos T. Laird involved the legality of one of the acts of second session. Munson ruled it invalid on the basis that because the first legislative assembly had not reapportioned the Territory, Montana's legislative functions had lapsed. Thus, none of the laws passed by the second session were valid.


3. Ibid.
made the territorial appropriation for 1866. That appropriation included the cost of a legislative assembly. John P. Bruce, editor of the Democrat, commented: "No greater outrage upon the rights of a free people was ever perpetrated than the attempt made by Governor Edgerton and seconded by Judges Hosmer, Munson, and Williston, to deprive Montana of the right and privilege guaranteed by the Organic Act." He termed their action "not only an outrage, but a positive crime."

The paper praised Montanans for the forbearance they had exercised with regard to these "enemies of free institutions," and noted that "when we reflect upon the outrageous attempts to run roughshod over the vested rights of the people of Montana . . . we can hardly restrain our indignation."

The Democrat voiced confidence that the judges would receive the condemnation of all just men in the community and expressed the hope that President Johnson would appoint better men in their places. The editorial asserted that no judge would come to the same decisions regarding the validity of the legislature as had Munson, Hosmer, and Williston. It concluded: "The public will soon have the opinion of the Attorney General of the United States on the question and if we are not mistaken these judges will receive a severe rap over their ignorant pates for the absurd opinion they have promulgated on the legislative question."

Montana Democrat, Aug. 30, 1866.
The campaign of 1866 was a mild one; and on September 8, without much pomp, the *Montana Radiator* announced that the entire Democratic ticket had been elected throughout the Territory. The Democrat commented simply: "The result of the election is a full and complete settlement of the legislative question, and a verdict rendered by the people against the federal judges."  

The third legislative assembly was scheduled to meet in November. On October 3, 1866, Green Clay Smith, a Kentucky Democrat who lost the 1864 vice-presidential nomination to Andrew Johnson by half a vote, arrived in Montana as the Territory's governor. Edgerton had left Montana without securing a leave of absence. When he arrived in Washington, Secretary Seward notified him that the reasons he gave for leaving the Territory without permission were not satisfactory, and that his absence could not be sanctioned. Edgerton thus "resigned" in June, 1866 and Johnson appointed Smith as his successor.

Edgerton's "resignation" had been rumored in Montana almost immediately on his departure from the Territory. Meagher originally hoped that he would receive the post. However, his petitions went  

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5 Henry N. Blake, then the editor of the *Montana Post*, remarked that "In 1866, there was no partisan campaign and my editorials were not composed of hot or inflammable material." Henry N. Blake, "The First Newspaper of Montana," *Historical Society of Montana Contributions*, V (1904), 257.

6 *Montana Democrat*, Sept. 6, 1866.

7 On Feb. 20, Meagher asked Seward that in the event of Edgerton's resignation, "I may . . . be retained in the position I now occupy." (Meagher to Seward, Feb. 20, 1866), Territorial Papers of Montana). Several times Meagher claimed to be the only federal office in the Territory loyal to the administration. On March 22, he sent a report
unheeded and the governorship went to Smith.

The Secretary took the appointment gracefully, and received the news with "the most cordial satisfaction." In announcing Smith's arrival, the Post rejoiced "most heartily that Governor Smith has assumed the gubernatorial chair and the General Meagher, who has brought disgrace upon himself, his race, the Territory, and the country generally, has been superceded." It added: "We understand ... this notorious individual (Meagher) is en route to Virginia City" and that he "will find ... he is now the most unimportant member of the community."  

Because of this editorial, Meagher challenged Henry N. Blake, the paper's editor, to a duel. Blake replied by printing the laws of the Territory which prohibited dueling. The challenge went unfulfilled. Meagher quickly forgot the issue, and in the spring of 1867 he appointed Blake Assistant Adjutant General of the territorial militia. The Post later mellowed slightly, and conceded that Meagher "will now have a chance to enjoy the roses of the secretariaship and not be annoyed by the thorns of the gubernatorial chair."

(continued) to Seward claiming that if the radical Republican officials in the Territory were left at their posts they would "produce much bitterness and considerable mischief." (Meagher to Seward, March 22, 1866, Territorial Papers of Montana.)

Montana Post, Aug. 25, 1866.

Ibid., Oct. 6, 1866.

Ibid.

Montana Post, Oct. 13, 1866.
On Smith's arrival in the Territory, Meagher resigned his office. Almost immediately, however, Smith persuaded him to withdraw the resignation; and on November 6, both men wrote President Johnson: Meagher withdrawing his resignation, and Smith asking the president not to accept it. Johnson wisely overlooked the matter.

When Smith arrived in Virginia City, the Republicans again donned the airs of congeniality with which they had greeted Meagher. Smith, a more experienced politician than the Secretary, initially managed to please both the Republicans (who saw in him relief from the Democratic "tyranny" of the Irishman) and the Democrats (who counted him as one of their fellows). Indicative of Smith's success in appeasing the Republicans was the change of attitude on their part concerning the validity of the Territory's legislative functions. As the third session assembled, the Post again began to lobby for issues it considered important. More significantly, once the paper felt the executive of the Territory was in sympathy with Republican views, it ran an editorial challenging "some parties" who had been inclined to censure Governor Smith because he had issued a proclamation declaring that certain men had been elected as members of the House and Council. "They assume," continued the Post "that he recognized the legality of the law-making body that convened in the Territory last winter, and thus has placed himself in opposition to the decisions of Judge Munson and the acts of the other members of the court. We do not regard his action in that light."

