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FRONTIER SOLONS

NEBRASKA'S TERRITORIAL LAWMAKERS, 1854-1867

JAMES B. POTTS

In the thirty-seven years since Earl Pomeroy maintained that the political history of the mid-nineteenth century American West needed "further study and clarification," Howard R. Lamar, Lewis Gould, Clark Spence, and other specialists have produced detailed studies of political life in the western territories. Their works have shed light on the everyday workings and failures of the American territorial system and have elucidated the distinctive political and economic conditions that shaped local institutions in Dakota, Wyoming, and other western regions and influenced what Kenneth Owens has labelled "the pattern and structure of western politics."¹

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Nevertheless, certain facets of western political development, including the role of territorial assemblies, still require "study and clarification." With few exceptions, territorial histories have focused upon the activities of federally appointed territorial officials—governors, secretaries, and, occasionally, judges—and upon the territorial delegates.² Considerably less study has been made of the territorial legislatures, locally elected lawmaking bodies that provide useful perspectives from which to examine frontier political behavior and attitudes.

This paper analyzes the activities and membership of Nebraska's Territorial Assembly (1855-67). The legislature, which comprised the Nebraska political community's heart from the time it was first seated in 1855, reveals territorial political patterns and attitudes and a political leadership structure. Was this body a cohesive working group or a conglomerate of competing local factions? Did assembly proceedings mirror the needs of the populace or merely reflect the interests and ambitions of the political community? Was it representative in its composition, or was it comprised of a narrow-minded elite? Finally, was legislative behavior determined by party ideology or by economic interest?

Nebraska Territory experienced two patterns of political organization from the first elections in 1854 to statehood in 1867. From 1854 to 1859, Nebraska's political behavior resembled that of nearly every other western territory. Politics initially affected the real concerns of very few early Nebraska settlers, and these political activists were predominantly "the new local boosters": frontier lawyers and entrepreneurs, land speculators, and town builders who were anxious to speed the growth of the territory—and their own fortunes—through governmental means, and whose concerns for material development and gain outweighed the influence of

national party loyalty. This fusion of political and economic affairs slowed effective party development and ensured "a type of disruptive, confused, intensely combative and highly personal form of politics" that Kenneth Owens describes as "chaotic factionalism."³

In the second period, lasting from 1859 to 1867, this "chaotic" single-party arrangement was replaced by a more orderly two-party system, and local politics were increasingly influenced by national political issues and party alignments. In order to distinguish the changing character of Nebraska politics, the legislatures of each period need to be examined separately.

TABLE 1
PERCENTAGE AND NUMERICAL DISTRIBUTION OF NEBRASKA LEGISLATORS
BY PLACE OF BIRTH, 1855-1867

Place of Birth	1855-58				1859-67				Total		1855-67 Total	
	Total		Republican		Democrat		Unknown		Total		Total	
	%	N	%	N	%	N	%	N	%	N	%	N
Born in U.S.												
New England	8	12	11	16	10	10	19	3	11	29	11	41
Middle Atlantic	17	26	28	41	28	29	31	5	28	75	25	97
Midwest	24	36	28	41	17	19	13	2	23	62	23	89
Upper South	19	29	5	8	10	10	6	1	7	19	12	44
Lower South	4	6	1	1	1	1	6	1	1	3	3	8
Total, born in U.S.	71	109	73	107	66	69	75	12	70	188	73	279
Foreign Born												
Germany	1	2	8	12	4	4	0	0	6	16	5	18
Ireland	1	2	1	1	5	5	0	0	2	6	2	8
Britain, exc. Ireland	3	5	3	4	2	2	0	0	2	6	2	11
Other, outside U.S.	0	0	1	1	1	1	0	0	1	2	1	2
Total Foreign Born	6	9	12	18	11	12	0	0	11	30	10	39
Unspecified	23	35	15	22	23	24	25	4	19	50	17	64
Total Number	153		147		105		16		268		382	

*Note: The percentages may not add up to 100% because of rounding. The number of lawmakers counted for the periods 1855-58 and 1859-67 may not add to 382 because some members served during both periods and were, as a result, counted twice.

TABLE 2
PERCENTAGE AND NUMERICAL DISTRIBUTION OF NEBRASKA LEGISLATORS
BY IMMEDIATE ORIGINS, 1855-1858

Place of Origin	Direct		Iowa		Missouri		Midwest*		Other		Unspecified		Total	
	%	N	%	N	%	N	%	N	%	N	%	N	%	1
New England	0	0	3	4	1	1	2	3	1	1	1	1	7	10
Middle Atlantic	4	6	5	7	1	1	7	10	0	0	1	1	16	25
Midwest	15	23	8	12	0	0	0	0	1	1	0	0	24	36
Upper South	3	4	7	10	3	4	6	9	1	1	1	1	19	29
Lower South	2	3	1	1	0	0	1	2	0	0	0	0	4	6
Outside U.S.	0	0	3	4	0	0	3	4	1	1	0	0	5	9
Unspecified											38		25	38
Total Number		36		38		6		28		4		41		153

*Midwest includes Illinois, Indiana, Kansas, Michigan, Minnesota, Ohio, and Wisconsin.

A comparison of the two periods shows both change and continuity in territorial leadership, in issues debated, and in the political attitudes of residents.⁴

WHO WERE THE LEGISLATORS?

Analysis of the composition of the first five assemblies (1855-58) discloses a certain uniformity in social, political, and economic characteristics. The geographic origins of the first lawmakers, for example, reveal that over 90 percent of those who served in the early assemblies were native-born Americans, with the majority coming from the midwestern and eastern states. Of the 118 men whose birthplaces are known, 35 were from the South, 36 from the Midwest, and 38 from the Northeast. Only 9 were foreign born.

The effect of sectional heterogeneity is offset, however, by the fact that most of the lawmakers had migrated west in the classic American frontier pattern—by stages—and had reached Nebraska by way of other midwestern

states. Fewer than one-fourth of the assemblymen migrated directly from their state of birth, and of these more than 60 percent were native midwesterners. The remainder, over 75 percent of the legislators, had come to Nebraska by way of Iowa, Illinois, Missouri, or other Mississippi Valley states. Significantly, many would continue this pattern of movement to the frontier. At least 60 (39 percent) of these early solons of Nebraska left the territory within five years of holding office—most moving on to the Colorado gold fields in the late 1850s. Perhaps a score of the earliest lawmakers—mainly Iowa and Missouri speculators interested in Nebraska lands—never even resided in the territory.

