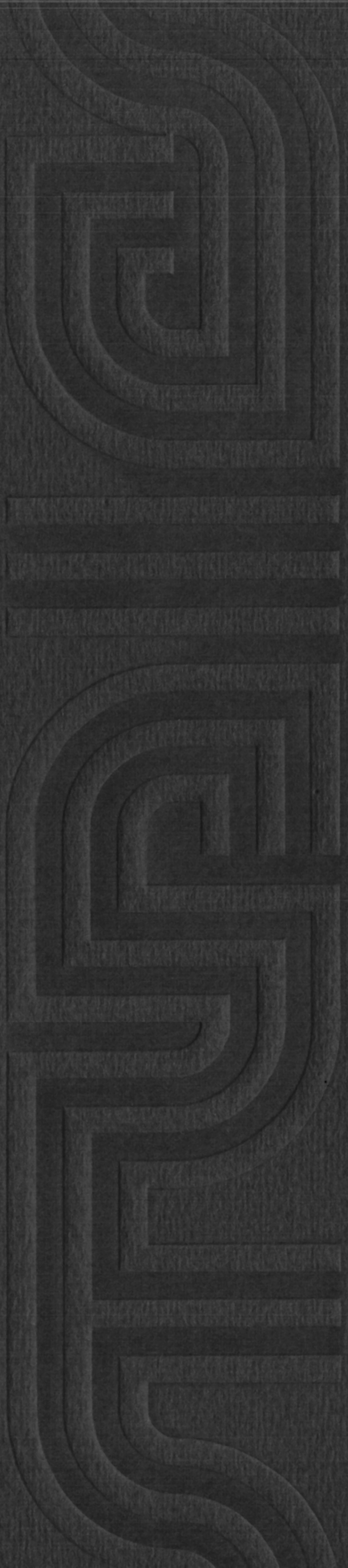


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The Doctrine of An Inspired Constitution

Noel B. Reynolds

Eighteenth and nineteenth century Americans very commonly assumed that the guiding hand of God was largely responsible for the founding of their new nation, that God had "called forth certain hardy souls from the old and privilege-ridden nations," and that he "had carried these precious few to a new world and presented them and their descendants with an environment ideally suited to the development of a free society."¹ Although this Puritan view "had its classic expression during the Revolution and constitutional period, . . . [it] has appeared repeatedly in the course of American history."²

The echoes of this providential view of America's origins sounded down through the nineteenth century and were even heard in the writings of notable historians.³ But in the twentieth century, both professional historians and Americans generally have been overtaken by secularization. As our contemporaries look back on the events of those formative years, they fail to discern the guiding hand of God. They satisfy themselves with the sophisticated assurance that the providential views of our ancestors were either rhetoric or mythology.⁴ In the twentieth century, we Mormons find ourselves almost alone in our belief that God did play a fundamental role in

Noel B. Reynolds is associate professor of philosophy at Brigham Young University.

¹Clinton Rossiter, "The American Mission," *The American Scholar* 20 (1950-51): 19.

²Conrad Cherry, *God's New Israel: Religious Interpretations of American Destiny* (Englewood Cliffs, N. J.: Prentice-Hall, 1971), p. 23. From this study of the Holy Scriptures, Puritans "recognized that governments, and laws were instituted to restrain man's sin and hence were truly of God." Sydney E. Ahlstrom, *A Religious History of the American People* (New Haven: Yale University Press, 1972), p. 129.

³See, e.g., George Bancroft, *History of the United States from the Discovery of the American Continent* (Boston: Charles Bowen, 1837).

⁴See generally Cherry, *God's New Israel*, and specifically his preface, pp. vii-viii. An interesting exception to this prevailing view is represented by the anthology edited by Frederick Gentles and Marvin Steinfield innocently titled *Dream On, America* (San Francisco: Canfield Press, 1971). Incidentally, Gentles and Steinfield reprint a feature article from the *Los Angeles Times* by John Dart on BYU to give an example of a university and a people that have preserved the central elements of the American dream ("A Campus of Peace and Patriotism," pp. 67-73).

the founding of our nation, and that the American Constitution was inspired by him.⁵

In the Church today, we speak frequently and loosely of our view that the Constitution was inspired. We can cite numerous clear statements by our prophets which elaborate this idea. In 1833 Joseph Smith recorded the scriptural statement that the Lord "established the Constitution of this land, by the hands of wise men whom [He] raised up unto this very purpose. . ." (D&C 101:80).⁶ In an official declaration of Church belief, the First Presidency recently affirmed that

we believe that the Constitution of the United States was divinely inspired, that it was produced by "wise men" whom God raised up for this "very purpose," and that the principles embodied in the Constitution are so fundamental and important that, if possible, they should be extended "for the rights and protection" of all mankind.⁷

The commitment of these Church leaders to the view that God was integrally involved in the formulation of the Constitution is unequivocal. Yet this may seem problematic for those Latter-day Saints who have grown up with the "demythologizing" accounts of Charles Beard and other progressivist historians who have insisted on explaining the Constitution primarily as a political compromise between competing economic interests.⁸ Because of the pervasive influence of these secular views in modern histories and textbooks, most Americans may not realize that over the last decades the major arguments of the old progressivist school have been significantly qualified by careful researchers.⁹

⁵Elder L. Tom Perry and his assistant Richard W. Eyre recently attended a planning meeting of the American Revolution Bicentennial Association along with representatives of 200 other American religious organizations. They encountered "uniform opposition" to their efforts to encourage the association to "place some emphasis on the religious aspects of this nation's birth," including the feeling that both the Declaration of Independence and the Constitution were inspired documents. I am indebted to Richard W. Eyre for this information provided by letter, 18 July 1975.

⁶Other typical affirmations published by Church leaders include: Brigham Young in *Journal of Discourses* 26 vols. (London: Latter-day Saints Book Depot, 1855-86), 7:13-15 (hereafter cited as *JD*); J. Reuben Clark, Jr., *Conference Report*, 1935, 35:93; Heber J. Grant, *The Improvement Era* 43 (1940):127; and George Albert Smith, *Conference Report*, 1940, p. 182.

⁷From a generally distributed letter clarifying the Church position regarding Negroes, signed for the First Presidency by Hugh B. Brown and N. Eldon Tanner and dated 15 December 1969, published in *The Improvement Era* 73 (February 1970): 70. See also note 57 below.

⁸See, for example, Charles Beard, *Economic Interpretations of the Constitution of the United States* (New York: Macmillan, 1962).

⁹The most important work on Beard's thesis is Robert E. Brown, *Charles Beard and the Constitution* (Princeton: Princeton University Press, 1956).

The historical facts are in every way compatible with the teaching that the Constitution was inspired by God. The question of inspiration should not focus exclusively on a few men in Independence Hall in that hot summer of 1787, but also on the gathering together of a people with beliefs conducive to forming a new, free republic. Inspiration can also operate in a diffused manner in the struggle of faithful men to find long-range solutions to real problems, as is illustrated by many developments in Church practice. A confirmation of this kind of inspiration in the Constitution can be found in the recognition that the central principles of rule of law, which the drafters built into the Constitution, are essentially identical to those "just and holy principles" which, according to the scripture, justify the Constitution in the eyes of the Lord.

WISE MEN RAISED UP FOR THIS VERY PURPOSE

The revelation recorded by Joseph Smith calls our attention directly to those "wise men" that God "raised up" to establish the Constitution. Many commentators have been impressed by the high character and remarkable political wisdom of the leading American statesmen of the constitutional period. The prominent historian, Henry Steele Commager, wrote:

Yet who can doubt that in the last quarter of the eighteenth century it was the New World—not democracy by our standards but certainly democracy by European—that provided the most impressive spectacle of leadership, rather than the nations of the Old World? Who can doubt, for example, that in the crisis of 1774-1783, the American colonies and states enjoyed far more competent leadership than the British Empire?

The situation is too familiar to rehearse. In the last quarter of the century the new United States—a nation with a white population of less than three million, without a single major city, and wholly lacking in those institutions of organized society or civilization so familiar in Europe—boasted a galaxy of leaders who were quite literally incomparable: Franklin, Washington, Jefferson, Hamilton, John Adams, Samuel Adams, John Jay, James Wilson, George Mason, Benjamin Rush, James Madison, and a dozen others scarcely less distinguished.

What explains this remarkable outpouring of political leadership, this fertility in the production of statesmen—a fertility unmatched since that day? Was it an historical accident? Was it a peculiar response to the time or the place, or to a combination of the two? Or was it a product of conditions and attitudes that were

cultivated and directed to calculated ends, and that can be if not re-created at least paralleled in our time?¹⁰

Such statements testify to the striking political wisdom and leadership of American statesmen in the eighteenth century. What is not as often recognized is that the American people themselves were a remarkable group. Historians have generally acknowledged the unusual political literacy of the eighteenth century Americans, but because of their presumed lack of formal education, this high political literacy has often been discounted by the assumption that their beliefs were largely naive and ideological. Fortunately, careful historical inquiry into the political discourses of eighteenth century America has illuminated anew the depths at which the political wisdom of the founding fathers ran simultaneously through the general populace.

Bernard Bailyn has opened our eyes to the flood of political tracts and treatises that washed across pre-revolutionary America.¹¹ The sustained success of these publications testifies that people were buying and reading them. A contemporary observer remarked that in Massachusetts

knowledge, at least in its first degrees, is extensively diffused. Not a house is to be found in the most remote corners of the country where a newspaper is not read; and there are few townships which do not possess a little library formed and supported by subscription.¹²

Although it is true that formal education was beyond the means of large numbers of Americans, the picture emerging today suggests that they were a surprisingly literate people and that their intelligent and informed interest in public affairs was extraordinary among eighteenth century societies.¹³

As significant as the political literacy of the people was, the strong spiritual foundations of colonial America were even more important. The major thrust of American settlement came from En-

¹⁰Henry Steele Commager, "Leadership in Eighteenth-Century America and Today," *Freedom and Order* (New York: G. Braziller, 1966), pp. 149-50.

¹¹Bernard Bailyn, *Ideological Origins of the American Revolution* (Cambridge, Mass.: Harvard University Press, 1967), pp. 1-8.

¹²This quotation from La Rochefocault-Liancourt, *Travels*, 2:215, is taken from Jackson Turner Main's study, *The Social Structure of Revolutionary America* (Princeton, N. J.: Princeton University Press, 1965), p. 254. Main reports several studies of inventories and probate records that further support the view that Americans in the North and the South were surprisingly well read (pp. 253-55).

¹³See, generally, Kenneth Lockenridge, *Literacy in Colonial New England* (New York: Norton, 1974).

glish Puritans, and this Puritanism "provided the moral and religious background of fully 75 per cent of the people . . ." ¹⁴ even as late as 1776. Transplanted to the free soil of America, English Puritanism thrived and flourished; the Puritan interest in democratic ideas and respect for English legal institutions typified American thought. But the Puritan political revolution was only a side effect of the spiritual regeneration that lay at the heart of the movement.

. . . The Puritan demanded of himself—and of others—a reformation of character, the rejection of idle recreations and vain display, and sober, obedient godliness. . . . The Puritan preacher sought nothing less than a new kind of Englishman . . . [through] "a revolution of the saints." ¹⁵

Not all Americans were Puritans, but most colonists believed in the Reformation teachings and felt a "calling" that made them "more serious, purposeful, and responsible in both [their] civic and economic roles." ¹⁶ This deep religiosity that linked the secular to the religious, created a respect for law and social order which survived long after the quest for personal holiness had been abandoned. ¹⁷

The radical theology of Puritanism was widely abandoned by the Americans of the late eighteenth century, but "the values and precepts derived from it, however, remained intact," ¹⁸ as characterized by the writings of political radicals through the Revolutionary period.

Two later developments in the spiritual and political outlook of the Revolutionary generation need to be recognized. The religious revivals of the Great Awakening, 1740-1790, prepared the common people to challenge constituted authorities and defend their precious liberties. They "also intensified the general tendency of the Reformed tradition . . . to set bounds on the will of Kings and the arbitrary exercise of governmental power." ¹⁹ The intellectual de-

¹⁴Ahlstrom, *Religious History of the American People*, p. 124. This same historian claims that the legacy of Puritanism in America was "no less significant than the impact of Luther upon the German nation." *Ibid.*, p. 98.

¹⁵*Ibid.*, p. 129.

¹⁶*Ibid.*, p. 348.

¹⁷"Puritanism . . . virtually sacrificed itself on the altar of civic responsibility. It helped to create a nation of individuals who were also fervent 'moral athletes,' with a strong sense of transcendent values which must receive ordered and corporate expression in the commonwealth." *Ibid.*, p. 348.

¹⁸Edmund S. Morgan, "The Puritan Ethic and the American Revolution," *William and Mary Quarterly*, 3d. series 24 (January 1967), p. 6.

¹⁹Ahlstrom, *Religious History of the American People*, p. 350.

velopments of the Enlightenment combined with this unique religious background to produce new conceptions of freedom and equality which "were woven into the very texture of American thinking" through the discourses "of the nation's Patriot heroes and Founding Fathers."²⁰ Any arguments about new political institutions depended heavily on whatever support they might derive from that unique moral and religious tradition which distinguished America from every other nation on earth.

It is easy for us to recognize the hand of God in the raising up of a group of luminaries, truly wise men who labored long to inform, persuade, provoke, and lead the American people, first to independence and finally to a happy Union. But we often forget the essential role that thousands of unremembered Americans played in the invention of the new political concepts, institutions, and perceptions of an ideal society which distinguished the final document. The actual drafters of the Constitution performed a miraculous task. But it would have been impossible without the understanding support of their fellow countrymen and the rich and varied background of political experimentation and discussion on the local level over the preceding decades.

Latter-day Saints have clear scriptural evidence for expecting something extraordinary from those who have come from foreign lands to settle in America. Anciently, Lehi prophesied many things about this land and the people who should come here:

Yea, the Lord hath covenanted this land unto me, and to my children forever, and also *all those who should be led out of other countries by the hand of the Lord.*

Wherefore, I, Lehi, prophesy according to the workings of the Spirit which is in me, that there shall *none come into this land save they shall be brought by the hand of the Lord.*

Wherefore, *this land is consecrated unto him whom he shall bring.* And if it so be that they shall serve him according to the commandments which he hath given, it shall be *a land of liberty* unto them. . . . (2 Nephi 1:5-7. Italics added.)

The modern Americans referred to in this and other passages were a select lot whose general devotion to liberty provided the seed-bed for our remarkable Constitution. The written document only reflects the most self-conscious stage of a developmental process that had been under way for generations in America. As the Americans struggled throughout the colonial and Confederation periods to

²⁰Ibid., p. 362.

shape instruments of government that would protect their individual liberties while effectively serving the public interest, they experimented endlessly in the refinement of institutions and principles which found their way, explicitly or implicitly, into that summary document. These early Americans were guided by certain principles and ideals of government which they were trying to actualize and institutionalize, as they engaged in extensive experimentation at each level of colonial government. The question is whether there was inspiration in this highly decentralized evolutionary process.

ANOTHER MODEL FOR INSPIRATION

It has often been observed that it is not entirely clear what is meant when one says that the Constitution is inspired. No one claims that the authors of the Constitution were prophets in the sense in which that word is used to describe the men from whom we ordinarily accept scripture. Nor did the Founding Fathers claim to be prophets. They did not claim to have seen visions, nor to have received the Constitution in any supernatural way.²¹ Further, the records that we have of the Federal Convention make it very clear that it was not like a council meeting of Church leaders, with divinely constituted priesthood authority present to make the decisions. And, the actual phrasing that was eventually approved was the result of numerous hard-fought compromises.²² Yet, if we take seriously the statements of the prophets on the origins of the Constitution, we must recognize that its development was divinely managed, even if in some less direct way.²³

²¹An exception of possible significance occurs in *The Federalist Papers*, No. 37, by James Madison. Near the end of that essay, Madison marvels at the purity of the document brought forth under such adverse circumstances and concludes that "it is impossible for the man of pious reflection not to perceive in it a finger of that Almighty hand which has been so frequently and signally extended to our relief in the critical stages of the revolution" (*The Federalist Papers*, ed. Clinton Rossiter [New York: New American Library, 1961], pp. 230-31).

²²Charles Biddle, who was acquainted with most of the members of this convention claimed that some of the best informed members of the federal convention had told him "they did not believe a single member was *perfectly* satisfied with the Constitution, but they believed it was the best they could ever agree upon, and that it was infinitely better to have such a one than break up without fixing on some form of government, which I believe at one time it was expected they would have done" (as quoted from Biddle's *Autobiography* in Max Farrand, *The Fathers of the Constitution* [New Haven, Conn.: Yale University Press, 1921], p. 141).

²³President J. Reuben Clark, Jr., observed that the founding fathers were "in God's hand; he guided them in their epoch making deliberations in Independence Hall" (*Conference Report*, April 1957, p. 48). But he saw in their work "the culmination of a long historical process which had its beginnings deep in the efforts of the English people to free themselves from the tyranny of absolute monarchy"

The Old Testament gives us an example of a society living by laws which were given directly to men by God. When the Lord appeared to Moses on the mountain, "all the people saw the thunders, and the lightnings, and the noise of the trumpet, and the mountain smoking" (Exodus 20:18). In addition to the Ten Commandments, Moses received at the same time numerous detailed statutes to govern the daily life of the Israelites.²⁴

The Book of Mormon provides the intermediate example of King Mosiah, the prophet who proposed a new constitution without claiming a detailed revelation. But we would not hesitate to call it an inspired arrangement.²⁵ In the case of the American Constitution, however, there was neither direct divine manifestation, nor were the principal actors prophets. Yet, like the Lamanites, they may have been blessed with the Holy Ghost and "knew it not" (3 Nephi 9:20).²⁶

In our search for evidence of inspiration in the development of the Constitution, we would do well to keep in mind a modern analogy. The way in which the institutional devices and principles ultimately embodied in the Constitution developed over seventy years in American experience is very similar to the development of the present welfare program and other programs in the Church. From the very small beginning forty years ago, the Church has now developed an extensive fully operational program to help its poor. As with our Constitution, so also the emergence of this program is marked most clearly by:

- (1) an experimental approach whereby successful ideas tried on the local level have eventually been incorporated into the structure of the overall program.
- (2) a dogged loyalty to the fundamental principles (such as that every welfare recipient shall provide some service in exchange for the commodities he receives, and that the service and commodities shall, where practicable, be provided through labor of Church members, and not by cash contribution alone), and
- (3) a final crystallization by those authorized to establish general policies.

(Martin B. Hickman, "J. Reuben Clark, Jr.: The Constitution and the Great Fundamentals," *J. Reuben Clark, Jr.: Diplomat and Statesman*, ed. Ray C. Hillam (Provo, Utah: Brigham Young University Press, 1973), p. 32.

²⁴See especially Exodus 21 and 22 for good examples of this.

²⁵See generally Mosiah 29.

²⁶It would be a serious mistake to underrate this inspiration in light of the Savior's promise to pour out the Holy Ghost on the gentiles making them "mighty above all" unto the scattering of the Israelites (3 Nephi 20:27).

Members of the Church would not hesitate to say that the present Welfare Services is an inspired program. Yet it was developed first by individuals who had specific Church responsibilities to fulfill and guiding principles of love, industry, and self-respect to observe in the performance of those assignments.²⁷ As good and even inspired ideas came to these individuals, they were tried, found true, and adopted as part of the general Church program that is continually being organized and reorganized under the leadership of men called and sustained to that responsibility. There is inspiration both in the initiative of the individuals seeking to magnify their specific Church callings and in the adoption and improvement of new programs by general Church leaders.

Other examples of similar inspiration include the youth programs, the Church educational system, and the prospective elders program. Each is inspired; each has undergone significant and continuing changes over the past decade or more. Most of these changes arose initially where local priesthood leaders felt impressed to adapt the general Church program to their particular circumstances in keeping with their callings.²⁸

²⁷Additional insight into this well-known example is provided by a letter written to President Spencer W. Kimball, 12 June 1971, by Paul C. Child, who was called to be a counselor to President Harold B. Lee when Pioneer Stake was reorganized in 1930. At that time President Child was given the responsibility for developing a welfare program for the Pioneer Stake.

In this letter, President Child explains how the program developed as opportunities arose providing means by which the needs of the unemployed members of the Pioneer Stake might be met. He gives numerous examples of the explicit dependence of the Stake Presidency on the scriptures, the words of the prophet, and on their own inspiration. He also records how the Pioneer Stake program proved to be the answer to the needs of the Church as the First Presidency undertook to develop such a program on a churchwide basis (Paul C. Child, "Physical Beginning of the Church Welfare Program," *BYU Studies* [Spring 1974], pp. 383-86.).

²⁸This phenomenon has been labeled "creative stewardship" by W. Keith Warner and Edward L. Kimball ("Creative Stewardship," *The Carpenter* 1 [Spring 1971]: 17-26). In this insightful article, Warner and Kimball analyze not only the process, but the doctrinal support for it. They also have several examples that illustrate how local leadership can create inspired programs, some of which ultimately prove suitable for general church use. Their intent is to encourage Church members "not only to be willing workers, but also to be creative stewards" (p. 26).

Good scriptural support for this notion of individual revelation comes from D&C 58:24-29. Edward Partridge and his associates had been commanded to go to Zion and after some delay had inquired of Joseph Smith as to the means by which they should travel. The Lord's reply instructs Edward Partridge to seek the direction of the Lord personally. "Let them bring their families to this land, *as they shall counsel between themselves and me*" (v. 25). "For *the power is in them* wherein they are agents unto themselves" (v. 28). This seems to suggest that the power in them or the Holy Ghost, will aid them as they counsel between themselves and their Father in heaven to find his will in this matter. On this occasion, the Lord took time to expand upon the principle underlying his reply, explaining that "it is not meet that I should command in all things [presumably through the Prophet] for he that is compelled in all things, the same is a slothful and not a wise servant. . . . Men

Certainly there are numerous examples of inspired programs which are simply handed down through the Church hierarchy, without prior experimentation. And certainly many programs which arise experimentally in stakes and wards are never adopted into the general Church program. Nevertheless, this remains a very important kind of inspiration which may have helped produce our "inspired Constitution." The political history of seventeenth and eighteenth century America shows that our Constitution emerged from the efforts of a whole people to resolve the conflict between individual liberty and political order, as well as from the creative pens of individual draftsmen.²⁹

LIMITATION OF POWER AS A GUIDING PRINCIPLE IN THE EVOLUTION OF EIGHTEENTH CENTURY AMERICAN POLITICAL ORDER

Eighteenth century Americans were preoccupied with the threat of arbitrary power. Their political energies were continually devoted

should be anxiously engaged in a good cause, and do many things of their own free will, and bring to pass much righteousness" (vs. 26-27). In this instance we have a clear example of a Church member being told not to seek complete direction from the head of the Church in carrying out his assignment, but to seek that direction from the Lord himself.

