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Zion in the Courts: A Legal History of The Church of Jesus Christ of Latter-day Saints, 1830-1900 Edwin Brown Firmage and Richard Collin Mangrum

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*Zion in the Courts* draws together under one cover the long history of both Latter-day Saint ecclesiastical courts and relations of Mormons with the tribunals of the land. The authors begin their narrative by discussing Mormon attitudes toward the Constitution and civil courts; then they move to the operation of the ecclesiastical court system in the East and Midwest. They follow this narrative with a second part that considers the relationship between the Latter-day Saints and the territorial court system in Utah. The third section deals with the operation of the Church court system in the Mountain West (not only the Great Basin as suggested by the title: "Part III: The Ecclesiastical Court System in the Great Basin").

That said, it is clear that the most valuable and original contribution of this volume comes in part 3, which draws on records of ecclesiastical court decisions housed in the LDS Church Archives and heretofore unavailable for serious scholarly research. The theoretical underpinning of the operation of the Church courts discussed in this section is already well known. Contrary to the statement of the authors (263), many scholars who have written on the subject have recognized that the Latter-day Saint courts generally assumed jurisdiction over civil matters within the community and that they imposed sanctions on members who ignored that jurisdiction. Both Mark Leone in *The Roots of Modern Mormonism*, which discusses a wide range of cases in nineteenth-century Arizona, and my discussion in *Mormonism in Transition*, which considers the changes that took place in the early twentieth century, were written on the assumption that adjudication of what we would consider civil matters before Church courts was mandatory for Church members in the nineteenth century.

Nevertheless, Firmage and Mangram go beyond such previous treatments to provide an excellent discussion of the broad range of matters adjudicated in Church courts and the sorts of judgments rendered. Moreover, the authors correct a misperception found in Leone’s work that the Church courts did not consider precedent or apply standards except inspiration. By a careful consideration of a large number of cases, Firmage and Mangram demonstrate that in
addition to inspiration, Church courts relied on custom, scripture, and instructions from ecclesiastical leaders in arriving at decisions. Moreover, as the authors indicate in dealing with land disputes, “Beneficial use, prior occupancy, and community harmony, not legal rights were the guiding principles” (313). Similar doctrines of equity, community benefit, and reconciliation were applied in water, marital, contract, and other disputes.

If part 3 provides the reader with considerable insight by citing examples from nineteenth-century Church court records, the principal value of parts 1 and 2 of the book is to bring together under one cover a summary of information already found in a broad range of published secondary and primary sources. Except for an update on the issue of free exercise, the authors have reported in these sections virtually nothing that is not well known to those who have read such works as B. H. Roberts’s edition of the seven volume History of the Church and his six volume Comprehensive History of the Church and Orson F. Whitney’s History of Utah.

In many ways, the least satisfactory section of the book is the discussion of the treatment of polygamists by the federal courts during the late nineteenth century. There is little question, as the authors rightly point out, that the Utah federal courts exceeded their authority; and in a number of cases (for example, Clinton v. Englebrecht, In re Snow) the United States Supreme Court overruled the territorial judiciary’s extraordinary zeal. Nevertheless, the authors would have served their readers better by building an argument from an understanding of nineteenth-century court practice and of the cultural attitudes of nineteenth-century Americans rather than by applying current norms. Citing present rules of evidence, for instance, the authors conclude that “in loosening the rules of evidence to serve Congress’s policy of ensuring the punishment of polygamy, the courts undermined the elemental bases of judicial procedure and due process of law” (193). Before judging the nineteenth-century jurists by present standards, the authors should have determined whether those same standards generally applied in the period. Rulings of the United States Supreme Court cited in the text would lead to the conclusion that nineteenth-century jurists believed they did not. The authors are definitely correct in believing that the federal courts often went to absurd lengths to convict Mormons. Nevertheless, it is not true that they did not offer any standards or that “Utah courts continued to find the polygamists’ efforts to terminate their unlawful relationships inadequate, and continued to refuse, at times almost gleefully, to specify what conduct would be lawful” (176).
Had the authors consulted the discussion of the 1889 William B. Bennett case in my article “Charles S. Zane, Apostle of the New Era” (Utah Historical Quarterly 34 [Fall 1966]: 290–314), they would have found that the Utah territorial third district court under Chief Justice Zane set a definite standard in such cases. In ruling Bennett eligible to vote in territorial elections, Zane ruled that parties could secure a Church divorce for time and remain married for eternity and thus meet the standard required under the Edmunds Act. Thus, as long as parties did not comport themselves as though they were married polygamously for time, they could continue to function as normal citizens in society.