The Post defended Smith for convening the legislature, because
"no citizen appears before him to enter any protest." It conceded that "grave questions of constitutional law may arise," but cautioned: "The judges of the Territory have never enunciated the proposition that the legislature de facto was not also de jure. In their conduct (with the exception of Judge Munson) they have quietly ignored its existence and never decided the point." With Smith and not Meagher in the gubernatorial chair, the paper could admit that the legality of the second and third legislatures was "a vexatious question" which "hangs by the gills," as of then undecided.

When the third legislature convened on November 3, 1866, the Post again became amenable. The paper cited Bagg, President of the Council, and Mayhew, who had been re-elected as Speaker of the House, as "competent, and efficient presiding officers." At the same time, the Post observed that the opinions of the judges regarding the legality of the legislature "conflict with those of a respectable portion of the community . . . . We trust that Congress will enact laws which will allow all parties who have acted in good faith to receive a reasonable compensation, and at the same time, emancipate the people of Montana from the trouble and perplexion which now exists."

The paper concluded that if Congress did not take such action, "either all men must cast aside their legal opinions and acknowledge the validity of the second and third Territorial legislatures . . . or

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12 Montana Post, Oct. 20, 1866.
the Supreme Court of Montana must . . . reverse its decision on the subject. A law-making body is absolutely essential to the safety and well-being of the community."  

The paper lauded the third legislature for its liberal spirit. "The Democrats and Republicans have buried the political hatchet," remarked the Post and "merit the thanks of the community for their action." In another article, the paper declared that "if every legislative assembly could deliberate as impartially as that which has just adjourned in Virginia City, many states and territories would be blessed."  

On December 19, Chief Justice Hezikiah L. Hosmer publically took a stand on the legality of the second session. Like Munson, he protected the $2500.00 a year it would have cost him to recognize that session. Then on December 29, the Montana Post announced: "THE JUDGES DISAGREE--Judge Williston has announced his intention to conform to the laws of the second and third legislatures of Montana."  

Undaunted by the decisions of Judges Munson and Hosmer--or possibly because of them, the third legislature passed an act defining the judicial districts of the Territory. They assigned Hosmer as Chief Justice to District One, including Madison, Beaverhead, and Gallatin counties; Williston to District Two: Deer Lodge, Missoula,

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13 Ibid., Dec. 22, 1866.
14 Montana Post, Dec. 22, 1866.
15 Ibid., Dec. 29, 1866.
Edgerton, Meagher, and Jefferson counties; and Munson to District Three: Choteau, Vivion and Big Horn counties. As of 1866, District Three was populated mostly by Indians and Buffalo. The Post noted that the number of lawsuits in Munson's district would be 'like angels' visits, few and far between. . . . The uncalled for action of the legislature cannot be justified upon the ordinary grounds of expediency, right or necessity.'

The legislature also memorialized Congress for post offices and postal routes in the Territory, for a land office and a surveyor general, for repairs to the Mullan Road, and finally for an appropriation to erect federal buildings in Virginia City. In addition, it passed a joint resolution requesting Smith to return to Washington and lay the Territory's problems before Congress "inasmuch as the Territory has not received an equal and just appropriation of lands and moneys usually appropriated to the Territories of the United States, and inasmuch as this Territory is suffering because our wants are not being sufficiently known at our national seat of government." Thus, on January 7, 1867, Smith left Montana for the nation's capitol. Once again, Thomas Francis Meagher was Montana's acting-governor.

With Smith's departure from Montana, the Territory again dissolved into political factions. The Fortieth U.S. Congress had

16 Council Journal of the Third Session of the Legislative Assembly of the Territory of Montana, (Helena, 1870), 276.
17 Montana Post, Dec. 29, 1866.
18 Council Journal, Third Session of the Legislature of the Territory of Montana, 276.
decided to meet in March, 1867, rather than in the fall. This meant
that Montana would have no delegate to represent it in Congress, since
Samuel McLean's term had expired at the end of the Thirty-ninth Congress.

On February 6, Meagher moved to fill the gap by calling an extra
session of the legislature for the "sole purpose of taking into con-
sideration the Act Relative to Elections . . . with the view of having
the same so altered so as to provide for the election of a delegate to
Congress on as early a day as practicable as well as for the adoption
of such other alterations and amendments as . . . it may appear to the
legislature expedient to enact."19

The Montana Post termed the proclamation "the most delightful
specimen of an expensive practical joke." It castigated Meagher for
calling the session so that county officers could be elected in the
spring rather than in the fall, by which time the Democrats would have
"forever relapsed into a hopeless minority." The paper also referred
to the expense involved and complained that even if Montana did
elect and send a delegate, he would not get to Washington until after
the session had adjourned.20 In a later issue, it complained that
the extra session would simply grant more toll road charters, and that
Montana suffered more from Meagher's legislatures than from congres-
sional neglect.21

Nonetheless, the third extra session met on February 25, 1867,

19 Montana Post, Feb. 16, 1867.
20 Montana Post, Feb. 16, 1867.
21 Ibid., Feb., 23, 1867.
and deliberated for seven days. While it did pass an act repealing the election law, it failed to approve any measures for chartering toll roads or any other type of corporation. No one knows what provisions, if any, the session made for sending a delegate to Washington. The only record of the activities of that session was an outline sketch of events reported by the Montana Post. The journals and laws of the third extra session were never printed, for on March 2, 1867, in an unprecedented action, the Congress of the United States declared Montana's second and third legislative sessions null and void.