Like their counterparts in other new territories, Nebraska's first lawmakers were mostly young and inexperienced, on average only slightly over thirty. Of the 107 men whose age is determinable, 85 (or nearly 80 percent) were under forty years of age. Only 7 were over fifty. Though young, the first lawmakers were probably better educated than the average Nebraskan. At least 22 legislators—of those 81 for

TABLE 3
PERCENTAGE AND NUMERICAL DISTRIBUTION OF NEBRASKA LEGISLATORS
BY IMMEDIATE ORIGINS, 1859-1867

Place of Origin	Direct		Iowa		Missouri		Midwest*		Other		Unspecified		Total	
	%	N	%	N	%	N	%	N	%	N	%	N	%	N
New England	1	3	1	2	1	2	6	16	2	6	0	0	11	29
Middle Atlantic	7	18	5	14	2	5	11	30	2	5	1	3	27	75
Midwest	15	39	4	10	1	3	1	3	1	1	2	5	21	67
Upper South	1	3	2	6	1	3	2	5	1	2	1	1	7	20
Lower South	1	1	1	1	1	1	1	1	0	0	0	0	1	4
Outside U.S.	0	0	2	5	1	2	4	10	4	11	0	0	11	28
Unspecified											51		22	51
Total Number		64		38		16		65		25		60		268

*Midwest includes Illinois, Indiana, Kansas, Michigan, Minnesota, Ohio, and Wisconsin.

whom educational data are available—had earned a college or university degree, while several others were academy-trained. More than half had training of some kind in medicine, journalism, or law. Few of the lawmakers had prior political experience, however; only 30 can be determined to have previously held public office. Of these only 8 had served in territorial, state, or national government before sitting in the Nebraska assembly. For the remaining 22, public service had been limited to local elective offices or minor appointive positions ranging from justice of the peace to postmaster—generally posts they had assumed after their arrival in Nebraska. Their youth, inexperience, and eagerness to “serve the people” suggests that many of the lawmakers were opportunists who migrated west specifically to fulfill political ambitions that had been—or might have been—frustrated in more populous eastern states. Almost everyone, according to one pioneer lawmaker, “fancied himself at no distant period, a Governor, Judge, United States Senator, Congressman, or millionaire—mostly preferring the latter title.”

The youth and inexperience of the assemblymen meant that the operation and decorum of the first legislatures often suffered. Sessions were frequently raucous and discordant, usually acrimonious, and at times anarchical. Laws were imperfectly drawn, hastily considered, and sometimes ill-conceived. Governors regularly complained about the ambiguities, deficiencies, and confusion of legislation. Newspapers also decried the “low caliber of our lawmakers.” After watching the second assembly in action in 1855, J. W. Pattison, Omaha correspondent for the *New York Times* judged “most of the members . . . entirely oblivious of legislative procedures.” Nebraska has had “her quota of ignorant and incompetent legislators,” moaned another local scribe in 1860. “Men who did not possess a single qualification for lawmaking, who possess scarcely sufficient intelligence to vote understandingly on questions of adjournment have . . . obtained seats in our legislative hall . . . with no other ambition, perhaps, than to pocket their three dollars per day.”⁶ Legislative immaturity was highlighted in 1857 when members of the fourth assembly “accidentally”

TABLE 4
PERCENTAGE AND NUMERICAL DISTRIBUTION OF NEBRASKA LEGISLATORS
BY AGE AND EDUCATION, 1855-1867

	1855-58				1859-67				1855-67			
	Total		Republican		Democrat		Unknown		Total		Total	
	%	N	%	N	%	N	%	N	%	N	%	N
Age Group												
30 and Under	30	46	16	24	20	21	25	4	18	49	24	90
31-40	25	39	39	57	36	38	38	6	38	101	33	127
41-50	10	15	19	28	17	18	19	3	18	49	17	64
51 and over	5	7	4	6	2	2	6	1	3	9	4	14
Age Not Known	30	46	22	32	26	26	12	2	22	60	23	87
Total Number	153		147		105		16		268		382	
Education Level												
None or Unspecified	47	72	49	72	43	45	63	10	47	127	46	176
Apprenticeship	5	7	5	8	5	5	0	0	5	13	5	19
Some Secondary	9	14	10	15	10	10	0	0	9	25	10	37
Read Law, No college	2	3	2	3	4	4	0	0	3	7	2	9
Some College	6	9	7	11	4	4	6	1	6	16	6	23
Law, Medical, or Other												
Professional School	12	19	13	19	17	18	6	1	14	38	14	54
Law, Medical, or Other												
Professional Training,												
Unspecified	19	29	13	19	18	19	25	4	16	42	17	64
Total Number	153		147		105		16		268		382	

repealed the criminal and civil law statutes of the territory. Council member Robert Furnas observed that "no member of that body except its originator knew anything of the merits of the bill."⁷

The occupations of the lawmakers reflected the heavy influence of town boosters in early Nebraska politics. At least 126 of the assemblymen who sat during 1855-1858 (over 90 percent of those 139 whose occupations are known) were either business or professional men. Of the 55 professional men, 39 were lawyers and 8 were doctors, while the rest included a scattering of editors, surveyors, and government officials.

Most of the remaining 84 were entrepreneurs, the majority engaged in real estate, banking, trade, and various service industries. Next to attorneys, the largest single group was land agents and town proprietors. The occupational pursuits of most legislators were certainly not agrarian, for only 10 might be classified as farmers. Only 3 members, 2 coopers and a carpenter, could be considered artisans or laborers.

Occupational categorization is, by itself, somewhat misleading here, since many pioneer lawmakers engaged in several enterprises. The Nuckolls brothers—Stephen and Lafe—were classic examples of what Howard Lamar has