This teaching is supported by the instructions given to Oliver Cowdery in Section 9 of the Doctrine and Covenants. Oliver had failed in his attempt to translate the record because he had "supposed that I would give it unto you, when you took no thought save it was to ask me" (v. 7). The Lord goes on to explain that the individual must exert his own efforts in resolving the problem before he calls upon the Lord for inspiration. "But behold, I say unto you that you must study it out in your own mind; then you must ask me if it be right, and if it be right, I will cause that your bosom shall burn within you; therefore, you shall feel that it is right" (v. 8). Or as Oliver was promised earlier, "I will tell you in your mind and in your heart by the Holy Ghost, which shall come upon you" (D&C 8:2).

²⁹This evolutionary view of the formulation of the Constitution is not original. As Martin Hickman has observed, "There is nothing in President [J. Reuben] Clark's writings on the Constitution which suggests that he thought the whole of the drama of the Constitution was played in Philadelphia in 1787. Rather he saw the Constitution as emerging from a long historical process. . . . President Clark was fully aware that the political principles which are enshrined in the Constitution had their origins in the development of Anglo-Saxon legal and political experience. . . . [The Framers] brought to their task, as he clearly saw, a mastery of the political ideas which had gradually emerged from the long struggle of Englishmen for self-government" (Hickman, "J. Reuben Clark," pp. 27-28).

William C. Kimball has claimed that the most important factors in the shaping of our Constitution were "the historical traditions of the English rule of law, the century and a half of unsupervised self-government, the lack of entrenched vested interest in the New World, and the literally boundless expanse of territory in which the New America could expand. In addition, one must take into consideration that the society itself was and is democratic—that is, we are all, or most of us, brought up to respect the rules of government, to support the regime, and to constantly tinker with the mechanisms of government, to adapt them to our changing needs." "The Constitution as a Delphic Oracle," Address delivered to the Cambridge Massachusetts Institute of Religion, 10 October 1969, p. 3.

Sydney George Fisher develops in detail the view that the component elements

to the erection and protection of political and governmental devices designed to protect them from the arbitrary wills of the officers of the crown and of their fellow Americans. While on the one hand they were extremely proud of the magnificent achievement of the mixed constitution of seventeenth and eighteenth century England, they saw almost everywhere means by which individuals in power could be corrupted, thus turning the government power against the people in the interest of a few.

Political radicals in England since the time of the English Civil War had voiced the dangers of power and corruption to the freedom of the individual. The second quarter of the eighteenth century saw the propaganda and political analysis of this radical opposition transplanted wholesale to the American colonies. The English radical writers—Sidney, Trenchard, Gordon, and Bolingbroke, among others—were extensively republished in the colonies and were very popularly received. Their attack centered on the corruption of the constitution and the government by the crown and on the corruption of the people and the times in general. One leading historian has marshalled what he describes as “profuse and unmistakable” evidence that the “opposition vision of English politics, conveyed through these popular opposition writers, was determinative of the political understanding of eighteenth-century Americans.”³⁰ The Americans universally accepted the view of the English radical that

man was by nature lustful, that he was utterly untrustworthy in power, unable to control his passion for domination. The antinomy of power and liberty was accepted as the central fact of politics, and with it the belief that power was aggressive, liberty passive, and that the duty of free men was to protect the latter and constrain the former. Threats to free government, it was believed, lurked everywhere, but nowhere more dangerously than in the designs of ministers in office to aggrandize power by the corrupt use of influence, and by this means ultimately to destroy the balance of the constitution. Corruption, especially in the form of the manipulation and the bribery of the Commons by the gift of places, pensions, and sinecures, was as universal a cry in the colonies as it

of the Constitution were the results of a long evolutionary history in English and American politics. This view was current even at the time the Constitution was written and was clearly derived from English legal history in which all Englishmen could see the clear evolution of individual liberty through the development of more and more effective restraints on government. Sydney George Fisher, *The Evolution of the Constitution of the United States* (Philadelphia: Lippincott, 1897).

³⁰Bernard Bailyn, *The Origins of American Politics* (New York: Random House, 1967), p. 56.

was in England, and with it the same sense of despair at the state of the rest of the world, the same belief that tyranny, already dominant over most of the earth, was continuing to spread its menace and was threatening even that greatest bastion of liberty, England itself.³¹

The primary guiding principle of the Americans was that no Englishman (especially an American heir to the rights of Englishmen) should be subjected to the arbitrary will of another man. Although they considered government to be necessary to protect individuals in the pursuit of property and happiness, they realized that it had been obviously perverted throughout history to enable those in power to impose their wills on others. As the founding fathers assumed that it was in the nature of all men to take advantage of political office to increase their personal wealth and power, they therefore developed institutional structures for the United States that were designed to play off the greed of one office holder against that of another. The very point of the separation of powers and system of checks and balances was to deny governmental officers the power to carry out schemes that could enhance them personally to the detriment of the people.³² The limitation of power was indeed the theme of much of the experimentation and reasoning that led to the constitutional provisions. Whereas the mixed government of England theoretically met this function by balancing king, lords, and commons, American society was not naturally divided this way, and new institutional devices needed to be developed.³³

The political experimentation in America during the first century and a half of colonial experience was primarily oriented towards developing the independence of the colonial legislatures. This in-

³¹Ibid., pp. 56-57. Richard L. Bushman has corrected Bailyn's generalization somewhat by showing that colonial concern over corruption did not extend to legislatures until after 1750. Whereas the colonists had long complained of the inherent corruptibility of their appointed governors and other crown officers, foreigners of little or no personal means and no vested interest in the colonies, it was only after 1750 and "under the tutelage of English radicals" that "a growing number of colonial politicians came to see that they were not part of a struggle extending beyond their own mercenary governors. . . ." Their notion of corruption "grew from simple greed to include corruption of the legislature through patronage and electoral influence." Thus Bushman believes the Revolution was fought not only "to escape the dominion of an oppressive ministry and a corrupted Parliament but [also] to create a government of men they could trust, men whose interests mingled with their own and whose lust was checked by all the limitations on power enlightenment thinkers had devised" (Richard L. Bushman, "Corruption and Power in Provincial America," *The Development of a Revolutionary Mentality* [Washington, D. C.: Library of Congress, 1972], p. 82).

³²Cf. Bushman, p. 73 and Gerald Stourzh, *Alexander Hamilton and the Idea of Republican Government* (Stanford, Calif.: Stanford University Press, 1970), pp. 63-75.

³³Bailyn, *Politics*, pp. 59ff.

dependence was achieved by a number of practical arrangements worked out between the legislatures and the colonial governors, and not by any formal written constitutional revisions. Many of the arrangements that the popularly elected legislatures eventually forced on the king's governors were actually illegal in terms of the charters and constitutions under which the colonial governments operated.

Greene documents nicely how these developments came about in the four southern colonies, showing that as in the other colonies, the lower houses had achieved not only equality with the crown's officers, but even superiority to them.³⁴ Although the formal documents had not been rewritten to accommodate new arrangements, they became solidly established in practice to resolve particular problems in ways that would be satisfactory to the colonists.

From the late 1600s to the Revolution, the colonial assemblies claimed the rights that Parliament had won in England in its struggle with the Stuarts. These included the full right of local legislation, control over both taxes and expenditures, the right to fix the qualifications of eligibility of House members, the power to apportion legislative districts, freedom of debate, immunity from arrest, and the right of the assemblies to choose their own speakers. "In Britain, these privileges had been fully vindicated by the Glorious Revolution, and in insisting upon them the colonial assemblies believed that they were assuming the normal prerogatives of all sovereign legislative bodies."³⁵ Of course, English officials were quick to oppose these claims, arguing that colonial legislators were more dependent on royal discretion and did not automatically enjoy the benefits gained by Parliament in the Glorious Revolution. The success of colonial legislatures in imposing their control over taxation and expenditures, however, enabled them eventually to

³⁴Jack P. Greene, *The Quest for Power* (Chapel Hill: University of North Carolina Press, 1963). As Greene and other historians have carefully demonstrated, colonial legislatures were fantastically successful in gaining controls over finances, the payment of fees and salaries, their own legislative procedures concerning membership and internal proceedings, and control over the affairs of the executive, including the collection of revenue, public works, printers, military affairs, Indian affairs, courts and judges, and church offices. For a detailed study of similar developments in Massachusetts, see Bushman, "Corruption and Power," p. 82, who concluded: "It was that perception of power, those animosities and fears pulsing below the surface of the constitutional disputes, that compelled the assemblies to defend and enlarge their privileges."

³⁵Alfred H. Kelly and Winfred A. Harbison, *The American Constitution: Its Origin and Development*, 3rd ed. (New York: Norton, 1963), p. 30. See also Michael G. Hall, Lawrence H. Leder, and Michael G. Kammen, eds., *The Glorious Revolution in America* (Chapel Hill: University of North Carolina Press, 1964), p. 214.

establish all of their claims. "The victory over the purse strings, recapitulating as it did a like victory by the House of Commons over the Crown, was of tremendous importance in the growth of colonial internal autonomy."³⁶

The ideal of legislative independence in the colonial assemblies was never compatible with the ideals of centralized administration of the empire that were long held by London officials. By the 1760s, when the Crown decided to pursue more strictly its ideal of an efficiently-organized empire, it was too late. The Americans regarded their new independence and privileges as constitutional in every way, and saw the attempts of the British government to resurrect centralized colonial administration as an attempt to deny them their constitutional rights as Englishmen³⁷ and enslave them.³⁸ Small wonder that with the success of the Revolution the thirteen states agreed on a form of national government which exalted above all things the independence of the state legislatures. This outstanding feature of the Articles of Confederation appeared to be the realization of the spoken and unspoken, recognized and unrecognized objectives of generations of Americans.

But the Union was barely born before the inadequacies of that first constitution became apparent. The jealous state legislatures had allowed the central government no power to tax and thereby finance centralized functions. Furthermore, no power was conceded to the central government by which it might exercise regulation over commerce or the economy. The statutes that the Confederation might adopt were unenforceable, as there was no recognized supremacy in its statutes over the statutes of any particular state. There was no central judiciary by which the conflicts of law might be settled nor by which residents of one state might seek re-

³⁶Kelly and Harbison, *The American Constitution*, p. 31.

³⁷Modern Americans may need to be reminded that the constitutional rights of eighteenth century Englishmen were simply those liberties and privileges that had been won from the king through military or political struggle and established by general observance over the years.

³⁸The attitude of Americans toward these crown policies was not fully appreciated before the Harvard historian Bernard Bailyn carefully examined the full range of political literature published in that pre-Revolutionary period. After that study, Bailyn concluded that: "We shall not understand why there was a revolution until we suspend disbelief and listen with care to what the Revolutionaries themselves said was the reason there was a revolution.

"... We shall have much disbelief to overcome. For what the leaders of the Revolutionary movement themselves said lay behind the convulsion of the time—what they themselves said was the cause of it all—was nothing less than a deliberate 'design'—a conspiracy—of ministers of state and their underlings to overthrow the British constitution, both in England and in America, and to blot out, or at least severely reduce, English liberties" (Bailyn, *Politics*, p. 11).

dress in the courts of another. There was no central executive, and this resulted in considerable disunity. The states were virtually sovereign and could go their own way whenever they disagreed with a majority vote of Congress. There was no federal mechanism which could settle disputes arising between state and national authorities. There was no popular representation in the national congress, each state having equal representation regardless of size or population. Finally, the jealousy of the states was again emphasized in the crippling amendment procedure which required unanimous assent. The adoption of the Articles of Confederation in the first place had apparently been dependent on this absolute control by each state over any future change in that arrangement.

These defects were soon generally recognized.³⁹ Consequently, the short career of the Confederation was marked by continued experimentation and theoretical discussion on both the state and national levels, which in turn generated many of the political ideas and institutional devices that were eventually embodied in the Constitution. As one prominent historian observed:

No matter how much the members might talk about democracy in theory or about ancient confederacies, when it came to action they did not go outside of their own experience. The Constitution was devised to correct well-known defects and it contained few provisions which had not been tested by practical political experience. Before the Convention met, some of the leading men in the country had prepared lists of the defects which existed in the Articles of Confederation, and in the Constitution, practically every one of these defects was corrected, and by means which had already been tested in the States and under the Articles of Confederation.⁴⁰

Other constitutional historians have summarized the same point as follows:

The [colonial] era closed with the ratification of the Constitution, a document embodying the political experience of the preceding two centuries.⁴¹

Some Latter-day Saints seem to take the prophetic teaching that the Constitution was inspired as a reason for insisting that the original document was a final achievement, which should never be

³⁹Hamilton appealed for support of the new Constitution by using a systematic review of the defects of the Articles of Confederation in *Federalist Papers* 21 and 22, pp. 138-152.

⁴⁰Farrand, *Fathers of the Constitution*, pp. 141-42.

⁴¹Kelly and Harbison, *The American Constitution*, p. 5.

modified or revised. This seems clearly mistaken. First, the Constitution condoned slavery, a practice rejected in modern scripture.⁴² But of course the Union of 1787 would not have been politically possible with a strong antislavery clause. Other defects of the original document were once outlined by Joseph Smith.⁴³ Second, the original document itself provides a formal amending procedure, which was promptly used to adopt the Bill of Rights. Third, serious students of the Constitution find that one of the greatest strengths of the document, which has enabled it to weather the shifting tides of American politics, ideologies, and social change is its vagueness and ambiguity in many key passages.⁴⁴ One may object to some of the fruits of this tradition of constitutional interpretation, without denying its importance to constitutional vitality. Fourth, the idea of a fixed and unchangeable Constitution seems inconsistent with the experimental origins of the document. The Americans of the nineteenth century were experimentalists in government, and the Constitution was their grand experiment. But it was not designed to end all experiments. Brigham Young explicitly recognized all this when he taught:

The signers of the Declaration of Independence and the framers of the Constitution were inspired from on high to do that work. But was that which was given to them perfect, not admitting of any addition whatever? No; for if men know anything, they must know that the Almighty has never yet found a man in mortality that was capable, at the first intimation, at the first impulse, to receive anything in a state of entire perfection. They laid the foundation, and it was for after generations to rear the superstructure upon it. It is a progressive—a gradual work.⁴⁵

⁴²"It is not right that any man should be in bondage one to another" (D&C 101:79).

⁴³Joseph Smith, Jr., *History of the Church of Jesus Christ of Latter-day Saints*, ed. B. H. Roberts, 7 vols. (Salt Lake City: Deseret Book, 1971), 6:7.

⁴⁴For example, Rex E. Lee, first dean of the J. Reuben Clark School of Law, sees this feature of the Constitution as additional evidence of its inspiration, and as the explanation for the ability of the Constitution to function successfully over a 183-year period of "explosive growth." (Rex E. Lee, "The United States Constitution: Divinity and Controversy," Commissioner's Lecture Series [Provo, Utah: Brigham Young University Press, 1972]). Very likely much of this vagueness was deliberate. Anyone who has served on writing committees knows that vagueness is the child of compromise. See, for example, the explanation given by Gouverneur Morris for his use of vague terms in Article IV, Section 3, as quoted in Max M. Minty, *Gouverneur Morris and the Revolution* (Norman, Oklahoma: University of Oklahoma Press, 1970), p. 191.

⁴⁵JD, 7:13-15. As J. Reuben Clark, Jr., once stated, "It is not my belief nor is it the doctrine of my Church that the Constitution is a fully grown document. On the contrary, we believe it must grow and develop to meet the changing needs of an advancing world" (J. Reuben Clark, Jr., "Constitutional Government: Our Birthright Threatened," *Vital Speeches of the Day* 5 [1938]:177).

Society under the Constitution is not static; it can develop increased or decreased respect for its basic principles. The original document was flexible enough to absorb shifts in either direction. The subsequent elimination of slavery certainly represented a shift that was already taking place in the views of the American public in the direction of increased liberty. However, the example of growing economic and other regulation in the twentieth century seems to signal a dwindling commitment to rule of law, not simply because it is economic regulation, but because this regulation in the twentieth century seems to have been shaped more by political considerations of the moment.⁴⁶

THE RULE OF LAW

The Constitution (and its authors) assume the rule of law as essential to a free society. The point of the rule of law is to enable individuals to pursue their own ends, without fear of being frustrated by impositions of the arbitrary will of others. F. A. Hayek has explained how man can be free *and* ruled by law:

Provided that I know beforehand that if I place myself in a particular position I shall be coerced and provided that I can avoid putting myself in such a position, I need never be coerced. At least insofar as the rules providing for coercion are not aimed at me personally but are so framed as to apply equally to all people in similar circumstances, they are no different from any of the natural obstacles that affect my plans. In that they tell me what will happen *if* I do this or that, the laws of the state have the same significance for me as the laws of nature; and I can use my knowledge of the laws of the state to achieve my own aims as I use my knowledge of the laws of nature.⁴⁷

Legal philosophers traditionally contrast this notion of rule of law with the rule of men, which is more common in human societies. The point is that individuals are free in a system where all men are ruled by the same laws according to their common agreement; men are not free when they are subject to the whims and discretionary commands of human rulers. The authors of the American Constitution were extremely sensitive to the latter possibility and built into this document every possible safeguard—or to use Madison's phrase, every "auxiliary precaution"—against the encroachments of tyranny.

⁴⁶F. A. Hayek, *The Constitution of Liberty* (Chicago: University of Chicago Press, 1960), part III.

⁴⁷*Ibid.*, p. 142.

To operate fully in all dimensions of a society's legal experience, the rule of law must be attended by a number of supporting principles—all of which have been recognized to some degree in Anglo-American law. F. A. Hayek and Lon Fuller find an implicit set of rules that must be observed by a society and its government if, in fact, rule of law is to be preserved.⁴⁸ These conditions include the requirements (1) that laws be general, applying equally to all members of society, including those who enact or enforce the law; (2) that laws never apply retroactive penalties; (3) that all laws be enacted publicly, never in secret; (4) that the judges be independent of the other branches of government; (5) that administrators not be allowed discretion in applying the law to individuals; and (6) that free individual activity can only be limited by *general* rules applying equally to all. These metalegal rules are in most cases general characterizations of specific limitations placed on government, especially in Anglo-American legal history.⁴⁹

The rule of law does not guarantee economic security, social status, or even minimal happiness to anyone. Thus it should not be confused either with the utopian scheme of the worldly philosophers or the divine outline of the City of God. Recognizing the human impossibility of the former and the present lack of the latter, the authors of our Constitution wisely selected as their guiding principle the rule of law which guarantees us nothing more than the *absence* of arbitrary coercion. Of course, the rule of law does not imply any general prohibition against affirmative government action in the protection of individuals or in pursuit of the general welfare. Rather it simply marks out certain limits to the use of any governmental coercion. Nothing is guaranteed to us except the freedom to pursue our objectives by our own individual or group efforts within certain constitutional limits. This seems to be the same point Hugh Nibley was making when he said:

The best of human laws leaves every man free to engage in his own pursuit of happiness, without presuming for a moment to tell him where that happiness lies; that is the very thing the laws of God can guarantee. At *best*, the political prize is negative.⁵⁰

⁴⁸See *Ibid.*, pp. 208-219 and Lon Fuller, *The Morality of Law*, rev. ed. (New Haven, Conn.: Yale University Press, 1969), pp. 33-94.

⁴⁹For an exciting yet concise historical analysis of the development of rule of law, see Francis D. Wormuth, *The Origins of Modern Constitutionalism* (New York: Harper and Row, 1949). Wormuth has influenced several other authors mentioned in this essay. His account should, however, be compared with the more traditional one by Charles Howard McIlwain, *Constitutionalism Ancient and Modern*, rev. ed. (Ithaca, N. Y.: Cornell University Press, 1947).

⁵⁰Hugh Nibley, "Beyond Politics," *BYU Studies* 15 (Autumn 1974):11. Nibley's

The rule of law does nothing more than restrict governmental coercion to those special cases in which certain formal criteria are met. Students of liberty often disagree on the adequacy of the formal rule by itself. Some believe that the formal principle of rule of law needs support in constitutional declarations of certain inviolable substantive freedoms, such as freedom of religion, freedom of the press, and right to trial by jury. The authors of the Constitution had chosen to omit such declarations of substantive rights for fear that future courts might treat such a list as exhaustive.⁵¹ As Hamilton and others persuaded their brethren in Philadelphia, the Constitution was designed to set out the limits of governmental power, not to limit the freedoms of the people.⁵²

But Madison spoke for the eventual majority who preferred some explicit constitutional status for those key liberties that Englishmen had won from their king over the preceding centuries. He recognized Hamilton's argument that Americans would have no king to worry about. But he felt that insufficient attention had been given to the fact that in a democracy

the invasion of private rights is *chiefly* to be apprehended, not from acts of Government contrary to the sense of its constituents, but from acts in which the Government is the mere instrument of the major number of the Constituents.⁵³

Madison's view was widely shared, and it was only by promising to

reference to the *Teachings of the Prophet Joseph Smith* is worth repeating here: "The laws of men may guarantee to a people protection in the honorable pursuits of this life . . . and when this is said, all is said" (Joseph Fielding Smith, comp., *Teachings of the Prophet Joseph Smith* [Salt Lake City: Deseret Book, 1938], p. 50).

⁵¹The Ninth Amendment clearly stipulates that "the enumeration of certain rights in this Constitution shall not be construed to deny or disparage others retained by the people." Some observers believe that the fears of Hamilton and Wilson have been realized as this provision has been frequently forgotten (Hayek, *Constitution of Liberty*, p. 186). The historical failure to use the Ninth Amendment has been documented and lamented by L. W. Dunbar, "James Madison and the Ninth Amendment," 42 *Virginia Law Review* 627. The utility of the Ninth Amendment has since been recognized by Justice Goldberg who tried to develop it to support the right of privacy which is not enumerated in the Bill of Rights. See his 1964 concurring opinion in *Griswold v. Connecticut*, where he observed: "The Ninth Amendment to the Constitution may be regarded by some as a recent discovery and may be forgotten by others, but since 1791, it has been a basic part of the Constitution." 381 *United States Reports* 479, 491.

⁵²See his argument in *Federalist Paper* 84, especially pp. 513-14. Also see James Wilson's argument to the Pennsylvanians in *The Debates in the Several State Conventions, on the Adoption of the Federal Constitution*, ed. Jonathan Elliot (Philadelphia and Washington: J. B. Lippincott, 1863), 2:436, where he described the proposal for a bill of rights as "highly imprudent."

⁵³From a letter to Jefferson dated 17 October 1788 published by S. K. Padover, ed., *The Complete Madison* (New York: Harper, 1953), p. 254. I am indebted to Hayek's book for the references in these two footnotes.

immediately append a Bill of Rights that the Federalists were able to obtain ratification in several states.

It is also important to note that the rule of law is a metalegal principle. That means it cannot be legislated or enacted as a safeguard for freedom, because anything that can be written into the law can be deleted from the law. Rather, to be operative in any political society, the rule of law must spring from a moral consensus of the people. It must not only be an assumption of the Constitution, but of the people governed by the Constitution.⁵⁴ It was thus crucial to the establishment of the Constitution and the rule of law in America that the population have a special character, that is, that it be selected for its love of liberty and be raised up with devotion to the rule of law.