Martin Maginnis, later a territorial delegate to Congress, once referred to the annulment of those two sessions as "the most unjust act ever perpetrated by the Congress of the United States on a Territory . . . carried on through the grossest misrepresentation of the character of the population."22

Maginnis underestimated the situation, or perhaps misunderstood it, for the blame correctly belonged for the most part to Wilbur Fisk Sanders. Upset because the Territory's citizens as well as the national government, apparently intended to ignore Montana's Radical Republicans and their claims that the legislatures were invalid, Sanders journeyed to Washington. He arrived there early in 1867, at the height of the struggle between President Johnson and the Radical Republican Congress. In Washington, he found Smith and McLean trying to get the Congress to approve the legislatures. Yet they were Democrats, and Sanders was a Radical. Thus after hearing Sanders, Congress swept

22 Martin Maginnis, "Thomas Francis Meagher," Historical Society of Montana Contributions, VI (1907), 106.
aside the second and third sessions and directed Smith to reappor-
tion the Territory and start all over again.

On March 9, the Post announced the action, but it could not
believe that Sanders had gone so far as to get all the acts of those
legislatures repealed. The paper stated that the telegram was "not
very explicit and after due consideration, we believe that it contains
ideas that are not correct . . . . The general laws have been useful
and necessary, and their abrogation wholesale will leave the Ter-
ritory in a very unenviable condition." 23

Shortly thereafter, Meagher issued a proclamation stating that
rumors and reports of the nullification of the legislatures were
circulating in the Territory, and that "certain persons have availed
themselves of the uncertainty so caused to refuse obedience to the
same. He added: "No official notification whatever has been made
anywhere," or received in Montana to substantiate the rumors. Thus
the laws of those sessions were still in force.

Confirmation eventually arrived. Even Meagher had to admit
that the laws were unenforceable. The Montana Post was correct:
territorial Montana was in a "very unenviable condition."

23 Montana Post, Mar. 9, 1867.
24 Ibid., Apr. 6, 1867.
Despite the confusion that totally disrupted Montana politics in the spring of 1867, the Territory's citizens stood together, regardless of party, on the issue of common defense from the Indians. The spring of 1867 brought with it the rumor that an alliance of Sioux warriors, 11,000 strong, stood poised and ready to invade the unprotected Territory. The rumor was based on the fact that the U. S. Army was planning a summer campaign against the Sioux north of the Platte River. Such an operation would have pushed the Indians back into Montana's fertile Gallatin Valley.

On February 9, the Post editorialized: "The well-founded reports of an alliance of Indian tribes . . . for the purpose of carrying the war into the settlements . . . calls for action immediate and earnest on the part of the residents of Montana." The paper urged the citizens to organize for "mutual protection and defense."

On February 17, the Radiator printed a report from Fort C. F. Smith describing Indian depredations as "worse than ever." In March, a Mr. Richards arrived in Virginia City from Fort C. F. Smith and reported that 5,400 Sioux led by Red Cloud, "the famous war chief of the recent massacre," were encamped 35 miles from Fort Smith, "prepared to move as soon as the weather will permit." According

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1 Montana Post, Feb. 9, 1867.

2 Montana Radiator, Feb. 17, 1867.
to Smith, "in anticipation of the Summer's work, the Sioux sent to
the Bloods, Peaguins, (sic.) and Gros Ventures (sic.) the 'peace
pipe' which they have accepted and joined against the whites." He
concluded: "The Commandant of Fort Smith does not expect to be able
to hold his position."3

Most residents felt that the Gallatin Valley, a sparsely
settled, rich agricultural area, would be the Indians' prime target.
On March 30, the Post noted that the citizens of the Gallatin were
preparing their own defenses. They agreed to erect a stockade, and
Meagher sent them forty muskets—all he had on hand. The paper
stated: "We are credibly informed that an incipient panic exists
among a large number of the ranchers on the Gallatin." It further
observed that as the settlers were willing to defend themselves,
"the duty is imperative of the government to provide them with the
means of resistance."4

On March 25, John M. Bozeman, the Gallatin's leading citizen,
informed Meagher: "We are in imminent danger of hostile Indians,
and if there is not something done to protect this valley soon,
there will be few men and no families left in the Gallatin Valley."5
The Post printed the letter and exhorted Montanans to "organize
volunteer companies, pledged to go to their assistance should the

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3 Montana Post, Mar. 16, 1867.
4 Ibid., Mar. 30, 1867.
5 Bozeman to Meagher, Mar. 25, 1867, in Montana Post, Apr. 6,
1867.
exigencies of the case require it."

On April 9, Meagher telegraphed General U. S. Grant that "the most populous and prosperous portion of our Territory . . . is threatened by the Sioux. The greatest alarm reasonably prevails . . . Danger is immanent (sic.) and will overpower unless measures for defence are instantly taken."