TABLE 5
PERCENTAGE AND NUMERICAL DISTRIBUTION OF NEBRASKA LEGISLATORS
BY VARIOUS POLITICAL CHARACTERISTICS, 1855-1867

Political Characteristics	1855-58		Republican		Democrat		Unknown		Total		1855-67	
	%	N	%	N	%	N	%	N	%	N	%	N
Residence in Nebraska												
Before Legislative Service												
0-1 year	19	29	7	11	4	4	13	2	6	17	10	38
1-2 years	36	55	11	16	8	8	13	2	10	26	19	71
2-3 years	16	25	14	21	8	8	6	1	11	30	13	50
3-5 years	10	16	23	34	28	29	13	2	24	65	19	72
More than 5 years	0	0	26	39	29	31	6	1	27	71	17	65
Unspecified	18	28	18	26	23	23	38	8	22	59	23	86
Total Number		153		147		105		16		268		382
After Legislative Service												
0-1 year	1	2	3	5	3	3	6	1	3	9	3	11
1-2 years	6	9	2	2	6	6	0	0	3	8	4	16
2-3 years	18	27	2	2	4	4	0	0	2	6	8	33
3-5 years	14	22	2	2	2	2	6	1	2	5	6	24
More than 5 years	36	55	60	88	52	55	31	5	55	148	48	186
Unspecified	25	38	29	48	33	35	56	9	32	92	29	112
Total Number		153		147		105		16		268		382
Political Experience												
Before Legislative Service												
State Office, Executive or Judicial	1	1	0	0	0	0	0	0	0	0	0	0
State Legislature	3	4	2	3	0	0	6	1	1	4	2	8
Territorial Official, Executive or Judicial	1	1	0	0	0	0	0	0	0	0	0	0
Territorial Legislature	1	1	1	1	2	2	6	1	2	4	1	4
Indian Bureau	1	1	1	1	2	2	6	1	2	4	1	4
Minor Federal Appointment	7	11	5	7	4	4	13	2	5	13	6	23
Local Office, State	3	5	0	0	0	0	0	0	0	0	1	4
Local Office, Nebraska Territory	4	6	18	27	22	23	0	0	19	50	15	57
None or Unspecified	80	123	74	108	72	74	75	11	74	193	74	282
Total Number		153		147		105		16		268		382
Terms Served in Legislature												
1 term	73	112	68	100	71	75	63	10	69	185	70	269
2 terms	17	26	20	30	16	16	25	4	19	50	18	70
3 terms	7	11	5	7	7	7	12	2	6	16	7	28
4 terms	3	4	5	8	5	5	0	0	3	13	3	11
More than 4 terms	0	0	1	2	2	2	0	0	2	4	1	4
Total Number		153		147		105		16		268		382

TABLE 6
PERCENTAGE AND NUMERICAL DISTRIBUTION OF NEBRASKA LEGISLATORS
BY OCCUPATION, 1855-1867

Occupation	1855-58		1859-67						1855-67	
	Total		Republican		Democrat		Unknown		Total	
	%	N	%	N	%	N	%	N	%	N
Business										
Merchandising	14	21	11	16	19	20	19	3	14	39
Banking/Real Estate	5	19	7	9	16	15	6	1	9	25
Other	18	31	5	9	4	4	6	1	5	14
Total Business	46	71	23	34	39	39	31	5	28	78
The Professions										
Law	25	39	20	30	23	23	19	3	21	56
Medicine	5	8	3	5	7	7	6	1	5	13
Journalism	2	3	5	7	5	5	6	1	5	13
Other	4	5	7	10	4	4	6	1	6	15
Total Professions	36	55	35	52	39	39	37	6	36	97
Agriculture	7	10	21	40	13	14	6	1	20	55
All Other Occupations	2	3	1	2	1	1	6	1	1	4
Unspecified	11	14	17	19	10	13	19	3	13	35
Total Number		153		147		105		16		268

termed the frontier "phase capitalist." Keenly aware of the profits to be made at each stage of settlement, the Nuckolls family entered into every facet of frontier enterprise—merchandising, freighting, banking, transportation, and town building—in Iowa and Missouri as well as in Nebraska. Others, on a smaller scale perhaps, also engaged in multiple economic pursuits. At least 82 members were actively engaged in real estate promotion. More than two-thirds of the attorneys doubled as land agents, and probably all were involved in legal transactions concerning land. Even some of those who claimed to be farmers resided in or near towns and may well have been land speculators or agents.⁸ Moreover, close scrutiny reveals a predominant

town influence in the early assemblies. At least 35 out of the 39 members of the first assembly, for example, were proprietors, agents, or employees of townsite companies or speculators with town connections. Similarly, over 90 percent of the members of the second assembly were townsmen, as were 85 percent of the third, 89 percent of the fourth, and 95 percent of the fifth.

THE EARLY LEGISLATURE

The town-based frontier entrepreneurs and speculators who controlled the legislature support Kenneth Owens's contention that territorial politics "were essentially the concern of



FIG. 1. Hiram Pitt Bennett represented Otoe County in the first (1855) legislative council, moved to Colorado Territory in 1857, and there served as territorial delegate (1861-65) and secretary (1867). Photograph courtesy of Nebraska State Historical Society.

a rather small, restricted leadership stratum that was identified with upper-class interests.”⁹ Nebraska’s lawmakers were hardly an exclusive or tight-knit group, however. The fact that 155 men occupied the 196 seats available in the five elections from 1854 to 1858 indicates that the turnover rate in the assembly was comparatively high—and this in turn suggests that the political system was relatively open and that opportunities to join the ruling establishment were fairly numerous for those with ability or connections. Typically, 70 to 80 percent of the territorial lawmakers had no previous experience. This high level of turnover continued, even increased, during the first decades of statehood.

Robert Cherny notes that 80 to 90 percent of the state legislators in the 1870s and 1880s were first-term members. This high rate of turnover among legislators and other elected state officials helped to produce a political structure and system of state government that, according to Cherny, was “dominated by political amateurs.”¹⁰ Despite the shifting personnel and the paucity of long-term political experience, Nebraska’s early legislators nevertheless formed a homogenous group of entrepreneur-politicians who shared almost to a man a common concern for the development of the territory and the promotion of their towns and businesses.

Whether politician or businessman, the typical lawmaker was primarily an opportunist who sought economic advantage through politics and, often as not, regarded the territorial legislature as the means to this end. Most of the assemblymen had resided for a time on frontiers in Illinois, Iowa, and Missouri during the 1840s and 1850s, and there they had learned much about land speculating and town founding, railroad promotion, and the politics of economic development. They clearly recognized that national and territorial governments were major providers of the developmental funds so essential on a relatively unsettled frontier like Nebraska. They also knew that those who controlled the legislature and other public offices could disperse valuable charters and franchises and influence the distribution of federal patronage and funds.

