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Brief Notice

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The Dissent of the Governed *Meditation* of the First Amendment. This ruling made a distinction between belief and practice. It forbade laws against beliefs that stay inside a person's head but gave legislators virtually free reign to draft laws criminalizing any religious activity deemed offensive to community morals (1–4). He gives many examples of what he considers the negative effects of *Reynolds* but focuses on cases having to do with alternative education and conscientious objection.

on Law, Religion, and Loyal by Stephen L. Carter (Harvard Univers Press, 1998)

The Americanization of Rel *ous Minorities: Confronting the Consti* *onal Order*, by Eric Michael Mazur (J ıs Hopkins University Press, 1999)

The Lustre of Our Country: The American Experience of Religious Freedom, by John T. Noonan Jr. (University of California Press, 1998)

God versus Caesar: Belief, Worship and Proselytizing under the First Amendment, by Martin S. Sheffer (State University of New York Press, 1999)

Four recently published books written by non–Latter-day Saint legal scholars and political scientists look at Mormon history as a means of examining the scope of constitutionally protected religious freedoms in the United States. The federal campaign against plural marriage in the late nineteenth century emerges as the main period of interest for each scholar. While none is a proponent of plural marriage, each sees the Raid as a landmark low point in the history of American religious freedom. For example, circuit court judge John T. Noonan identifies the property confiscations, imprisonments, test oaths, suffrage revocations, and constriction of religious practice that Latter-day Saints endured in the 1880s as the result of a "mass of intolerant legislation" (32).

Martin S. Sheffer, emeritus professor of political science at Tuskegee University, begins his book by suggesting that *Reynolds v. United States*—in which the Supreme Court in 1887 upheld the conviction of a Latter-day Saint polygamist—set an unfortunate pivotal precedent in interpreting the religious freedom clause

Legal scholar Eric Michael Mazur argues that, throughout American history, constitutional protection has tended to cover those religions least in need of it—namely mainstream and evangelical Protestant religions whose conception of the proper sphere of religion tends to be narrowly defined as personal rather than the more social definition common in newer, smaller groups. He also suggests that the more a religion diverges from the mainstream, the less likely it is that the Constitution will be interpreted to protect its practices. Mazur raises difficult questions about the ostensible religious neutrality of America's constitutional order and claims that unless constitutional interpretations embrace America's growing religious plurality, Americans are in for a future of further religious conflict and state-sanctioned violence against religious minorities (122–43).

In *The Dissent of the Governed,* the prolific legal scholar Stephen L. Carter, author of *Civility* and *The Culture of Disbelief: How American Laws and Politics Trivialize Religious Devotion*, examines those difficult situations in history where people are reluctant to obey laws they consider unjust and immoral. He argues forcefully that civil societies must allow for a great deal of individual and community autonomy for religious and other groups. To him, Latter-day Saint polygamists were victims of an overzealous drive

for moral homogeneity—an example of our nation's difficulty in tolerating dissenting visions of righteousness. Even more forcefully than Mazur, Carter takes *Reynolds* to task as emblematic of governmental intolerance and questions the privileging of "high-church Protestant values" in legal interpretations of religious freedom (57–58).

These authors' views echo those expressed in Elder Dallin H. Oaks' testimony before the Senate Judiciary Committee considering the proposed 1993 Religious Freedom Restoration Act. (When passed, RFRA helped close the *Reynolds* loophole for religious discrimination until the act was overturned by the Supreme Court.) Elder Oaks reminded the legislators of the Raid and underscored the aptness of using the Mormon experience to highlight the necessity of religious freedom for even the most unpopular of religious groups—even those who would violate Latter-day Saint beliefs by sacrificing animals or using narcotics in religious ceremonies. According to Elder Oaks, "The Bill of Rights protects principles, not constituencies. The worshippers who need its protections are the oppressed minorities, not the influential constituent elements of the majority."[1] The four authors and Elder Oaks seem to agree that the essence of a principled defense of constitutional religious liberty goes beyond seeking to preserve the right to practice one's own religion. Rather, it is to advocate freedom even for those whose practices we find heretical or repugnant.

These four books from leading university presses are not representative of all contemporary legal views on religious freedom, nor are they the first to expound these views. However, they are significant additions to the ongoing debate and will be of interest to those keeping their finger on the pulse of contemporary constitutional thinking in general and the rights of American religious minorities in particular.[2] Interestingly, each of these scholars seems to have arrived independently at similar interpretations. What these books may forebode for future legal rulings on thorny issues, including contemporary polygamy prohibited by The Church of Jesus Christ of Latter-day Saints, is yet to be seen.

—Eric A. Eliason

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1. Senate Committee on the Judiciary, *The Religious Freedom Restoration Act: Hearing before the Committee on the Judiciary*, 102d Cong., 2d sess., September 18, 1992, 31–32, 38.

2. Prevailing scholarly legal opinion of late seems to hold that the Supreme Court rulings that led legislators to find RFRA necessary and then later overturned the Act have, in essence, made the free-exercise clause of the First Amendment powerless to protect religious practices. See, for example, Michael W. McConnell, Institutions and Interpretation: A Critique of *City of Boerne v. Flores*, *Harvard Law Review* 111 (1997): 153–95; and R. Collin Mangrum, The Falling Star of Free Exercise: Free Exercise and Substantive Due Process Entitlement Claims in *City of Boerne v. Flores*, *Creighton Law Review* 31 (1998): 693–740.