

The Butler Murder of April 1869: A Look at Extralegal Punishment in Utah

Craig L. Foster

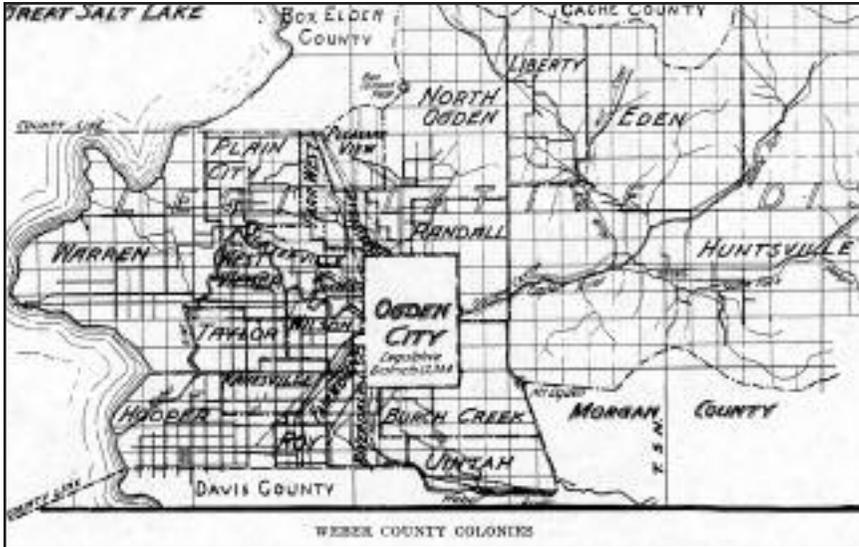
The coming of the Union Pacific Railroad in 1869 was the most exciting thing that had happened to the small farming community of Marriott, Utah, since its founding. Indeed, it was the talk of the town. Moreover, the railroad itself passed right through a portion of the town. Speculation abounded over how the coming of the iron horse would affect the little community and if the railroad would truly bring the much-anticipated economic prosperity.

On 1 April 1869, a murder occurred that shattered the state of innocence of this northern Utah settlement and forcefully introduced its inhabitants to the reality of violent assault and its aftermath. The attack and the ensuing punishment of the perpetrator also represented a prevalent form of extralegal justice that dictated death to seducers and rapists—even those who attempted such acts.¹ Thus, the vicious assault by a deranged individual on members of the William Butler family and the attacker's ultimate death at the hands of Butler and his neighbors demonstrated a speedy, decisive, violent-crime reaction that was not only accepted but also expected on the rough-and-tumble frontier of nineteenth-century America.

Marriott was a small farming community located a few miles northwest of Ogden. It was settled in 1850 by the families of John and Moroni Marriott and Helon Henry Tracy. Several years later, William Butler moved from Kay's Creek in Davis County to Marriott where he remained with his families for the rest of his life.

William Butler was born in 1825 on the Butler family's farm outside of Gorey, Wexford County, Ireland. As a young man, he inherited a large por-

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The small community of Marriott is shown immediately west of Ogden City, between Slaterville and Wilson. The map is taken from Beneath Ben Lomond's Peak: A History of Weber County 1824-1900, compiled and edited by Milton R. Hunter (Salt Lake City: Publishers Press, 1966).

Map courtesy of Weber Chapter, Daughters of Utah Pioneers.

tion of his father's estate and continued his father's occupation of raising and training blooded race horses. Because of some unfortunate circumstances, in 1846, Butler decided to leave his home in Ireland and travel for a few years. It was in the course of his travels in the United States that he converted to The Church of Jesus Christ of Latter-day Saints and, after a harrowing experience crossing the plains, found his way to Utah.²

William Butler arrived in Salt Lake City at the end of August 1850. By 1869, he had settled in at least three different places before finally choosing the settlement of Marriott as his permanent home. Butler, who stood about six feet tall and weighed around 250 pounds, was a farmer and freighter and was considered to be an industrious and dedicated member of the community. He eventually became the husband of five wives and father to thirty children.³

