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Edward L. Carter

Brigham Young University - Provo, ed_carter@byu.edu

James C. Phillips

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The Mormon Education of a Gentile¹ Justice: George Sutherland and Brigham Young Academy

EDWARD L. CARTER AND JAMES C. PHILLIPS

To the man of determination there is no such word as Fate or Chance.²

—George Sutherland to Daniel Harrington, 1881

Even within the eclectic group of men and women who have sat on the U.S. Supreme Court, Associate Justice George Sutherland (1922–1938) was truly one of a kind. The only Justice ever to come from the state of Utah, he grew up as a non-Mormon in a cloistered nineteenth-century Mormon society—and yet he rose to become one of the community’s most popular and even beloved political figures. As a lawyer, Sutherland defended Mormon men charged with “unlawful cohabitation” for polygamous lifestyles—and yet as a U.S. Senator he championed women’s rights, including suffrage. As one of the “Four Horsemen of the Apocalypse,” along with Justices James McReynolds, Willis Van Devanter, and Pierce Butler, Justice Sutherland has been pilloried for striking down portions of the New Deal³—and yet some scholars in recent years have reappraised his role in achieving progressive judicial outcomes.⁴

Virtually no aspect of Sutherland’s life, however, could have been more unique than his education. He received only three years of formal schooling after age twelve. The English-born Sutherland, brought to Utah as a toddler by his Mormon convert parents, spent two of those formal school years at a four-year-old, barely surviving Mormon frontier academy. Subsequently he attended just one year of law school at the University of Michigan. Notwithstanding his unlikely academic record, however, Justice Sutherland was a brilliant thinker and polished orator who had strong command of philosophy and an uncanny understanding of politics. His own scant education and virtually non-existent experience as an academic did not stop Sutherland, in his later years, from becoming a sought-after informal advisor to deans and university presidents.

Perhaps most remarkable of all, Justice Sutherland maintained throughout his life that

no institution had so profound an influence on him as the little school in Provo, Utah, then known as Brigham Young Academy (now Brigham Young University). And no individual at the Academy had a greater impact on Sutherland than Karl G. Maeser, a Mormon immigrant from Germany who was the Academy's principal. Along with Sutherland's own father, also a Mormon convert and himself a prominent Utah frontier lawyer, Maeser helped shape the Justice's lifelong views of the law and the U.S. Constitution. And Maeser's impact on Sutherland's outlook on life and on his very character may have been even more significant.⁵

For this article, the authors reviewed primary historical documents on Sutherland in the U.S. Supreme Court Library, the Library of Congress, the L. Tom Perry Special Collections at Brigham Young University's Harold B. Lee Library, and the Church History Library and Archives of The Church of Jesus Christ of Latter-day Saints. Although there are at least two fine published biographies of Sutherland, these and other accounts do not include extensive information about the future Justice's educational activities at Brigham Young Academy from 1879 to 1881. Thus, this article focuses on the formative experiences of Sutherland, then between the ages of seventeen and nineteen, at the Academy. Clearly, his relationships with classmates and faculty left a lasting impression that affected the rest of his life, including his work on the Court. The article also details for the first time the Sutherland family's close relationship to the Mormon Church from 1849 to approximately 1870; although Sutherland himself never joined the Church, he maintained strong relationships with Mormons and Brigham Young University throughout his life.

Mormonism and the Sutherlands

When famed British author Charles Dickens arrived at the Liverpool shipyard "on a hot morning in early June"⁶ of 1863 to survey the emigrant ship *Amazon* bound for the United



George Sutherland was born in England, but his parents brought him to Utah as a toddler. Although his parents were Mormon converts, Justice Sutherland never formally joined the Church of Jesus Christ of Latter-day Saints.

States, he found a "people . . . so strikingly different from all other people in like circumstances whom I have ever seen."⁷ To his marvel, a survey of the ship's decks found that "nobody is in an ill temper, nobody is the worse for drink, nobody swears an oath or uses a coarse word, nobody appears depressed, [and] nobody is weeping."⁸ He praised the "universal cheerfulness"⁹ and expressed amazement at the lack of "disorder, hurry, or difficulty"¹⁰ among the more than 800 passengers. Dickens summed up his observations of this peculiar people with the declaration that they were "the pick and flower of England."¹¹

Dickens was surprised to learn that the *Amazon* was full of Latter-day Saints, or Mormons, "bound for the Great Salt Lake."¹² Dickens' assessment turned prophetic with regard to at least one of the emigrants—a fourteen-month-old toddler who would later be described as "the ablest man in the United States Senate"¹³ and "the greatest Constitutional

lawyer in Congress”¹⁴ and who would serve fifteen years on the U.S. Supreme Court: Alexander George Sutherland, Jr. Sutherland, named for his father, was born at Stoney Stratford, Buckinghamshire, England, on March 25, 1862. His father, Alexander George Sutherland, was of Scottish descent, whereas the ancestors of his mother, Frances Slater Sutherland, came from England.¹⁵

Though historians previously have brushed over Sutherland’s ties to The Church of Jesus Christ of Latter-day Saints,¹⁶ the reality is that the Sutherland family as a whole did not merely undergo momentary religious rapture before returning to reason and leaving the Church. Instead, for two decades the Sutherlands were intricately tied to the faith founded by Joseph Smith, Jr., at Palmyra, New York, on April 6, 1830. From the beginning, the Mormons zealously conducted missionary efforts: Mormon emissaries seeking converts first traveled to Great Britain in 1837.¹⁷ The first of Sutherland’s family, his paternal grandmother and an aunt and uncle, joined the LDS Church in England in November 1848.¹⁸ Months later, on March 6, 1849, Sutherland’s father—then age ten—joined the Mormon Church through baptism, along with another aunt. Six years later, Sutherland’s mother, then twenty, also aligned herself with the ranks of British Latter-day Saints, as did Sutherland’s paternal grandfather.¹⁹