Meagher then requested permission to raise a force of 1,000 volunteers, to be financed by the federal government. He intended to keep these troops in the field until the regular army could relieve them. He concluded: "Major Clinton commander at Judith no use whatever to settlements spoken of. Fort Smith too far from latter and too weakly manned to be of service. People of Territory will generously and bravely do their duty successfully defending themselves if privileges asked be granted."7

Without waiting for permission, Meagher then authorized Martin Beem, whom he commissioned a captain, to superintend the recruitment and organization of volunteers. "It is very evident," observed the Post, "that the boys mean business. Whether the War Department grants the solicited permission or not there will be such assistance rendered to exposed localities as the circumstances demand."8

On April 14, 1867, Gen. William T. Sherman, Commander of the

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6 Montana Post, Apr. 6, 1867.
7 Meagher to Grant, Apr. 9, 1867. Division of the Missouri, Special File, Indian Wars of 1867. Records of the United States Army Commands, Record Group 98, National Archives, Hereafter cited as Spec. File.
8 Montana Post, Apr. 13, 1867.
Division of the Missouri, wrote of the danger facing Montana to Gen. Christopher C. Augur, Commander of the Department of the Platte. Sherman noted: "the object of most pressing importance at this time is to strike the hostile bands of Indians who have infested that road (between Fort C. F. Smith and the Gallatin Valley) during the past year, and who, from success, have become bold and insolent in the highest degree. If this be endured much longer, all the Indians of that vast region will combine and attack our thin lines at any exposed point and endanger the settlements beyond."  

The Montana situation exploded on April 18, when John Bozeman and Thomas Cover, another Gallatin citizen, were attacked en route to Fort C. F. Smith. Five marauding Blackfeet Indians murdered Bozeman and wounded Cover who galloped panic-stricken back to Bozeman to report the "uprising."

When Meagher heard what had happened, he and Hosmer telegraphed Secretary of War E. M. Stanton, that "our Territory (is) in serious danger from the Indians. Positive evidence of general attack from Yellowstone and Wind River Mountains. Richest portion already invaded. Citizens murdered. (my italics.) Troops within Territory no use whatever . . . . People of Montana thrown upon themselves, ask therefore authority from War Department to organize eight hundred (800) men for military duty in field until relieved by regulars. This authority most earnestly asked. Not an hour to be lost."  

9 Sherman to Augur, Apr. 14, 1867, Spec. File.  
10 Meagher and Hosmer to Stanton, Apr. 27, 1867, Spec. File.
death and the ensuing panic, it apparently never occurred to anyone that Bozeman had been killed not by the Sioux, but by five marauding Blackfeet, who had not even figured in the rumors of the season.

On April 27, the Post printed a letter from William Clinton, who commanded Camp Cook, located on the mouth of the Judith River. Clinton wrote Meagher that he did not have the power to send a detachment of troops into the Gallatin, one hundred and fifty miles from the Judith. The Post published this reply in an editorial that described Clinton as guarding "a grove of cottonwood trees against the attack of the 'bad lands' hundred of miles in extent, over which even the whippoorwill (sic.) has to carry rations on his ariel voyage, and where an Indian is never seen." According to the Post, "The Gallatin may be depopulated, its people murdered and ravished; their towns laid waste, and the finest valley in the north be the camping ground of Indians, (and) what matters it to this son of Mars, with six hundred men in the bog by the Judith . . . . We would like to ask Major Clinton one question: What is your commend sent to this country for?"

Receiving no response from Stanton or Grant, Hosmer in desperation on May 2, telegraphed President Johnson. "Our Territory is invaded by hostile Indians," he stated. "We have telegraphed Grant and War Dept., yet no reply. Can we have authority to raise eight hundred (800) men?".

Johnson referred the request to Stanton, who in turn passes it

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11 Montana Post, Apr. 27, 1867.
12 Hosmer to Johnson, May 2, 1867, Spec.File.
on to Grant. The following day, Grant replied that no law existed to authorize calling out the militia. "The law of self-defense," he wrote, "will justify the governor of the Territory in calling out troops for the protection of her citizens and Congress must be looked to afterwards for reimbursement."\(^\text{13}\)

On that same day, Stanton informed Sherman of the problem in Montana. "The matter has been considered by the Department and by General Grant and submitted to the President," he stated. "Very serious evils besides enormous expenditure always attend to conferring such authority on Territorial governors, unless controlled by the supervision and authority of discreet military officers." Yet, he added, "there is no objection to authorizing you to call out such militia force in the territories under your command as in your judgement may be needed for immediate protection against hostile Indians. If therefore the Territory of Montana is invaded or threatened with invasion so as to require in your judgement the inhabitants to be called out for defense, you are authorized to make such call . . . and to organize, arm, equip, and subsist the force so long as demanded by actual necessity."\(^\text{14}\)

"The cloud is bursting," the Post reported the next day. After listing the latest Indian reports, the editor commented: "If hitherto there have been doubts of their intention to inaugurate a war

\(^{13}\) Grant to Hosmer, May 3, 1867. Spec. File.

at as early as practicable a moment this spring, we think the latest advices will dissipate the blinding glamour of disbelief."  

Sherman agreed with Stanton that "discretion to call out the militia in Montana, or any other of our territories, cannot be safely lodged with their governors, for to be candid, each has an interest antagonistic to that of the United States. Meagher in Montana, is a stampeder, and can always with a fair show of truth raise a clamor, and would have in pay the maximum number of men allowed." Sherman conceded that it was impossible for the regular army to guard such scattered settlements as those in Montana. "When the Indians combine against them, the white people must combine against the Indians." Finally, Sherman noted that after talking with Governor Smith in St. Louis, he was sending 2,500 muskets up the Missouri to Fort Benton for use by the Montana citizens.  