However, like many men of his time, William Butler had a rough edge to him and participated in difficult and dangerous activities. During the Utah War of 1857–58, he was one of the "minute men" who rode under the command of Lot Smith. As one of Smith's soldiers, he participated in the harassment of Johnston's army and in the burning of government supply wagons. He was also an active participant in the Morrisite War and later

applauded the actions of the territorial marshal Robert T. Burton and other officials against Morris and his followers.⁴

In early 1869, workers on the Union Pacific Railroad laid tracks across a portion of William Butler's land. During the construction, a number of laborers came and went, one of whom was a French-Canadian who made advances toward Ellen Close, Butler's third wife. The man approached Ellen, asking if he could buy some eggs. She told him she had none to sell. Later, he returned and forcefully tried to enter her home. He ran away when William



William Butler

Photo courtesy of Craig L. Foster

Butler and a neighbor rode up. After that incident, Butler guarded the house until the track layers had moved on some distance.⁵

About noon on 1 April 1869, this same French-Canadian returned to the Butler farm. This time, a violent scene ensued. The *Deseret Evening News* later reported that on this occasion, the man successfully entered the Butler home and again tried to force Butler's wife. In the process, he picked up a hatchet and killed one child and severely wounded Ellen and another child. He then tried to escape but was chased down by men of the community, including Butler. The *News* further reported that Butler successfully overtook him and shot and killed him. At the time the article appeared in the newspaper, the man's body was still where he had been slain. The following day, the newspaper announced that an inquest had been held, clearing Butler of any criminal conduct.⁶

Although the newspaper accounts gave an overview of the tragic events, Butler later recorded his more-detailed and explicit memories of the incident. The man entered Ellen's house and seeing no weapon handy, ran back outside where he grabbed a hatchet. Butler wrote:

My wife spoke to him and said, "That's my hatchet!" thinking he was about to steal it. He turned suddenly round and said . . . "Yes, damn you, I'll kill you with it

too." . . . He struck her, while she was trying to get out of the house, on top of the head with the hatchet, laying it open. . . . She continued to struggle with him. He also blackened both her eyes with his fists. The children ran to her assistance, [but] he still kept on with the hatchet, hewing them down as fast as they came within his reach. One girl about five years of age [Ruth Close Butler] he killed on the spot and another girl [Ellen Close Butler] about seven years got away, not, however, until the miscreant had struck her twice, cutting her on the head. . . . By this time, Tracy's women and my oldest girl came up. He threatened their lives also, the women screamed, which caused Tracy's boys, which were working in the meadow, to run to their assistance. With this the murderer broke and ran—running towards the willows close to my house. Hearing the boys hollering out that he had murdered my wife and two children, I ran and headed the murderer and followed him up and caught him in the street in front of Tracy's house. I held him with one hand and beat him with the other till, at length, Tracy and his wife ran up with a club. She held the club and said, "Kill him, Butler." At the same time trying to help me all she could, but Tracy stepped forward and dragged his wife away, I burst the back of his head with a rock, leaving a stream of blood behind him. I then followed him again right along the railroad track. Soon after, John Hudson came to my assistance on horseback with a revolver. He fired at him and missed. Fired at him again and hit him in the hand. The Canadian wheeled and asked Hudson what he wanted to shoot him for, saying he had not done anything to him. Hudson said, "Damn you, stop!" The man wheeled and began to run again. John Hudson fired and shot him in the shoulder which stunned him which caused him to slacken his speed. By this time we had got to the railroad bridge across the Ogden River. As soon as he got across the bridge he jumped off. I ran on to him and clubbed him until I thought he was dead. He begged to let him die in peace. . . . [Butler then went for help] after we returned to the spot where I left the murderer. I found where he had been and dipped himself into the river and thrown off his coat to disguise himself and left his coat where I had left him for dead. . . . I asked the boys to help me pursue him again. They joined me and we corraled him near Farr's Mill race in town. . . . He got up and ran and I ran after him. He met me with a gun and I knocked him down with a club and beat his skull into atoms. By this time he uttered up a prayer saying, "Lord, have mercy on my soul." I stepped over to John Hudson and he handed me his pistol saying, "Make a sure shot, there is only one bullet in it." I went up to the man. He raised his head and gave a groan, when I shot him through his head at the side. The blood ran out of the mouth and bullet holes. Just after I sent the last bullet in him, I said to him, "Go to Hell across lots!"⁷

After killing the murderer, William Butler went to the Ogden authorities and turned himself in. They had already been notified of the attack in neighboring Marriott and told him to go home and take care of his family. As already stated, neither Butler nor any of his neighbors were ever prosecuted for their actions against the foreigner.