As most lawmakers had invested in town properties, they invariably sought legislation to speed the development of their communities. While this gave them a common interest, it also created factions that potentially matched the number of townsites represented. Because the Platte River naturally split the territory into two sections, legislative struggles were often geographic: North and South Platte boosters regularly contended over the locations of institutions and transportation facilities that could alter their section’s prospects—either favorably or unfavorably. According to Hiram P. Bennett, a member of the 1855 and 1858 sessions; “The

corner lot question was the great political question at stake between the two Nebraska parties—North and South Platte—of that early period.” Such rivalry encouraged logrolling, and many lawmakers reputedly were willing “to buy, sell, or swap” to gain an advantage for their communities.¹¹

The institutional prize that town boosters most coveted was the territorial capital. Its advantages were numerous: political prestige; government payroll and patronage opportunity; rapid population growth; the rise in value of town lots; and the stimulation it offered to general mercantile and business life. As one town booster put it, selection as the capital would assure “the expenditure of thousands of dollars, a horde of officials, and . . . the busy hum of business activity.”¹² The much-discussed Pacific railroad would very probably pass through the capital as well—greatly enhancing the urban possibilities of that lucky town.¹³ Given the stakes involved, the site of government fascinated local boosters who dominated early legislative councils. So avid were partisans of rival towns to secure this distinction that for several years after they had placed it at Omaha in 1855, lawmakers repeatedly attempted to move the government to Chester, Douglas City, or one of several other sites south of the Platte River.¹⁴

Paralleling the capital issue for most of the territorial period was a bitter debate over legislative apportionment. The number of assembly seats was limited by federal law to 52, but each lawmaker hoped to revise the apportionment to secure more representatives and councilors for his constituents. Moreover, in the original distribution of assembly seats, Secretary Thomas B. Cuming (then acting governor and also a member of the Omaha Land Company) had unfairly weighted the political balance in favor of the more lightly populated northern counties, enabling North Platte representatives to locate the capital at Omaha.¹⁵ South Platte members introduced reapportionment bills in every subsequent session to reduce the relative voting strength of Omaha and its allies.

Despite their preoccupation with sectional



FIG. 2. Robert W. Furnas, longtime publisher and editor of the *Nebraska Advertiser*, represented Nemaha County in the 1857, 1858, and 1859 sessions of the legislative council, and later served as governor of Nebraska (1873-75). Photograph courtesy of Nebraska State Historical Society.

issues, the early lawmakers found time to survey and establish eighty-two territorial roads, to define the boundaries and locate the seats of twenty-five counties, to effect a system of public schools, and to enact the usual general laws for civil government in the territory. Although the organic act placed few restraints on their authority, the legislators evinced little desire to experiment or to lead their constituents in social legislation. Largely imitators, they continued the established frontier practice of borrowing substantially from the laws of older regions. With a conservatism reflecting their common middle-western and Protestant backgrounds, Nebraska legislators, in turn, adopted *in toto* the civil and

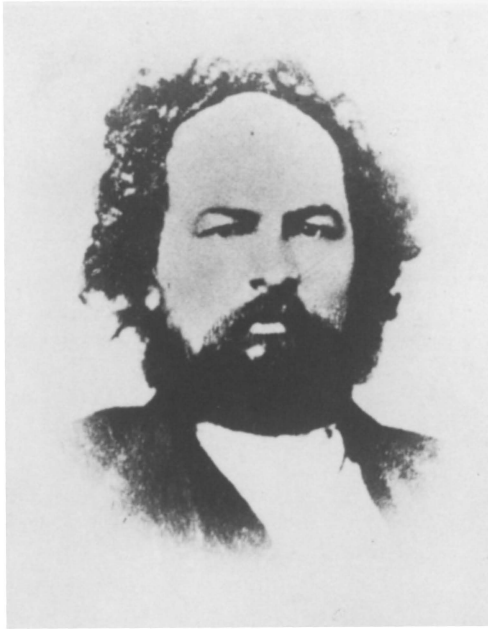


FIG. 3. Oliver Perry Mason represented Otoe County in the 1864, 1865, and 1866 sessions of the legislative council and later became first chief justice of the Nebraska State Supreme Court (1867-73). Photograph courtesy of Nebraska State Historical Society.

criminal codes of Iowa in 1855 and those of Illinois in 1858.¹⁶ In the process they prohibited gaming, gambling dens, and bawdy houses, and, in a separate and altogether incongruous act that remained law until 1858, prohibited the manufacture, sale, and consumption of intoxicating beverages—a statute that was apparently never enforced as saloons operated adjacent to the capitol and, according to James Olson, “enjoyed steady patronage from members of the legislature and territorial officials.”¹⁷

The early lawmakers also passed several customary measures calculated to speed the development of the territory and to insure the success of personal and local enterprises. The 1855 legislature, for example, enacted statutes designed to protect speculators’ rights to land claims by

legalizing the activities of local claim associations; it increased the size of preemption claims from 160 acres (as prescribed by federal law) to 320 and validated the sale and transfer of such claims without legal title. The assembly also gave legal sanction to an array of business activities as well as to the development of municipalities and assorted social and educational organizations. It granted authority to incorporate towns; to establish academies, seminaries, and universities; to construct bridges, dams, and railroads; to operate ferries and sawmills; to purchase and sell real estate; and to establish banks, insurance companies, and mining companies. Between 1855 and 1858 the legislators considered nearly 500 separate bills of incorporation and chartered 79 out of 103 ferry companies, 73 out of 103 towns, 13 out of 83 land and bridge companies, 11 out of 35 banks, and 6 out of 10 railroads. Consistent with the usual territorial experience, the legislators repeatedly appealed for federal aid, persistently badgering Congress for military protection, school lands, transportation subsidies, and favorable homestead legislation.¹⁸

Having come to Nebraska on personal or career speculation, many Nebraska lawmakers intended to profit from the business of government and used their office for personal gain. A comparison of names reveals that at least 67 of the members sitting between 1855 and 1859 were listed as incorporators on at least one private charter. Some like James C. Mitchell (eight) and Milton H. Clark (seven) appeared on several. Better than half the corporate charters issued during these years included the names of legislators, ex-legislators, or government officials. The logrolling activities of the third legislature prompted the editor of one local paper to scold:

We think but very few more bridge charters, ferry charters, bank charters, and city charters are required at the present time; and we do hope that if any more special privileges are to be granted, they will not all be monopolized by members of the legislature. . .

it don't look well to see the names of legislators figuring special acts, passed by their own votes.¹⁹

Lyman Richardson, visiting the Nebraska assembly in 1855, noted that "every man is legislating for his own personal interest—and the scheming and 'logrolling' that is going on would astound you. It is all one grand scramble—and he who is smartest and has the longest fingers gets the most—and is the best fellow." The typical assembly session in those early years was as J. Sterling Morton remarked, "a game of scramble with 'the devil take the hindmost' for its guiding rule."²⁰