The obvious problem is that there is no way to enforce liberty. Being free entails absence of coercion. Consequently, a legal system can only provide freedom for a population that will voluntarily espouse the principles of liberty. Without this there could be no liberty, but only force. There are numerous examples of developing countries that have admired the American Constitution, adopted its form of government and still lapsed into dictatorships. The usual explanation is that the political culture lacked traditional commitment to "the rights of Englishmen," as it were, thus robbing the constitutional form of its vital force. A contemporary reaffirmation of this view is given to us by Russia's Alexander Solzhenitsyn, who sees the lack of love for liberty or traditional respect for the principles of rule of law among his people as a major reason for their failure to resist the mass imprisonment of innocent citizens that has continued over the last fifty years.⁵⁵ In an age of revolution the Americans were the only ones to exercise restrained sovereignty, stepping back to be ruled by their own legal creation. R. R. Palmer concluded that this approach was "distinctively American."

European thinkers, in all their discussion of a political or social contract, of government by consent of sovereignty of the people, had not clearly imagined the people as actually contriving a constitution and creating the organs of government. They lacked the idea of a people as a constituent power.⁵⁶

⁵⁴Cf. Hayek, *Constitution of Liberty*, pp. 180-82.

⁵⁵Aleksandr I. Solzhenitsyn, *The Gulag Archipelago* (New York: Harper & Row, 1974). Or as he says of prisoners who are broken, "We lost the *measure of freedom*" (p. 143). Other passages emphasizing the habitual disregard of the rule of law in Soviet Russia include, pp. 15, 147-49, 151-53, 161-62, 177-78, 281-91, 298, 308-09, 329, 333, 352, 359, 367, 399, 407-08, 431, 505, 537, and 563.

⁵⁶R. R. Palmer, *The Age of Democratic Revolution*, 2 vols. (Princeton, N. J.:

The rule of law guarantees a people freedom to pursue their own ends without constraint from the arbitrary will of others, a guarantee which also enables men to assume moral responsibility for their own actions. A close reading of Section 101 of the Doctrine and Covenants suggests that the Constitution and the laws of America are acceptable before the Lord precisely because they are “established *according to* just and holy principles” (D&C 101:77; italics added). And what is the effect of these principles? The same as the effect of the rule of law!

That every man may act in doctrine and principle pertaining to futurity, according to the moral agency which I have given unto him, that every man may be accountable for his own sins in the day of judgment. (D&C 101:78)

This verse seems to echo the common sentiment that men are morally responsible for their acts only when they are free from the arbitrary compulsion of others. Thus a man is only responsible for his own sins (or acts of righteousness) when he is free to “act in doctrine and principle pertaining to futurity,” that is, when the future consequence of his acts can be reasonably predicted in the light of previous experience and known rules, without being governed arbitrarily by the will of others. But this means that the rule of law is at the least functionally equivalent to the “just and holy principles” referred to in the scripture. The same principle which makes men responsible for their own sins, also makes them free to pursue wealth or happiness in any other form. An inspired constitution embracing that principle could be established by the hands of “wise men” whose motives might vary dramatically from the motives of righteous prophets. Yet each gets the results he desires.⁵⁷

Just as it was necessary to devise a substantially new institutional

Princeton University Press, 1959), 1:214-215. Palmer believes that although “the American and the French revolutions ‘proceeded from the same principles’ . . . the difference is that these principles were much more deeply rooted in America. [The] ideas of constitutionalism, individual liberty, or legal equality—were more fully incorporated and less disputed in America than in Europe” (p. 189).

⁵⁷This analysis seems generally consistent with Hugh Nibley’s essay on the “ancient law of liberty” in which he concluded that “it is more than Fourth of July rhetoric when the Latter-day Saints declare that the Constitution is an inspired document. It actually is the restoration to the earth of that ancient law of liberty which has been preached by the prophets in every age allowing every man to act in doctrine and principle according to the moral agency which God has given him, to be accountable for his own sins in the day of judgment. Such acts may never be prescribed or judged by any human agency, the Constitution maintains, and we firmly believe that to be the will of God: it was known to the early Christians as the ancient law of liberty” (Hugh Nibley, *The World and the Prophets* [Salt Lake City: Deseret Book, 1962], p. 173).

device to preserve the ancient rights and liberties of Englishmen in the new and unique egalitarian society of eighteenth century America, so we might find that other forms of government could well be established "according to just and holy principles" in nations with different political cultures or social compositions. King Benjamin proved that all the requirements of the rule of law could be met in a righteous monarchy. His successors went on to establish a government composed only of elected judges which proved able to preserve the same principles for several generations. Another Book of Mormon prophet saw exactly the same principles as essential, combining in one statement the ends of moral responsibility and personal freedom as achievements of good law. As Mosiah writes:

. . . I command you to do these things, and that ye have no king, that if these people commit sins and iniquities they shall be answered upon their own heads.

For behold I say unto you, the sins of many people have been caused by the iniquities of their kings; therefore their iniquities are answered upon the heads of their kings.

And now I desire that this inequality should be no more in this land, especially among this my people; but I desire that this land be a land of liberty, and every man enjoy his rights and privileges alike. . . . (Mosiah 29:30-32, 37-39)

LIBERTY DEPENDENT ON MORALITY

The inspired principles in the Constitution are the principles of the rule of law which, if preserved, guarantee liberty to every man. These principles are assumed in the Constitution because they had come to be assumed by Americans generally, as they struggled through several generations to find institutional safeguards for the liberty that they prized so highly. Many theoreticians of law and politics have rejected such a tenuous and fragile basis for a nation's freedom. They dream of constitutional arrangements based on clear libertarian principles which would maximize individual liberty whether or not the people understood or supported the basic principles. Their objection does raise the important secondary problem of preserving the liberty we have obtained.

The early Americans themselves recognized the necessity of "public virtue" for the continuing security of their liberty. As a recent prize-winning history summarizes:

In a monarchy, each man's desire to do what is right in his own eyes could be restrained by fear or force. In a Republic, however,

each man must somehow be persuaded to submerge his personal wants into the greater good of the whole. This willingness of the individual to sacrifice his private interest for the good of the community—such patriotism or love of country—the eighteenth century termed public virtue. A republic was such a delicate polity precisely because it demanded such an extraordinary moral character in the people. Every state in which the people participated needed a degree of virtue; but a republic which rested solely on the people absolutely required it, although a particular structural arrangement of the government in a republic might temper the necessity for public virtue, ultimately no model of government whatever can equal the importance of this principle, nor afford proper safety and security without it.

Without some portion of this generous principle, anarchy and confusion would immediately ensue. The jarring interest of individuals, regarding themselves only, and indifferent to the welfare of others would still further heighten the distressing scene, and with the assistance of the selfish passions, it would end in the ruin and subversion of the state. The eighteenth century mind was thoroughly convinced that a popularly based government "cannot be supported without virtue." Only with a public-spirited, self-sacrificing people would the authority of a popularly elected rule be obeyed, but "more by the virtue of the people than by the terror of his power." Because virtue is truly the lifeblood of the republic, the thoughts and hopes surrounding the concept of public spirit gave the Revolution its socially radical character—an expected alteration in the very behavior of the people "laying the foundation in a constitution, not without or over, but within the subjects."⁵⁸

This teaching is appropriately extended by King Benjamin's warning:

Now it is not common that the voice of the people desireth anything contrary to that which is right; but it is common for the lesser part of the people to desire that which is not right; therefore, this shall ye observe and make it your law—to do your business by the voice of the people.

And if the time comes that the voice of the people doth choose iniquity, then is the time that the judgments of God will come upon you; yea, then is the time he will visit you with great destruction even as he has hitherto visited this land. (Mosiah 29: 26-27)

THE CONSTITUTION AND THE SAINTS

No matter what happens with the rest of the gentiles, if the Latter-day Saints are righteous and love liberty, the Constitution will

⁵⁸Gordon S. Wood, *The Creation of the American Republic, 1776-1787* (New York: W. W. Norton and Co., 1969), p. 68. See also Bushman, "Corruption and Power," p. 63, and Stourzh, *Alexander Hamilton*.

be preserved among them, and as liberty declines elsewhere, it will shine forth more and more brightly among them as a beacon, drawing the honest in heart and lovers of liberty from all the earth to Zion. As John Taylor prophesied in 1879,

We have got to establish a government upon the principle of righteousness, justice, truth and equality and not according to the many false notions that exist among men. And then the day is not far distant when this nation will be shaken from centre to circumference. And now, you may write it down, any of you, and I will prophesy it in the name of God. And then will be fulfilled that prediction to be found in one of the revelations given through the Prophet Joseph Smith. Those who will not take up their sword to fight against their neighbor must needs flee to Zion for safety. And they will come, saying, we do not know anything of the principles of your religion, but we perceive that you are an honest community; you administer justice and righteousness, and we want to live with you and receive the protection of your laws, but as for your religion we will talk about that some other time. Will we protect such people? Yes, all honorable men. When the people shall have torn to shreds the Constitution of the United States the Elders of Israel will be found holding it up to the nations of the earth, and proclaiming liberty and equal rights to all men, and extending the hand of fellowship to the oppressed of all nations. This is part of the programme, and as long as we do what is right and fear God, he will help us and stand by us under all circumstances.⁵⁹

The eighteenth century radicals that perpetrated the American Revolution were often highly respected men of substance and were widely regarded as moral leaders in their communities. They were usually leaders in the popular party serving as elected representatives in assemblies and other posts of public trust. Their radical creed was characterized by a deep and passionate opposition to arbitrary and uncontrolled government—by a love of liberty, as it has usually been called. We have been warned by contemporary prophets not to associate ourselves with the rhetoric or political tactics of modern radicals of the left or the right, who also wave their flags of liberty. This might seem inconsistent unless we recognize that being a radical does not entail adherence to any particular political doctrine. Rather, it refers to the depth and degree of commitment. The radicals of the left today seek freedom from social and ma-

⁵⁹*JD*, 21:8. Brigham Young had acknowledged much earlier that “we have the best system of government in existence, but queried if the people of this nation were righteous enough to sustain its institutions.” He answered his own rhetorical question: “I say they are not, but will trample them under their feet” (*JD*, 12:119). Cited in Nibley, “Beyond Politics,” p. 14.

terial deprivation through the application of government power. On the right, according to your preferences in political taxonomy, we have either those libertarians who would go far beyond the classically liberal views of the founding fathers in restricting the role of government, or those reactionaries who would be willing to invoke arbitrarily the power of government to reshape moral society in their own image. Modern prophets seem to reject both the reactionary and radical left views. And in clearly recognizing a positive role for limited government, they refuse to join the libertarians. Like those wise men who forged our Constitution they speak out for integrity in public affairs, protection of the rights of individuals from arbitrary government interference, and for loyalty to that constitutional system which has been so successful in securing to us our freedoms in the past. As we seek to teach our children to love and appreciate their liberty, we would in the contemporary context emphasize the virtues of our constitutional system, the need to protect and repair it as necessary, and the importance of holding public officials to strict standards of integrity, allowing no man to stand above the law. Perhaps the most important things we can do to preserve our constitution and our liberty are first to learn to understand and love liberty ourselves and then to teach our children and our fellow citizens these same things.⁶⁰ Indeed we might do well to follow the exhortation of young Abraham Lincoln who urged his hearers to make the love of liberty and the respect for law "the political religion of the nation."⁶¹

The Book of Mormon teaches that our continued liberty in this land depends on our obedience to Christ's commandments. Therefore, we can make our most important contribution to the preser-

⁶⁰As Harold B. Lee has put it, "We would hope that we might be instrumental in developing statesmen—men not only with unsurpassed excellence of training in the law, but also with an unwavering faith that the Constitution of the United States was divinely inspired and written by men whom God raised up for this very purpose;" and "May I voice a plea for all Americans to love this country with a fervor that will inspire each to so live as to merit the favor of the Almighty during this time of grave uncertainties, as well as in times to come. I would that all men could believe in the destiny of America as did the early pioneers: that it is the land of Zion; that the founders of this nation were men of inspired vision; that the Constitution as written by the inspiration of heaven must be preserved at all costs."

"I will make a further plea that the citizens of this favored land live righteously that they might enjoy the fruits of their righteousness in this land of promise" (Harold B. Lee, *Ye Are the Light of the World* [Salt Lake City: Deseret Book, 1974], pp. 118, 181-82).

⁶¹A speech at the Young Men's Lyceum, Springfield, Illinois, 27 January 1838, entitled, "The Perpetuation of Our Political Institutions," *The Collected Works of Abraham Lincoln*, ed. Roy P. Basler, 8 vols. (New Brunswick, N. J.: Rutgers University Press, 1953), 1:112.

vation of national liberty by calling on our nation to repent and come unto Christ. The Constitution of the United States is seriously threatened by the widespread lack of understanding of and loyalty to its fundamental principles. If modern Americans, who have received their constitutional heritage as a free gift, can be helped to understand and support it with the same fervor as have many generations of immigrants, we will have no need to fear for the future.

Black Holes: Some Facts and Fancies

S. Neil Rasband

Although I intend to leave the description of this empire to a particular treatise, yet in the meantime I am content to gratify the curious reader with some general ideas.¹

Gulliver's Travels

Imagine that you hold in your hand a small marble which is about one centimeter in size and has a mass of a few grams. Now take a mass about twice that of the earth's and magically transform it to the ultimate state of collapsed matter, and you would have a black hole about the size of the marble. Were such magic possible, the possessor of that marble-sized black hole would indeed have a memorable experience. That small a black hole would not only have a mass twice that of the earth's but it would also have intense tidal forces of gravitational origin that would destroy the hand which tried to hold it. Furthermore, all those nuances of color and light which make many marbles attractive would disappear since no light comes or is reflected from a black hole. However, we are getting ahead of our story and hasten to add that no such magical transformation is possible. The very existence of black holes has not been conclusively demonstrated. Nevertheless, the concept of them forms one of the most interesting recent areas of scientific research.

Black holes are thought to exist in, and to contribute to, conditions which are far removed from those we commonly experience. Despite their unusual nature, black holes are thought to be interspersed throughout interstellar space and have properties so bizarre that a discussion of them sounds like science fiction. However, the concept of black holes did not originate in science fiction,

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¹Jonathan Swift, *Gulliver's Travels*, volume 36 of *Great Books of the Western World* (Chicago: Encyclopedia Britannica, 1952), p. 27.

but as a consequence of well-accepted scientific theories which have given excellent descriptions of nature in less extreme situations. A detailed description of black holes requires the precise language of mathematics in the context of Einstein's General Theory of Relativity. Nevertheless, many properties can be described in qualitative terms and thus may be of interest to all persons desiring knowledge of the "bounds set to the heavens or . . . the sun, moon, or stars" (D&C 121:30).

In some cases, a black hole may merely be the remains of a dead star. For many years it has been known that the source of the enormous energy release of the sun, and presumably of other stars, is thermonuclear fusion. Nuclear fusion is the process by which the nuclei of light elements such as hydrogen, helium, etc., are "burned" (i. e., combined) into heavier elements such as carbon, oxygen, iron, etc., thereby releasing enormous quantities of energy. As this "burning" proceeds and the nuclear fuel is consumed, the star ages. A star may age in a number of ways. For a particular star, the most important parameter for determining its evolutionary course—insofar as it is currently possible to compute this evolution—is its mass. Chemical composition and rotation rate also play important roles.

Without pausing to discuss the various stages of stellar evolution, we focus our attention on the end. Some stars die in spectacular fashion by becoming supernovae, in which massive explosions disrupt the stars, and pour out great quantities of hot gases and radiation of all types. They literally go out with a bang. In some cases a collapsed, compact core is left behind. It is possible that these collapsed stellar remnants may also be formed without such massive display, though at present there is no consensus among the experts as to the details leading to stellar collapse. Despite our lack of knowledge concerning the precise details, examples of collapsed stars abound and may be observed with telescopes.

These collapsed stars come in at least two, and probably three, varieties. The most common class is a white dwarf, so called because of its high temperature (white hot) and its very small size (approximately that of the earth). These burned-out stars have a mass approximately equal to that of our sun and thus a density about a million times that of ordinary rock. A white dwarf star is prevented from further collapse by pressure due to electrons, if its

²For more detailed scientific studies see Roger Penrose, "Black Holes," *Scientific American* 226 (May 1972):38-46; and Kip S. Thorne, "The Search for Black Holes," *Scientific American* 231 (December 1974):32-43.

mass is not larger than about 1.2 times the mass of our sun. If the stellar remnant has a mass greater than this, but still less than about three times the sun's mass, then the mutual gravitational attraction is so strong that the electrons are squeezed into the protons, forming neutrons and resulting in what is called a neutron star. A neutron star is tiny indeed by stellar standards, having a size about ten miles across, yet having a mass about that of our sun. Consequently such a star would be more than a million million times more dense than ordinary rock.

What happens when the mass of the collapsed star exceeds three solar masses, the upper bound for the mass of a neutron star? In this third case, no force known to scientists—not even neutron pressure—is sufficient to prevent further collapse into a black hole. Black holes may perhaps be formed in other ways, but the importance of the collapse process lies in the fact that well-established laws of nature essentially demand the existence of black holes. Let us examine some of their properties as predicted by theory.

FANCIES

*When I found myself on my feet, I looked about me, and must confess I never beheld a more entertaining prospect.*³

Gulliver's Travels

The only types of black hole solutions of Einstein's equations presently known are symmetric around the axis of rotation. If a black hole is not rotating, then it is also spherically symmetric. Theory tells us that the only parameters characterizing black holes are mass, charge, and angular momentum, and that we cannot expect them to have a certain fixed number of neutrons, protons, and electrons as does everything we see about us such as a star, a chair, or even the sheet of paper these words are printed on. Independent of how they may have formed, when two black holes have equal mass, charge, and angular momentum we must consider them to be identical in every respect, despite the fact that one may have formed from pure radiation and the other from a collapsing sphere of neutrons. In the following, only uncharged black holes are considered.

The size of a black hole is directly proportional to its mass. A black hole with the mass of our own sun would be approximately two miles in diameter. However, one should not think of the outer "surface" of the black hole as a material surface. There is not

³Swift, *Gulliver's Travels*, p. 9.

anything there that one can touch with a finger or any other measuring instrument. The outer surface of a black hole is an intangible surface which divides space into two regions. Any events taking place inside this surface will never be seen in any way by an observer outside. For this reason the surface is called an "event horizon." The event horizon acts as a one-way membrane. Light beams, material particles, etc., can pass inward through the horizon—but nothing ever comes out.

This event horizon can also be characterized in another way. Think of a lantern which emits light in all directions and hence can be observed from any direction. Let this lantern fall along a straight line toward the center of a black hole (radial infall). In the neighborhood of the black hole, some light emitted by the lantern is captured by the black hole. Figure 1 depicts the uniform emission of light in all directions by a lantern as it approaches the surface of a black hole. The blackened part of the circle indicates those directions of emissions for light which will end up captured by the black hole and can never be seen at infinity. Thus we see that as the lantern approaches the black hole, increasingly fewer emission directions allow the light to escape. Precisely at the surface of the black hole the cone of escape closes down to nothing and all light emitted by the lantern is captured by the black hole, irrespective of the direction of emission. The lantern at the surface of the black hole be-