This unfortunate incident is significant for several reasons. The first is on a personal, perhaps emotional, level. Although the residents of the Marriott community had certainly been witnesses to and, in some circumstances, even victims to acts of violence, such incidents had never reached

so close to home. Furthermore, the attack upon one of Butler's plural wives represented the type of societal and cultural change that was taking place in the Utah landscape. While bringing fast and easy transportation as well as the possibility of less-expensive goods and increased wealth, the railroad also introduced the possibility of increased contact with the outside world. This attack showed that outside contact could also bring in negative and undesirable elements.

The murder had a deep impact upon the psyche of the close-knit community. Some members became more suspicious of outsiders, and others lived in fear that something of that nature would happen again. In a very real sense, an aspect of innocence was taken from the Marriott settlement that spring day. Descendants of Rose Marriott, first wife of Moroni Marriott, and neighbors of Ellen Close Butler remembered that "This horrible affair was a shock to the whole community and made Rose afraid to be alone the rest of her life."⁸

The Butler murder and the subsequent hunting down and killing of the perpetrator are also significant for another reason. Although certainly not an everyday event, the response of the community was not uncommon at that time in the western United States. Indeed, in some communities, extralegal punishment by a family member against the perpetrator of attempted or accomplished seduction, or rape, was justified and supported.

Utah, for example, had several well-publicized cases of retribution against seducers and rapists on the part of husbands, fathers, or brothers. The precedent-setting case was that of Howard Egan, who, in 1851, killed James Monroe. Monroe had an affair with Egan's first wife, Tamson. Monroe wisely chose to get out of town before Egan's return from a prolonged journey to California. However, Egan followed Monroe and finally caught up with him close to the Utah border, where he shot and killed him.⁹ Egan was later brought to a trial in which William W. Phelps and George A. Smith served as his defense counsel. During the closing arguments, Smith stated, "In this territory it is a principle of mountain common law, that no man can seduce the wife of another without endangering his own life." He then continued, "The principle, the only one, that beats and throbs through the heart of the entire inhabitants of this territory is simply this: The man who seduces his neighbor's wife must die, and her nearest relative must kill him!"¹⁰

Egan was acquitted, and during the next several decades, several incidents of husbands and angry fathers killing seducers and rapists used Smith's defense argument of Egan as the basis for later actions. Ironically, one of the cases of retribution against a seducer or rapist took place about the same time as the Butler murder tragedy. The wife of an Ogden man named Wolverton was raped by a transient. The transient was caught and found guilty and

received a sentence of fifteen years in the territorial penitentiary. However, while being taken to prison, he was shot five times by Wolverton, who was then arrested and put on trial. On Saturday, 3 April 1869, only two days after the murder in Marriott, Wolverton was acquitted, with the jury classifying the act as justifiable homicide.¹¹

Although the cases of family and community members taking extralegal action against seducers and rapists are better known, there were also cases in early Utah of individuals and even groups taking extralegal action to punish persons charged with murder and assault. Two of the best known cases involved the notion of righting a wrong when the legal system had failed.

The first incident began in March and culminated in August 1859. Howard Spencer, son of Orson Spencer, had been at his father's ranch in Rush Valley when he was accosted by a Sergeant Ralph Pike and ten to twelve U.S. soldiers. Heated words ensued between Spencer and Pike, whereupon Pike hit Spencer on the head with his gun, fracturing his skull. Spencer spent the summer trying to recover from his injuries. Pike was subsequently charged with "assault with intent to kill."¹²