These special concessions favored individual lawmakers and other influential groups, and opponents invariably protested "the creation of paltry corporations and petty monopolies which enable a few individuals to bar away the public from privileges to which they are inherently entitled."²¹ Yet, at the same time, such developmental measures were useful—perhaps even necessary—on the capital-hungry frontier where so many things begged to be done. In the Nebraska context of underdevelopment, these potentially lucrative charters and franchises, combined with the infusion of government funds and contracts, often measured the difference between the success and failure of local enterprises. Moreover, as Howard Lamar and others have demonstrated, this was traditional promotional activity, and in their efforts to promote and control the economic development of the territory, Nebraska's lawmakers extended precedents established earlier on other frontiers.²²

Their attention to immediate and often selfish ends took up an enormous amount of time that the lawmakers might better have devoted to more significant matters. Yet, despite their shortcomings, Nebraska's early legislators performed "far better than . . . many expect[ed]"—and probably no worse or better than those in neighboring states and territories.²³ The laws they enacted generally reflected the needs and desires of some part of the population, including

special interest groups who shared the lawmakers' concerns for economic progress and advantage.

THE LATER LEGISLATURE

Political patterns in Nebraska changed radically between 1859 and 1867. In 1858-59 Nebraska politics were ordered along Democratic and Republican lines for the first time; increasingly thereafter national party issues and ideology promoted divisions and flavored political dialogue. Nebraska also realized a rapid increase in population after 1858; the number of Euro-American inhabitants jumped from 10,716 in 1856 to 28,841 in 1860 and to more than 50,000 by 1867. Agricultural expansion and political reorganization coincided with population growth. By 1867 the line of farm settlement, largely restricted to the Missouri River region in early territorial times, reached more than one hundred miles into the interior.²⁴

Population growth and party development ushered in a more stable territorial assembly. Though youth continued to dominate legislative councils, the average lawmaker after 1858 was somewhat older—thirty-seven years old, compared to thirty-one for the first five assemblies. Also, the post-1858 legislator was more likely to be an established resident of the territory. Unlike the first solons, who had entered the assembly a year or so after their arrival, those seated after 1858 had lived in Nebraska an average of more than five years prior to their election. Approximately 85 percent remained in Nebraska at least five years after their tenure in the assembly, as contrasted to roughly 50 percent formerly.

Democrats were different from Republicans. Democrats (37.5) were only slightly older than Republicans (36.1), but the average Democratic assemblyman had been in the territory two years longer than his Republican counterpart. The fact that 48 percent of the Republican members, contrasted to 21 percent of the Democrats, had lived in Nebraska three years or less prior to their election suggests that the party of



FIG. 4. George L. Miller, founder and publisher of the Omaha Daily Herald, represented Douglas County in the territorial house in 1855 and in the council in 1857, 1858, and 1859. Photograph courtesy of Nebraska State Historical Society.

Lincoln represented new Nebraska settlers. My study of Otoe county indicates that active Republicans, like their representatives, were "new men" in the territory. Active Democrats had lived in Nebraska for an average of 4.5 years, while Republicans had resided there only an average of 2.4 years.²⁵ Democrats, in fact, claimed that many ambitious newcomers—riding the winds of impending national political change—took up the Republican label simply to gain access to the government pork barrel. Democratic spokesmen regularly labelled Republican candidates as "mostly new men, but a short time in the territory;" "men inexperienced in legislation . . . with little or no interest here;" or "men of untamed political ambitions." And

apparently some were opportunists, like Alfred Mathias, editor of the *People's Press*, who confessed to joining the party "with every assurance that when a Republican administration should be in power, I would receive an appointment which would enable me to sustain the paper and support my family."²⁶

The average assemblyman, like his predecessor, had probably been born in the Old Northwest or northeastern states or had spent a part of his life there. Of the 218 men whose birthplace could be determined, 62 were natives of the Midwest, while an additional 119 had migrated to Nebraska by way of the Mississippi and Ohio Valley regions. The years after 1858 did witness a reduction in the number of southern-born representatives, from 35 (30 percent) to 22 (10 percent)—the latter divided proportionally among Democrats and Republicans. At the same time, the proportion of foreign-born members doubled from 7 to nearly 14 percent of the lawmakers, reflecting the growing number of German and Irish voters in the territory. (A slightly larger percentage of Democrats were foreign born, 15 percent in contrast to 14 percent of the Republicans.) The two party system and the resultant competition for votes seemed to have made the political establishment more sensitive to previously excluded ethnic and occupational groups.

The occupations of later assemblymen also point up changes in the territory's political structure. Townsman continued to predominate between 1859 and 1867, but the proportion of farmers grew. Of 234 legislators, 56 were lawyers, 64 merchants, bankers and land agents, while another 41 represented other town-based professions. But nearly 25 percent of the post-1858 lawmakers, as compared to 7 percent earlier, claimed agricultural occupations. The Democrats continued to be townsman, with few exceptions. The Republican segment likewise included a dominant merchant-lawyer group, but one of every three Republican lawmakers was a farmer, as contrasted with only one in five Democrats.

The difference between the two parties be-

came more marked between 1859 and 1867. The disproportionate number of Democratic townsmen reveals that, while the party enjoyed support in all sections of the territory, its strength was in the older, more settled easternmost counties—particularly around Omaha, Nebraska City, and other Missouri River towns. Of 88 legislators who could be identified as Democrats between 1861 and 1867, 26 were from Otoe, 24 from Douglas, and 11 were from Sarpy counties. Sixteen of the remaining 27 represented Dakota, Dixon, and Cedar counties. Douglas, Otoe, Sarpy, Dakota, and Dixon were the most Democratic counties in the delegate elections from 1859 to 1867 and this pattern of Democratic strength in eastern and northeastern Nebraska continued through 1890.²⁷ The sizeable rural representation in the Republican party indicates that farmers were becoming important GOP voters. After 1858 new settlers, whether they came from Illinois or Pennsylvania, were as likely as not to be farmers, and they were also likely to be Free Soil or Republican in their politics, making the Republicans the majority party by 1861. The Civil War and Republican political advantage as the party of the Union, combined with the massive postwar influx of homesteaders and Union Army veterans, consolidated Republican supremacy in the middle 1860s.²⁸

The new immigration strengthened rural Nebraska. Before 1859 Nebraska political affairs had been controlled by town builders and other townsmen. Political rivalry had been mainly between northern and southern representatives, and the issues had primarily concerned capital location, sectionalism, and logrolling. After 1858 rural Nebraskans, less interested in the old townsite and capital location rivalries of former years, played a larger role in legislative debates. As farm settlement expanded westward from the Missouri and as new communities and counties appeared, factional squabbling between North and South Platte towns gave way to new alignments in which newly organized interior counties and lesser towns throughout the territory played a larger role.