Sutherland’s family apparently was not idle in their new denomination. From her baptism until her emigration to Utah a decade and a half later, Sutherland’s grandmother, Mary Ann Timmings Sutherland, was known as “Mother Sutherland” to Mormon missionaries because of her willingness to open her house to them.²⁰ In 1857, Sutherland’s father was re-baptized, a then-common practice that showed one’s rededication to the cause; meanwhile, an 1859 record of Church leaders in England lists the elder Sutherland as a “Travelling Elder” in the “Norwich Pastorate.”²¹

Even as Mormon converts in the United States suffered persecution that forced them to

move from upstate New York to, in succession, Ohio, Missouri, Illinois and then Utah, Mormon converts outside the United States numbering in the thousands heeded the Church’s call to gather to their “Zion” by joining the main body of the Saints. To this end, the Church instituted a program called the Perpetual Emigration Fund to help poor members join them in Utah. The program essentially functioned as a revolving loan fund, with members encouraged to pay back their loans as they could so others might use the proceeds for travel as well, enabling more than 85,000 new converts to leave England and Northern Europe in the last half of the nineteenth century and travel to Utah.²² The *Amazon’s* passenger list noted Sutherland’s father’s occupation as “labourer,”²³ a profession that hardly speaks of wealth sufficient for ocean passage. The voyage would have been out of economic reach for the Sutherlands but for something akin to the Perpetual Emigration Fund, of which they were likely beneficiaries. Thus, the LDS Church provided both the motivation and means for the future Justice and his family to arrive in the United States.

After disembarking on American soil, the Sutherlands traveled by rail to Florence, Nebraska, before joining an oxen-pulled wagon company of about 200 Mormons bound for Utah Territory. An eight-week overland journey culminated in their arrival in Salt Lake City in early October 1863.²⁴ The Sutherlands appear to have had an easier journey than many Mormon pioneers, as they were privileged to ride in a new coach being transported to Utah for Brigham Young, the successor to Joseph Smith as prophet and president of the LDS Church.²⁵ Referring to this cross-country trip, Sutherland would later jokingly reminisce:

I might be tempted to call myself a pioneer if that designation had not already been specifically bestowed upon the faithful and courageous band of exiles who came in 1847, and

whose exclusive right to it should not suffer encroachment. Since, then, I can not claim to be a pioneer, perhaps I may call myself a “pio-nearly.”²⁶

After their arrival in Salt Lake City, the Sutherlands headed fifty miles south to Springville, Utah, a little frontier town where Sutherland’s grandparents operated a confectionary and bakery shop, the same profession they had pursued in England.²⁷ Five years after settling in Utah, Sutherland’s parents demonstrated the continued sincerity of their conversion by traveling to the Endowment House in Salt Lake City to be married for eternity after the Latter-day Saint fashion.²⁸ Records from the Springville congregation document that Sutherland’s father performed an infant blessing ceremony for one of his sons, Henry Edward, on May 7, 1868.²⁹ Alexander Sutherland would occasionally perform such ceremonies for other children, with the last one recorded in February 1870.

After the spring of 1870, when “Alex Sutherland” was listed as a member of the newly organized Springville ward choir, a congregational singing group, no more notations document Sutherland family Church involvement in Springville, although they may have continued to attend services for a few more years.³⁰ In any case, Sutherland’s nuclear family’s divorce from Mormonism was complete by 1880, when local ecclesiastical leaders noted in a census that Sutherland’s parents were apostates and the children—including the future Supreme Court Justice—were Gentiles, meaning they were never baptized into the Church.³¹

Business and Civic Pursuits

In 1864, soon after arriving in Springville, Sutherland’s father began working as an agent for a Springville businessman named William Dallin, shipping goods to Utah from the East.³² The elder Sutherland eventually rose to become Dallin’s business partner.³³

Sutherland’s father also fully involved himself in civic life, providing a pattern his son would follow. In July 1867, the citizens of Springville celebrated the twentieth anniversary of the first LDS pioneers entering Utah, and the Church-owned newspaper *Deseret News* recorded that “[a]fter the opening ceremonies, the Orator of the Day, Alexander Sutherland, delivered an oration.”³⁴ In the fall of that year, a debating society was organized in Springville, with Alexander as president.³⁵ The elder Sutherland submitted several letters to the editor that were eventually published in the *Deseret News* on topics such as the community’s educational endeavors, prospects for a good harvest, healthy attendance of 400 at the community’s Sunday School, and the beginnings of a “Co-operative Society for the manufacture of cotton cloth and yarn.”³⁶ That same month, the newspaper listed officers in the Utah militia, including “Alex. Sutherland, Sergeant Major.”³⁷

By 1872, the Sutherlands had moved from Springville, in Utah County, to neighboring Juab County. The move appears to have been economically motivated. Dallin & Sutherland petitioned for bankruptcy, and the judgment was issued in October 1868.³⁸ Bankruptcy proceedings appear to have been concluded by the end of 1869,³⁹ but the experience undoubtedly had a psychological impact on the Sutherland family. The bankruptcy coincided approximately with the Sutherlands’ estrangement from the LDS Church and their move from the first American community they called home, although the precise motivations for those changes are not clearly known. The 1870 census listed Alexander Sutherland as a blacksmith in Springville with assets of \$200 in real estate and \$100 in “personal estate,” placing the Sutherlands on the lower end of the local economic spectrum, but not at the bottom.⁴⁰

Near the end of his life Sutherland reflected on conditions in Utah Territory (statehood was not achieved until 1896) during his childhood:

It was a period when life was very simple, but, as I can bear testimony, very hard as measured by present-day standards. . . . Nobody worried about child labor. The average boy of ten worked—and often worked very hard—along with the older members to support the family. . . . There was never any surplus of food. Too often there was a scarcity. . . . Society was not divided into the idle rich and the worthy poor. There were no rich, idle or otherwise. Everybody was poor and everybody worked.⁴¹

The year 1869 witnessed the discovery of silver in the Tintic Mountains of Juab County, and the mining boom that followed appears to have lured the Sutherlands southward.⁴² By 1872, the future Justice's father was listed as one of three Juab County delegates to the territorial constitutional convention, as the residents of Utah attempted to gain statehood.⁴³

For six years, the Sutherlands resided in Silver City (sometimes referred to as Tintic) as Alexander, naturalized an American citizen in 1871, became involved in mining operations and served as a notary public,⁴⁴ "recorder of the mining district, postmaster, and justice of the peace."⁴⁵ Described by one contemporary as having "had a sad life, but a brilliant man"⁴⁶ and in another source as "a restless soul content with few comforts,"⁴⁷ Alexander seemed to struggle to support his family.