On the same day, the War Department notified Hosmer that in answer to his telegrams, "authority has been given to Lieutenant General Sherman to call out, organize, officer, arm and subsist such militia force in Montana as he deems necessary."  

On May 4, Mayor Castnor of Virginia City also got into the act by asking Stanton for aid. The Secretary forwarded his telegram to Sherman, who replied: "Our official reports (from officers in the field) do not justify such extreme alarm, but if the inhabitants of  

15 Montana Post, May 4, 1867.  
Gallatin Valley be in immediate danger from Indians, you may organize your people and go to their relief and defense under the general direction of your governor."18

Though Sherman had at last given tentative approval for volunteer action in Montana, he was still unhappy about the situation. He confessed to Augur: "The governor of Montana and the Mayor of Virginia City are stampeded by reports of Indian invasion and want authority to raise volunteers. I don't think the case demands it as I have no faith in the parties who want to raise and command the volunteers."

Sherman told Augur to push his operations towards the Yellowstone, "regardless of cost," because "there is no doubt the Indians have it in their power to do mischief in that quarter."19

Though Sherman "had no faith" in Meagher, he was still not taking any chances.

On May 7, Meagher telegraphed Sherman: "Murders and depredations daily committed by Indians. Action absolutely necessary. Not an hour to be lost." Again he asked permission to raise a volunteer force of eight hundred men.20

Thus, by early May, Sherman was caught on the horns of a dilemma. He did not trust Meagher or the other territorial governors, many of whom were making similar requests, and most of whom he felt

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18 Sherman to Stanton, May 4, 1867, Spec. File.
19 Sherman to Augur, May 6, 1867, Spec. File.
20 Meagher to Sherman, May 7, 1867, Spec. File.
were concerned only with making a raid on the federal treasury. Yet, if he refused to allow the citizens to organize, and if the Indians did attack, he was open to fire for ignoring the governors' pleas. Therefore, on May 7, Sherman telegraphed Meagher: "If Indians enter the Valley of the Gallatin, organize eight hundred (800) volunteers and drive them out. These troops should be used only till the Regulars reach the Yellowstone." 21

By the time the telegram reached the Montana Post it authorized Meagher to organize the militia if the Indians threatened the valley of the Gallatin. It is impossible to determine who misquoted the wire, but for Meagher's purposes the intent was all that mattered. Circumstances required that the militia be organized while the Indians threatened the Gallatin. If Meagher waited until the Indians actually entered the Valley, the volunteers would be useless.

With permission to defend the Territory, perhaps Meagher should have been content to leave well enough alone; but he was not. On May 9, he wired a request to Sherman for 500 guns and 200 saddles from Salt Lake City. At this, Sherman exploded. He fired back a telegram, refusing to send the equipment. "I believe you are stampeded," to wrote. "Until I hear of some fight in which you whip the Indians or they whip you, I won't believe it is anything more than a stampede. If the danger is so great that not an hour is to be lost, how can you wait for saddles from Utah?" Finally, tired of paying for Meagher's

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telegrams (which were always sent collect), Sherman concluded: "I expect you to pay for your dispatched at your end of the line."  

Sherman then ordered Augur to send some "good discreet officer" to Virginia City "to accept if necessary the services of a battalion of volunteers . . . and lead them to the point of danger."  

Sherman was not alone in his suspicion of Meagher. On May 14, W. T. Nowlan, a Helena citizen, wrote Sherman. Nowlan felt it his duty "to call your attention to the efforts that are being made to distract this Territory and plunge us into debt by a few persons, who unfortunately hold such positions . . . as to make the public lend a willing ear to their cry of danger from the Indians." Nowlan maintained that the whole war was a scare caused by the death of Bozeman who, according to Nowlan, had no business in Indian country anyhow.  

It is impossible to estimate how many Montanans shared Nowlan's point of view, but certainly they were in a minority. For example, had the Montana Post enjoyed even the slightest suspicion that the threat was a hoax, it would have immediately capitalized on the issue and used it to crucify Meagher. However, the territorial press was a dominant moving factor behind the war. Chief Justice Hosmer, who lost no love on Meagher, was one of his main supporters.  

22Sherman to Meagher, May 9, 1867, Spec. File.  
23Sherman to Augur, May 9, 1867, Spec. File.  
in the action. However, though Nowlan was in a minority, it is significant to note that not all Montanans were enthused about doing battle in 1867.

As per Sherman's instructions, Augur ordered Maj. William H. Lewis to "proceed without delay to Virginia City, Montana Territory," where he was to "accept the services of the battalion organized by the acting-governor, and proceed to the points of danger."\(^{25}\)

Meanwhile, the Montana volunteers were already in the field. On May 11, Gen. Thomas Thoroughman, whom Meagher had appointed to command the Bozeman camp, sent to the Commander-in-Chief a report confirming the fact that the Indians were preparing for war. However, Thoroughman based his report on second-hand information which he had received from Fort C. F. Smith. As of May 11, the militia itself had not encountered any Indians. Thoroughman also noted that Fort Smith, manned by two hundred federal soldiers, was in danger of starvation.