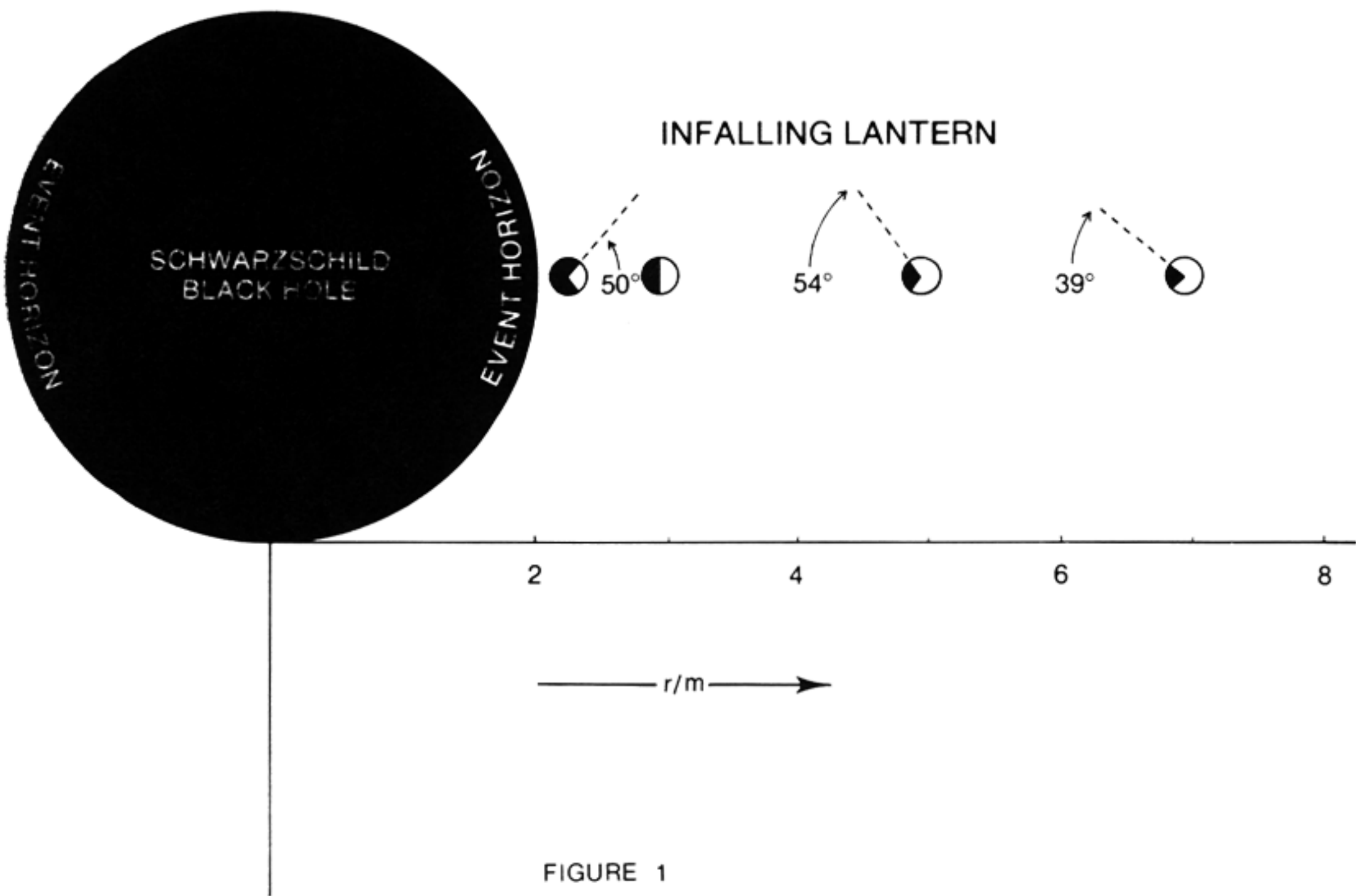


FIGURE 1

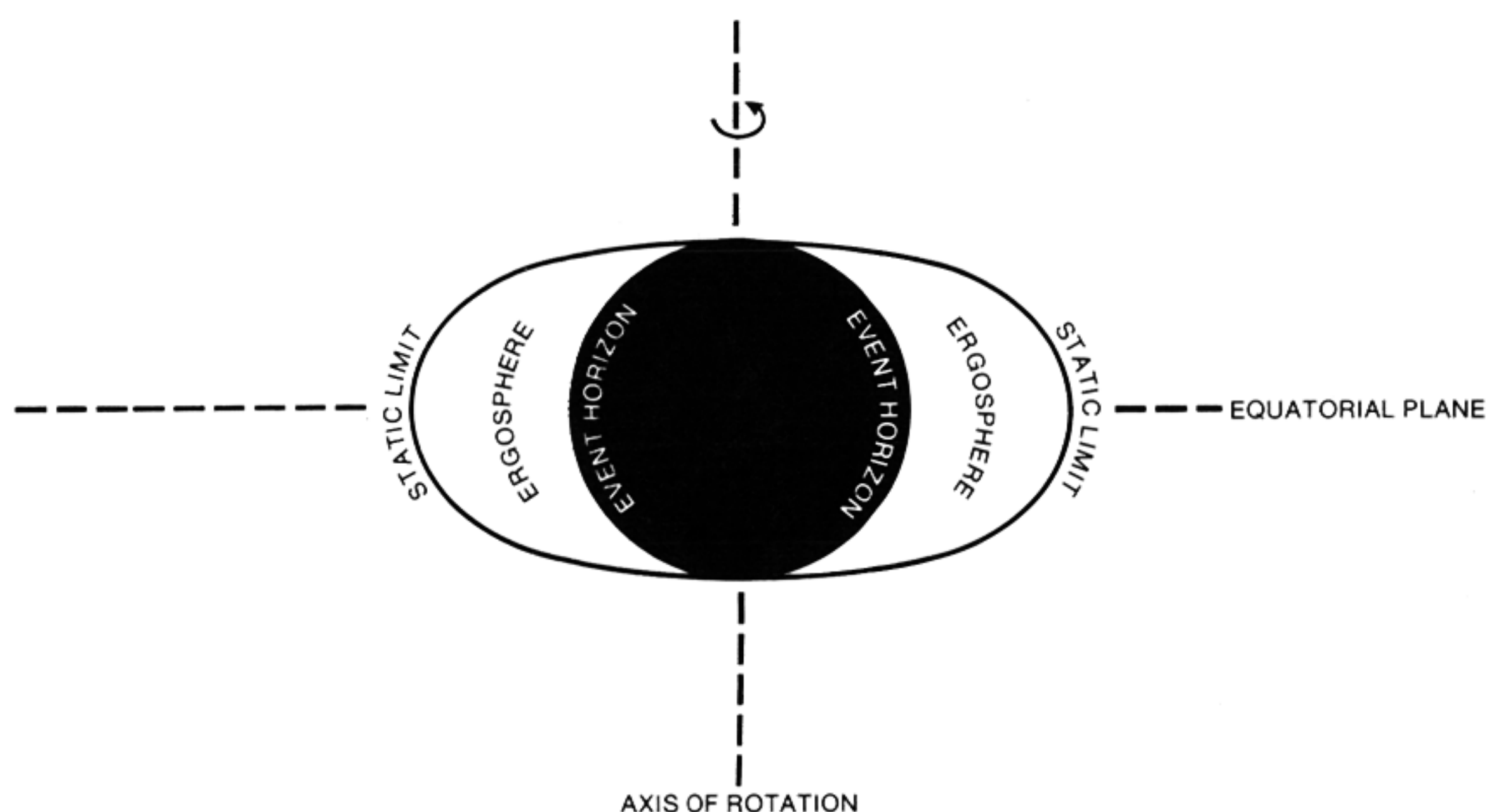


FIGURE 2

comes invisible to distant observers as does any other light source. Not only does this offer another characterization of the event horizon but also explains the “black” in black holes.

When black holes are rotating and consequently have some angular momentum, another intangible surface appears which is of some importance. This surface is called the static limit and the region between the static limit and the event horizon is called the ergosphere (*ergo* meaning energy). The relationship between the ergosphere, the static limit, and the event horizon is depicted in Figure 2. The actual separation of the static limit and the event horizon depends on how much angular momentum the black hole has. The maximum separation in the equatorial plane is just the radius of the event horizon.

The static limit can also be characterized by considering the so-called “dragging of inertial frames.” Consider an object, like our lantern, falling radially into the black hole. As it nears the black hole, the hole’s powerful gravitational field tends to drag the object around in the hole’s direction of rotation. If the falling object had powerful rocket motors attached to it, the thrust of these motors could be used to control and maintain radial infall—until the object reached the static limit. At this surface no rocket motor, no matter how powerful, could hold the object to radial infall; it would be irresistibly dragged around in the direction of the black hole’s rota-

tion. In other words, rocket motors could be used to hold an object motionless outside the static limit, but not inside.

Within the static limit, in the ergosphere, it is possible for an incoming particle to split and have one fragment captured by the black hole and the second leave with more energy than the original particle had initially. Through this mechanism, called the "Penrose Process," it is possible, in theory, to extract the rotational energy of a black hole. Since this energy can be on the order of 50% of the total energy in a black hole, even more energy than is available in thermonuclear fusion could be extracted—however, only in principle.⁴ The mechanisms imagined to date require so much energy to make the Penrose Process operable, that this extraction process is thought to be astrophysically unimportant.

Could an astronaut explore the event horizon of a black hole? The answer to this question depends on the magnitude of the tidal forces which exist at the event horizon and consequently on the mass or size of the black hole. Tidal forces at the event horizon are inversely proportional to the cube of the radius. Consequently, the smaller the size of the black hole, the stronger the tidal forces at its surface. The tidal forces at the surface of a one solar mass black hole would pull an astronaut apart and completely destroy all his equipment, whereas, an astronaut could pass through the event horizon of a black hole with the mass of a billion suns without noticing any effect.

If the black holes emit no visible light and we can't go near any to explore them, one is tempted to conclude that black holes are doomed to remain in the world of theory. Not true!

FACTS

*If the censure of Yahoos could any way affect me, I should have great reason to complain, that some of them are so bold as to think my book of travels a mere fiction out of mine own brain. . . .*⁵

Gulliver's Travels

Even though a black hole isolated in space would very likely never be experimentally observed, we can expect many black holes to make themselves apparent in binary systems. Perhaps as many as 50% of all stars occur in binary or higher multiple star systems.

⁴All thermonuclear fusion processes together can release at most about 0.7% of the total energy in a star.

⁵Swift, *Gulliver's Travels*, p. xviii.

Since the rate of evolution depends on mass, the stars in many binary systems evolve at different rates. Thus we can expect to find binary systems where one stellar component is a collapsed star, and, in truth, many such systems are observed. For example, the familiar star Sirius consists of a normal star and a white dwarf. Consequently, many black holes may be expected to exist in binary systems as companions to visible stars. The question is how would such black holes make themselves evident? Certainly not by their own emitted light, since they are black. Also, there is no hope of observing a black disk against the background light of the companion star because the black hole is only about ten miles across and would intercept a negligible portion of the light from the visible star.

The binary nature of a great many stars is revealed only by a periodic variation in the light we receive from them, as the light from the brighter star changes its color slightly, due to its to and fro motion perpendicular to the plane of the sky as it moves around its dimmer, often unseen companion. Such stars are called spectroscopic binaries. A large fraction of binary pairs are also close binaries, so close, in fact, that the outer regions of their atmospheres may interact. If a black hole were to interact with the atmosphere of a stellar companion it is likely that large quantities of X-rays would be produced because the matter captured from the companion star is heated to high temperatures as it approaches the event horizon of the black hole. The energy for the X-ray emission comes from the large amount of gravitational energy released. Only for black holes or neutron stars is there enough gravitational energy available to produce X-rays.

Thus, the following scheme emerges: a binary star system is identified by the periodic variations in the light from the visible star. If this system is also observed to be an X-ray emitter then we can be reasonably certain that the unseen companion is a neutron star or black hole. In actual practice, the X-ray sources are discovered first and the attention of visual observers is then drawn to a certain region of the sky to discover the telltale optical variations.

The observations of the light from the visible companion alone allow one to derive a range of probable masses for both components of the binary system. If the range of possible values for the unseen component is above the upper bound for the mass of a neutron star, then we conclude that the unseen component is likely a black hole.

With the advent of X-ray telescopes in orbiting earth satellites

hundreds of astronomical X-ray sources have been discovered. Some of these sources have been found to conform to the general features of a binary system as described above.⁶ The current most likely candidate for a black hole is in the constellation Cygnus and is called Cygnus X-1. The black hole model of this system suggests that it consists of a giant yellow star of about thirty solar masses orbiting an unseen companion about eight times as massive as our sun. So far, the observations are all consistent with the hypothesis that the unseen companion is a black hole and, in fact, many observational details which are expected from such a system appear to be present.

There are, however, other models which have been constructed to explain the observations of Cygnus X-1 which do not involve black holes, although they appear at present to be more contrived and less likely explanations for the data. Nevertheless, one must bear in mind that the systems currently viewed as possibly containing black holes are unusual, and may be attributable to an uncommon combination of very ordinary physical effects.

On the other hand, the inevitability of black hole formation has been considerably strengthened in recent years, and the absence of black holes would be difficult to explain in light of our current understanding. Indeed, the recent astronomical X-ray observations offer hope that theory will be further bolstered by observational data. Regardless of whether these observations confirm current theoretical ideas or ultimately lead to revisions, the study of black holes promises insights into conditions never before imagined. Already it appears reasonable to conclude that black holes are more fact than fancy.

⁶For an excellent discussion of the X-ray sources, see Herbert Gursky and Edward P. J. van den Heuvel, "X-Ray-Emitting Double Stars," *Scientific American* 232 (March 1975):24-35.

John Jay and the Judicial Power

G. Homer Durham

During recent years, the Supreme Court has handed down a number of decisions which have centralized the power of the national government at the expense of state power. This action has caused critics to accuse the court of being unduly "activist" and creating a dangerous centralization of power. What these critics have failed to realize is that the activism of recent history is not a departure from the original tradition of judicial power. From the beginning of American constitutional government, those governmental leaders who framed the Constitution and worked out its meaning saw the Court not as a mere technical clarifier of the law, but as a major political force, sharing the basic powers of government with the congressional and executive branches. Those men who first held office under the Constitution were nationalists, seeking deliberately to strengthen the national government at the expense of state power. John Jay, first chief justice of the United States Supreme Court, was one of these nationalists, and his activity on the Court reflects his philosophy of government.

Jay himself underestimated the importance and influence of his work as chief justice. In 1801, on being tendered the appointment as chief justice a second time, he wrote as governor of New York to John Adams, president of the United States:

I left the bench perfectly convinced that under a system so defective it would not obtain the energy, weight, and dignity which was essential to its affording due support to the national government; nor acquire the public confidence and respect which, as the last resort of the justice of the nation, it should possess. Hence I am induced to doubt both the propriety and expedience of my returning to the bench under the present system.¹

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¹Henry P. Johnston, ed., *The Correspondence and Public Papers of John Jay*, 4 vols. (New York: G. P. Putnam's Sons, 1890), 4:285. Hereafter cited as *CPP*. Page Smith, *John Adams*, 2 vols. (New York: Doubleday, 1962), 2:1063-64, describes Adams' actions in extending the appointment to Jay.

Even though Jay did not realize it at the time, his career laid the foundation by which the Court obtained "energy, weight, and dignity." The scope and methods with which the first chief justice applied the "judicial power" gave the Court political qualities, impetus, and directions that have never been reversed. Under Jay, the Court was involved in all the major political issues of its time, both domestic and foreign. The Eleventh Amendment, restricting the judicial power, was added to the Constitution in reaction to his decision in *Chisholm v. Georgia*. (He was burned in effigy for that same decision.) Too many have forgotten these facts, and too few have known of their existence. Hence this attempt at a further exposition of Jay's career.

DEVELOPMENT OF JAY'S NATIONALISM

John Jay was a founder of the school of national power which included Alexander Hamilton, John Marshall, and Abraham Lincoln. Entering actively into New York politics at the period of revolutionary crisis when it appeared that leadership would be captured by a previously unenfranchised group, Jay, from membership in the New York Committees of Correspondence, became a member of the Continental Congress in 1774. He was also a member of the New York Convention which on 9 July 1776 ratified the Declaration of Independence and which later drafted the state constitution. Later, he served as chief justice of New York, 1776-78; president of the Continental Congress, 1779; minister to Spain, 1779-82; peace commissioner at Paris, 1782-83; and secretary of foreign affairs, 1784-89. In the latter office he was, in effect, a principal "executive" officer of the Confederation, a position he carried into the early days of Washington's administration in 1789. He was first chief justice of the Supreme Court, 1789-95. During this time, he also served as envoy to Great Britain, 1794-95, resigning to serve as governor of New York, 1795-1801. In 1801 he was again tendered the commission as chief justice by President Adams. Refusing, he spent the next twenty-eight years as a retired gentleman, dying in 1829.²

Jay's nationalistic doctrines developed from his experience as president of the Continental Congress, from his involvement in foreign affairs, and from his life under the Articles of Confederation.

²See Frank Monaghan, *John Jay: Defender of Liberty* (New York: Bobbs-Merrill, 1935), for a full-length biography. See also the recent sketch by R. D. Burns and R. D. Yerty, "John Jay: Political Jurist," *Journal of Public Law* 13 (1964): 222-31.

As president of the Continental Congress, Jay wrote Governor Clinton, on 27 August 1779, pleading that New York (and New Hampshire) sacrifice states' rights in the national interest and empower Congress to settle the Vermont boundary dispute.³ Although Jay favored a separation of powers,⁴ he also favored a strong national government rather than strongly sovereign state governments, as indicated in a letter he had written to Elbridge Gerry from Spain on 9 January 1781 after scrutinizing John Adams' Massachusetts Constitution of 1780:

Your constitution gives me much satisfaction. It appears to be, upon the whole, wisely formed and well-digested. I find that it describes your State as being in New England as well as America. Perhaps it would be better if these distinctions were permitted to die away.⁵

Thus developed in Jay the nationalistic doctrines which also found expression in the Federal Convention of 1787. The idea of the Constitution establishing a "mixed central government," but with these national organs drawing force from a national community and the people, rather from the states, characterized Jay's judicial decisions.

JOHN JAY'S SERVICE AS CHIEF JUSTICE

The Judiciary Act of 1789 provided for a Supreme Court presided over by a chief justice and five associate justices, and for three circuit courts—Eastern, Middle, and Southern. Each circuit court was to be presided over by two Supreme Court justices and one district judge. Jay thus saw judicial service in the new circuit courts as well as in the Supreme Court.

The Supreme Court had practically no cases to decide during its first three years of existence, the circuit courts constituting the functional judicial element in the new federal scheme. Charles Haines has observed that there was a decided trend towards the strengthening of the state courts at the expense of federal authority after the adoption of the Constitution.⁶ In the meantime, wrote Charles Warren:

³CPP, 1:214.

⁴As seen, for instance, in this interesting view expressed to Jefferson on 18 August 1786: "I have long thought, and become daily more convinced, that the constitution of our federal government is fundamentally wrong. To vest legislative, judicial, and executive powers in one and the same body of men . . . can never be wise." CPP, 2:212.

⁵CCP, 1:458.

⁶Charles Grove Haines, *The American Doctrine of Judicial Supremacy*, 2nd ed. (Berkeley: University of California Press, 1932), p. 172.

It was almost entirely through their contact with the Judges sitting in these circuit courts that the people of the country became acquainted with this new institution, the Federal judiciary; and it was largely through the charges to the Grand Jury made by these judges that the fundamental principles of the new Constitution and government . . . became known to the people.⁷

Jay began circuit duty in New York on 4 April 1790, proceeding to Connecticut on 22 April, to Massachusetts on 4 May, and to New Hampshire on 20 May. He delivered the same "charge" at each point. The charge was enthusiastically received and printed by admirers of the new order. He said, in part:

It cannot be too strongly impressed on the minds of us all how greatly our individual prosperity depends on our national prosperity, and how greatly our national prosperity depends on a well organized, vigorous government; . . . nor is such a government unfriendly, to liberty. . . .⁸

Jay's circuit rulings introduced many distinctive features of the infant judiciary. In May 1791 a Connecticut statute was voided as conflicting with a United States treaty.⁹ In June 1792, the case of *Alexander Champion and Thomas Dickason v. Silas Casey* came before Jay, William Cushing, and Henry Marchant (district judge). A statute of the state of Rhode Island was invalidated on the basis of the contract clause.¹⁰ Thus the Constitution prevailed against a state statute. A judiciary in hands which would have upheld state statutes in the face of treaties and contrary constitutional provisions would have failed to extend federal jurisdiction (or at least so endeavor as in *U. S. v. Ravara*) and could have launched something different from the subsequent American practices of judicial review and supremacy. Yet, as early as 1792, Jay found circuit duty so intolerable that he was ready to accept "any other office of suitable rank," and consented to be a candidate for governor of New York.¹¹ His active term of office, therefore, extends roughly from September 1789 to April 1794. During that time not more than a dozen cases appeared before the Supreme Court. Of these, four never reached the state of actual decision.¹²

⁷Charles Warren, *The Supreme Court in United States History*, 3 vols. (Boston: Little, Brown, 1922), 1:58.

⁸*CPP*, 3:394-95.

⁹Warren, *The Supreme Court*, pp. 65-66.

¹⁰*Ibid.* See also Monaghan, *John Jay*, pp. 314-17.

¹¹Monaghan, *John Jay*, p. 319.

¹²*West v. Barnes* (August 1791); *Vanstophorst v. Maryland* (August 1791); *Oswald v. New York* (1792-93); *Indiana Co. v. Virginia* (February 1792).

Intermingled with these seven sessions of the Supreme Court were Jay's circuit duties. Behind these judicial duties moved the events of the new nation—the revolution in France, and the commercial difficulties with England. These international and domestic political problems, colliding on the Supreme Bench with the character and public experience of John Jay, influenced the foundations of our political system.

In May 1791 and June 1792, John Jay, sitting as a federal court judge, voided acts of the Connecticut and Rhode Island legislatures. On 23 March 1792, the Congress of the United States enacted a measure that was destined to the same fate. This was the Pensions Act of 1792, providing benefits for soldiers of the revolution. The statute provided that the justices of the Supreme Court should adjudicate the various claims in their circuits, subject to review by both Congress and the secretary of war!

On 5 April 1792, Jay, sitting with William Cushing and James Duane (district judge) agreed that “. . . neither the *Legislative* nor the *Executive* branches can constitutionally assign to the *Judicial* any duties, but such as are properly judicial, and to be performed in a judicial manner.” Further, “Neither the Secretary of War, nor any other Executive officer, nor even the Legislature, are authorized to sit as a court of errors on the judicial acts or opinions of this court.” The chief justice and his colleagues then set forth the proposition that:

As therefore, the business assigned to this court, by the act, is not judicial, nor directed to be performed judicially, the act can only be considered as appointing commissioners for the purposes mentioned in it, by *official* instead of *personal* description.¹³

Max Farrand has stated “there would seem no reasonable doubt that on April 11, 1792, James Wilson, John Blair, and Richard Peters declared the Invalid Pensions Act of 1792 unconstitutional” in the “First Hayburn Case.” Two days later, 13 April 1792, William Hayburn presented a memorial to the House of Representatives “setting forth the refusal of the circuit court to take cognizance of his case and asking for relief.” In debate a Congressman remarked, “This being the first instance in which a court of justice had declared a law of Congress to be unconstitutional, the novelty

¹³2 Dallas *Reports*, footnote, p. 410. Dallas lists this date as April 5, 1791, clearly an error for April 5, 1792.

of the case produced a variety of opinions with respect to the measures to be taken on the subject."¹⁴

In August 1792 the Supreme Court heard two separate motions in *Hayburn's Case* and postponed final action until the following term. In the meantime, Congress provided other procedures.¹⁵ Later, in the famous *Marbury* case, John Marshall dealt with political friends and foes in a mixed situation. In *Hayburn's* case, we see John Jay moving cautiously so as not to unduly embarrass the Congress or jeopardize the Court's fragile place in the government. By adopting the "commissioner" interpretation, and by Congress' *noblesse oblige* in repealing the act on 28 February 1793, the situation was saved. The action, taken by the Court after repeal of the original act, demonstrates the nicety with which effort was made to preserve, maintain, and elevate the prestige of the new federal regime.

Similar delicacy is portrayed in the two cases, *Chandler v. Secretary of War*, and *United States v. Yale Todd*,¹⁶ decided at the February 1794 session of the Court, Jay's last. In the first of these, the Supreme Court refused to embarrass the Executive department by utilizing *mandamus* against the secretary of war.¹⁷ Chandler's name did not appear on a list of pensioners in the possession of the secretary, despite action to the contrary taken by Justice James Iredell and District Judge Richard Law sitting as "commissioners" before the repeal of the original act. Then the repeal of the original statute had come. Now the motion came for *mandamus* proceedings against Henry Knox, secretary of war. The court refused, as Marshall did later in *Marbury v. Madison*, deciding that *mandamus* could not be issued. In the Todd case, the pensioner's name was on the list, the result of action taken by Jay, Cushing, and Law as commissioners! Before the decision, agreement appears to have been made that Todd's plea to draw benefits vested through act of the "commissioners" (question: Could he now draw them in view of the accepted illegality of their action?) would fail and result in judgment for the United States if Jay, Cushing, and Law, acting as commissioners, had not the authority to do so. Judgment was entered for the United

¹⁴Max Farrand, "The First Hayburn Case, 1792," *American Historical Review* 13 (1908):281-85.

¹⁵See Warren, *The Supreme Court*, pp. 71-76; and Monaghan, *John Jay*, p. 317, for discussions of this point.

¹⁶Haines, *Judicial Supremacy*, pp. 173-78 contains full reference to both cases in connected form, and in relation to Hayburn's case.

¹⁷Haines and others suggest this as a precedent for Marshall in *Marbury v. Madison*, also a *mandamus* case.

States, indicating that the act was considered void by the court.¹⁸ Use of the phrase "judgment for the United States" may have served to soften the general effect upon the new federal government of having one of its early and important statutes invalidated. The effect of all three cases—Hayburn's, Chandler's, and Todd's—on the Supreme Court itself, was to leave that body in a stronger position than before, both in relation to the other branches of government and perhaps with respect to political feeling.