Young George Sutherland left home in 1874, at age twelve, to work in the O'Reilly Brothers clothing store in Salt Lake City, the O'Reillys being family friends.⁴⁸ Two years later George returned to his family in Silver City, but he continued to work, this time "in the mining recorder's office, and as agent for Wells-Fargo & Company."⁴⁹ In 1878, the Sutherlands moved to Provo, the county seat, and George took advantage of the only viable local educational opportunity. At the age of seventeen, he enrolled in the Mormon Church's Brigham Young Academy, which was started

in 1875 as part of a system of local primary and secondary schools in Mormon frontier communities.

George at the Academy

When Sutherland arrived at the Academy in the fall of 1879, he found "a grim, nondescript structure without beauty or grace or any other aesthetic feature calculated to invite a second look."⁵⁰ At that point, the Academy consisted of a single two-story edifice, called the Lewis Building, on Provo's Center Street.⁵¹ The first floor housed four classrooms, while the second floor had been remodeled into a theater so "utterly bare and gloomy as to make inappropriate any form of entertainment except tragedy."⁵² Although not intimately familiar with elaborate educational institutions, Sutherland nevertheless found himself full of "doubt and disappointment" at the school's condition. But that lasted only until he got to know Karl G. Maeser, the school's principal.

Maeser was born in Meissen, Germany, in 1828. Although initially educated in what were considered the world's best schools at the time, he chose to enroll in a progressive teacher's preparation program, rather than a German university. He became trained "in Pestalozzian freedom, democratic thinking, and a belief in self-directed learning."⁵³ Originally agnostic due to his dissatisfaction with the state-sponsored Lutheran religion, Maeser became interested in Mormonism due, ironically, to an anti-Mormon pamphlet. With no Mormon missionaries then allowed in Germany, Maeser wrote to the nearest Church office in Denmark requesting additional information. He was baptized into the Mormon Church in October 1855 under cover of darkness, to avoid detection from local authorities.⁵⁴ Expelled from his homeland because of his religious conversion, Maeser and his young family lived in England before decamping to Salt Lake City in 1860.⁵⁵

When he succeeded Warren Dusenberry, the first principal of Brigham Young Academy

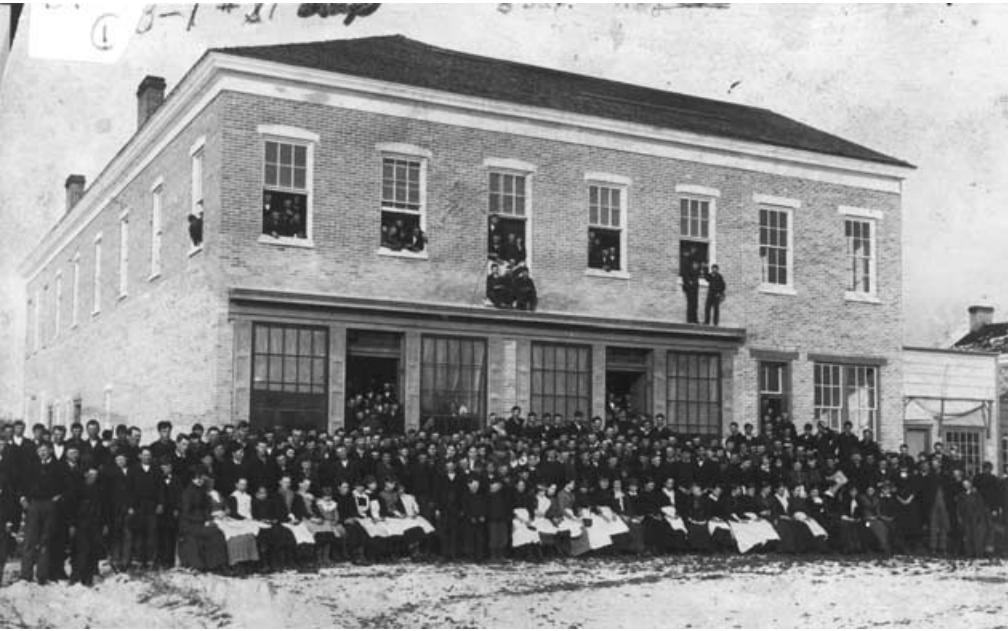
Names	Occupation	Age	Country
Ruben Chubb		7	U.S.
Elizabeth do		4	
Susan Moulton	Spinster	26	
Elijah Latham	Father	23	
Sarah do	Wife	20	
Geo. W. do		14	
James J. do		11	
Mary W. Maeser	Spinster	23	
Ann Watts	"	42	
Phoebe do	"	23	
Ruth Cox	"	24	
Sarah Redmond	Wife	31	
Martha Latham	Spinster	41	
Susan Pilgrim	"	27	
Mr. Reed	Clerk	18	
Emma Clayton	Spinster	20	
Thos. do	Farmer	21	
Geo. A. Sutherland	Labourer	24	
Frances do	Wife	26	
A. C. do	Wife	24	
Margaret W. do	Wife	20	
Geo. Webb	Labourer	24	
Oliver do	Wife	25	
Samuel do		7	

George Alexander Sutherland, the Justice's father, is listed on the passenger log of the *Amazon* as a twenty-four-year-old labourer (see seventh name from bottom). Accompanying him on the 1863 voyage were his wife, Frances; their infant son, the future Justice; and the elder George Sutherland's mother, Mary Ann Timmings Sutherland.