The initial focal point of the war, then, became Fort C. F. Smith. Ironically, the citizens ended up going to the rescue of the federal troops initially sent to protect them. The Post had published a report from Fort Smith that the garrison expected an attack at any time. The soldiers of the fort were starving because no one was brave enough to provision them. When the commander of the post petitioned the people of the Gallatin for food, a force of forty volunteers under Col. W. W. DeLacey left Bozeman to escort a supply

\(^{25}\)Special Order No. 85, Department of the Platte, May 10, 1867, Spec. File.
train to the fort. Meanwhile, in a report from the "front" to the Montana Post, one volunteer described the situation as quiet but stated that "there is a couple of Crow Indian families here," who are kept under strict surveillance (sic.). 26 The Montana volunteers were not overlooking any bets.

On May 19, Major Lewis arrived in Virginia City. The Post noted his arrival and stated: "We are glad to hear of this purpose and evident desire on the part of General Sherman to have this matter looked up . . . and are confident that his experience and judgement are ample assurance that the action taken by the people of Montana under the urgent necessity of the case will meet his urgent approval." 27

On his arrival in Virginia City, Lewis became the center of attraction and immediately compounded the confusion that already existed. His orders from Augur were quite clear: first of all he was to determine if any real danger existed; then, depending on his conclusion, he was to assume command of the volunteers and lead them "to the points of danger."

Soon after Lewis began his investigation, Sherman telegraphed him to "muster in a battalion of eight hundred men at the cost of the United States, for two months. Equip them as best you can until the arms enroute reach Fort Benton. Move quickly to the threatened point . . . let the men furnish their own horses at forty cents a day.

26 Montana Post, May 25, 1867.

27 Ibid., May 27, 1867.
and be rationed by contract. When the service is rendered I will order payment by regular paymaster."28

Lewis replied that it was impossible to raise men on those terms, but that troops should be mustered into service. He proceeded to fulfill the second half of his orders by exhibiting about the town his telegram of authorization from Sherman. He posted a copy of it in a local bank and told the merchants of Virginia City that it was an answer sent by Sherman to muster in the troops. "There gentlemen," he stated, "is authority for you: that is sufficient."29

On the strength of Lewis' statements, the merchants began supplying the volunteers with everything from horses to whiskey to a ten-dollar truss, confident that the federal government would repay them. However, before Lewis could lead the volunteers to the "points of danger," Sherman countermanded his own orders and forbade the operation. Though Lewis had concluded that the threat was in fact substantial, he realized that it would not materialize until the army began its operations north of the Platte. Meanwhile, Sherman wired him for an account of actual depredations, and the only one Lewis could list was the murder of Bozeman. Sherman then ordered him not to call out the volunteers. Later, Lewis testified that "I should have mustered in a battalion of not to exceed four hundred men but for that dispatch."30

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29 Ibid., 3.

At this juncture Lewis returned to Salt Lake City, apparently without countermanding the permission he had given for the mustering of the troops and, worse, for their provision by the merchants.

On June 14, Meagher issued **General Order** No. 1, commissioning Thomas Thoroughman as a brigadier general and establishing a chain of command that included enough officers to staff an army of eight thousand rather than eight hundred.

Nine companies were organized, and Meagher instructed Thoroughman to move into the Gallatin and safeguard the frontier. However, owing to a lack of horses, only two or three of the nine companies ever appeared at Bozeman. The Helena troops, for example, were forced to disband after only thirty days in "action"--those days spent in an unsuccessful attempt to break wild Indian ponies for use as cavalry mounts. When the attempt failed, the volunteers were dismissed from service.

Thoroughman moved into Bozeman and threw up a stockade around the city. The troops then constructed Camp Elizabeth Meagher eight miles from Bozeman on a site chosen by Col. W. W. DeLacy, the militia's chief engineer. Later, they established Camp Ida Thoroughman on the Shields River, thirty-five miles from Camp Meagher to watch the Crow and Sioux Indians in the area.

The volunteers spent the month of June organizing; near the end of the month, Meagher and some of his officers left for Camp Cook to pick up 130 muskets there.

Around noon on July 1, the party arrived in Fort Benton.
Meagher spent the afternoon in the company of Wilbur Fisk Sanders on "social visits" in Fort Benton. During the course of the afternoon, he accepted the invitation of an Irish compatriot to spend the night on his run-down freighter, the G. A. Thompson, then docked at Fort Benton. Later that evening, he dined in the company of T. H. Eastman, the head of the fur company at the fort.

Recalling the events of the day, Sanders swore that Meagher had taken nothing to drink (although he was reputed to imbibe rather heavily on occasion). Thus, when he met the General after dinner and found him in a confused state, he attributed his condition to a sun stroke--the result of the morning's ride.

Perhaps Sanders was only being charitable, or perhaps Meagher had drunk rather heavily at dinner. (Sanders did not accompany him to Eastman's). It seems rather improbable that Meagher would have suffered a sun stroke that late in the evening. The ride to Fort Benton was a short one, and Meagher had been in the saddle in the cool hours of the morning. He spent the afternoon in Fort Benton, out of the sun, socializing, and exhibited no signs of affliction until hours after dinner.