Jay's doctrines of 5 April 1792 were supported by a letter of 18 April 1792 from Justices Wilson, Blair, and Peters to President Washington. Referring to the provision of the act which made judgments of the court open to revision or control by Congress or "an officer in the Executive Department," the letter said: "Such revision and control we deemed radically inconsistent with the independence of that judicial power which is vested in the courts; and consequently with that important principle which is so strictly observed in the Constitution of the United States."¹⁹

In *Chisholm's Executor v. Georgia*, the Supreme Court (especially Jay's argument) gave major impetus to the function of the judicial power in American government. As an instrumentality of the national power, established by the Constitution of 1787, the court demonstrated a nationalism not later exceeded by Marshall. The pattern of the case is significant, particularly in the light of Justice James Iredell's dissent. Iredell argued that the article in the Constitution under which the court took jurisdiction was clearly intended to be the subject of a legislative act, and not a matter for judicial discretion. But by assuming jurisdiction over the state of Georgia, and justifying it, by interpreting thereby the nature of the Federal Union, and by pushing the court along its own path to "justice," Jay provided an extraordinary demonstration of Chief Justice Hughes' later aphorism that the Constitution is what the judges declare it to be. Said Mr. Justice Iredell in part of his eighteen-page dissent:

The Constitution intended this article . . . to be the subject of a legislative act. . . . Subject to this restriction (fundamental law), the whole business of organizing the courts, and directing the methods of their proceeding where necessary, I conceive to be in the discretion of Congress. . . . We must receive our directions from the Legislature in this particular, and have no right to constitute ourselves an *officiria brevium*.

¹⁸See Haines, *Judicial Supremacy*, p. 176.

¹⁹2 Dallas, notes, pp. 410-12.

Referring to the Judiciary Act of 1789, he continued, "It is plain that the Legislature did not choose to leave to our own discretion the path to justice, but has prescribed one of its own."²⁰ Iredell was upholding the doctrine of the "reserved powers" of the states to the new national government.

The theme of Jay's argument, like that of Lincoln's first inaugural, was that the states had never possessed an independent sovereignty. Pellew says of this opinion: "It laid down the lines, indeed, that Marshall followed in his famous series of federal decisions, culminating especially in *McCulloch v. Maryland*."²¹

William Whitelock described the case as "being novel in character and had to be determined, not by precedent and legal authorities, but by the great principles of justice and constitutional law."²²

Jay's opinion proceeded from the assumption that Georgia (or any of the states) was never sovereign. He posed three questions: Was Georgia a sovereign state? Was a suit incompatible with said status? Does the Constitution authorize such a suit? Jay made the broad assumption that "sovereignty" descended from Great Britain directly to the American *people*, rather than to the states. Interpreting the Revolution, Jay announced that the Declaration of Independence "found *the people already united for general purposes*, and at the same time providing for their more domestic concerns by State conventions and other temporary arrangements," including the idea of Union, if not the "more perfect union" of 1787. "Experience disappointed expectations they had formed; . . . and then the people, in their collective and national capacity, established the present constitution."²³

James Brown Scott viewed Marshall's opinion in *McCulloch v. Maryland* 1819 (4 Wheaton 316) as a restatement of Jay's argument in the *Chisholm* case.

This one careful opinion, notwithstanding the press and stress of business and hasty composition, placed Jay in the category of great judges. Constitutional amendments are not usually required to check inferior minds or patent error.²⁴

²⁰2 Dallas, pp. 433-51. Quoted material on pp. 433 and 434.

²¹George Pellew, *Life of John Jay* (New York: Houghton-Mifflin, 1890), p. 283.

²²William Whitelock, *The Life and Times of John Jay* (New York: Dodd-Mead, 1887), p. 231.

²³Extracted from 2 Dallas Reports (*Chisholm v. Georgia*), p. 470.

²⁴James Brown Scott, "John Jay, First Chief Justice of the United States," *Columbia Law Review* 6 (May 1906):314.

Chisholm v. Georgia was the momentous case to be decided by the Jay Court. Jay's views in this case (called by Frank Monaghan "more advanced than the 'immortal Nationalist opinions' of Marshall") completely reversed the position expressed by James Madison in the constitutional convention, that "it is not in the power of individuals to call any State into court."²⁵ On 5 February 1793, Jared Ingersoll and Alexander Dallas presented a written remonstrance and protestation on behalf of Georgia asserting that the Court could not take jurisdiction of this suit by an executor, of *assumpsit*; a "sovereign state" not being suable. On 18 February 1793, Jay and his colleagues, guided by the simple language of Article III of the Constitution and urged forward by their nationalistic sentiments, issued their decision. It was a frontal attack upon the sovereignty of the states. The anti-Federalists denounced it as "an Aristocratic plot,"²⁶ and on 19 February 1793, the day following the decision (Court and Congress both convening in Philadelphia), what was to become the Eleventh Amendment was introduced in the House of Representatives. By 2 January 1794 it had passed both houses (23-2 in the Senate, 81-9 in the House) and on 8 January 1798 came into effect.²⁷ The immediate effect of the actual decision was nullified. But new gears had been added to the judicial machinery of American government. And in the nationalist theory of the American Constitution, Jay's judicial arguments stand with the views of Hamilton, Marshall, Webster, and Lincoln.

THE JUDICIAL POWER AND INTERNATIONAL AFFAIRS

In 1890 Jay's biographer, George Pellew, summarized contributions made by Jay as chief justice:

Three great facts were determined once for all: the dignity of the court was vindicated from encroachment by the federal executive and legislative departments; its jurisdiction was established over the state governments; and, incidentally, Jay announced and determined that foreign policy of the United States which has been accepted and followed from that day to this.²⁸

²⁵Monaghan, *John Jay*, p. 302.

²⁶Ibid., p. 308. This writer also contends that Jay's opinion was based on "the republican principles introduced by the Revolution" despite the anti-Federalists' denouncement of it as "an Aristocratic plot."

²⁷Warren, *The Supreme Court*, p. 101. In an interesting footnote, Warren points out that the records of the State Department show only the ratifications of six states. It is evident that the nationalistic doctrines announced by Jay with regard to the Union were out of joint with the times. Accordingly it is all the more interesting that he uttered them via the Bench.

²⁸Pellew, *Life of John Jay*, p. 264.

The French Treaty of 1778 bound the United States to a more or less active neutrality in any wars France should engage in. Our ports were to be open to French privateers for prize purposes, to come and go "at pleasure." On 22 May at Richmond, Jay delivered a charge to the Grand Jury sitting there, pointing out that:

Of national violations of neutrality our government can only take cognizance. Questions of peace and war and reprisals and the like do not belong to courts of justice . . . because the people of the United States have been pleased to commit them to Congress.²⁹

On 22 April 1793, Washington issued the Neutrality Proclamation. It included views Jay had supplied Hamilton eleven days earlier as well as the contributions of others.³⁰ Said the president:

I have given instructions to those officers to whom it belongs to cause prosecutions to be instituted against all persons who shall, within the cognizance of the courts of the United States, violate the law of nations with respect to the powers at war. . . .³¹

Pelley felt that Washington's Neutrality Proclamation could have no practical effect unless supported by the courts.³² Jay's charge at Richmond stated that the people of the United States had been pleased to commit such questions to Congress.³³ *Henfield's Case*, the *William*, the *Fanny*, and other cases³⁴ had come before such judges as Justices Wilson and Peters. Either juries refused to convict, or the courts held that they had no power to question the legality of prizes.³⁵

In July 1793, less than three months after his Neutrality Proclamation had been issued, Washington questioned the situation. On 18 July, Jefferson presented the inquiry to the "Chief Justice and Associate Justices"³⁶ for an advisory opinion relative to the situation, involving some twenty-nine questions of international

²⁹CPP, 3:483-84.

³⁰Charles Marion Thomas, *American Neutrality 1793* (New York: Columbia University Press, 1931), pp. 44-45 expresses an opinion that Randolph rather than Jay was author of the final draft and in his preface avers that the policy was peculiarly a cabinet contribution.

³¹*A Compilation of the Messages and Papers of the Presidents*, [ed. James D. Richardson], Prepared Under the Direction of the Joint Committee on Printing, of the House and the Senate, Pursuant to an Act of the Fifty-Second Congress of the United States, 20 vols. (New York: Bureau of National Literature, 1897), 1:149.

³²Pelley, *Life of John Jay*, p. 290.

³³CPP, 3:483-84.

³⁴Warren, *The Supreme Court*, pp. 105-09, provides a connected exposition of the problem and the cases which arose.

³⁵Pelley, *Life of John Jay*, p. 290; Monaghan, *John Jay*, p. 312.

³⁶CPP, 3:486.

law.³⁷ Jay answered on 8 August 1793 to the effect that to respond with an advisory opinion would be improper. That same month, irritated by the French practices, Washington revoked the *exequatur* of Duplaine, the French agent at Boston, only to receive an insulting letter from Edmond Charles Genêt, first minister of the French Republic, to the effect that "the President had overstepped his authority," and indicating that he (Genêt) would "appeal to the sovereign state of Massachusetts."³⁸ About this time a rumor circulated that Genêt had threatened to appeal from the president to the people.³⁹ Subsequently, Jay and Rufus King issued a card stating that they were authority for the rumor and believed it.⁴⁰ In this climate of domestic and foreign political considerations came the *Glass* case to the February 1794 term of the Court.

Glass's libel, filed in the district court of Maryland, asked restitution of the sloop, *Betsey*, to its original Swedish-American proprietors. This was refused on the grounds that the court could not take jurisdiction, grounds which appeared in the arguments at bar February 8-12: "The act of Congress limits the power of the District Court to civil cases of admiralty and maritime jurisdiction; and the court can have no other, or greater power, than the act has given."⁴¹

Counsel made much of Article 17 of the 1778 Franco-American treaty which expressly stated that the "validity of prizes shall not be questioned," which allowed French privateers to travel in and out of American ports "at pleasure."⁴²

For five days the Court heard argument; then on 18 February,

. . . informed counsel, that *besides the question of jurisdiction* as to the District Court, another question fairly arose upon the record—whether any foreign nation had a right, without the positive stipulation of a treaty, to establish in this country, an admiralty jurisdiction for taking cognizance of prizes captured on the high seas. . . . Though this question had not been agitated, the Court deemed it of great public importance to be decided; and *meaning to decide it*, they declared a desire to hear it discussed.⁴³

³⁷Warren, *The Supreme Court*, p. 109. Jay and the Court's first reply was dated 20 July 1793, postponing their answer in deference to "absent brethren."

³⁸Henry Cabot Lodge, *George Washington*, American Statesman Series, vol. 5 (Cambridge, Mass.: Riverside Press, 1900), p. 159. Genêt evidently knew how to make good use of his political possibilities in bringing in the "sovereign state" idea, dear to the democratic localisms of the times.

³⁹See Monaghan, "The Federalists Scotch Genêt," *John Jay*, pp. 342-60.

⁴⁰Lodge, *George Washington*, p. 159.

⁴¹3 Dallas, p. 7.

⁴²*Ibid.*, p. 11.

⁴³*Ibid.*, pp. 15-16. Italics added.

It would appear that Mr. Jay and his colleagues were anxious to settle several difficulties. Peter S. Duponceau, French advocate at bar, observed "that the parties to the appeal did not consider themselves interested in the point" (that is, on the additional question raised by the Court and not by the parties). But whether the parties wished the additional question decided or not, the Supreme Court of the United States answered. Chief Justice Jay delivered the following unanimous opinion:

BY THE COURT: The judges being decidedly of opinion, that every District Court in the United States possesses all the powers of Admiralty, whether considered as an instance, or as a prize court. . . . Therefore it is . . . finally decreed and adjudged . . . that the said plea . . . is hereby overruled and dismissed.

Thus the district court, declared competent, was ordered to determine restitution of the *Betsey* on the merits involved.

And the said Supreme Court being further of opinion, that, no foreign power can of right institute, or erect, any court of judicature of any kind, within the jurisdiction of the United States, but such only as may be warranted by, and be in pursuance of treaties, IT IS THEREFORE DECREED AND ADJUDGED that the admiralty jurisdiction, which has been exercised in the United States by the consuls of France, not being so warranted, is not of right.⁴⁴

The *Prize Cases Decided in the United States Supreme Court 1789-1918* contains the comment:

The famous case of the Sloop *Betsey* (3 Dallas 6), decided in 1794, held that the district courts of the United States were courts of prize *without being specifically constituted as such*. (By the Judiciary Act of 1789.) From this date the inferior courts of the United States have passed upon questions of prize in first instance, and in appropriate cases, the Supreme Court in final instance.⁴⁵

Thus did this decision extend the jurisdiction of the lower courts (promptly recognized by congressional enactment in section six of the 1794 Neutrality Act which followed). A weighty political problem was decided, indicating the nature and potential of the new national judiciary. Charles Warren wrote: "No decision . . . ever did more to vindicate our international rights, to establish respect amongst other nations for the sovereignty of this country, and to keep the United States out of international complications."⁴⁶

⁴⁴Ibid., p. 16.

⁴⁵*Prize Cases Decided in the United States Supreme Court 1789-1918*, 3 vols. (New York: Carnegie Endowment for International Peace, 1918), 1:1-2.

⁴⁶Warren, *The Supreme Court*, p. 117.

The discretion of the bench was exercised, despite a treaty, lower decisions, and an act of Congress. And the Court did not strictly confine itself to the legal niceties of the case at bar.

The new national legislature followed the lead of the Court in enacting the 1794 neutrality laws. Undoubtedly the national executive was not saddened by the action of Mr. Jay and his colleagues. Undoubtedly the chief justice "judged" in line with the personal counsel he had lent Hamilton and Washington before the case arose. In short, John Jay utilized the chief justiceship as an instrument for carrying forward what he thought was best for the United States of America. He was the first chief justice to do so, but not the last. The judicial power of the United States, vested in a Supreme Court and exercised by the justices thereof, has continued to be exercised, with discretion, with due regard to the position of the judiciary, and with a keen understanding for the necessity for decision-making in a complicated, self-governing, federal scheme.

Jay was evidently unaware of his influential molding of the mightiest judicial tribunal of modern times. Nevertheless, the maxim that Americans live under a constitution, but that the Supreme Court determines what that constitution is, began to have its meaning with Jay's court. The Supreme Court of the United States is a political as well as a legal instrument. It is one of the triumphs of man's quest to use political power with reason and intelligence. The judgments of Chief Justice Jay, developed from his political experience and expressed in judicial capacity, had critical significance in launching and in shaping such an instrument. The Court flourishes *sans* purse, *sans* sword. On decisions days it functions *sans* press conferences in the era of managed news.

Students of the judicial process and its historic influence on American national life should never assume that the truly formative years began with John Marshall or Roger Taney. Nor did the Court for a role in policy matters have to wait the development of the "due process" clause. The contributions began with John Jay, first chief justice. The contributions will continue so long as the unique and ever-growing conception of the framers, in placing the Court on an equal basis (Article III) with Congress (Article I) and the Presidency (Article II), continues to live.

The Birthday Evening

Howard Robinson

When the weather was warm the drive home from campus usually took Martin less than half an hour. Normally he enjoyed the ride; his route bore him soon out of the downtown area and into a large municipal park, and then along the edge of the lake which bordered the park on one side for nearly a mile. In summer Martin occasionally stopped to walk casually along the lakefront, or to spend an hour studying on one of the warm stone benches. It would have been pleasant, in fact, to have stopped this evening, and to have tried to forget for a few moments the unpleasantness of the afternoon.

Tonight it was cold, however; the way out of the city was filled with long lines of ponderous, snow-laden traffic, and his progress was halted a number of times by the cumbersome maneuverings of city snowplows. It was the third storm in less than a week; and even as Martin traveled the winding road through the park, the large wet flakes continued to fall softly over everything. Later, along the lakefront, he observed the waves as they rolled in and broke up against great chunks of ice, which in some places were lodged in at the shore in heaps as high as a man.

At home he entered the apartment through the back door so as not to track snow into the living room. The kitchen smelled sweet and warm. Marian was slightly bent at the waist over the kitchen table, just finishing the work on a tall, pink cake. The cake had three layers, each layer smaller than the one below; on its stemmed, glass plate, it was neatly symmetrical.

"Hello," she said.

"What's the occasion?"

Marian didn't answer at first; her mouth firmly set, she was circling the middle layer with a cordon of white frosting, pausing every few inches to make a loop. In her slender fingers the writing instrument looked like a fat crayon held by a child. "It's Emily's

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birthday today. Robert called . . ." she hesitated for a moment, pricking delicately at the cake, "around noon, to see if I'd bake her a surprise." She stood straight for a moment and pushed the hair back from her face, then began on the top layer.

"I guess that means we'll be going over there tonight."

"For a little while. Isn't that all right?"

"I suppose so. I'd looked forward to staying at home this evening."

"What's wrong?"

"Nothing. I just wanted to stay home tonight, that's all."

"No, I don't mean that. You act as if something is wrong."

"Not really." He felt the edge in his voice. "The Press turned down my book today."

She stopped working and raised her head. It was the first time she had looked up since he had come in. For a moment she was quite still, her arms and hands motionless in front of her. In the pause, Martin came around the end of the table and eyed the cake. From this angle the symmetry was not as regular.

"Are you serious?"

"Yes."

"Did they say why?"

"No. There was a notice in my box. All it said was that a board of three readers, working independently of each other, had come to a unanimous judgment. Unquote."

"What will you do?"

"I don't know. Start over, I guess." He had been carrying an armload of books, which he now laid down on the table by the cake.

"I'm sorry," she said. She sat down slowly.

"It's all right; let's talk about it later. What's for dinner?"

"I don't know, I haven't even thought about it yet. This took so much longer than I thought."

Martin went into the other room and laid his keys on the bookcase. Automatically he turned on the television for the news and then went upstairs to change. The children were playing in the large bedroom; hearing him, they scrambled down from atop the bed and ran to be held. Martin picked them up, one in each arm. The boy had begun to lose the fleshiness that had recently characterized him, and had now taken on the appearance of a complete, miniature adult, save that the head was larger than the body seemed to require. Generally, he resembled Martin; the color of their eyes was a perfect match, and there were similarities around the mouth

and chin. Lately, the boy had become difficult to manage, especially for Marian; and Martin, in observing him at play, had discovered that his son didn't fit in well with the other children in the neighborhood. Martin felt that there was something they were doing wrong, though he didn't know what. Whatever it was, it hadn't affected the girl. She was at present merely passing through a stage of quiet shyness. She ate without being prodded, went to bed without difficulty, and demonstrated much love for an unwieldy array of stuffed animals. She currently showed four tiny front teeth.

Tonight, both of them seemed in good humor, and while balancing them in his arms, Martin pretended to listen with interest to something only partly intelligible about a toy, broken, which the boy held in his hands. Setting the children gently in turn down to the floor again, Martin took the thing into his own hands and attempted for a few moments to piece it together; then, fondling it rather absentmindedly he went to the head of the stairway and called down.

"What time did you plan to go over?"

There was no response at first. Martin waited, then heard her walk quickly across the uncarpeted living room. "What did you say?"

"I said what time did we plan to go over?"

"Oh. About 8:30 I imagine. Robert is taking her to dinner early; and then he and I thought it would be nice to get together afterwards for cake. We won't stay long—all right?"

"Did you get a sitter?"

"Yes."

"Who did you get?"

"Mona."

After dinner, while shaving, Martin decided that it would be pleasant after all to go out for the evening; perhaps food and light conversation could lift his depression. He dressed and went after the sitter, leaving his wife in the bedroom getting ready.

It was still snowing; the streets, however, were not yet slippery. At the sitter's home he pulled into the driveway and honked the horn. Mona appeared in the doorway, turned towards the inside and called something, then closed the door behind her and came down the front steps. She was a tall, long-legged, ample girl of eighteen, broad and woman-like through the hips, and tending to be rather slow in her movements. The summer before, when Martin had taken his family to the seashore for a few days, Mona was invited along to watch the children, though as it turned out, during the hot, sunny days on the beach she was asleep most of the time.

Mona wore glasses, great thick ones which she could not do without, and which caused her face to have a kind of scholarly look. Tonight as she entered the car, bringing the cold night air into the confines with her, she carried a staggering armload of books, including her customary Complete Works of a favorite poet—a heavily-thumbed brown book with a broken back.

The children were neutral towards her; they preferred another girl who lived nearer but who was not always available. Martin nonetheless enjoyed Mona's inquisitive and aggressive conversation, though sometimes, in its youthful naivete, it caused him to feel very old. She admired, he knew, his library and his stereo; she occasionally brought records of her own, which she played at such volume that the neighbors had once complained and he had had to talk to her about it. Martin sometimes got the impression from her attitude that should they happen to forget to pay her for her services she might never notice.

Tonight they rode together in relative silence, conversing only lightly about the weather and about her plans for college. She seemed content to watch through the window at the snowfall, and Martin suspected that he might have awakened her from a nap. He busied himself with the road and with the light frost on the windshield, which blurred their vision; and with the long, steep, almost treacherous hill which led down the street on which he lived.

At home Marian was ready and Martin helped her on with her coat; on an impulse he leaned forward and kissed her lightly on the back of the neck, just above the coat collar. She shrugged away laughing, and clearly embarrassed, gave some instructions to Mona, who in any event had not seen, having already turned to her reading. Next to Mona on the sofa sat Martin Jr. with a book of his own, a small favorite one full of pictures of animals. The girl was upstairs, already asleep.

Martin went into the kitchen for the cake. To it had been added, since he had seen it, several red candy flowers; and a single white candle, somewhat larger and more substantial than the usual kind.

It was warm, almost musty inside. In the entryway Martin and Marian stamped the snow from their feet as Robert helped them remove their coats. Emily, now fully nine months pregnant, did not arise, but offered a greeting from where she lay resting on the sofa. Her shoes were on the floor, and she wore an old red shirt, one of Robert's, which billowed out unnaturally at the waist. She did not at first see the cake, which Marian had by now surrendered

over to Robert, until Robert had begun to cross the room to place it, in mock ceremony, at the center of the dining room table. Then, "Oh!" she almost squealed, "Marian, it's beautiful." She sat upright and gathered her legs beneath her, then extended her arm to grasp Marian's in a brief, fondling hold, to which Marian responded. Marian sat down beside her and for a moment there was quiet, the four of them captured as if in a photograph. Martin could sense the depth of feeling between the two women, and was strangely saddened not to be a part of it; Emily, having grown with Marian from childhood, knew his wife better than he himself did. The other couple would soon be leaving the area—a transfer within Robert's company—and Marian was taking it hard. Once lately he had found her in the corner of a darkened room, uncharacteristically despondent and crying softly about the thought of the separation.

"Happy birthday, Em," Marian said. "How is it to be twenty-three and pregnant?" It was a joke the four of them had; Robert and Emily had tried for three years to have children, and they had all laughed often about Emily's preoccupations with calendars and thermometers. Marian did not know it, but Robert had once confided to Martin that the results of tests had indicated that he, Robert, was responsible.

Marian handed Emily a birthday card. Martin had seen it at home. It was signed simply, in Marian's round, open handwriting, "Love to Emily from Martin and Marian."

Robert came in from the dining room and sat next to Emily on the sofa. Martin went to the large, soft chair opposite and dropped down into it. The television was on; Martin, sitting at an oblique angle to it, turned the sound down until it was almost inaudible, and for a few moments he studied the three across from him as they watched the flickering figures on the screen. It was quiet throughout the house. For some reason the usual noises from outside were not apparent tonight. There were no cars passing outside in the road; only the snow fell.

"How was the dinner?" Martin asked, to neither of them in particular, though he expected Robert to answer.

"It was very good," Emily said; "we went to a little place that Robert knows. It was a nice place."