(who lasted just one term), Maeser learned in no uncertain terms that he was to lead a Church school. When Maeser visited Mormon prophet Brigham Young in the latter's office to receive instruction prior to Maeser's taking over leadership of the Academy, Young stated simply: "Brother Maeser, I want you to remember that you ought not to teach even the alphabet or the multiplication tables without the Spirit of God. That is all. God bless you. Good-bye."⁵⁶

Recalling his first days as Maeser's student, Sutherland contrasted the Academy's homely edifice with its majestic leader:

Fortunately, the building was not the school, but only the house in which the school lived; and the discovery of the school itself was as though I had opened a rough shell and found a pearl. The soul of the school was Karl G. Maeser; and when I came, as I soon did, to realize the tremendous import of that fact, the ugly structure ceased to trouble my eyes, my doubts vanished, and were replaced by the comfort of certainty and a feeling of deep content.⁵⁷



Brigham Young Academy students were photographed in front of the Lewis Building at Third West and Center Street in Provo. When Sutherland arrived here to begin school at age seventeen he expressed disappointment in the school's appearance.



When German-born Karl G. Maeser converted to Mormonism in 1855, he was expelled from his homeland. Sutherland saw Maeser, who led the Academy, as “the soul of the school.”

Besides Maeser, Sutherland developed personal relationships with several others while at the Academy that would remain important throughout his life. Among his Academy classmates were Daniel Harrington, who would become a Utah judge, and William H. King, who later became—like Sutherland himself—a U.S. Senator from Utah. Unlike Sutherland, however, Harrington, King, and most of the student body were Mormons. In fact, Sutherland also attended the Academy with James E. Talmage and Richard Lyman, both of whom later became Mormon apostles. By necessity, Mormons became Sutherland's best friends. Near the end of his life, Sutherland would recall these Academy students as “diligent workers . . . earnest, sincere, serious-minded, well-behaved, clean of thought, comradely, and anxious to know and do the right thing.”⁵⁸ Their families, many of them in distant pioneer communities, sacrificed greatly to provide the students with \$15 a month on which to live while at the Academy.⁵⁹

One of Sutherland's friends, Harrington, shared a lifelong interest—manifest in both boys at an early age—in the law. Within two weeks of Sutherland's arrival at the Academy, he had taken Harrington, his senior by two years, to see his father's library. By that time, approximately a decade after his company's bankruptcy and his estrangement from the Mormon Church, the elder Sutherland was practicing law in Provo and Salt Lake City, and was considered by the local newspaper to be "one of our most popular barristers."⁶⁰

The senior Sutherland's law library was "quite a large one for those days," Harrington later recalled, "consisting of several tiers of text books, reports, statutes, and works on pleadings, etc."⁶¹ Although the books "looked very formidable" to Harrington, "they must have been a challenge to George's ambition."⁶² While Sutherland himself went on to become one of the select few lawyers in the United States privileged to argue before—and ultimately sit on—the nation's High Court, Harrington, too, assumed the Bench: He served eight years as presiding judge of the city court in Salt Lake City.⁶³

As young Academy students, however, Sutherland and Harrington were not too seriously focused on their futures in the law to engage in a bit of good, clean humor. While arguing a case in the Academy's Moot Court, Sutherland found an opportunity for a laugh at the expense of Harrington. Arguing for the defense, Harrington at one point appealed to the logic of public opinion: "Why, your Honor, even the spectators can see that the Defendant ought to win this case."⁶⁴ When his turn came for rebuttal, Sutherland argued for the plaintiff with his characteristic dry wit: "The gentleman on the other side has referred to speckle potatoes. I don't see any potatoes of that kind here at all."⁶⁵

During his first year at the Academy, 1879–1880, Sutherland's academic load included courses in theology, reading, orthography, grammar, arithmetic, Latin, physical geography, phonography, bookkeeping and

commercial lectures, history of civilization, rhetoric, and physiology.⁶⁶ Sutherland was one of a half dozen students in 1879 who jumped grades after the first term (or quarter), advancing from the level of Academic B to Academic A.⁶⁷ Despite the handicap of not participating in formal schooling for at least five years prior to entering the Academy, Sutherland quickly became proficient in his studies. His average grade for the first term was 93%, and then 96% for every term thereafter except for the last term, when he averaged 99%.⁶⁸ During his second year, Sutherland carried a significantly lighter load than he had in the first year, possibly due to his concurrent part-time work as a bookkeeper for several stores in Provo and one in Springville six miles to the south.⁶⁹ Additionally, Sutherland worked as the enumerator for Provo in the 1880 census.⁷⁰

In the 1880–1881 academic year, Sutherland took courses in rhetoric, Latin, philosophy, and logic.⁷¹ Displaying a hunger for knowledge, Sutherland also participated in additional classes not officially listed on his transcript, which might explain why the word "special" appears by his name in school records.⁷² Among those study topics, which Sutherland and a few others undertook directly under the personal tutelage of Maeser, were Greek and a reading of Aristotle.⁷³ The Greek class was held before school and included future Mormon theologian and scientist Talmage, who was both a student and a teacher during Sutherland's two years at the Academy.⁷⁴

Not surprisingly, Sutherland and Harrington spent a good portion of discretionary time thinking and talking about the young women with whom they were, or hoped to be, acquainted. The year after Sutherland left the Academy, he worked in his father's law office and prepared to attend law school at the University of Michigan. Harrington, meanwhile, had moved to the central Utah town of Richfield, where he received humorous dispatches from the nineteen-year-old Sutherland. "By the way," Sutherland wrote Harrington on February 18, 1882, "there is a young lady over in



Sutherland took courses in theology, reading, orthography, grammar, arithmetic, Latin, physical geography, phonography, bookkeeping and commercial lectures, history of civilization, rhetoric, and physiology at the Academy. He is pictured here (to the right and slightly above the boy on crutches) with his classmates at Brigham Young Academy circa 1880.