FIG. 5. J. Sterling Morton represented Otoe County in the territorial house in 1855 and 1857 and also served as Nebraska territorial secretary (1858-61) and as United States secretary of agriculture during the second Cleveland administration (1893-97). Photograph courtesy of Nebraska State Historical Society.

After 1858 the proceedings of the legislature reflect a growing concern for general economic legislation. Eager to promote the growth of Nebraska, the lawmakers enacted a homestead and debt exemption act during the 1859 session, calculated at least in part to attract new settlers. The same legislature also requested Congress to give the territory its school land grant, usually made at the time of statehood, for immediate use. With increasing frequency the lawmakers debated the merits of local herd laws to protect farmers against stray cattle and swine. Following the advice of Governor Samuel Black to provide bounties and tax incentives for timber culture and animal husbandry, legislatures after 1859

routinely debated measures to encourage "agrarian pursuits" and "the planting and growth of timber."²⁹

The last seven sessions of the territorial assembly passed only 66 bills of incorporation, chartering 31 ferries, 9 towns, 4 railroads, 3 land companies, and a variety of businesses.³⁰ Although their logrolling activities diminished, the lawmakers nevertheless continued to pursue the politics of development. The legislature reviewed numerous reports, petitions, and resolutions supporting local railroad schemes and other territorial projects. The assemblies pleaded throughout the 1860s for federal assistance in the form of land offices, railroad land grants, and free homesteads.³¹ Moreover, sectional animosity did not disappear completely. During the 1859 session, for example, lawmakers divided at the Platte over the question of internal improvements. Friction arose again during the 1861, the 1862, and the 1867 sessions as northern and southern representatives contended over the apportionment issue. No attempt, however, was made to reintroduce the disruptive capital question during the remainder of the territorial period.³²

Only on the matter of race and slavery did the legislators divide along ideological lines. In 1855 the first Nebraska assembly debated a resolution "to prevent free negroes or mulattoes from settling within the Territory." Opponents killed the measure, and racial exclusion schemes disappeared from the legislature until 1859-60, when Republicans and Free Soil Democrats gained control. Motivated by politics as much as principle, Free Soilers in the sixth and seventh legislatures introduced proposals to prohibit both African Americans and slavery from entering Nebraska. When the Free Negro exclusion bill failed to pass, despite some bipartisan support, the measure was dropped, but the legislators did approve anti-slavery measures in 1859 and 1860. Territorial governor Samuel Black vetoed them both. Although he personally considered the issue to be "of no practical importance" since there were few African Americans and no slaves in the territory,

Black—and the "regular" Democrats in the assembly—chose to sustain the national administration's position that the Dred Scott decision prevented any prohibition of slavery until Nebraska became a state. The legislature nevertheless overrode the governor's veto and officially abolished slavery in Nebraska in January 1861.³³

The introduction of two-party politics, coupled with the growth of the territory, effected changes both within the political community and in settler political activities. Organized parties brought a measure of order to Nebraska politics. Political methods became more standardized and party divisions more distinct, and after 1861 Civil War-related issues increasingly captured the attention of Nebraska lawmakers, although legislative business still focused on local concerns, including sectionalism, logrolling, and material advancement. Even though the farm frontier overtook the region by the end of the territorial period, townsmen continued to dominate legislative sessions, and the assembly itself remained, to a large extent, a congress of sectional and local factions.³⁴

Kenneth Owens concluded that the political development of nearly every western state was rooted in its individual territorial experience.³⁵ No doubt this was true for Nebraska. After 1867 the political machinery, including the state legislature, was typically dominated by town and city-based boosters who continued to contend over familiar frontier issues throughout the 1870s and 1880s. The close alliance between business and politics, the impact of local interests, and bitter sectional rivalry also persisted after 1867 as part of the politics of development. And Nebraskans, too, continued to clamor for state and federal aid for their economic expansion.³⁶ Nebraskans did not ignore national issues like the tariff and currency reform, but local conflicts over offices and patronage (what J. Sterling Morton called "party fetichism") and provincial economic needs usually overshadowed national considerations.³⁷ By the time Nebraska became a state, its legislature had grown up. Like other western states, its legislature carried over the conflicts of its territorial days, but its legislators

had the political experience and the knowledge of the state to function at a level above maneuverings for personal and local economic gain.

NOTES

1. Earl Pomeroy, "Toward a Reorientation of Western History: Continuity and Environment," *Mississippi Valley Historical Review* 41. (March 1955): 579-600. The history of territorial administration and frontier politics is treated generally in Earl S. Pomeroy, *The Territories and the United States, 1861-1890: Studies in Colonial Administration* (1947; rpt. Seattle: University of Washington Press, 1969); Jack Ericson Eblen, *The First and Second United States Empires: Governors and Territorial Government, 1784-1912* (Pittsburg: University of Pittsburg Press, 1968); John D. W. Guice, *The Rocky Mountain Bench: The Territorial Supreme Courts of Colorado, Montana, and Wyoming, 1861-1890* (New Haven: Yale University Press, 1972); Ray C. Colton, *The Civil War in the Western Territories* (Norman: University of Oklahoma Press, 1972); and Eugene H. Berwanger, *The West and Reconstruction* (Urbana: University of Illinois Press, 1982). The published monographs on individual territories include Howard Roberts Lamar, *Dakota Territory, 1861-1889: A Study of Frontier Politics* (New Haven: Yale University Press, 1956) and *The Far Southwest, 1846-1912: A Territorial History* (1966; rpt. New York: W.W. Norton and Company, 1970); Jay J. Wagoner, *Arizona Territory, 1863-1912: A Political History* (Tucson: University of Arizona Press, 1970); Lewis Gould, *Wyoming: A Political History, 1868-1896* (New Haven: Yale University Press, 1968); Clarke C. Spence, *Territorial Politics and Government in Montana, 1864-1889* (Urbana: University of Illinois Press, 1975); Robert Larson, *New Mexico's Quest for Statehood, 1846-1912* (Albuquerque: University of New Mexico Press, 1969); Merle W. Wells, *Anti-Mormonism in Idaho, 1872-1892* (Provo: Brigham Young University Press, 1978); Gustave O. Larson, *The "Americanization" of Utah for Statehood* (San Marino, California: Huntington Library, 1971); Danny Goble, *Progressive Oklahoma: The Making of a New Kind of State* (Norman: University of Oklahoma Press, 1980); E. B. Long, *The Saints and the Union: Utah Territory During the Civil War* (Urbana: University of Illinois Press, 1981); Robert W. Johannsen, *Frontier Politics and the Sectional Conflict: The Pacific Northwest on the Eve of the Civil War* (Seattle: University of Washington Press, 1955), and Ronald H. Limbaugh, *Rocky Mountain Carpetbaggers: Idaho's Territorial Governors, 1863-1890* (Moscow: University Press of Idaho, 1982). See Kenneth Owens, "Pattern and Structure in Western Territorial

Politics," *Western Historical Quarterly* 1 (October 1970): 373-91.