Though Marian and Emily were about the same age, Marian's two children and a longer married life had made her seem years older. She had developed a tense, perhaps more nervous character than Emily, who tended to be playful, girlish. Like Mona, Emily

was ample and broad, and though not actually tall, gave the impression of being so, so that to stand next to her and to be aware of her actual height was always vaguely surprising. Her fingers were long and grasping, and her arms, too, seemed longer than they needed to be. Now, at the end of her pregnancy, she had seemed to turn the usually-unattractive roundness and fullness of the condition to her advantage.

Her husband was a research engineer, an innovator, a maker of concrete things: he was everything that Martin was not. While Martin spent his days in a small cubicle of an office in the basement of the humanities building, sharing space with two other research fellows, studying subtle shifts in the movements of art history, writing long, laborious treatises about naves in medieval churches, or the geometry of Byzantine mosaics, Robert was part of a development team in a laboratory filled with work tables and tools and business machines. He wore a shop apron and metal-toed boots, and his thumbs were callused from pushing cotter pins and twisting wires. When he pulled a handful of change from his pocket, there were always, among the silver coins, alligator clips and bits of wire solder and small condensers like tiny brown barrels. He had invented something recently which was too complex for Martin to understand, and for which his company had given him a cash award amounting to something in the lower five figures. While Martin respected this achievement it was vaguely unsettling to him to realize that in just a few months Robert would earn roughly four or five times more than Martin would earn in a year.

The evening passed quietly. Low, pleasant conversation alternated with an occasional program on television. The women talked unashamedly about pregnancy. Robert talked about his car. Martin withdrew into himself and became only half attentive to the evening. He found it quite agreeable just to sit and absorb the warmth and the talk and the others, and to try not to think at all of the day or of the snow outside. The big chair was soft and he was drowsy. Twice there was mild excitement as Emily felt, or rather thought she felt, pain. Robert sat up both times, tensely, and then both times Emily laughed it off nervously and the evening lapsed again into its drowsy pace. Towards the end of the evening Robert got up and motioned for Martin to follow. He picked the cake up from the dining room table and carried it into the kitchen.

"I've been looking at this for an hour," Robert said. "I'm ready to eat all of it."

Martin turned on the kitchen light—it seemed brighter than usual—and Robert began filling dishes with great scoops of ice cream. Watching Robert work, Martin realized that he himself had perhaps always admired the quality in some men of being particularly well-organized, noting even now how cautious Robert was in dishing the ice cream, careful not to spill. The contrast between them supported Martin's feeling that friendships are based, not on the similarities between two people, but on one's seeing in another the subdued and even latent characteristics in one's self.

It was Martin who lighted the stout candle, after a brief hunt for matches, and carried the cake into the living room. Robert turned out the lights, making the room completely dark away from the flickering yellow flame, so that Martin couldn't see anyone when he entered, and was for a moment aware only of his own presence. As he approached the sofa where Emily sat, the others came into view, and together they formed a rough circle. Martin bowed low at the waist, drawing nearer to her with the cumbersome thing in his hands, and for a moment the four of them were still. Martin looked at Emily. She was staring into the light; and water, glistening, had begun to well in the bottom of her eyes. "Make a wish," he said gently, "and blow the candle out."

Emily looked up and glanced briefly around the circle, then, taking a deep breath, and holding it for what seemed an interminably long time, her eyes closed, she sat quiet, rocking almost imperceptibly back and forth. In a moment she opened her eyes wide into the light and exhaled a brief, almost effortless sigh, which Martin could feel from where he stood. With the candle out it was completely dark in the room. There was some nervous laughter—it was Marian's—while Robert fumbled for the switch, and the flash of light caused them all to blink.

Martin set the cake on a low table next to the sofa, and Emily, leaning forward, cut the cake into large pieces and served it from where she sat. Martin pulled his chair in closer. The cake and ice cream were smooth-textured and delicious, and Martin ate slowly. Robert encouraged second helpings for everyone, and Martin took another scoop of ice cream and another large piece of cake onto his dish. Finishing the second helping, he was aware of lapsing again for a time into what must have seemed to the others a distant silence. The cake, mutilated, had become asymmetrical. The center was gone out of it and there was perhaps only a third of it left. Martin began to get, deep in his stomach, a feeling of nausea. Had

he eaten too much? He tried to ignore the feeling, but it wouldn't go away.

The others were discussing Robert. Emily went into the bedroom and came out again, holding in her hand a letter from which she began to read. She stood upright in the hall doorway, the white letter brilliant against the red background of her shirt. The letter was from Robert's prospective new boss in the company, who seemed to be praising intelligence and insight in one so young. There was something about looking forward to the association, and there was a proffered salary. Robert protested mildly over Marian's congratulations.

Martin became suddenly ill. There was no immediately apparent reason for it; it was simply that the nausea had become intense, had risen quickly in his throat and had begun to expand there. Feeling the need to vomit, and fearing that he might do so at once, he excused himself from the others and went into the bathroom, where, reeling, he leaned at the waist and retched violently and interminably into the stool. His chest ached deeply; his thoughts were not clear. As a child, his mother had always, when he was ill, placed her warm hand on his forehead, had patted his back lightly. He stood now for a moment, head bowed, arms outstretched and touching the walls for support; then spat and flushed away the pink remains, watching as they swirled and sucked noisily into the drain. The water helped. He rinsed his mouth with it, dried his face, and went out of the bathroom.

He padded quietly down the darkened hallway. Marian, he could hear, was discussing in hushed tones the failure of his project. Strangely, the mention of it now did not bother him, though even the thought of it earlier had been unsettling. He entered the room, causing among the others a silence and then a shift in the conversation. He felt slightly dizzy. He sat down in the soft chair, face in his hands; and then looking up, announced that he was ready to go home.

He arose and retrieved the coats from the closet, and amid half-hearted protests from Marian, and a questioning look from Emily, lifted Marian up from the sofa and onto her feet and helped her on with her coat. The four of them gathered at the door. There was some fumbling and bumping in the small entryway. Martin, his head throbbing, attempted to appear normal.

"Thanks," Emily said, "for the party."

"Such as it was," Martin said; then, turning to Robert, "Any definite plans about when you'll be leaving?" The topic had been

generally avoided during the entire evening.

"No. Within a month, I imagine."

"There'll be no more evenings like this," Marian said.

"No," said Robert. "But then maybe we'll be back soon."

Martin knew better. Before, in saying goodbye to others, he had learned something about it: that plans to meet later, or to take vacations together or to travel halfway across the country for a visit did not reach fruition; that there would be a few letters, and perhaps a chance meeting now and then, but that goodbyes, once made, generally signified the end of things.

Emily knew this too; he could sense that she did. And then, suddenly and surprisingly, she reached out to him with those long arms and fingers and took him to her in a brief, tight embrace, the bulbous stomach between them. The light, loose layer of skin on her back wrinkled under his hand. She broke from him slowly, touching his face with her hand, then turned to Marian and kissed her lightly on the cheek.

Outside in the car, Marian immediately moved over close to him in the center of the seat, and together they viewed the snow-storm through the cleared space in the windshield. It was colder now, and the streets were iced over, making the driving difficult. There were no other cars out.

"Did you enjoy the evening?" Marian asked.

"It was all right. You?"

"You seemed unsettled."

"No. I ate too much cake."

"Emily mentioned it too. I told them I thought it was your book."

"I was just tired, I guess." He was not willing to admit, even to himself, exactly what was wrong. He was aware that the failure of the book was not a central problem, but simply a catalyst. And what bothered him there was not so much the loss of two years' work, but the realization that perhaps his judgment had been poor. He would concede to the anonymous, distinguished critics. And maybe another time, on another campus, in another cubicle, he would think it through again and rewrite it.

By the time they got home, Martin was feeling better. Mona was asleep, and he had to fumble for the key to get in. She was stretched out on her back on the sofa, her arms folded over her middle. A late-night television program was still on, the sound turned low. Marian leaned and shook her gently by the shoulders, and Mona awoke startled and reached for her glasses. Martin,

thirsty, went out into the kitchen for a glass of water, and Marian followed to get change from him. Marian always paid the sitter, and tonight almost without a word she put the money in Mona's coat pocket. Martin helped Mona on with her coat, and handed her the pile of books she had brought to study from. She was still half asleep.

In the car Mona stacked the books neatly between them in the seat; and except for a brief discussion regarding the children, they rode to her home in silence. Mona sat rather stiffly, her hands in her lap, and seemed to be cold as she peered through the thick lenses at the storm. Martin turned the heater up higher.

Later, as Mona left the car, with one long leg poised briefly in the air ready to step out, and with her books clasped tightly in her arms across her chest, Martin suddenly understood what it was he had fought against all evening—realized that for the second or perhaps third time in a few hours he had experienced feelings of covetousness, jealousy. He was jealous of Mona, this tall girl who was young, whose life had not as yet become complex, and whose enjoyment came still from simple things; and he was jealous too of Robert, whose life was in order and whose future was clear, definite, and secure.

On the way back home from Mona's house Martin noticed that the snow had nearly stopped falling. At the same time, however, the streets had become even more difficult, deceptively so, so that twice on the way home Martin lost control of the car: once as he slid partway into a deserted intersection against the red light; and once again as he felt the wheels break loose in a quite gentle curve of the road. His old, heavy-lugged tires were no longer of service.

And again, as Martin began to descend the long, steep hill near where they lived, his stomach contracted when the car failed to respond either to the brakes or to the wheel, carrying him into a long, uncontrollable skid. Quickly he whirled the front wheels away from the direction of the sliding. He pumped the brakes rhythmically with loud, jerking thumps which didn't help. The car banged into the curb halfway down the hill, then jolted away, reversing direction, and continued on down, facing upwards. Martin could only wait. He prayed. Near the bottom of the hill the road curved sharply; the obstinate machine, failing to respond to the change in direction, headed again towards the curb. Martin remembered a low guardrail somewhere; and then with a jolt, almost soundlessly,

one rear wheel hit the curb and jumped it, and the car came to rest with the other three wheels on the street.

The whole thing had taken only a few seconds. Martin sat quietly for a moment, his hands shaking against the wheel, his arms and legs feeling weak and useless. He got out. There seemed to be no damage to the car. He looked up at the sky. Here in the hollow at the bottom of the hill there was wind. It whipped noisily against the trees, and seemed to turn them inside out; the tiny leaves faced inward, their backs against the wind and against the cold light from the streetlamp. Martin pushed his coat collar up at the back of his neck.

He would put chains on when he got home. He hoped the car wasn't stuck here; he couldn't leave it—it was blocking part of the roadway. He got back into the car, which was still running, and put it into forward gear. The car lurched forward, then stopped, one rear wheel spinning. He couldn't get the car to move at first; then, rocking it backwards and forwards, the engine racing, he was able to shake it loose. It dropped from the curb, then glided around the rest of the curve for one block to his driveway.

Marian was still up. He told her what had happened. She agreed that he should put on the chains. He dressed warmly in some old clothes, found a pair of leather work gloves, and went out again. Removing the chains from the trunk of the car, he draped them over his arms and straightened them out, then laid them ladder-like in the snow. They were difficult to mount and in several places it was necessary to wire some of the links down. His fingers became numb inside his gloves. It was, however, almost pleasant out now in spite of the cold. From where he lay in the snow he could see beyond the dark shadow of the car the almost pale blueness of the sky; it was as if the clouds had emptied their contents onto the ground and then had absented themselves. The stars were distinct, and somewhere beyond his vision shone a pale light from the moon. For a few moments, he experienced a feeling of quiet, of consonance.

The job took about half an hour. When the chains were secure he brushed the snow from his coat, got into the car and drove it to the corner and back. There was a clatter and an attendant vibrating rumble as the car moved surely and steadily down the road. He turned about and came back, pulling into the driveway. He got out of the car and closed the door, and stood by it for a moment, noting now the white intensity of the lighted snow. Then, in a ges-

ture of complete acquiescence, he fell back into it, checking his fall with a gloved hand, coming to rest firmly into a bank at the edge of the driveway, which accommodated his back and neck rather comfortably. He didn't feel the cold at all now, and the dampness didn't come through the layers of clothing for several minutes. It was quiet. From somewhere behind him he heard the slow trickling of water. A dog passed close by, sinking to its body, saw him, and stopped, poised and stiff. Martin spoke to it in low tones, carried on, in fact a rather low, quiet conversation with it as it relaxed into the snow. Martin remembered for a moment something, something in his simple and elemental youth that had been similar to this in some way, and then lost the thought, recalling now only the pleasant emotion it had aroused. He removed his gloves and made a small, lightly-packed ball; and in a quick sidearm motion hit the unsuspecting animal neatly in the hind-quarter. The dog stumbled and ran, then after a brief pause, looking back, trotted briskly away. Martin sat for another moment or two beginning to feel the cool dampness, then got up and went into the house.

Inside, he found Marian on the telephone in a state of happy excitement. She was speaking to Robert, she said, who was phoning to say that Emily was feeling pains at regular intervals. Wasn't it wonderful?

Martin removed his outer clothing and left it in a heap on the welcome mat. Yes, he thought, it was. Marian's voice receded as he climbed the stairs and went into the bedroom. His fingers smarted from the cold; he felt very awake as he undressed and got into his nightclothes. He went into the other bedroom where the children were, and covered them. The girl was asleep on her side, her back snug against the bars of the crib. Martin Jr. lay on his back, his mouth partly open, his hands clenched into little fists. The broken toy lay in pieces on the floor; perhaps Martin could repair it tomorrow.

Marian came up behind him and circled his waist with her arms. He could sense her happiness. Neither of them spoke. As they separated, Martin went into the bathroom to wash his hands. The water was too warm and hurt his fingertips; he wondered if he had been frostbitten. In the bedroom, Marian had gotten into bed and begun to read a magazine. A small reading lamp over the headboard cast a limited glow about the room. As Martin got into bed and moved next to her, she shut the magazine with a light, final, smacking sound and dropped it to the floor.

When the reading lamp went out the room became totally dark; drapes, heavy over the windows, did not allow the light of the moon to enter. The darkness seemed to intensify, and in its intensity Martin experienced the frightening sensation of being pressed from above, of becoming smaller. He imagined the walls to be widening, lengthening; the ceiling to be moving outward; the room becoming as great as the inside of one of his cathedrals, himself a small living thing in the center of the nave. He felt to raise his arms in the attitude of prayer, but the pressing seemed to weigh him down and a fear of the darkness beyond the covers restrained him. His breathing became quick, his chest contracted, he became terrified. The body lying next to him rolled over and faced him whispering out of the deep softness of the covers quiet, soothing words. Gradually the fear was dispelled, and the eyes, adjusting to the darkness, came to distinguish the outlines of the room. He was feverish, he knew, possibly quite ill; and in his heat, exhausted, disillusioned, yet reconciled, he felt himself falling deeply and heavily into a long, numbing sleep.

Ordained and Acting Teachers in the Lesser Priesthood, 1851-1883

William G. Hartley

If today's Latter-day Saint expects that Aaronic Priesthood work a century ago was basically the same as it is today, he will be surprised and confused when he examines records of the lesser priesthood in the Church's first decades in Utah. Those fading documents, often rich in detail, produce as many hard questions about priesthood operations as they do ready answers. In the records, for example, are references to deacons with temple endowments, and teachers quorums composed of adults, not boys. We read of bishops preventing priests from the local stake priests quorum from working in their wards, and of a set of deacons, teachers, and priests presidencies sustained at general conferences as "General Authorities." Teachers quorums served as courts to try recalcitrant individuals for their Church memberships. There are also frequent statements that the lesser priesthood quorums have more importance in gathered Zion than do the Melchizedek quorums.

It is important to analyze such references and attempt to describe Aaronic Priesthood work of a century ago for two reasons. First, only by knowing how the lesser priesthood operated during that period can we fully understand that era's priesthood matters involving elders, seventies, high priests, bishops, wards, stakes, temple ordinances, and judicial procedures. Second, today's priesthood practices, both Melchizedek and Aaronic, are deeply rooted in the Church of the nineteenth century and are best understood when compared with Aaronic work as institutionalized during that period.

One important key to understanding modern Aaronic Priesthood operations is the paradox which leaders a century ago identified, wrestled with, and finally circumvented. The paradox stemmed from their fixed belief that the revelations required Aaronic Priesthood bearers, especially teachers and priests, to be spiritual adults capable of teaching gospel principles, rooting out iniquity, and settling dis-

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putes. But how could the Church fill its Aaronic quorums with such capable men when they were at the same time qualified for and received the Melchizedek Priesthood? It could not. So alternative methods for staffing the lesser quorums had to be developed.

No time period more clearly demonstrates the problem than the years when Edward Hunter presided over the lesser priesthood as Presiding Bishop of the Church, 1851-1883 (basically the period of Brigham Young's presidency). Because ordained teachers were then the most important of the lesser priesthood quorums, this paper examines the nineteenth century Aaronic Priesthood in terms of the ordained teachers' role in the Church, both in theory and practice, especially during the Bishop Hunter era.¹

EARLY LESSER PRIESTHOOD QUORUMS FILLED BY ADULTS

Theoretically, "the Melchizedek Priesthood comprehends the Aaronic," but the Church traditionally has treated "these two priesthoods" as separate entities.² Melchizedek Priesthood bearers—the elders, seventies, and high priests—are by revelation assigned higher spiritual responsibilities and blessings of the Church. They are to preside as leaders, to "watch over the Church," and serve proselytizing missions, and they are eligible to receive full temple endowments, be married for the eternities, and know "the mysteries of the kingdom."³

Although the Aaronic Priesthood is termed a lesser, preparatory priesthood, it has awesome significance for the Church. It adminis-

¹D&C 20, 68, 84, and 107 are of particular importance regarding Aaronic Priesthood work in general. For discussions of Aaronic Priesthood operations in the Church see Lee A. Palmer, *Aaronic Priesthood Through the Centuries* (Salt Lake City: Deseret Book, 1964); John A. Widtsoe, *Priesthood and Church Government*, rev. ed. (Salt Lake City: Deseret Book, 1965); Joseph B. Keeler, *The Lesser Priesthood and Notes on Church Government*. . . (Salt Lake City: Deseret News, 1904); and Gary L. Phelps, "Home Teaching: Attempts By the Latter-day Saints to Establish an Effective Program During the Nineteenth Century" (Master's thesis, Brigham Young University, 1975).

Essential to understanding priesthood matters during the Bishop Hunter years are three primary sources in particular, from which this study draws most of its information and interpretations: Bishops Meetings with Presiding Bishopric, Minutes, 4 vols., 1849-1884, cited hereafter as Bishops Minutes; Salt Lake Stake, Deacons Quorum Minutes, 1873-1877, cited hereafter as Salt Lake Deacons Minutes; and Presiding Bishops Office, Aaronic Priesthood Minutes, 1857-1877, hereafter cited as General Aaronic Priesthood Minutes. These and all other manuscript sources cited in this paper are found in the Archives of the Historical Department of the Church of Jesus Christ of Latter-day Saints, Salt Lake City, Utah.

²Joseph Smith, Jr., *History of the Church of Jesus Christ of Latter-day Saints*, ed. B. H. Roberts, 7 vols., 2nd ed. rev. (Salt Lake City: Deseret Book, 1949), 4:207. See also, D&C 84:33.

³See D&C 76:50-65; 84:6-42.

ters the two sacred ordinances directly relating to the Savior's atonement: baptism, to remove sin; and the sacrament, symbolizing the Savior's broken flesh and shed blood. To Aaronic males are vouchsafed the keys of the ministering of angels. Also, by revelation as recorded in Doctrine and Covenants 20, the Aaronic Priesthood is assigned important watchman work. Priests are instructed to "visit the house of each member, exhorting them to pray vocally and in secret and attend to all family duties." Teachers similarly are commanded to

. . . watch over the church always, and be with and strengthen them; And see that there is no iniquity in the church, neither hardness with each other, neither lying, backbiting, nor evil speaking; And see that the Church meet together often, and also see that all the members do their duty. (D&C 20:54-55)⁴

Earlier in this revelation a similar admonition to "watch over the Church" is given to elders—meaning all Melchizedek Priesthood bearers. But for nearly a century Church leaders stressed that lesser priesthood teachers and priests, *not the Melchizedek men*, had the major responsibility for ward teaching. This interpretation of Section 20 is primarily responsible, as we shall see, for the Aaronic Priesthood paradox.

Early Church leaders tried to fill the lesser quorums with the most capable adults and young men available in the Ohio, Missouri, and Illinois gathering centers and in the mission branches. Such ordained brethren, particularly priests and teachers, served as local ministers presiding over branches, collecting and dispersing Church funds, dealing with membership discipline problems, and making pastoral visits to the homes of members.⁵

But manpower problems developed. Repeatedly the ranks of the lesser priesthood thinned out, due in large part to the active re-

⁴See also D&C 20:51, 53.

⁵The Conference Minutes and Record Book of Christ's Church of Latter-day Saints, Belonging to the High Council of Said Church, or Their Successors in Office, Caldwell County, Missouri: Far West: 6 April 1838. This manuscript is referred to, and is cited hereafter, as the Far West Record. Also, Teachers Quorum Minutes at Kirtland, Ohio, Far West, Missouri, and Nauvoo, Illinois, 1841-46; Aaronic Priesthood Minutes and Biographical Sketches, 13 January 1844 to 15 June 1845; and Manchester, England, Historical Record, 1844-46. Also see Robert L. Marrott, "History and Functions of the Aaronic Priesthood and the Offices of Priest, Teacher, and Deacon in the Church of Jesus Christ of Latter-day Saints, 1829-1844 (Master's thesis, Brigham Young University, 1975).

It is noteworthy that an 1838 conference in Missouri resolved that no high priest, seventy, elder, or priest "has any right or authority to preside over or take charge of any branch, society, or neighborhood within the bounds of this Stake; but that the teachers, assisted by the deacons, be considered the standing ministry to preside each over his respective branch." Far West Record, 10 March 1838.

cruiting practices of Melchizedek Priesthood quorums seeking to keep their own units fully manned. By standards of the higher quorum, the faithful lesser priesthood men were qualified to receive the higher priesthood with its added blessings and responsibilities, and no reason existed for holding these men back. Aaronic males therefore readily accepted invitations for advancement to the higher priesthood, sometimes after just a few months of lesser priesthood service. This left the lesser quorums with continual vacancies, and their meetings through the Nauvoo period were characterized by frequent disruptions of labor, replacements of officers, and revised visiting assignments.

After removal to the Great Basin, Church leaders continued to believe that lesser priesthood offices ought to be filled by capable non-Melchizedek Priesthood adults.⁶ But the number of such eligible men proved inadequate for the usual reasons, which were further compounded by the temple endowments newly introduced at Nauvoo: To marry for eternity or to serve full time Church missions, men now had to receive the endowments which required Melchizedek Priesthood ordination. Faced with shortages, Church leaders turned to two alternative methods of filling the lesser quorums. The most popular and practical was to call Melchizedek Priesthood bearers to serve as *acting* deacons, *acting* teachers, and *acting* priests. In a secondary solution younger boys were ordained and served as apprentices to the adult teachers.