Springville named Miss Pancake.⁷⁵ Whether fictional or not, Miss Pancake clearly tickled Sutherland's funny bone:

Now if she is a sorghum eater she wouldn't be bad to take, would she? How would you like to taste her? If she should get married and settle down in the High Islands, the cannibals might have little pancakes for breakfast some morning. Suppose she should marry a Mr. Syrup, what a strange combination would be in the little Syrupses! There is room for a great deal of thought in this matter.⁷⁶

Sutherland's musings about young women were sometimes more serious. Although just twenty years old, he had already begun to feel some pressure to settle down with a companion. After referencing in another letter to Harrington the prospect of marriage by a son of Maeser, Sutherland ruminated:

By the way, Dan, you and the undersigned had better be making strenuous efforts in that direction or we shall be left. There are, at present, of course, several if not more mar-

riagable [sic] young ladies on deck but in the course of a few more years they will all have gone where the woodbine (and other spring vegetables) twineth; hence it behooveth the youths of a hymeneal twist of character to make a move in the right direction. Don't you think so?⁷⁷

Sutherland, though, did not have to search far and wide to find the object of his romantic longings. At the Academy, he met an "attractive young friend"⁷⁸ named Rosamond Lee of Beaver, Utah. Rose had been born into a Mormon family on July 16, 1865. Although, like George, she never joined the Church through baptism, an acquaintance of the Sutherlands and daughter of Maeser years later referred to her as "really a Mormon girl."⁷⁹ In the fall of 1880, Rose was just fifteen years old, but she began serving at the Academy as secretary of the Scientific Section of the school's Polysophical Society, a group of inquisitive and motivated students who held weeknight meetings and activities under the direction of Academy faculty members.⁸⁰ Sutherland served as chairman of the Scientific Section,⁸¹ thus allowing

him to work closely with the woman he would marry on June 18, 1883. The pair remained lifelong companions, achieving a marriage of more than fifty years and having three children together.

Perhaps more pertinent to Sutherland's future endeavors than this involvement in the Scientific Section was his participation in the Polysophical Society's Civil Government Section. Here George was appointed "Prosecut-

ing Attorney" of the section's moot court.⁸² In this capacity, he argued cases involving such offenses as fraudulent voting, a stolen note, murder, assault and battery, and "breaking the peace by loud and unusual noises." The record notes that he won more cases than he lost.⁸³ Additionally, the Civil Government Section spent two sessions in May 1881 discussing the relative merits of national political party platforms.⁸⁴ Coincidentally, at about this time



Sutherland met his future wife, Rosamond Lee, as a fellow student at the Academy. Their marriage lasted more than fifty years and produced three children.

Sutherland began his involvement in local politics, an endeavor that would culminate years later with his representation of Utah in the U.S. House of Representatives and U.S. Senate.

Along with Harrington and other classmates, George and Rose finally exhausted the resources of the Academy to instruct them and hence prepared for graduation in June 1881. In April of that year, the would-be graduates were subjected to a public examination, which also included an address by George Sutherland.⁸⁵ George apparently succeeded in the examinations, because in May the name “A. G. Sutherland Jr.” appeared on the school’s official “List of Certificates issued for Special Examinations.” George’s final grades foreshadowed the talents that would prove vital for his future work as a lawyer and judge: He earned 96% in natural philosophy, 98% in logic, and 100% in rhetoric.⁸⁶

Sutherland earned particular praise from Maeser for his writing. Maeser once commented that George’s essays at the Academy were “invariably models of excellence.”⁸⁷ Even the *Deseret News* took notice: “Dr. Maeser was often heard to say that Sutherland in his youth was one of the best writers in the English language he had ever known. He considered every essay this young man handed in for class recitation a model of classic literature.”⁸⁸ Although the Academy lacked first-rate facilities, Sutherland received there a remarkably high-quality education. For her part, the future Rose Sutherland remembered the rigors to which students at the Academy were subjected:

We certainly worked hard, long hours at school then as we were required to take notes of all lesson[s] and lectures and write them up in full every night. For weeks at a time, I did not get to bed before 3 a.m. But that was the spirit of the school.⁸⁹

Not long after he left the Academy and took up residence in Ann Arbor, Michigan, for his legal studies, Sutherland penned a poem

that reflected his early awareness of his destiny but that also embodied a remarkably mature view of the role good character would play throughout his life. In this vein, Sutherland clearly had learned life lessons from Maeser. The poem was scribbled in Sutherland’s diary and dated Christmas Day 1882:

Upon your footsteps fame and honor
wait,—
Rewards of diligence, not rules of
fate.
Bend every energy of heart and mind
And obstacles surmount and chains
unbind
Now curb now spur Ambitions [illegible]
The immortal two to gain let naught
impede

But in the struggle let your motto be,
(Come sore defeat or glorious
victory);—
My *honor* first my *fame* depends on
thee.

Original
Ann Arbor, Mich.
Dec. 25, 1882.⁹⁰

Sutherland and Maeser

When he first met Maeser, Sutherland admitted later, he felt respect but also “some apprehension.”⁹¹ By the time he assumed his seat on the Supreme Court, however, Sutherland had written of Maeser: “His teaching, example and character have constituted an influence for good upon my whole life that cannot be exaggerated.”⁹² Sutherland was not alone in his approbation for the German-born educator. As one historian explained, numerous former students “admired him to the point of idolatry. They admired him as a teacher; they admired him as a person; they admired him as a saint; they were very much aware of his weaknesses, but it was the way in which he was a living example of his ideas that carried with them

years later.”⁹³ Maeser himself considered the affection of his pupils “a gift from God,” and he solemnly declared that “I would rather lose my life than the love of my students.”⁹⁴

While completely embracing the beliefs of the Church from his conversion until his death, Maeser preached and practiced religious tolerance, possibly because of his own experiences in Germany. Sutherland later wrote of his beloved principal:

He was, of course, an ardent believer in the doctrines of his Church, but with great tolerance for the views of those who differed with him in religious faith. I came to the old Academy with religious opinions frankly at variance with those he entertained, but I was never made to feel that it made the slightest difference in his regard or attention.⁹⁵

Although Sutherland also credited his classmates with treating him well, the non-Mormon suffered teasing by some of his fellow students at one point because he was not enrolled in a class studying the Book of Mormon, a Church scripture. In frustration George swore at his tormentors, and under the Academy’s rules such a profane outburst required expulsion. The next morning at the school-wide devotional Sutherland expected to hear his name read as having been expelled from the Academy. However, instead of announcing Sutherland’s expulsion,

Maeser got up and quoted the [LDS] Article of Faith, “We claim the privilege of worshipping Almighty God according to the dictates of our own conscience, and allow all men the same privilege, let them worship how, where, or what they may.” And he gave a lecture to those boys who had been heckling me, and said: “What is the good of your coming to this school if you cannot even learn to live up to the Articles of Faith?” He further said: “If I hear again of your heckling

this young man, somebody will be expelled from school.” . . . I rushed up immediately after the adjournment of that meeting, and I said, “Dr. Maeser, I shall take Book of Mormon, and I shall pass as good an examination in it as any student you have.” And I think I did very well.⁹⁶

Indeed, despite starting the theology class halfway through the term, Sutherland still managed to achieve 83%. In future terms his theology grades were 100%, 90%, and 96%, respectively.⁹⁷ The theology class consisted not only of Book of Mormon study but also of study of the Bible, as well as hymn singing, prayers, sermons, and student readings of poetry, prose, and essays.⁹⁸ Class minutes show that Sutherland was an active participant, performing readings, writing essays, and answering questions. Possibly because of his non-member status, Sutherland was never called on to pray, nor did he ever serve as class chairman.⁹⁹

On more than one occasion, Sutherland told acquaintances that he felt, while an Academy student, that there was no question Maeser could not answer and no subject he could not teach. In fact, Sutherland said, “I think there were days when I would have taken my oath that if the Rosetta Stone had never been found, nevertheless he could have easily revealed the meaning of the Egyptian hieroglyphics.”¹⁰⁰ One lesson Sutherland—the man whom the *New York Times* would describe as “the living voice of the Constitution”¹⁰¹—carried with him from Maeser’s classroom to the Supreme Court concerned the origins of the U.S. Constitution: “I can recall, as far back as 1879 and 1880, the words of Professor Maeser, who declared that [the Constitution] was a divinely inspired instrument—as I truly think it is.”¹⁰²

In 1887, after Sutherland had returned from the University of Michigan to practice law in Utah, Maeser—like many Mormon men at the time—was arrested for unlawful

cohabitation. In 1888, Maeser appeared in court and was found guilty of the offense of having more than one wife.¹⁰³ Though not Maeser's lawyer, Sutherland became informally involved in the case, according to one account:

Sutherland went to the Judge and said, "Dr. Maeser has been convicted, you have to sentence him. . . . I am not a member of the LDS Church, nor is my family, but this man was my tutor in school. I know he is a good man and he has done much for the community here in Provo and the adjoining section. Judge, I know you have to give him some kind of punishment, but I am pleading with you, don't send him to jail. If you do he will die of humiliation. He is a good man and he has done what he believes to be right, but the law says he has violated [it] and you will have to punish him. Give him as much of a fine as you want to, but don't send him to the penitentiary, I am pleading with you."¹⁰⁴

The following day, Maeser appeared before the court to be sentenced, and the judge announced that due to his great service to the community he would not be sent to prison but would be fined the maximum amount under the law, \$300.¹⁰⁵ When the judge returned to his chambers, he was met by Sutherland, who, reaching out his hand, said, "Judge, I thank you with all my heart for what you have done. Here is my check to pay Dr. Maeser's fine."¹⁰⁶

Sutherland After BYA

While still an Academy student and just eighteen years old, Sutherland attended on September 18, 1880 the county convention of the Liberal party, organized specifically to combat the LDS Church-backed People's party. The Liberal party platform consisted of the two-fold aim of outlawing plural marriage, or polygamy, and reducing the Church's influence

in local economics. Although "no county ticket was put in the field" by the Liberal party for that year's elections, Sutherland himself became actively involved in politics for the first time when he was appointed party secretary.¹⁰⁷ While it may seem odd for George to have taken an active part in a political party virulently opposed to and universally despised by many of his Mormon classmates, George's involvement seems to have stemmed from his sincere dislike of polygamy and Mormon collectivist economic practices. Additionally, his father may have had some influence on the young Sutherland, as Alexander was eventually a Liberal party candidate for office in both Utah and Juab counties.¹⁰⁸

Following his return to Utah in 1883 after a year in law school at the University of Michigan, Sutherland immediately dove back into local politics, specifically with the Liberal party. He ran for mayor of Provo in 1890 on that party's ticket and lost. But his intelligence, leadership, and communication skills enabled him to gain support of non-Mormons as well as Mormons. After the Mormon Church disavowed polygamy in 1890 with an official proclamation known as the Manifesto, the Liberal party dissolved, and Sutherland thereafter aligned himself with the Republican party.¹⁰⁹

After taking up the legal profession, first with his father and then with a couple of Mormon partners including his old Academy classmate, William H. King, Sutherland continued to maintain popularity with both Mormons and non-Mormons in Utah, which no doubt helped his political aspirations. The 1880s witnessed intense persecution and prosecution of polygamists, and Sutherland often represented Mormon men who were charged with unlawful cohabitation, including the president of the Academy's Board of Education, Abraham O. Smoot, who was the father of Reed Smoot, Sutherland's fellow Academy graduate and later his congressional colleague.¹¹⁰