The main problem with the discussion of the attempt of the federal government to eradicate polygamy is that it is written from a good guys (the Mormons) vs. bad guys (the federal government) perspective. The actions of federal officials such as Judge Zane and a number of others after President Wilford Woodruff issued the Manifesto in 1890 demonstrate that the federal government was not “nakedly” attacking a religious institution and imposing “civil punishments on an entire group of people solely for their religious beliefs” (202). As the court ruled in the Reynolds case, the antipolygamy statutes punished actions, not beliefs. After the Church leadership agreed to give up its practice of polygamy, domination of the economy, and unitary political practices, members were free to believe what they wished as long as they did not continue practices such as polygamy that were considered by the majority of Americans as subversive of good order.

Though one can push the argument too far, it is possible to see the Edmunds and Edmunds Tucker acts as analogous to the recently enacted Racketeer Influenced and Corrupt Organizations (RICO) Act. In the opinion of a majority of Americans in the late nineteenth century, polygamy and the organization that supported it posed every bit as great a threat to the American home as illicit drugs do today. Like the Morrill, Edmunds, and Edmunds-Tucker acts, the RICO Act was designed to break up what most Americans then perceived as a criminal conspiracy by attacking its leadership and property. After the leadership agreed to give up the practices the majority of Americans found illegitimate and subversive of good order, the laws allowed the Church and its members to operate without fear of legal sanctions.

Beyond this difficulty, a major problem with the book is the lack of depth of research in collateral works on Mormon history that should have underpinned the study. For example, the authors assert:
From an external perspective there is little evidence to suggest that the Mormon hierarchy aspired to political domination over nonmembers akin to the religious domination exercised over members. Even if the Saints had established substantial political independence in Deseret, either with early statehood or actual independence, the Council of Fifty likely would have preserved substantial separation of church and state.

For this statement, the authors cite Klaus Hansen’s *Quest for Empire* (1967). More recent studies by Michael Quinn and others (for example, “The Council of Fifty and Its Members, 1844 to 1945,” *BYU Studies* 20 [Fall 1979]: 163–97) demonstrate that the inclusion of Gentiles in the membership of the Council of Fifty was largely early window dressing and that by the Utah period its membership was exclusively Mormon. Moreover, in order to accept such an interpretation one would have completely to disregard statements from “an external perspective” by otherwise experienced local non-Mormon observers such as Charles S. Zane, Robert N. Baskin, and Jacob S. Boreman, who themselves suffered under political disabilities because they were non-Mormons.

Moreover, the failure to read more widely introduced some errors of fact into the book. The authors state, for instance, that William Marks, Sidney Rigdon, and James J. Strang united with Joseph Smith, III, in 1859 to form the Reorganized Church of Jesus Christ of Latter Day Saints (46). In fact, Rigdon and Strang formed their own organizations and were not members of the Reorganized Church. They also date Zion’s Camp in 1831 instead of 1834 (53). They place Doctor Philastus Hurlbut’s first name in quotation marks (30–31). Doctor was his given name.

In spite of these lapses and the difficulty created by writing part 2 from a partisan point of view, I would unqualifiedly recommend the book. The first section brings together in a readily usable form a general discussion of Church courts in Ohio, Missouri, and Illinois. In spite of the antifederal bias, the section on the relations with the federal judiciary provides a good summary of the various cases and updates the Reynolds decision by citing more recent cases dealing with free exercise of religion. Most important, part 3 is an absolutely superb discussion of nineteenth-century Church court procedure and practice. This section will prove indispensable for those trying to understand the nineteenth-century Church judicial system and for scholars who need a basis for comparative work on intervening and current practices.