At any rate, and whatever the malady, it was apparent that Meagher was "deranged" when he met Sanders at about 10:30 that evening. Sanders described him as "abnormally loud" and stated that in his "disturbed mental condition" the General was convinced that the citizens of Fort Benton were plotting to kill him. Sanders helped get him to bed and noted: "As he had removed his outer garments
and laid down in her berth; we did not apprehend there would be any
further trouble."\textsuperscript{31}

About 11:15, Meagher, clad only in his underwear, left his
cabin and wandered out onto the unfenced deck. As he walked down the
deck, he apparently tripped on a coil of rope and fell into the raging
Missouri River. A night watchman heard the splash and sounded the
cry "Man Overboard!" Yet by the time help arrived, the flood-swollen
waters had swept the Irishman far downstream. Today, one hundred
years later, the remains of Thomas Francis Meagher lie buried some­
where along the course of the Missouri River.

Montanans temporarily put aside their partisan political
feelings to pay respect to Meagher's memory. In reporting the
accident, the Montana Post described Meagher as "a ripe scholar. . .
gifted with talents of a high order . . . courteous, amiable, and
 hospitable." From his arrival in Montana, Meagher had "prominently
identified himself with the material interests of the Territory, ever
aiding them with that earnest, impulsive generosity of spirit which
was a marked characteristic of his nature."\textsuperscript{32}

On July 3, Governor Smith ordered all federal and military
offices of the Territory draped in mourning for thirty days. Smith
cited Meagher as a "man of high social qualities, great urbanity, a
high order of intellect, a brave solider, a true gentleman, and an

\textsuperscript{31} Helen F. Sanders, A History of Montana, (Chicago, 1913)
I, 339-40.

\textsuperscript{32} Montana Post, July 6, 1867.
honor to his Territory and government."\(^{33}\)

A meeting of citizens in Helena termed Meagher "a true patriot, a friend of universal liberty, a sympathizer with the afflicted of all nations, a foe to tyranny, a fearless and intrepid general, a man of genius and eloquence, who, at all times was ready to sacrifice personal interest for the public good."\(^{34}\)

Judge Lyman E. Munson presided over another Helena meeting. Ever after all the harsh and bitter exchanges they had had, he still described Meagher as "a brave patriot, an earnest, pure, and faithful officer and an esteemed citizen." Munson added that "in his official capacity as Secretary and Acting-governor of this Territory, he has ever shown a zealous desire and untiring energy in advancing the material interests of Montana."\(^{35}\)

Green Clay Smith who had returned to Montana in June, assumed command of the volunteers upon Meagher's death. He reorganized the militia and cut down on the number of officers. However, the summer of 1867 passed into Autumn and the expected Indian attack never materialized. Only three Indians were killed by the militia—two shot in the act of stealing horses, and another hanged for his participation in the same crime.

With no Indians to fight, the militiamen dissolved into bickering among themselves. In early October, a mutiny occurred and

\(^{33}\text{Montana Post, July 6, 1867.}\)

\(^{34}\text{Ibid., July 13, 1867.}\)

\(^{35}\text{Ibid., July 6, 1867.}\)
one hundred and forty men deserted on a prospecting mission while another twenty-five left and returned to the states. General Alfred H. Terry, commander of the Department of the Dakota, investigated the problem and concluded that while the people had been genuinely alarmed, the danger—if any real danger had ever existed—had passed. Terry did recommend that a military post be constructed in the Gallatin, and on his advice, Smith mustered out the volunteers. At the end of the "war", Montana billed the federal government for $1,100,000—a cost roughly equivalent to $375,000 per Indian killed. The government eventually paid claims totalling $513,000.

Because no war developed, many historians have accused Meagher of inventing the whole scare, or at least fanning it to further his own position. Paul F. Sharp, for example, accused Meagher of aggravating Indian problems "by playing upon public fears to rehabilitate his own waning political fortunes."36

It must be remembered, however, that Meagher did not begin the Indian scare: it originated with the U.S. Army stationed at Fort C. F. Smith. Furthermore, 1867 was a year of Indian scares throughout the west; the phenomena was not restricted to Montana. Identical "threats" cropped up in Colorado, New Mexico, and Utah.

With the advantage of one hundred years hindsight, it is easy to ridicule the Montana volunteers for throwing up a stockade around Bozeman to ward off an attack that was never to come. However,

the isolated Gallatin farmers saw nothing even remotely humorous about a federal garrison of troops cowering behind the walls of their fort, starving to death out of fear and leaving the Gallatin totally unprotected.

Meagher found himself caught in the middle of the scare. No doubt he delighted in the thought of being back in the saddle, charging off to war; certainly, the situation was ideal for someone like Meagher who longed to be in the limelight. Yet, the evidence would indicate that he actually felt a war was developing. An Indian war without any Indians offers little opportunity for gallantry, heroism, or headline-grabbing.

Without question, Meagher exaggerated his later telegrams to Sherman when he reported that "murders and depredations" were being committed daily by Indians, yet he was under pressure from the citizens, from the press, and from his own belief that the Territory was in danger. As Burlingame and Toole point out, he acted under "the real belief that the population was threatened." Grant and Stanton did not even answer when he reported that the Territory was "threatened"; only by exaggerating could he get permission to mobilize the volunteers.

If we are to accept the judgement of Lewis, the only official—and supposedly impartial—observer on the scene during the crisis, Meagher's actions were at least understandable.