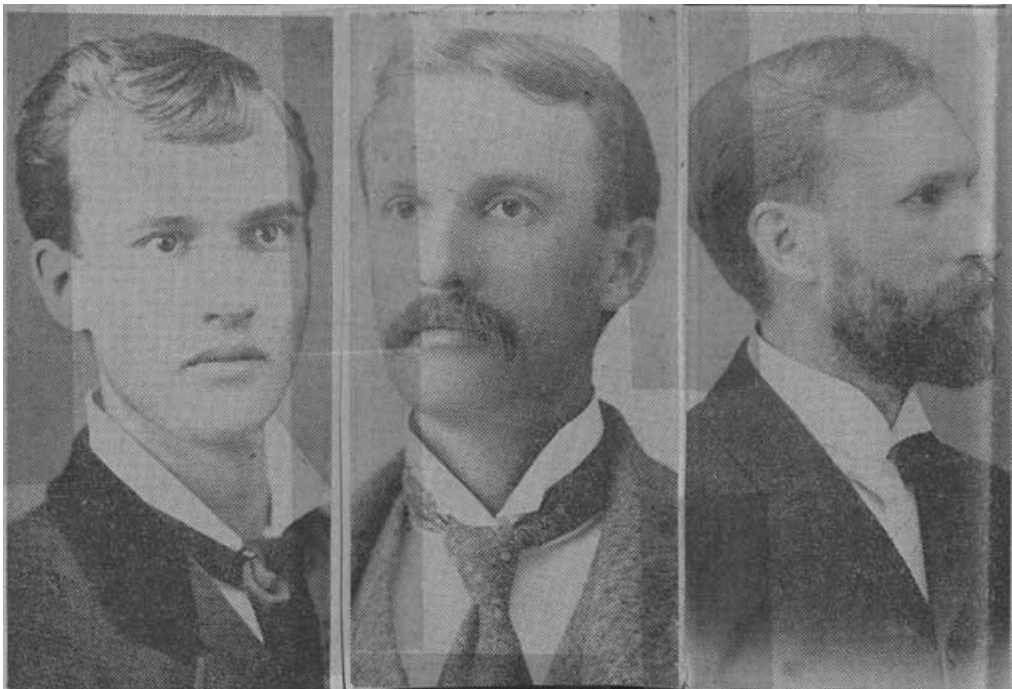
Sutherland served in the first Utah Legislature, after statehood in 1896, and from 1901 to 1903 he represented Utah as its lone

Congressman in the U.S. House of Representatives. Interestingly, in the election of 1900 for Congress he defeated his former Academy classmate and law partner King.¹¹¹ In 1904, Sutherland was elected to the U.S. Senate, where he served two terms. In 1907, he delivered a powerful address advocating the right of Reed Smoot, who had been duly elected, to take his seat in the Senate notwithstanding opposition because of his ties to Mormonism. In 1900, Smoot became a Mormon Apostle, one of the highest positions of authority in the Church. Although Sutherland thought it unwise for Utah to send a Mormon Church official to the Senate, his support for Smoot, once elected, helped persuade fellow Senators to allow Smoot to be seated.¹¹²

As a Senator, Sutherland achieved several notable accomplishments. He was instrumental in drafting the criminal and judicial portions of the U.S. Code, and his service in that capacity earned him a position on the

Senate Judiciary Committee.¹¹³ Sutherland introduced and spoke forcibly in favor of the Susan B. Anthony Suffrage Amendment in the Senate in 1916, and he was known as a great friend to the women's suffragist movement.¹¹⁴ In the election of 1916, he once again crossed paths with his old friend King, who defeated him and took his seat in the Senate in 1917.

After leaving the Senate, Sutherland delivered a series of eight lectures, titled "Constitutional Power and World Affairs," at Columbia University in 1918.¹¹⁵ In 1916 and 1917, Sutherland served as president of the American Bar Association, and speculation began immediately that he would be appointed to the Supreme Court. By that time, Sutherland had returned to private law practice in Washington, D.C. and Salt Lake City, and he appeared before the U.S. Supreme Court to argue a total of six cases during the October 1919, October 1920, and October 1921 Terms.¹¹⁶ He also became a key campaign advisor to



After Sutherland retired from the Supreme Court, the *Salt Lake Tribune* ran an article looking back on his many accomplishments. These photos show him (at left) as a youth at eighteen, (center) in 1883, the year he married, and (right) in 1905, the year he was elected seated in the U.S. Senate.

Warren G. Harding in the election of 1920, and when Harding assumed the presidency in 1921, he relied on Sutherland's expertise in a variety of administration posts. In July and August 1922, Sutherland represented the United States in arbitration with Norway before the Permanent Court of Arbitration at the Hague.¹¹⁷

On September 5, 1922, Harding appointed Sutherland to the High Court to replace Justice Clarke; the Senate confirmed Sutherland the same day, without even referring the appointment to the Judiciary Committee.¹¹⁸ Sutherland himself was in Europe at the time and may not have immediately known of the happenings concerning him in Washington, D.C. A simple note from Harding, dated September 13, 1922 and now in Sutherland's papers at the Library of Congress, reveals the relative simplicity of that time's confirmation politics compared to today:

Since your departure for Europe you have been nominated and confirmed as a Justice of the United States Supreme Court. I suppose you know all about this without me having taken the time to communicate with you. What pleases me more than anything else is that your nomination was received with unanimous satisfaction throughout the country.

Very sincerely yours,

Warren G. Harding

Once on the Supreme Court, Sutherland was known as an eloquent opinion writer. During his service on the Court from September 5, 1922 to January 18, 1938, he wrote 320 opinions, including 295 majority opinions, 1 concurrence, and 24 dissents.¹¹⁹ Among his important opinions were: *Euclid v. Ambler Co.*,¹²⁰ holding a zoning ordinance to be constitutional; *Powell v. Alabama*,¹²¹ holding that the Fourteenth Amendment mandated the right to legal representation in state criminal court; *Humphrey's Executor v. United States*,¹²² holding that the President could not remove an individual from an independent administra-

tive agency; and *Grosjean v. American Press. Co.*,¹²³ holding a state newspaper tax to be an unconstitutional prior restraint.