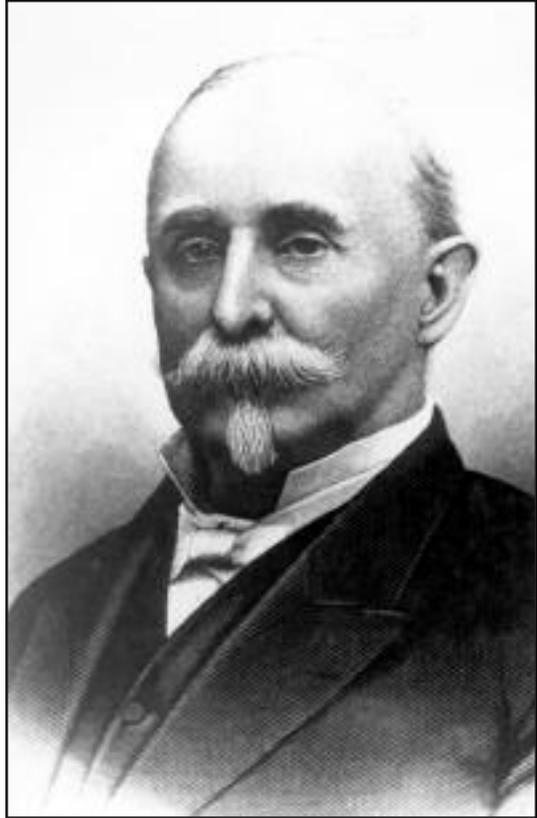
In August, Pike appeared in Salt Lake City for his hearing. Spencer and other Church members realized Pike would probably be acquitted, so while Pike was walking along Main Street, Spencer approached him, pulled a pistol, and shot him in broad daylight. He then calmly walked away before anyone could react. Although there were a number of soldiers present, Spencer got away. And although there were over a hundred people on the street at the time of the shooting, no one seemed to recognize him, nor were any two descriptions given of him that were the same. Indeed, afterwards, a number of people expressed their approval of Spencer's bold action as just punishment for Pike's earlier assault. Spencer was later tried and acquitted of Pike's murder by a majority non-Mormon jury.¹³

The second incident, though not as dramatic as the first, nevertheless demonstrated an extralegal action used to ensure what was believed to be just punishment. This incident involved Amos Milton Musser and Harry Bane, son of the receiver of the land office, General M. M. Bane. Previously, Musser had published a number of articles in the *Salt Lake Herald* questioning the moral status of certain members of the Anti-Polygamy Society, of which Harry Bane's mother was a prominent figure.¹⁴

In August 1879, Musser was at his home when Harry Bane and another friend knocked at his door. Musser's son answered and called his father. Amos Musser came to the door, and Bane handed him an empty envelope and said "compliments of Mrs. Bane." As Musser reached for the envelope, Bane grabbed the lapel of his vest and began beating him on the head with the butt of a one-inch thick, two-and-one-half-foot-long rawhide whip.

Before Bane could be stopped by Musser's wife and son, he had hit Musser about fifteen times. Musser received several cuts and bruises.¹⁵

Although Bane and his accomplice were able to get away, they were quickly arrested and the next week appeared in court to post bonds. As they left the courtroom and entered into the adjoining hall, the door by which they had just entered was shut and locked, as were all the other doors. Musser proceeded to whip young Bane with the same whip he had used the week before. The police finally broke open the front door and arrested the participants. When the cases finally came to court, the decision was that both cases were equal in criminality and were dismissed. The *Deseret Evening News* expressed regret that such an incident had to happen. However, the editor-



Amos Milton Musser

Photo courtesy of Utah State Historical Society

ial went on to state, "At any rate, the clique to which Bane belongs cannot reasonably complain after opening the ball, that one of them is compelled to dance to his own kind of music."¹⁶

Admittedly, these two examples involved underlying problems of interreligious conflict and reaction to real or perceived problems with the judicial system. However, these examples also demonstrate another idea that appears to have been prevalent not only in nineteenth-century Utah but also in other parts of the western United States—that people threatened with assault or death were justified in using deadly force to protect themselves, even if that defense extended beyond traditional legal bounds. For example, in 1876 in Ohio, a judge stated that "a true man" was not "obliged

to fly” from the threat of violence and could, in fact, defend himself with fatal force. In Missouri, the courts defined self-defense as “a divine right.” Moreover, according to some historians, the West developed a culture of violence built upon the notion of individuality, self-redress, and a “somewhat primitive code of honor.”¹⁷

