diaries, present us with the raw data of experience to interpret for ourselves, leaves us feeling little except a diluted sense of pity—diluted because, as far as we know, there was so little need for such misery to be perpetuated.


Reviewed by Klaus J. Hansen, professor of history at Queen's University, Kingston, Ontario, Canada.

The authors tell us that this book had its origins when the two of them—a legal scholar and a historian—were standing on a street corner in Chicago “wondering whether there were enough sources on the trial for a joint scholarly article.” Obviously, the riches they unearthed far exceeded their original expectation, so that their project resulted in a well-researched and well-written scholarly monograph that can also be appreciated and understood—as was their intention—by the layman. Though not overtly revisionist in intention and tone, the study disabuses Mormon readers of some common popular notions: that no attempt was made to bring the murderers of Joseph Smith to justice, and that as compensation divine justice triumphed and the mobsters met with particularly horrible ends. As this book makes abundantly clear, the State of Illinois did prosecute the accused murderers. But ironically, the acquitted defendants “enjoyed notably successful careers,” while those involved in the unsuccessful prosecution came to premature and even tragic ends. It is a story in which divine justice seems to have failed, while the sham justice of the state prevailed.

The outcome of the trial suggests that while the State of Illinois seemed to pursue justice in this case impartially, it was primarily interested in clearing its honor and thus make it appear that justice was done. The murder had been a great embarrassment to Governor Thomas Ford, who had personally promised safe conduct to Joseph and his brother Hyrum. Ford did not relish the thought of going down in history as a kind of latter-day Pilate because of someone he believed to be a “miserable imposter.” Yet a conviction of the accused murderers might lead to civil war. The problem, then, was how to make it appear that justice had prevailed while the accused were acquitted.
In this train of events, one of the most crucial steps was the selection of an impartial jury. Indeed, at first it seemed that justice might triumph as a representative jury was selected. Bowing to anti-Mormon pressures, however, Circuit Judge Richard M. Young "set aside the legally constituted and representative jury and approved a procedure for choosing an unrepresentative one. . . ."

In the opinion of the authors, if this had not happened, "the jury might not have exonerated the murderers by a verdict of acquittal," though the lack of sufficiently strong evidence most likely would have ended in a hung jury. To make matters worse, in his closing arguments, prosecuting attorney Josiah Lamborn inexplicably destroyed the credibility of his three major witnesses, thus ensuring an acquittal. The authors do not suggest that Ford was an accomplice in these strange events, but they make it clear that he cannot have been displeased by the results. Even if the trial was a sham, it had provided a "ceremonial cleansing" for the inhabitants of Hancock County and the State of Illinois. Acquittal was sufficient to restore the honor of the state as long as the trial appeared to be a fair one. Moreover, "if some were doubtful that the trial achieved justice, most were satisfied that it at least had preserved peace."

The authors suggest that even the Mormons must have realized that fact, though they could not admit it openly.

Oaks and Hill have been eminently successful in presenting a detailed yet colorful description and analysis of the trial in its immediate context. They are less successful, however, in presenting it "as a significant legal event in Mormon and American history."

In their opinion the story of Joseph's murder and subsequent trial of his accused assassins involves a conflict of two conceptions of the "higher law." It is to this idea that the "respectable men" of Hancock County appealed as they attempted to justify the murder of Joseph and Hyrum. According to the leaders of the mob, the Mormons were a "disruptive force in the community, and . . . opposition to them was not based on politics or religious prejudice."

_Warsaw Signal_ editor Thomas Sharp "argued on the basis of Lockean revolutionary theory that the old citizens had called upon their sacred rights to life, liberty, and property. When these were threatened by the Mormon leaders, they had taken the law into their own hands." This drastic action became necessary because the Mormons were presumed to hide behind their own version of the higher law as expressed in the Kingdom of God, and as evidenced by Joseph's high-handed smashing of the _Nauvoo Expositor_

439
press. Therefore, the anti-Mormons maintained, they had no re-
course but to appeal to "the right of self-preservation, and popular
sovereignty."

This, indeed, is a fair representation of the position of the gen-
tiles in Hancock County. And it is also a fair description of the
light in which they perceived their adversaries. The Mormon con-
cept of the "higher law," however, is somewhat more complex than
the authors make it out to be. The extreme reluctance of the Mor-
mons to participate in the trial may be at least partly explained—as
the authors do—by the Saints' understandable lack of faith in the
ability of the state to protect its witnesses. Moreover, they pro-
fessed to believe that cooperation would in any case be fruitless.
Apostle George A. Smith undoubtedly spoke for the majority of
the Saints when he said that "we have not the least idea of [sic]
any of the guilty will be punished by the laws of Illinois."

But is it not possible that a more important reason why the
Saints failed to cooperate with the State of Illinois is that, accord-
ing to the jurisprudence of the Kingdom of God, justice was to be
in the hand of the Lord as administered by his servants. According
to a revelation by Joseph Smith, the official and secret name of the
Council of Fifty was "The Kingdom of God and His Laws with
the keys and powers thereof and judgment in the hands of his serv-
ants." Under the concept of legitimacy of the Kingdom of God,
the laws of the Kingdom, as administered by its servants, were the
only truly legitimate ones. To the extent that secular governments
administered the law, they had merely usurped that power. Unlike
the gentiles, then, the Mormons, at least according to their own
jurisprudence, were not resorting to a higher law, but to the only
legitimate law.

In a larger context, it seems clear that the Carthage trial had
important consequences for Mormon history. We do know, for ex-
ample, that at least some of the Mormon participants in the Moun-
tain Meadows massacre believed they were avenging the death of
the Prophet Joseph and that prominent members of the Council
of Fifty were among the ringleaders, while George A. Smith
played a leading role in hushing up its true dimensions. Beyond
this, the trial appears to have had far-reaching implications for
Mormon attitudes toward the U. S. judiciary system, influencing
the establishment of bishops' and probate courts in Utah—a major
source of friction between the gentiles and Saints. It is these
"larger" issues that deserve more careful scrutiny.

440