LOCAL PRIESTHOOD OPERATIONS DURING THE BISHOP HUNTER ERA

Initially, lesser priesthood quorums operated as *stake* rather than *ward* entities. During the first three Utah decades each stake was expected to have at least one quorum each of deacons, teachers, and priests, with additional units as needed. When Sanpete Stake organized its lesser priesthood work in 1874, for example, it called forty-eight priests, twenty-four teachers, and twelve deacons—the quorum maximums outlined in the Doctrine and Covenants—with half of each quorum coming from each of the stake's two large settlements, Manti and Ephraim.⁷ In time more populous stakes created ward quorums, particularly for the deacons and teachers, to co-exist with the general stake quorums. In Salt Lake Stake, for example, a stake deacons quorum presidency conducted monthly meet-

⁶Bishops Minutes, 24 June 1851.

⁷Sanpete Stake, Aaronic Priesthood Minute Book, 1873-1877.

ings for two decades to which ward deacons quorums presidencies and all other deacons were invited.⁸

Until Brigham Young placed all Church stakes on an equal basis in 1876, many leaders and members accepted Salt Lake Stake as the center stake for the Church, authorized to supervise and direct work in the other stakes.⁹ For years, therefore, the presidencies of the Salt Lake Stake's deacons quorum, teachers quorum, and priests quorum were sustained at general conference as general lesser priesthood officers—they were sometimes termed "General Authorities"—for the entire Church. The stake's monthly deacons, teachers, and priests meetings and a combined stake monthly Aaronic Priesthood meeting frequently attracted lesser priesthood leaders from non-Salt Lake settlements whenever such men were in town. The Presiding Bishopric and local bishops also attended. Initially important, these general meetings faded in significance by the late 1870s, although in individual Salt Lake wards deacons and teachers quorums flourished. Priests quorums, requiring a minimum of twenty-five members back then, rarely if ever existed at the ward level, although some stake quorums were formed.

At the ward level the bishops, who often served for life, were temporal and spiritual leaders. They filled roles resembling those of pastor, constable, judge, arbitrator, foreman, and mayor. For assistants they had counselors and the local Aaronic Priesthood bearers. Bishops normally developed some type of simple lesser priesthood operations to help oversee their wards, usually calling a few deacons and a body of teachers. Deacons generally took no part in the sacrament ordinance, but served mainly as meetinghouse custodians and ushers, collected fast offerings and meetinghouse funds, and assisted as block teachers. In theory priests were the primary visiting watchmen, assisted by the teachers. But in practice priests operated as regular teachers and usually met with the teachers quorum.¹⁰

Deacons, teachers, and priests were official ward officers and as such were voted on by the membership each year at ward conferences. "It is then expected," taught Apostle John Taylor in 1877,

⁸Ibid.; Bishops Minutes, 1849-1884; Salt Lake Deacons Minutes, 1873-1877, Southern Utah Mission, St. George Stake, 1869-1886, Lesser Priesthood Record Book A, hereafter cited as St. George Lesser Priesthood Minutes; General Aaronic Priesthood Minutes, 1857-1877.

⁹General Aaronic Priesthood Minutes, 1 August 1874. In 1876 President Young squelched the lingering idea that Salt Lake Stake was a center stake for the Church with other stakes subject to its officers. See Bishops Minutes, 19 October 1876.

¹⁰General Aaronic Priesthood Minutes, 1857-1877.

“that Priests, Teachers, and Deacons will hearken to and obey the counsel of their Bishop; and it will be expected that the people will listen to the voice of their Priests and Teachers and those whose business it is to look after their interest and welfare.”¹¹

Bishops relied heavily upon the lesser priesthood partly because Melchizedek Priesthood quorums and auxiliaries were not well organized during the Hunter era. High priests, if not serving in bishoprics or as stake leaders, did little Church work other than hold meetings and await specific ward assignments. Seventies quorums, being general Church quorums and not stake or ward units, served the broader purpose of recruiting missionaries more than of assisting local bishops. Few elders quorums were organized before 1877. Also, until the 1870s there were few Sunday Schools, no Primaries, and not many Relief Societies. Young ladies’ and young men’s programs developed only after 1869. Therefore, activities of a typical ward during most of this earlier period generally consisted of a late Sunday preaching service, perhaps a week night prayer meeting, a biweekly or monthly ward council or teachers’ report meeting, and a fast meeting on one Thursday morning a month.

Each ward tailored its lesser priesthood operations to its particular circumstances. Rural wards assigned teachers to districts and urban wards to blocks—hence the term “block teacher.” In the 1850s some wards had but one pair of teachers do all the visiting, but as ward populations grew a minimum of one teacher per block became the rule, then two. A survey of Salt Lake bishops in 1870 showed that the wards then had between eighteen and twenty-four teachers each, which meant teaching beats of eight to twenty families per team. Busy summer months produced little visiting by teachers, particularly in the farming communities. But during the rest of the year visits occurred weekly in some wards, bimonthly or monthly in others. Teachers were expected to give reports of their visits to the regular biweekly or monthly ward council meeting or at teachers quorum meeting—which in many wards were the same meeting.¹²

¹¹Sermon at Farmington, Utah, 17 June 1877, in *Journal of Discourses*, 26 vols. (London: Latter-day Saints’ Book Depot, 1854-1886), 19:56. Hereafter cited as *JD*.

¹²Bishops Minutes; Payson Ward, Utah Stake, Priests Quorum Minute Book, 1876-1885, 26 April 1876. General Aaronic Priesthood Minutes, 5 August 1865; Bishops Minutes 28 February 1854, 19 June and 31 July 1855, 23 June 1870, 23 August 1877, 26 November, 8 and 22 December 1881, 5 and 19 January and 2 February 1882, and 22 November 1860.

LOFTY CONCEPTS OF THE AARONIC PRIESTHOOD'S PURPOSES

Edward Hunter was the General Authority directly in charge of lesser priesthood work. Formerly a Nauvoo bishop and close friend of Joseph Smith, the energetic and kindly Pennsylvanian taught by letter and sermon a noble conception of the Aaronic Priesthood, one shared by his contemporary stake and general authorities. To them the lesser priesthood bearers had not only general service duties but also unique and special responsibilities, without which the local wards and branches could not succeed.

Temporal Assistants to the Bishops

For a multitude of local temporal tasks bishops depended upon their lesser priesthood teachers, whose monthly or fortnightly meetings they frequently attended and advised. Sometimes bishops appointed presiding teachers to take charge of collecting and disbursing fast offerings and other funds, making visiting assignments, keeping ward records, supervising the deacons, and administering the sacrament. Bishops also employed their teachers in such day-to-day work as cleaning canals, grading roads, controlling stray cattle, rounding up goods and funds for various Church projects, acting as neighborhood guards, and caring for the physical needs of the poor.¹³

Watchmen Against Iniquity

But teachers' primary priesthood role was to act "as Watchmen to guard against all manner of iniquity," a duty strongly stressed by Bishop Hunter and the other General Authorities. Teachers during this period were regarded as spiritual policemen for the Church. "Every move should be understood through every block, and the whereabouts of every man," explained Hunter's counselor Jesse C. Little, "and if there's stealing going forward or whoring, the Teachers should find them out."¹⁴ Erastus Snow was even more specific:

It is the duty of the Teachers to report to their Bishops the relative standing of those under their supervision—whether their houses are houses of order—whether the wife is good to the husband, and the husband is good to his wife—whether the children are obedient to their parents, and whether the parents are training their children in the way they should walk,—if there is strife where there should be peace, if there are jealousy and discord where love and unity

¹³Bishops Minutes, 1849-1884.

¹⁴Ibid., 21 October 1856, and General Aaronic Priesthood Minutes, 5 February 1856.

should exist,—whether the mother poisons the mind of her daughter instead of teaching her correct principles; in short—whether the house is what it should be—a house of God . . . nothing that may have a bearing on the union and fellowship of the Saints, should escape the notice of the teachers.¹⁵

Such guardian work entailed visiting, observing, and asking questions of family members regarding their loyalty to Church leaders and principles. During most of this period—and not just during the Reformation of 1856—lists of questions were sometimes read, a practice which too often degenerated into a meaningless routine. Aware of such ineffectiveness, Hunter taught that when a teacher visits “that House is subject to him and the Teacher has the privilege to ask such questions as the Spirit of God may direct him to and no person should go as a Teacher without that spirit.”¹⁶

Teachers were expected to combat a wide assortment of specific troublesome evils such as “drinking saloons & hurdy gurdies,” intoxication, Sabbath breaking, “the growth of wickedness among our young people,” nonattendance at meetings, criticizing polygamy and Church leaders, not paying tithes and offerings, unpaid debts, and parental neglect. Teachers brought charges against adulterers, and handled cases of disrespect for neighbors and property. At quorum meetings or ward councils teachers occasionally served as a ward court, trying sinners for their memberships. When required by Church leaders, teachers encouraged members to enter into United Orders, to enter into plural marriage, and to cease associating with or buying from enemies of the Church. In light of such responsibilities, it is not without significance that just before Brigham Young’s death in 1877, the dying prophet’s last conversation with his counselor, George Q. Cannon, was about teachers. “His great anxiety,” said President Cannon, “seemed to rest on the necessity of a more thorough Visitation of every member of the Church by the Priests and Teachers.”¹⁷

Priesthood watch care was then considered a responsibility of the lesser priesthood. “It was not the calling of the Twelve Apostles to do this,” taught President Cannon, “the Lord had placed proper officers, teachers, to do this work.”¹⁸ To help them police the Church, teachers repeatedly were told that their particular

¹⁵Sermon at Provo, Utah, 13 October 1877, in *JD*, 19:131.

¹⁶General Aaronic Priesthood Minutes, 6 November 1875.

¹⁷Bishops Minutes, 6 September 1877, and 1851-1884.

¹⁸Sixth Ward, Salt Lake Stake, Record Book, October 1869-April 1880, 12 June 1877.

priesthood office entitled them to special divine aid. "God will honor and give strength to the Teacher who will do his duty," said Bishop Hunter, "and he will have the administration of Angels."¹⁹

Teachers as Peacemakers: "The Proper Channel of the Priesthood"

Lesser priesthood men were also expected to be the primary peace officers of the Church. Members were told that teachers possessed not only the *right* but also the unique *power* to end disputes and pacify disputants. "There was a power to settle difficulties vouchsafed to the Lesser Priesthood," said Hunter, such that "a Teacher when he would act in the Spirit of his calling and in the order of the Priesthood, could settle difficulties that no other officer or member of the Kingdom of God can accomplish unless under the Priesthood." He explained further that "when cases are settled by aid of the lesser priesthood, the agency of the parties themselves is brought to bear in the matter, but where brought before a Bishops court or High Council the case is decided but not settled, and the parties themselves give up their agency." He warned that if teachers cannot reconcile the parties "it cannot be done," but, conversely, when teachers settled disputes, "they generally remain settled, because they [are] accomplished on the principle of mutual reconciliation."²⁰

Enlisting teachers as peacemakers was not simply an option which members might employ, it was the rule of the Church. If members refused to abide "this order of the kingdom," warned Bishop Little, then "the Bishop had a perfect right to deal with them and cut them off from the Church." When high council trials increased during 1862, Bishop Hunter pointed out the remedy: "The Bishops should employ the best Teachers they can get, and have all wrong matters adjusted through the proper channel of the Priesthood." Alert teachers made a difference, according to Salt Lake Bishop Nathan Davis: "The success the teachers had in the 17th Ward of adjusting differences that occurred amongst the Saints [was such] that since he had presided [two years] he had not had one Bishops Court." Hunter said that he knew of "many instances where they [teachers] had done a mighty work in the settlement of difficultys."²¹

¹⁹General Aaronic Priesthood Minutes, 7 November 1874.

²⁰Bishops Minutes, 9 January 1879, 28 May 1868; General Aaronic Priesthood Minutes, 6 April and 2 November 1867, 1 February 1873, 2 June 1877, 7 November 1874.

²¹Bishops Minutes, 23 July 1868, and 24 April 1862; General Aaronic Priesthood Minutes, 2 December 1863.

Teachers' Unique Right to Preside in Homes

Priesthood leaders taught that teachers possessed a special right to preside over each family during official visits in the home, and that members therefore ought to receive their teachers deferentially. As Hunter explained it, teachers had privileges "such that no other officer in the Kingdom of God enjoyed, not even the Prophet Joseph Smith, or President Young; no man can take the presidency in any family, except a Teacher while exercising his duties in visiting amongst the people." Concerning his own block teachers, the Presiding Bishop said: "My feeling is to honor them. No man has a right in entering my house to assume the prerogative of dictating there, but when the Lesser Priesthood call, I yield up to them the control of my family for the time being." John Taylor similarly respected his teachers' priesthood authority: "When they do come, I acquaint my family with it, call them together, and then tell our visitors that we are all under their jurisdiction. . . . Shall I assume to dictate to those who are above me? No, never." To justify such behavior, Hunter and others often cited a story then popular. When a Brother Oakley visited the Prophet Joseph as a teacher, so one version went, the Prophet called his family together and gave his own chair to Oakley, telling his family that Brother Oakley presided while acting in that capacity.²²

The Aaronic Priesthood and the Temple

During Joseph Smith's lifetime, Church leaders, aware of the Aaronic Priesthood's temple connection in the Old Testament, had discussed possible Nauvoo Temple roles for the Aaronic Priesthood.²³ During most of the Hunter era, however, no temple existed, although some temple ordinances were performed in the Salt Lake Endowment House and perhaps elsewhere. The Saints anxiously anticipated the day when a temple would be built in Utah at which time Brigham Young expected to see the Aaronic Priesthood involved in part of the temple endowment:

Most of you, my brethren, are Elders, Seventies, or High Priests: perhaps there is not a Priest or Teacher present. The reason of this is that when we give the brethren their endowments, we are obliged to confer upon them the Melchisedec Priesthood; but I

²²Bishops Minutes, 26 October 1851; General Aaronic Priesthood Minutes, 6 July 1872 and 2 January 1875; John Taylor Sermon at Salt Lake City, 5 November 1876, in *JD*, 18:285.

²³In 1846, for example, Brigham Young said: "When we see a temple built right, there will be a place for the priests to enter and put on their robes, and offer up sacrifices, first for themselves, and then for the people." Heber C. Kimball Journal, 2 January 1846.

expect to see the day when we shall be so situated that we can say to a company of brethren you can go and receive the ordinances pertaining to the Aaronic order of the Priesthood, and then you can go into the world and preach the Gospel, or do something that will prove whether you will honor that Priesthood before you receive more. Now we pass them through the ordinances [endowment] of both Priesthoods in one day, but this is not as it should be and would be if we had a Temple wherein to administer these ordinances.²⁴

Evidently this idea that men might receive only the Aaronic portion of the endowment never was implemented. But as late as 1894, President Young's former counselor, George Q. Cannon, still preached the positive effect that plan could have:

I have felt for years that something should be done to change this [obtaining endowments too easily] so that instead of it being necessary for a man to receive the Melchizedek Priesthood, he will first manifest his efficiency in the Aaronic Priesthood and show his capabilities and good desires before receiving the higher Priesthood. I firmly believe that this will be so some time and that men will not get the fullness of the endowment with the ease that they have done but will receive that part which belongs to the Aaronic Priesthood.²⁵

Special features designed for the Aaronic Priesthood were provided in the first Utah temple opened in 1877. Following a precedent established at the Kirtland Temple,²⁶ the St. George edifice included a

platform with the several pulpits in the western end for the use of the Aaronic Priesthood, namely the Bishopric, or Presidency of the Aaronic Priesthood, the presidency of the Priests' quorum, the presidency of the Teachers Quorum and the presidency of the Deacons quorum . . . with the side seats arranged for visiting bishops and for the Priests, Teachers, and Deacons.²⁷

The Most Important Laborers in Gathered Zion

Because of their vital temporal and spiritual duties, teachers symbolically were considered the legs and feet of the Church, without which the institution would be crippled. Priesthood minute books contain repeated statements to the effect that "No more

²⁴Sermon at Ogden, 11 June 1864 in *JD*, 10:309.

²⁵George Q. Cannon, *Gospel Truth: Discourses and Writings of President George Q. Cannon*, ed. Jerrald L. Newquist, 2 vols. (Salt Lake City: Deseret Book, 1974), 1:227-28.

²⁶Lauritz G. Petersen, "The Kirtland Temple," *BYU Studies* 12 (Summer 1972): 400-409.

²⁷Account of dedicatory proceedings on 1 January 1877, as reported in *Deseret Evening News*, 13 January 1877.

important labor rests on any portion of the priesthood than does that of a Teacher.” Comparisons between the higher and lesser priesthoods’ contributions to the Church often favored the latter. Many believed that “there was more depending upon the lesser Priesthood than the High Priests or Seventies or Elders.” One lesser priesthood worker asked, rhetorically, “Where is the influence & responsibility of a Seventy by the side of that of a teacher?” then continued: “It is far easier to convince people of the necessity of being baptized than it is to keep them in the church to instruct them in the principles of life.” Another asserted crisply, “They gather, we teach them how to live.”²⁸ In 1877 Hunter made this assessment of the local work of the two priesthoods:

We meet together as labourers in the kingdom of God. The Kingdom of God could not exist without us, or others like us. It is well for the Elders etc. to meet & keep up their various organizations, they are as a band of Volunteers in a time of peace, but we are the “Regulars” . . . We are the people that are called to act. The others meet together, truly, & preach around the Territory. The Seventies in the nations. The High Priests when they are wanted, but we are “The Labourers.” We are called to act. The others are only lay members till they are called to act.²⁹

Perhaps Bishop Hunter and other leaders overstated the case somewhat in order to boost the morale of those workers whose jobs bore the designation “lesser.” But even discounting some degree of exaggeration, their numerous statements clearly define a large degree of importance and usefulness for the Aaronic Priesthood.

THE AARONIC PRIESTHOOD IN PRACTICE

Temporal laborers. Watchmen with special powers to combat iniquity. The Church’s only authorized peacemakers. Specified recipients of the ministering of angels. The only officers allowed to preside in homes in place of fathers. Officers with admitted temple roles. Given these lofty conceptions of lesser priesthood work, it is not surprising that Church leaders a century ago sought to staff teachers quorums with stalwart men.

Ideal: The Best Men as Teachers

“Select the best men for Teachers” was a recurring theme in the Hunter decades. During the 1856 Reformation, when teachers were

²⁸Bishops Minutes, 3 February 1881; General Aaronic Priesthood Minutes, 3 November 1877, 6 March 1875, 7 January 1860, and 6 April 1867.

²⁹Salt Lake Deacons Minutes, 29 July 1877.

expected to instigate deep Church-wide repentance, Hunter stressed "the importance of . . . having wise men as Teachers, which was a high and holy calling." A decade later he counseled: "Bishops should arm themselves with the best teachers they possibly can." One bishop in 1869 "desired to select the best men for Teachers in the 8th Ward, and he considered that though a man without a wife can honor his calling as a teacher, a man that is married has a greater experience & is more fully qualified."³⁰ Careful recruitment also concerned John Taylor:

The bishops should be very choice in the selection of teachers, taking the greatest pains to get the best men they could find in their wards, men that sought after God themselves and who were filled with his Spirit; at the same time they should be possessed of good judgment, and capable of giving good advice.³¹

Some exceptions to this ideal were made in the cases of youthful junior companions and of semi-active adults who, needing preparatory priesthood training, served as apprentices accompanying the more qualified teachers.³²

Alternative: Boys and Young Men as Teachers

During most of the Hunter era it was desired but not practiced that all older boys receive some preparatory priesthood experience before receiving the Melchizedek Priesthood. Manpower shortages encouraged the use of older boys, and during periodic pushes to revitalize the work and to fill up quorums the number of youthful ordinations increased. "It is a difficult task," lamented one bishop, "to find a sufficient quantity of efficient teachers. I have thought of calling upon some of the boys." Another bishop found his boys receptive to that idea: "It is very hard to get out the older men to act as Teachers but the young men come forward and are willing to take their parts and therefore we have to appoint young men where older ones should be."³³

The reader must be cautious, however, when interpreting terms like "young men" and "boys." What is implied, for example, when Samuel Andrews says about his Seventh Ward deacons: "The *boys* as well as myself belong to the Elders' Quorum"? (italics added). The suggestion here, as elsewhere, is that perhaps males in

³⁰General Aaronic Priesthood Minutes, 1 August 1868, 6 March 1869; also Bishops Minutes, 20 April 1880, 13 December 1856, 6 September 1866, and 1 September 1870.

³¹Sermon at Ogden, 24 May 1877, in *Deseret News*, 6 June 1877.

³²Bishops Minutes, 8 October 1855 and 31 January 1854.

³³Salt Lake Deacons Minutes, 27 January 1877; General Aaronic Priesthood Minutes, 6 November 1875.

their early twenties sometimes were classed as "boys." What we do know is that it was common practice for *some* young men and boys, ranging in age from ten to their twenties, in *some* of the wards to serve as ordained deacons, teachers, and priests.³⁴

As early as 1849 local leaders were instructed to call "young men" to help with the visiting. Four years later Bishop Seth Taft suggested that Salt Lake bishops "fill up our quorum, ordain boys to the lesser priesthood, that they may commence in the harness." Another bishop "found it [ordaining boys] working well, kept the boys from mischief and recommended the Bishops to follow his example." Salt Lake Stake Teachers President McGee Harris counseled: "Take the teachers who are young & learn them their duties." Two years later Salt Lake lesser priesthood leaders discussed "installing our young brethren in the offices of teachers & Deacons." One Salt Lake bishop "called on the young men of the ward to labor as teachers," and another ordained about twenty young men to act as teachers. Similar ordinations occurred in Provo, St. George, and other settlements.³⁵

All too often, however, boys became deacons and remained such until adulthood. "It had been the custom," noted a Salt Lake Stake officer in 1876, "to ordain boys to the office of deacon and allow them to retain this office till they get their endowments when they were ordained Elders."³⁶ Illustrative, too, is the Kanab Ward, where the bishop at an 1874 priesthood meeting "spoke at length on the duties of deacons, was in favor of ordaining those, who had been called to the office of deacons, to be Elders," whereupon three deacons—ages twenty, eighteen, and twenty-two—were ordained as elders.³⁷

Some leaders, recognizing the problem involved in asking boys to do men's work, adamantly opposed ordaining the youth. Well known is Brigham Young's warning in 1854 not to let boys be deacons:

When you have got your Bishop, he needs assistants, and he ordains Counsellors, Priests, Teachers, and Deacons, and calls them to help him; and he wishes men of his own heart and hand to do this. Says he, "I dare not even call a man to be a Deacon, to assist me in my calling, unless he has a family." It is not the busi-

³⁴Salt Lake Deacons Minutes, 5 August 1873 and 4 February 1877.

³⁵Brigham Young Journal, 16 February 1849; Bishops Minutes, 15 February 1853, 17 January 1854, and 31 March 1857; General Aaronic Priesthood Minutes, 2 March 1861, 3 January 1863, 1 March 1873, and 2 January 1875.

³⁶General Aaronic Priesthood Minutes, 6 May 1876.