As the Montanans had done, Lewis made his judgements partially on the basis that the proposed Indian campaign of 1867 would indeed
have driven the Sioux into the Gallatin. The fact that the army did not initiate that operation accounts in large measure for the failure of the militia to encounter any Indians.

In the end then, a breakdown in communications between the federal and territorial officials can be blamed for the debacle that was Montana's Indian war of 1867. Had Sherman kept Meagher and the other territorial governors informed of the army's plans, perhaps he could have put their fears to rest. In turn, had Meagher been more rational and less enthusiastic in his prosecution of the "war," he might have gained Sherman's confidence and a hearing for Montana's problem.

Meagher does not deserve all of the blame for the wasted time, energy, and money expended in Montana in the summer of 1867. As acting-governor, he was also the commander-in-chief of the territorial militia and it was his responsibility to see that the Territory was prepared should a conflict actually develop. Because of his action, however hasty or impolitic it might have been, the Territory was prepared. $513,000 worth of preparation was a much smaller price than the Sioux would have extracted had they invaded or been forced into an unprotected Montana Territory.
Thomas Francis Meagher was one of the most colorful individuals ever to cross the Montana scene. In many ways he was one of the most tragic. Meagher came to Montana in a desperate, last-ditch attempt to salvage his diminishing fortunes and stumbled into a most perplexing political problem. Though he may justly be criticized for compounding the confusion in which he found Montana, Meagher deserves some credit for getting the Territory back on the road to recovery. Had he not called the second and third legislative assemblies, the Republicans might have waited indefinitely before securing a new enabling act. Furthermore, the fact that those assemblies were later nullified does not mitigate the fact that once they were in session, Meagher proved to be one of the Territory's most contentious executives.

The question of legislative legality is largely an academic one: in reality, Meagher did possess the power to call the legislature. If his action was not within the letter of the law, certainly it was within the spirit of the Organic Act that provided Montana with a legislature.

Meagher's critics have castigated his "switch" from the Republican to the Democratic position regarding the validity of the legislature as an opportunistic move to further his own career. Yet that decision benefitted only Montanans. Ironically, in calling the legislature, Meagher destroyed his own political career.
Quite clearly, political power in Montana rested with the Republicans, who identified with the party in power nationally. They illustrated this control very effectively in the nullification of the second and third legislatures. Moreover, common political sense dictated the fact that a Republican Congress would not admit Montana to statehood until it too was Republican. Montana's first senator would not be a Democrat.

Finally, Meagher's critics have accused him of being ambitious. They claim, for example, that he called the convention of 1866 for the express purpose of having it form a state constitution and elect him a senator. However, those who hold this view have never adequately explained Meagher's failure even to attempt to see this purpose through.

Certainly Meagher was ambitious. Doubtless he did have hopes one day of becoming a Montana senator, but one can hardly criticize him for that. Wilbur Fisk Sanders had exactly the same ambition. Though he accused Meagher of calling the convention to put himself in the Senate, he made it quite clear what he would have done had the Republicans been in power. Speaking of the convention, he wrote: "To make patronage ours, I would not object to an anticipation by a year or two of our requirements because I consider that there is too much at stake in politics to lose any strength."¹

In summation, Toole was correct when he observed that Montana was in worse shape when Meagher died than it was on his arrival. He

¹Sanders to James Fergus, Feb. 14, 1866. Wilbur Fisk Sanders papers, Montana State Historical Society.
erred, however, in placing the blame entirely on Meagher. In reality, the confusion that engulfed the Montana Territory from 1865 to 1867 was due in part to the confusion which pervaded the country generally during that period; and to the fact that the national government, caught up in the struggle between the legislative and executive branches, did not have the time to administer the territories effectively. Certainly some of the confusion was due to Meagher's rash, impetuous judgement and to the fact that he often acted without considering the consequences ahead of time. Much of that confusion resulted, however, because of Sanders and the Republicans who did everything in their power to keep Montana in a state of anarchy and confusion because they could not control its government.

The nullification of the Territory's second and third legislatures was a selfish, useless thing to do. The action was productive only of confusion. Even the Post admitted that Montana was in an "unenviable condition" because of it. Sanders' action succeeded only in preventing those legislators, Republicans and Democrats alike, who had acted in good faith and passed useful, needed legislation, from ever being compensated for their efforts. It threw the territory into legal chaos, and finally, it cost Montana the expense of an extra session of the legislature when the fourth assembly met and re-passed much of the legislation enacted by the second and third.

Today on the lawn of the state capitol building in Helena, stands a large equestrian statue of Thomas Francis Meagher; and Montanans who have long forgotten Sanders, Edgerton and Munson still
remember the colorful, dashing Irishman who once invaded their Territory. It is a curious comment on their sense of history that outside of the state legislative assembly Montanans would erect a statue in memory of the man responsible for the three most futile legislatures in their history. Yet Montanans remember Meagher as he would have wished—not as a floundering politician, but as a legendary soldier dressed in the uniform of a Civil War general, who sits bravely but patiently astride his charger in Helena, waiting for the Indians to invade Montana.

The inscription at the base of the statue reads: "In Ireland, in America, he invited no man to danger he was not ready to share . . . He gave all, lost all for the land of his birth. He risked all for the land of his adoption, was her true and loyal soldier, and in the end, died in her service."

Thomas Francis Meagher would have liked that.
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