2. An important exception is Clark Spence's *Territorial Politics and Government in Montana* (note 1 above), which includes an impressive analysis of the activities and accomplishments of Montana's territorial legislators during the years 1864-89.

3. Owens, "Pattern and Structure" (note 1 above), pp. 377-79.

4. Three hundred and eighty-two men sat in Nebraska's Territorial legislatures—153 during the first five sessions (1855-58) and 269 during the final seven sessions (1859-67). I have discovered some biographical data on more than 90 percent of the lawmakers from a variety of sources. Of these the more important are: A. C. Edmunds, *Pen Sketches of Nebraskans* (Omaha: 1872); Augustus F. Harvey, *Sketches of the Early Days of Nebraska City, Nebraska Territory, 1854-1860* (1871; rpt. St. Louis: Western Insurance Review Book Printing House, 1975); J. Sterling Morton and Albert Watkins, *Illustrated History of Nebraska: A History of Nebraska from the Earliest Explorations of the Trans-Mississippi Region*, 3 vols. (Lincoln: Jacob North, 1905, 1907; Lincoln: Western Publishing and Engraving Company, 1913); James C. Olson, *J. Sterling Morton* (Lincoln: University of Nebraska Press, 1942); Andrew J. Poppleton, *Reminiscences* (Omaha: 1915); James W. Savage and John T. Bell, *History of the City of Omaha Nebraska* (New York: Munsell Company, 1894); Addison E. Sheldon, *Nebraska: The Land and the People*, 3 volumes (Chicago and New York: Lewis Publishing Company, 1931); Alfred R. Sorenson, *History of Omaha: From the Pioneer Days to the Present Times*, (Omaha: Gibbon Miller and Richardson, Printers, 1889); James M. Woolworth, *Nebraska in 1857* (New York: A.S. Barnes and Company, 1857); Jay Amos Barrett, "Legislators of 1855: Biographical Fragments, Nebraska State Historical Society (NSHS), Lincoln, *Publications*, 7 (1898): 124-34; Hiram P. Bennett, "The First Territorial-Legislature of Nebraska, Reminiscences," *NSHS Publications*, 7 (1898): 88-92; David M. Johnston, "Nebraska's First Territorial Legislature," *Nebraska History*, 22 (1941): 275-80; George L. Miller, "Newspapers and Newspapermen of the Territorial Period," *NSHS Publications* 10 (1902): 31-47; Samuel E. Rogers, "Sketches of Members of the Legislature of 1855," *NSHS Publications* 7 (1898): 115-20; Eighth Census of the United States, 1860; Nebraska Population Manuscript, National Archives; and the Nebraska Territorial Census of 1854 and 1855, Nebraska Territorial Governor's Papers, NSHS. Substantial biographical data was also gleaned from the (Brownville) *Nebraska Advertiser*, 1856-67; the *Nebraska (Omaha) Republican*, 1858-67; the *Nebraska City News*, 1855-67; *The (Nebraska City) People's Press*, 1858-66; the

Omaha Nebraskian, 1855-59; the Omaha Weekly Herald, 1865-67; and a host of other territorial newspapers.

5. John Q. Goss, "Bellevue," *Proceedings of the Nebraska State Historical Society* 7 (1898): 116-17.

6. See the Annual Messages of Governor Mark Izard (1855, 1856 and 1857), Governor William Richardson (1858), and Governor Samuel Black (1859). *Messages and Proclamations of the Governors of Nebraska: 1854-1942*, 4 vol., (Lincoln: 1941) 1: 29-31, 44-45, 56-57, 70-71, 86-93, 112-13, 121-22. *New York Times* 17 January 1855, clipping, Edmond Frost Scrapbook, NSHS; *Daily Omaha Nebraskian*, 28 September 1860.

7. Historians have suggested that the bill's sponsor, Allen A. Bradford, sought the repeal of the criminal law code to protect a friend—Simpson Hargus—from the gallows. Hargus, a Nebraska city land speculator, had killed Benjamin Lacy in 1856 in a claim dispute. Bradford, Hargus's attorney, believed that his client had no escape under the existing criminal code so he persuaded the legislators to repeal the criminal code without adopting a new one to take its place. Hargus was eventually acquitted. Morton and Watkins, *History of Nebraska* 1: 228-30; Michael W. Homer, "The Territorial Judiciary," *Nebraska History* 63 (Fall 1982): 365-67.

8. Lamar, *Dakota Territory* (note 1 above), p. 36; Nuckolls Family Mss. NSHS. C. Howard Richardson notes that many early Nebraska farmers (mostly single men) resided in nearby towns rather than on their farms because, he argues, they were "gregarious" and "unwilling to remain alone on their claims in the countryside." It is just as likely, however, that many of these self-styled "farmers" had little interest in working the land; rather they envisioned their "farms" as future cities or as "additions" to Omaha, Brownville, or other already established Missouri River towns. C. Howard Richardson, "The Nebraska Prairies: Dilemma to Early Territorial Farmers," *Nebraska History* 50 (Winter 1969): 364-65.

9. Owens, "Pattern and Structure" (note 1 above), p. 391.

10. Robert W. Cherny, *Populism, Progressivism, and Nebraska Politics*, (Lincoln: University of Nebraska Press, 1981), pp. 30-31.

11. James C. Olson, *History of Nebraska* (Lincoln: University of Nebraska Press, 1955), pp. 82-84; Hiram P. Bennett, "First Territorial Legislative," *Proceedings of the Nebraska State Historical Society* 7 (1898): 89; Morton and Watkins, *History of Nebraska* (note 4 above), vol. 1, 279-80.