Demonstrative of this culture was an incident that occurred in 1896 in Okmulgee, Oklahoma. A man by the name of Hartsfield shot and killed a man who was attempting to rape Hartsfield’s wife. Hartsfield was later acquitted of the killing, as it was shown that he was justified in the act of killing the rapist. In 1879, after a lynching of a particularly hated murderer in Phoenix, Arizona, a “panel concluded that this act of popular justice was aided and abetted by so large a number of our best citizens, that it was deemed impossible to punish anyone for the lynching.”¹⁸

Although the theory of a violent culture of extralegal justice built upon “mountain law” or an unwritten code of honor could certainly be debated, several inferences can be drawn from the Butler murder and the subsequent swift and violent justice that followed.¹⁹

First, the terrible crime greatly affected the small community. An innocent child was killed, and the mother and another daughter both carried permanent physical and emotional scars. Some members of the community lived with suspicion and fear for the rest of their lives. Yet everyone learned that both good and bad would come with contact with the outside world.

Second, although the actions taken by the members of the community may appear to us today as being undertaken contrary to law, at the time, the actions taken against the perpetrators were viewed as a warranted response to what was perceived as a real threat to the safety of the entire community. Simply put, the community members met violence with violence.

Finally, although the use of extralegal justice was perhaps extreme in one sense, it was viewed as necessary and was representative of its time—at least in the western United States—as an acceptable means by which a community could punish a perpetrator of a violent crime.²⁰

Whether this and other examples of extralegal justice were appropriate and actually deterred crime is questionable. Regardless, the actions taken by William Butler and other Marriott residents, as well as the actions of Howard Egan, Howard O. Spencer, and other victims or relatives of victims of such crimes, sent a message to would-be felons. Those who committed such crimes could expect one thing in return—swift and deadly punishment.

Notes

1. I have taken the term *extralegal punishment*, as well as the arguments concerning

the use of extralegal punishment in nineteenth-century Utah, from Kenneth L. Cannon II, "Mountain Common Law: The Extralegal Punishment of Seducers in Early Utah," *Utah Historical Quarterly* 51, no. 4 (fall 1983): 308–27.

2. Craig L. Foster, "William Butler: Irish Convert and Builder of the Kingdom," *The Nauvoo Journal* 7, no. 1 (spring 1995): 56–57. William Butler raised and trained race horses. Apparently, he had a favorite racehorse that he entered in the derby and on which he placed a large bet. Unfortunately, the day before the race, the horse died under mysterious circumstances. Butler later recalled that he no longer had a desire to stay in Ireland and decided to travel for a few years. However, given the large bet and the quick departure after the horse's mysterious death, it would not be surprising if Butler may have owed large sums of money and felt it would be best to leave Ireland for awhile.

3. See Foster, "William Butler," 59–60, and miscellaneous Butler family documents in possession of the author.

4. William Butler, "Journal of William Butler," typescript, 17–18, 22–23, copy in possession of the author. Butler was a simple man who viewed the world in well-defined images of right and wrong, black and white, and "us against them." In his journal, he leaves no doubt to how he viewed the followers of Morris, calling them "the scum of the population round about" and like "hogs basking in the sun and committing all manner of abominations in the sight of God and Man." Butler, "Journal," 22.

5. William Butler, "Autobiography of William Butler," typescript, 39, copy in the possession of author. The document appears to have been primarily written by Butler. However, a few pages at the end were written by someone else, probably a family member.

6. "Speedy Justice," *Deseret Evening News*, 1 April 1869; and "Further Particulars of the Outrages at Ogden," *Deseret Evening News*, 2 April 1869.

7. Butler, "Autobiography of William Butler," 30–41. Although Butler does not name his wife or children in his account, other evidence, as well as family documents and pedigree charts, shows that it was Butler's third wife, Ellen Close (1840–73), and her second and third daughters. Her second daughter, Ellen Close Butler, was actually about eight years old. His third daughter, Ruth Close Butler, was almost six. She died soon after the attack and was buried the next day. Butler's wife was close to death when she requested and received a blessing. The day after the attack, William Butler telegraphed Brigham Young requesting that he and the Brethren remember Ellen Close Butler and her daughter in their prayer circle. Both mother and daughter eventually recovered from their wounds.

8. Hermoine Tracy Jex, *The Marriotts: Workers of Flock and Field* (Salt Lake City: Marriott Family, 1990), 1:583. Rose Marriott appears to have lived to a very old age and did not die until the 1920s, fifty years after the Butler murder.