While on the Court, Sutherland—a teetotaler who ascribed his health, in part, to following the Mormon custom of abstention¹²⁴—gained notice in the popular press for his refusal to attend a non-dry dinner during Prohibition. In March 1923, the *Chicago Tribune* reported:

A dinner which was to have been given tonight in honor of Justice Sutherland of the Supreme Court by the Phi Delta Phi fraternity had to be called off, because the honor guest refused to attend.

The reason for his refusal was that the invitations were facetiously framed in ridicule of the Volstead prohibition enforcement act. Invited guests were asked if they possessed any liquor and how much of their supply they intended bringing to the dinner. . . .

Justice Sutherland was indignant and declined to be present.¹²⁵

During his time on the Court, Sutherland maintained a long and colorful correspondence with Mormon prophet Heber J. Grant, president of the Church of Jesus Christ of Latter-day Saints in Salt Lake City and president of the Board of Trustees of Brigham Young University in Provo. Grant clearly saw in Sutherland a political leader who understood the Mormons without being beholden to them. Just weeks after Sutherland's confirmation to the Supreme Court, Grant wrote Sutherland a lengthy congratulatory letter from Los Angeles, where the Church leader had gone to dedicate a meetinghouse:

I, as the head of a very much misunderstood and misrepresented people, rejoice in your appointment because at home and abroad you have at *all times* been absolutely fair to the "Mormon" people, and, therefore, it

is but natural that I should feel that you are just the kind of a man who is entitled to the great honor which has come to you.

Justice having been the main-spring of your treatment of the “Mormons” I *know* it will be the main-spring of your administration of your high office as a member of the Supreme Court of the United States.¹²⁶

During his tenure on the Court, Sutherland also maintained regular correspondence with various deans and university presidents, primarily those at the University of Michigan. While these academic leaders cultivated Sutherland’s support and sought his advice, the letters from Grant stand out for their personal nature and frankness. Among other things, Grant shared details of the economic struggles and activities of the normally reserved Church.¹²⁷ Additionally, on January 21, 1924 Grant wrote to Sutherland and detailed his own personal economic difficulties: Having invested in a large irrigation project in 1923, Grant had lost \$50,000 and been forced to liquidate his securities holdings in order to pay debts.¹²⁸ Although Sutherland’s letters to Grant were not as forthcoming, he did provide Grant with advice at one point about which Washington, D.C. bank the Mormon Church should use.¹²⁹

The Grant-Sutherland relationship also apparently included personal visits. In a 1941 letter, Grant referred to “the many pleasant visits we have had together in Washington.”¹³⁰ Coincidentally, Grant’s tenure as the Mormon Church president (1918–1945) corresponded roughly with the period from Sutherland’s appointment to the Supreme Court (1922) until his death (1942). Grant himself left formal schooling at age fifteen and never returned, and he confessed in a letter to Sutherland that he had proofreaders correct all his letters before they were sent. Nevertheless, the sparsely educated Mormon leader and the decorated

non-Mormon Supreme Court Justice seemed to get along well, and much of their relationship stemmed from their mutual interest in Brigham Young University.¹³¹

Sutherland was awarded honorary degrees from Columbia University, George Washington University, and the University of Michigan. But the degree that left the largest trail, by far, in Sutherland’s papers was the honorary Doctor of Laws degree given him in June 1941 by his first alma mater, Brigham Young. By that time, Brigham Young University had grown to 2,343 students¹³²; after World War II, the school eventually grew to its present-day enrollment of approximately 30,000.

Sutherland did not deliver his speech at this event in person due to the insistence of his doctor, but the writing of his remarks—“his last public article”—was not taken lightly; Rose later wrote that “he put his heart into it.”¹³³ Sutherland admitted in a letter to an old schoolmate that the honorary degree “made me very happy.”¹³⁴ When the degree was conferred on June 5, 1941, it was the first time in Brigham Young University’s history that an honorary degree was awarded *in absentia*. Sutherland’s remarks were read by a local judge and BYU alumnus, George S. Bailiff. Thirteen months later, on July 18, 1942, Sutherland died at the age of eighty.

In his commencement speech, Sutherland recounted the early days at Brigham Young Academy and his association with fellow students. He particularly focused on the impact Maeser had on him. He also discoursed at length on morality and character. The commencement address seemed to serve as recognition of the accomplishment of the life plan—honor first, then fame—that Sutherland had laid out for himself in the poem he wrote in his diary on Christmas Day 1882. While Sutherland’s speech focused on Maeser’s qualities and goodness, the greatest legacy left by the Brigham Young Academy principal may well have been the sober and moral life led by Sutherland, Maeser’s star pupil. Of his first mentor and teacher Sutherland said:

Dr. Maeser's ability to teach... covered the entire field of learning...; but far more important than anything else, he was a teacher of goodness and a builder of character. He believed that scholastic attainments were better than riches, but that better than either were faith, love, charity, clean living, clean thinking, loyalty, tolerance, and all the other attributes that combine to constitute that most precious of all possessions, good character.¹³⁵

ENDNOTES

¹Throughout this article, the Church of Jesus Christ of Latter-day Saints is referred to as the LDS Church, the Mormon Church, or simply the Church. Historically, Latter-day Saints (also called LDS, Saints, or Mormons) often referred to individuals who were not members of the Church as "Gentiles," though currently the common term is "non-members."

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⁴Samuel R. Olken, "The Business of Expression: Economic Liberty, Political Factions, and the Forgotten First Amendment Legacy of Justice George Sutherland," *William & Mary Bill of Rights Journal* 10 (2002): 249. See also Hadley Arkes, **The Return of George Sutherland: Restoring a Jurisprudence of Natural Rights** (Princeton, NJ: Princeton University Press, 1994); Hadley Arkes, "A Return to the Four Horsemen," *Journal of Supreme Court History* 1 (1997): 33–54.

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²³Folder 3, MSS 843, The Perpetual Immigration Fund Company, Western and Mormon Americana, L. Tom Perry Special Collections (LTPSC), Harold B. Lee Library, Brigham Young University, Provo, UT.

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