12. Goss, "Bellevue" (note 5 above), p. 117.

13. Olson, *Nebraska* (note 11 above), p. 82.

14. In 1856 removalist members of the second legislature attempted without success to place the capital at Chester. In 1857 Governor Mark Izard,

who was linked with Omaha townsite promoters, vetoed a bill to relocate the capital at Douglas City. A removal effort by the fourth assembly culminated in the complete breakdown of legislative organization when, after "the brandishing of dirks and threats of shooting," the anti-Omaha majority bolted the capital and adjourned to nearby Florence. The "Florence Legislature" voted to change the government site to Neapolis, but the new governor, William Richardson, refused to recognize the action. For a fuller discussion of the capital location struggle see James B. Potts, "The Nebraska Capital Controversy, 1855-59," *Great Plains Quarterly* 8 (Summer 1988): 172-82.

15. The Nebraska Act of 1854 specified that the territorial governor would select the meeting site for the first assembly and stipulated that thereafter the legislature would determine the seat of government. Governor Francis Burt, however, died shortly after his arrival and the task of putting the government into operation fell to the secretary, Thomas B. Cuming, who became acting governor. Unlike Burt, who apparently had no fixed notion regarding the permanent location of the capital, Cuming was committed to the success of Omaha where he owned land. Once clothed with executive authority, Cuming moved quickly to ensure the election of a legislature that would fix the capital at Omaha. He divided the territory into eight counties, four north and four south of the Platte River. And though the census showed nearly twice as many people south of the river—1,818 compared to 914—Cuming assigned the majority of seats to Omaha and the northern counties and gerrymandered Bellevue into an election district dominated by Omaha voters. On 20 December 1854 after a hurriedly called election, Cuming announced that the first legislature would meet in Omaha. See Potts, "Capital Controversy" (note 14 above), pp. 172-73; Lawrence H. Larson and Barbara J. Cottrell, *The Gate City: A History of Omaha* (Boulder: Pruett, 1982, pp. 12-13); Olson, *Nebraska* (note 11 above), p. 82-83.

16. Olson, *Nebraska* (note 11 above), p. 87; *Nebraska Legislative Assembly, Laws, Resolutions, and Memorials*, 3 volumes (Lincoln: 1886-87). From *Laws, Resolutions, and Memorials*, 1, I was able to determine the religious affiliation of 128 lawmakers, approximately 34 percent of those who sat in the assembly between 1855 and 1867. Roughly 86% were Protestant: 25 Methodists (20%); 20 Presbyterians (16%); 19 Congregationalists (15%); 15 Episcopalians (12%); and 14 Lutherans (11%). Fifteen Roman Catholics (12%) and 2 Jews (2%) were the non-Protestants.

17. Olson, *Nebraska* (note 11 above), p. 87.

18. *House and Council Journals*, 1st, 2nd, 3rd, 4th and 5th sessions. See also *Laws, Resolutions and Memorials* (note 16 above), 1.

19. *Laws, Resolutions, and Memorials* (note 16 above), 1; *Bellevue Gazette*, 18 Dec. 1856.

20. Lyman Richardson to Mrs. Origen Richardson, 4 Feb. 1855, Richardson Family Papers, NSHS; Morton and Watkins, *History of Nebraska*, vol. 1 (note 4 above), p. 245.

21. *Nebraska Palladium*, 28 February 1855.

22. Lamar, *Dakota Territory* (note 1 above), pp. 280-284; see also Lamar, *The Far Southwest*, (note 1 above), pp. 299-301, 483-485; Owens, "Pattern and Structure" (note 1 above), p. 379; and Gould, *Wyoming* (note 1 above), pp. 12-22.

23. J. W. Pattison, 17 January 1885, Clipping, Edmond Frost Scrapbook, NSHS.

24. Olson, *Nebraska* (note 11 above), pp. 88-89.

25. This information is drawn from my own survey of 165 Otoe county residents who were active in both territorial and local politics during the period 1858-1867.

26. Alfred Mathias to John Goode, 31 May 1861, Interior Department Appointments, Nebraska file. Also J. F. Warner to Samuel R. Curtis, 5 March 1861, Interior Department Appointments, Nebraska, *Omaha Nebraskan*, 28 July 1858; *Dakota City Herald*, 3 September 1859.

27. Stanley Parsons, *The Populist Content: Rural Versus Urban Power on a Great Plains Frontier* (Westport, Connecticut: Greenwood Press, 1973).

28. Olson, *Nebraska* (note 11 above), pp. 119-27.

29. See the House and Council *Journal* of the 6th, 7th, 8th, 9th, 10th, 11th, and 12th Legislative Assemblies of Nebraska Territory; *Laws, Resolutions, and Memorials* (note 16 above), 1; *Messages and Proclamations* (note 6 above), 1.

30. *Laws, Resolutions, and Memorials* (note 16 above), 1.

31. House and Council *Journals* of the 6th, 7th, 8th, 9th, 10th, 11th, and 12th Legislative Assemblies of Nebraska Territory.

32. The 1859 conflict stemmed from the attempt to raise state funds to build a bridge in northern Nebraska. In a minority committee report on the bill Robert W. Furnas charged that "the northern portion of the territory" had received almost all the territory's internal improvement moneys to the disadvantage of the southern section. Council *Journal* (1860), p. 136; see also House and Council *Journals* of the 6th, 7th, 8th, 9th, 10th, 11th, and 12th Legislative Assemblies of Nebraska Territory.

33. Edson P. Rich, "Slavery in Nebraska," *Transactions of the NSHS* 2 (1887): 97-106; House and Council *Journals* of the 5th, 6th, and 7th Legislative Assemblies of Nebraska Territory; *Messages and Proclamations* (note 6 above), pp. 130-35; 174-79.

34. Olson, *Nebraska* (note 11 above), pp. 121-22; Olson, *J. Sterling Morton* (note 4 above), p. 95.

35. Kenneth N. Owens, "Research Opportunities in Western Territorial History," *Arizona and the West* 8 (Spring, 1966): 7-8.

36. Robert Cherny and Stanley Parsons have revealed the continuing political influence of local boosters after statehood. Parsons particularly argues that urban and village-based boosters dominated the early state legislature and that most legislative business during the 1870s and 1880s reflected their concern for economic development. Parsons, *Populist Content* (note 27 above), p. 21; also see Cherny, *Populism, Progressivism, and Nebraska Politics* (note 10 above).

37. J. Sterling Morton and Albert Watkins, *History of Nebraska, From the Earliest Explorations of the Trans-Missouri Region*, rev. ed. (Lincoln: Western Publishing Company, 1918), p. 559.