9. Cannon, "Extralegal Punishment," 310–11.

10. *Deseret Evening News*, 15 November 1851, as quoted in Cannon, 312. Utah was certainly not alone in cases of family members trying to punish the man who either did bring shame or tried to bring shame to one of the female members of the family. One of the most gruesome examples was a case reported in the *Washington Statesman*, published in Walla Walla, Washington, on 20 July 1866, under the title of "A Macabre Discovery." A man apparently tried to rape a young girl but was stopped. He was never brought to trial, but he was later killed by a group of local citizens. A group of men road to a ranch where he was working and informed him he was to be judged for attempted rape. He was not seen again until his body was found where he had been hanged from a tree. His executioners had left the body to rot. The weight of the rotting body had torn it from the head and shoulders. The head was found in the noose, and the body was lying on the

ground below. The *Washington Statesman* account is published in “Walla Walla in the 1860s: Violence,” *Western Places: A Chronicle of Western Settlement 2* (October 1993): 33.

11. Cannon, “Extralegal Punishment,” 319–20; and *Deseret Evening News*, 5 April 1869.

12. B. H. Roberts, *Comprehensive History of the Church, Century One*, 6 vols. (Provo, Utah: Corporation of the President, The Church of Jesus Christ of Latter-day Saints, 1930), 4:503.

13. *Ibid.*, 4:503–4 and Juanita Brooks, ed., *On the Mormon Frontier: The Diary of Hosea Stout, Volume Two, 1848–1861* (Salt Lake City: University of Utah Press, 1982), 701. Howard Orson Spencer moved to southern Utah after the shooting. There he became a model member of the community. He eventually served as bishop of Orderville during the United Order and later as a counselor and then president of the Kanab Stake. In 1889, he was put on trial for the murder of Ralph Pike and was acquitted. Spencer died a respected ecclesiastical and community leader in Kanab, Kane County, Utah.

14. Karl Brooks, “The Life of Amos Milton Musser” (M.A. thesis, Brigham Young University, 1961), 65.

15. Brooks, “The Life of Amos Milton Musser,” 65.

16. *Ibid.*, 65–66.

17. Charles Phillips and Bill O’Neal, “Violence: Historical Overview,” *Encyclopedia of the American West*, 4 vols., Charles Phillips and Alan Axelrod, eds. (New York: Simon & Schuster Macmillan, 1996), 4:1688–94. Although emphasis has been placed on violence and extralegal justice in the West, the South is another region of the United States that appears to have had an accepted culture of violence. Indeed, Steve Smith, “Were Our Southern Ancestors Violent?” *Heritage Quest* 30 (September–October 1990): 52–54, explains that the notion of honor extended to revenge for real and perceived injustices. For further reading, see Richard Maxwell Brown, *Strain of Violence: Historical Studies of American Violence and Vigilantism* (New York: Oxford University Press, 1975); Richard Maxwell Brown, *No Duty to Retreat: Violence and Values in American History and Society* (New York: Oxford University Press, 1991); James E. Cutler, *Lynch Law: An Investigation into the History of Lynching in the United States* (New York: n.p., 1969); and W. Eugene Hollon, *Frontier Violence: Another Look* (New York: n.p., 1974).

18. See Edward Herring, comp., *Malice, Murder and Mayhem in the Oklahoma and Indian Territories: Abstracts from Oklahoma Newspapers, Volume One, The Muskogee Phoenix, January 30, 1896 thru December 31, 1897* (Mt. Hope, Alabama: Edward Herring, n.p.), 66, 162; Larry D. Ball, *Desert Lawmen: The High Sheriffs of New Mexico and Arizona, 1846–1912* (Albuquerque: University of New Mexico Press, 1992), 139.

19. The expression “Death to the seducer is mountain law” came from the *Ogden Junction*, 27 September 1871 and the *Deseret Evening News*, 28 September 1871.

20. Cannon notes a case in Pennsylvania in 1854 similar to the Egans’. In the case, “the judge roundly criticized adherents of such a view and described ‘how much wiser the law is.’” Cannon, “Extralegal Punishment,” 326, note 46.