³⁷Kanab Teachers Minutes, 14 January 1874.

ness of an ignorant young man, of no experience in family matters, to inquire into the circumstances of families, and know the wants of every person. Some may want medicine and nourishment, and be looked after, and it is not the business of boys to do this. . . .”³⁸

Bishop Canute Petersen gave similar blunt counsel to his ward priesthood in 1874:

We might think that these quorums should be filled with young men, but the kingdom of God had increased and there was evils and iniquities in the church, and it is the duty of the lesser priesthood to look after these things, and for this reason men of experience was called for that purpose.³⁹

Such sentiments also caused Salt Lake Stake priests quorum president Samuel G. Ladd, frustrated in his efforts to raise a full priests quorum, to plead with bishops for help, adding the specific request that they “send good responsible men and not boys.” He had always felt that this quorum, the special teachers in the Church, “should be composed of experienced men and he had not seen anything to change his mind.”⁴⁰

Despite such feelings, the First Presidency in an 1877 circular letter declared that policy henceforth was that youth should serve as apprentice teachers: “the experienced priest or teacher should have as a companion a young man, so that the latter may have the opportunity of learning the duties of his calling, and becoming thoroughly wise and efficient in the discharge thereof.”⁴¹ The practice immediately took hold in many wards but was unevenly followed throughout the Church until 1908, when formal age groupings for young deacons, teachers, and priests, and systematic advancement patterns through each office became official policy.⁴²

Alternative: Melchizedek Priesthood Men as “Acting” Teachers

While youth were useful apprentices, the Church found that its commitment to ordaining the best brethren as senior teachers was impossible to meet. Men with the necessary qualifications were at the same time eligible for and received the greater Melchizedek Priesthood, leaving few, if any, of their type available for the lesser priesthood quorums.

³⁸Sermon at General Conference, 6 October 1854, in *JD*, 2:89.

³⁹Sanpete Aaronic Priesthood Minutes, 2 February 1874.

⁴⁰General Aaronic Priesthood Minutes, 1 January 1876 and 2 January 1875.

⁴¹Circular of the First Presidency, 11 July 1877, in James R. Clark, ed., *Messages of the First Presidency* . . . 6 vols. (Salt Lake City: Bookcraft, 1965), 2:286.

⁴²William Hartley, “The Priesthood Reform Movement, 1908-1922,” *BYU Studies* 13 (Winter 1973):137-56.

Two solutions, although drastic, could have solved the problem. One, discussed by Brigham Young and George Q. Cannon as noted earlier,⁴³ was to make the Melchizedek Priesthood harder to receive, reserving it for those men who proved themselves worthy of it during a lengthy period of lesser priesthood service. A second way would have been to assign historical relativity to early revelations, such as D&C 20. By assuming that those instructions had definite validity in the formative years of the Church, before wards were created and ward bishops called and prior to the introduction of the temple endowment, the Church could have announced that the new circumstances in the Rocky Mountain Zion necessitated a different use of its priesthood quorums. This could have involved a de-emphasis of the lesser priesthood's more pastoral duties coupled with a simultaneous emphasis upon the Melchizedek Priesthood's duty to "watch over the Church" given in D&C 20—the solution the Church finally implemented during the twentieth century.

Neither solution, however, was adopted by President Brigham Young and his contemporary Church leaders. Instead, they decided to call Melchizedek Priesthood men to the lesser priesthood work in an "acting" capacity, much like high priests act in the Aaronic Priesthood when called to be bishops. Calling "acting" teachers became the main method of providing the Church with its Aaronic Priesthood teachers during the Hunter era.

In 1849, immediately after dividing Salt Lake City into wards and calling the bishops, President Young formally requested that leading brethren, including "the best high priests, the most substantial men," act in the lesser priesthood. Instructions to bishops two years later were similar: "If there be no members of the Lesser Priesthood in the Wards to act as teachers take High Priests or seventies or any other wise man." The Salt Lake Seventh Ward reported in 1855 that they had high priests appointed as acting teachers over each block in the ward. George Goddard, secretary to the Presiding Bishopric, calculated in 1872 that "between 3[00] and 400 teachers are employed in this city, most of whom hold the Melchisedec Priesthood, and yet act in the lesser priesthood." The priests in Salt Lake that decade likewise were mostly acting priests—"men having higher ordinations."⁴⁴ In 1873 the Presiding Bishop counseled:

⁴³See text of this article, pages 384-85.

⁴⁴Brigham Young Journal, 16 February 1849; Bishops Minutes, 30 November 1851, 16 January 1855; Salt Lake Stake, School of the Prophets, Minutes, 23 December 1872; General Aaronic Priesthood Minutes, 1 July 1876.

We cannot be satisfied, neither can you be safe, without the order of the Kingdom being observed. . . . The Lord says, How can the body stand without the feet, etc. We hope therefore, that High Priests, Seventies and Elders, if required to fill up these Quorums, will be pleased to act in each, and magnify their callings, as Priests, Teachers and Deacons.⁴⁵

Double duty—serving in both priesthoods at once—produced some strange work loads. One deacons quorum president in 1877, Samuel W. Andrew, had been a deacon for four years, was also a teacher, and belonged to an elders quorum. George Whittaker, a priests quorum counselor, had been in Zion over thirty years and “never laboured in any but the lesser priesthood” even though he had been ordained a seventy before migrating from England. “I was an Elder before I was a deacon,” Matthias Cowley told a Salt Lake Stake deacons’ meeting in the 1870s and then emphasized how important it was that acting deacons like himself attend deacons quorum meetings: “If we were all to stay away because we are Elders or Seventies, where would the Teachers and deacons’ quorums be? Why! Here your president is a high priest, & his counsellors, Seventies.” John H. Picknell, counselor in the Salt Lake Stake deacons quorum, once outlined to the deacons his busy schedule: “I’ve Seventies, Priests’, Teachers’ & Deacons’ meetings to attend, Teacher in two wards, a Priest in one . . . I’m out almost every night in the month.” In cases of loyalty conflicts, said Brigham Young, “It is not the duty of a Seventy or High Priest, who is appointed a Teacher or a Bishop, to neglect the duties of those callings to attend a Seventies’ or High Priests’ meeting. Attend to the wishes of your Bishop.”⁴⁶

The question arose as to whether or not such “acting” lesser priesthood men needed to be set apart. Generally it was recognized that “Those holding the Melchisadeck Priesthood can act in all the offices of the Aaronic Priesthood,” but that they must first be “called and set apart for that [lesser] office.”⁴⁷

The Problem of Prestige

While General Authorities held lofty concepts of the lesser priesthood’s role in the Church, too many rank and file members

⁴⁵Edward Hunter to Joseph A. Young, 18 September 1873, General Tithing Store, Letterbooks, 1872-1875.

⁴⁶Salt Lake Deacons Minutes, 27 January, 26 May, 4 February 1877, and 14 December 1875; Sermon at Mill Creek Ward, Utah, 7 May 1861, in *JD*, 9:92.

⁴⁷Sixth Ward Record Book, 1 June 1877; Bishops Minutes, 7 December 1882; General Aaronic Priesthood Minutes, 5 August 1876.

did not share that viewpoint. Many felt that *lesser* priesthood service was in fact a *lesser* honor, and if a choice could be made they would prefer a Melchizedek Priesthood ordination with its added blessings and privileges. And choice was possible because higher quorums continued to actively recruit available men and young men to keep their own ranks filled.

Unordained youths recognized the status differences and many desired that their first priesthood ordination be to the Melchizedek Priesthood, not the Aaronic. Such attitudes caused Bishop Alonzo Raleigh to warn young men who were “aspiring to become seventy’s in their first ordination,” that “it would be much better for them to go through the duties of the lesser priesthood and magnify those first.”⁴⁸

The already ordained Aaronic males had similar ambitions for higher ordinations, causing Bishop Hunter to warn at various times that he “objected to the brethren striving and hurrying to be ordained into the High Priests or Seventies Quorums, when they are needed to act in the lesser priesthood.” One bishop noted there were social pressures involved: “Let an individual be ordained as a Teacher, some kind friend or other tells him he is not in his right place as it was high time he should be ordained High Priest or Seventy, by this means the Kingdom of God is deprived of its legs and feet.” Hunter observed that “Everybody wanted to be a High Priest, nobody wanted to be a Deacon, people tried to get offices they could not magnify.” He forthrightly confessed that the main reason he was unable to properly fill up lesser priesthood quorums during his first two decades as Presiding Bishop was because of “so many seeking to become high priests and seventies.”⁴⁹ Perhaps the clearest contemporary expression of the Aaronic Priesthood problem is contained in one of Bishop Hunter’s letters to Apostle Orson Hyde in 1873: “We have many times tried to fill up these quorums by those who have not received the Melchisedeck Priesthood, but have been almost immediately called out to receive their endowments, leaving vacancies that had to be filled with High Priests, Seventies or Elders.”⁵⁰

Similarly, some Melchizedek Priesthood men were reluctant to act as lesser priesthood members. Recognizing that “some men be-

⁴⁸Bishops Minutes, 19 January 1860.

⁴⁹Bishops Minutes, 17 January 1854, 25 September 1856 and 18 May 1876; General Aaronic Priesthood Minutes, 3 February 1877.

⁵⁰Edward Hunter to Orson Hyde, General Tithing Store, Letterbooks, 17 October 1873.

cause they are Elders or Seventies consider it beneath them to operate as Teachers," Hunter waged a continual struggle for three decades "to make honourable the lessor priesthood." The status problem generated one extreme proposal, not implemented, that if Melchizedek men refused to serve in the lesser callings they should "be cut off from the quorum they belong to, and remain as private members until they are willing to be useful in the lesser priesthood."⁵¹

REVITALIZING LESSER PRIESTHOOD WORK

Despite prestige problems, teachers' work *was* performed during these years, but with varying degrees of quantity and quality depending upon the given month, ward, block, teacher or bishop. Since the overall teaching effort did not satisfy the Presiding Bishop, he engineered periodic recruitment and organizing campaigns. The first big push came in the mid-1850s, culminating in the Reformation of 1856-57. Another commenced in 1873, when President Young pointedly challenged Hunter to have at least one full quorum of deacons, teachers, and priests "properly organized" in every *stake*—not mentioning anything about *ward* quorums. It took three years, but in 1876 Bishop Hunter pronounced the effort successful.⁵² During Bishop Hunter's last few years the Aaronic Priesthood quorums, as a result of the 1877 reorganization, generally operated in more wards than before and at an improved level of efficiency.⁵³

Leaders found that using Melchizedek Priesthood men as senior teachers, aided by ordained youths, was a fairly workable way of keeping Aaronic Priesthood units operational. But their solution was considered only temporary. As the First Presidency explained in 1877, bishops would use Melchizedek Priesthood men in the lesser offices only "until priests, teachers, and deacons of the necessary experience are found." Similarly, John Taylor stated that year that acting teachers "would remain for the present, but would be changed as soon as arrangements could be made, and exclusive teachers would fill the Quorum." To later generations was left the task of finding a permanent solution.⁵⁴

⁵¹General Aaronic Priesthood Minutes, 4 September 1875, and 5 June 1869; Bishops Minutes, 13 August 1874 and 25 September 1856.

⁵²Bishops Minutes, 1856-1857, particularly 11 September 1873 and 18 May 1876.

⁵³Circular of the First Presidency, 11 July 1877; also Bishops Minutes, 1877-1884.

⁵⁴Circular of the First Presidency, 11 July 1877; also Sixth Ward Record Book, 1 June 1877.

Concepts of priesthood ward teaching developed during the Hunter era remained basically unchanged until well after the turn of the century. Latter-day Saints were reminded in 1902, for example, that "There are in every ward a number of brethren selected to be acting teachers, under the direction of the Bishopric. These are usually men holding the Melchizedek Priesthood, but called to act in the lesser or Aaronic Priesthood for visiting and teaching purposes."⁵⁵

Utilizing "permanent substitutes" rather than properly ordained officers disturbed some leaders, particularly a General Priesthood Committee established in 1908 to reevaluate, reorganize, and reinvigorate priesthood operations.⁵⁶ Including a score of leading Church officials at its peak, the Committee in the course of its fourteen-year investigation of priesthood matters found it necessary to directly confront the problem of having two kinds of teachers—acting (adults) and ordained (youth)—functioning in the Church.

On 5 May 1909, these brethren openly debated how the two kinds of teachers related to each other and whether the two should have separate meetings and courses of study. Brigham H. Roberts, defending the traditional concept that both kinds of teachers essentially operated in the same office, opposed separate treatment. Training to do the ward teacher's work, he felt, should be provided only by quorums. Joseph B. Keeler, another noted priesthood expert, disagreed, asserting that "until teachers and priests are qualified to do this work, it will be necessary to call in the elders, seventies and high priests to do the teaching, and that two meetings were not too many." Roberts, cutting to the heart of the old paradox, countered: "When will the quorums ever do the work required of them if they are put aside and others appointed to do their work?" Thereupon Keeler pointed out the impracticality of Roberts' view, given the Church practice of filling the lesser quorums with youths: "Even the brightest young men lack experience and it would always be necessary to have older men go with them to assist them in this work."⁵⁷

With majority sentiment favoring the Keeler position, the Committee took two important steps during the next few years to ef-

⁵⁵*Deseret News*, 20 November 1902.

⁵⁶Hartley, "Priesthood Reform Movement"; General Priesthood Committee on Outlines, Minutes, 1908-1922, inclusive.

⁵⁷General Priesthood Committee Minutes, 5 May 1909.

fectively establish two separate and distinct types of teachers in the Church. First, it redefined Aaronic Priesthood work as something for boys to perform, and established for the first time in the Church definite ordination ages for deacons, teachers, and priests as twelve, fifteen, and eighteen respectively. New lists of suggested duties geared to the youthful capabilities of the Aaronic boys were drawn up. Teenage ordained teachers, for example, were asked to:

assist in ward teaching	help renovate meetinghouses
assist with the sacrament	care for meetinghouse grounds
be instructors for boy scouts	cut wood for the poor
collect ward funds	be auxiliary officers
speak and sing at meetings	be clerks of branches
notify quorums of meetings	be choir members ⁵⁸

Lists for deacons and priests were also circulated. Since that time similar duties have regularly been given to youthful Aaronic Priesthood bearers. These assignments have provided excellent development and training for the young men, preparing them for greater priesthood service following their Aaronic apprenticeships. But, except for the priests' duty to baptize and bless the sacrament, and the priests' and teachers' duties to visit teach and to ordain, most assignments given to Aaronic boys in this century require no actual priesthood authority to perform. During World War II, for example, girls collected fast offerings. Women have also prepared the sacrament tables. President Heber J. Grant once authorized boys with no priesthood to pass the sacrament when ordained boys were unavailable. Serving as officers in auxiliaries and participating in meetings as speakers and singers are opportunities open to all Church members regardless of priesthood ordination or lack of it.⁵⁹

Besides clearly defining lesser priesthood work in youthful terms, the Committee also campaigned to eliminate the traditional concept of the *acting teacher*. Could not Melchizedek Priesthood men visit by virtue of their higher ordinations and therefore cease to act in a lesser priesthood capacity? Such thinking led the Committee to create a new kind of teacher, the *ward teacher*, which was a ward position, not a priesthood office:

[Ward teachers] should not consider that they are called away from their own responsibilities to take up the work of a lesser office in the Aaronic Priesthood. Ward teaching is a calling, just as

⁵⁸Ibid., 1 June 1916.

⁵⁹*Church News*, 21 April 1945, p. 5; Heber J. Grant to Henry H. Rolapp, 28 June 1928, Heber J. Grant Letterbook, 14 April 1928 to 30 August 1928, microfilm.

missionary work abroad is a calling, and no quorum is solely responsible for the performance of this duty.⁶⁰

But the traditional acting teacher concept continued to have wide acceptance among leaders and members. President Joseph F. Smith, for example, taught it in the April 1914 General Conference while chiding prominent men for refusing to serve as block teachers:

When their presidents or their bishops of the wards in which they live call upon them to visit the Saints, teach the principles of the Gospel and perform the duties of teacher, they coolly inform their bishops that they have graduated from that calling and refuse to act as teachers. Brother Charles W. Penrose is eighty-two years of age. I am going on seventy-six, and I believe that I am older than several of these good men who have graduated from the *duties in the Lesser Priesthood*, and I want to tell them and you that we are not too old to act as teachers, if you will call us to do it. . . .⁶¹

Similarly, the 1933 Melchizedek Priesthood handbook reported: "At present in many wards there were not enough men to fill up the quorums of the Lesser Priesthood and members of the Higher Priesthood are frequently found officiating as teachers."⁶² Three years later Apostle Joseph Fielding Smith also expressed the traditional view:

I know of no work more important than that which has been assigned to the Ward Teacher and the Ward Priest. We have throughout the Church quite generally combined these two offices and placed the responsibilities of the Teachers and Priests upon the brethren whom we call [Ward] Teachers.⁶³

The old (acting teacher) and new (ward teacher) concepts co-existed and were interchanged with each other for at least three decades. Resulting ambiguity produced a surprising reversion in the late 1920s and 1930s to the original basic ideal of using *ordained* teachers instead of either *acting* or *ward* teachers! Many wards sent increasing numbers of ordained teachers—boys—out as ward teachers, frequently paired together, to the homes of the more active families. Such youth work was justified, urged the *Improvement Era*, because ward teaching "is specifically assigned to the Priests and

⁶⁰"Ward Teaching," *The Improvement Era* 16 (November 1912):79-80.

⁶¹*Conference Report*, 4 April 1914, p. 7. Italics added.

⁶²*Priesthood Manual: A Handbook for the Quorums of the Melchizedek Priesthood* (Salt Lake City: Deseret Book, 1933), pp. 16-17.

⁶³Joseph Fielding Smith to Vernon L. Israelsen, 14 July 1935, reproduced in Israelsen, "Changes in the Number and the Priesthood Affiliation of the Men Used as Ward Teachers in the Church of Jesus Christ of Latter-day Saints, 1920-1935" (Master's thesis, Brigham Young University, 1937), pp. 22-23.

Teachers of the Church by revelation." It noted with pride in 1934 that "in several stakes the greater part of the teaching is being done by young men of the Lesser Priesthood quorums. Results are reported to be gratifying."⁶⁴ For a good example of Aaronic Ward Teaching, *Era* readers were referred to the Cache Stake program where

Teachers and Priests are given first call when new members of the acting teachers force are needed. Members of the Melchizedek Priesthood quorums are called to assist only when there are no available teachers or priests. In some wards nearly all the members of the acting teachers force are members of the Aaronic Priesthood quorums.⁶⁵

But employing boys as the Church's watchmen brought the old paradox again to the surface. How far can the Church move in placing the teaching work upon young men, an important 1937 study of ward teaching asked, and still achieve the primary purpose of teaching as outlined in the revelations?⁶⁶ A partial answer came from the Presiding Bishopric in 1940 when they instructed bishops to "discontinue the practice of sending members of the Aaronic Priesthood in pairs, or alone, to do Ward Teaching," admitting that "people will feel better about it if an older and more experienced brother takes the lead in discussions and inquiries."⁶⁷

Finally in the 1940s the *ward teaching* idea completely replaced the *acting teacher* concept. Then, during the past three decades the ward teaching concept itself has been modified, particularly by the *home teaching* program instituted in the 1960s which produced two further notable changes in the old traditional concepts about teachers. First, instead of the principle of "selecting" the most qualified men for teaching assignments, the new instruction is that *every* Melchizedek Priesthood bearer by virtue of his higher ordination automatically is a watchman, a home teacher. Second, Melchizedek Priesthood quorum presidencies are responsible for directing the teaching of the families of their own quorum members.⁶⁸

⁶⁴"Melchizedek Priesthood Ward Teaching," *The Improvement Era* 37 (April 1934):229.

⁶⁵*Ibid.*, 37 (June 1934):364.

⁶⁶Israelsen, "Changes in Number and Priesthood Affiliation," p. 224.

⁶⁷"Ward Teaching," *The Improvement Era* 43 (December 1940):748.

⁶⁸For a scrapbook-type description of priesthood teaching which overlooks nineteenth century teaching practices, the issues raised by the Aaronic Priesthood paradox, and the priesthood research of Israelsen, Hartley, and Richard Cowan, but which presents some selected important documents about ward and home teaching, see Rex A. Andersen, "A Documentary History of the Lord's Way of Watching Over the Church by the Priesthood Through the Ages" (Master's thesis, Brigham Young University, 1974).

Basic to the new home teaching program is a change in scriptural emphasis. Where a century ago the emphasis was on D&C 20:46-55 which places visiting responsibilities upon the priests and teachers, today D&C 20:42—which requires elders to “watch over the Church”—provides the basis for home teaching and makes it primarily a Melchizedek Priesthood function. In 1962 President Marion G. Romney explained the current interpretations of that revelation: “By some it has been thought that some of the directions given in the revelation referred only to ordained teachers. It would seem, however, that the responsibility has been placed upon every bearer of the Melchizedek Priesthood, and the priests as well as upon the teachers.”⁶⁹

Leaders of the Church, mindful of revelations given to Joseph Smith and receptive to continuing divine guidance, periodically have redeployed priesthood and auxiliary forces and redefined institutional functions as required by the Church’s ever changing problems, its institutional growth, and the shifting needs of its members. During the past century the Aaronic Priesthood has received major alterations of theory and practice. By reinterpreting the adult aspects of the work, particularly the teaching obligation, to be Melchizedek Priesthood work, the traditional objective that more qualified men do the teaching generally is achieved. And by giving deacons, teachers, and priests more youthful and less demanding responsibilities, Aaronic quorums now are kept filled and Church youth receive important priesthood training.

But Bishop Hunter’s generation of leaders would remind us that to achieve this present state of priesthood work, the Church has modified their lofty nineteenth century concepts of the Aaronic Priesthood. Today’s fourteen- and fifteen-year-old teachers, it would appear, while providing useful Church service, nevertheless are not meaningfully credited like teachers were in previous times with special rights and powers to ferret out iniquity, receive the ministrings of angels, reconcile disputants as the Church’s exclusive peace-makers, preside as Church officers in homes during official priesthood visits, or possibly participate in any part of the temple endowment. Nevertheless, the Aaronic Priesthood paradox, which Church leaders had to deal with for many decades, finally has been resolved despite some differences with priesthood concepts and practices of the past. The resolution seems pragmatically workable for this present generation.

⁶⁹*Conference Report*, 6 October 1962, p. 78.

The Mormon Disfranchisements of 1882 to 1892

Joseph H. Groberg

A flurry of anti-Mormon lawmaking from 1882 to 1892 was designed to disfranchise most Mormons on the grounds of religious practice or affiliation. The Mormon people challenged these laws by contending that the constitutional guarantees of religious freedom protected their franchise. The outcome of this conflict as recorded in the decisions of state, territorial, and federal courts cast a dark shadow across the history of religious liberty in the United States, a shadow which, because of the law's use of precedent, may yet prove long enough to reach and influence the outcome of future conflicts between religious belief and public policy.¹ Consequently, this is an instructive as well as an interesting episode in American history.

During the early years of the American colonies, the privilege of voting was often denied expressly on the basis of religious affiliation or belief. However, in the last century of the colonial period great strides were made toward breaking down religious and moral qualifications of electors. This enlightened attitude dominated the Constitutional Convention, and our founders prohibited religious discrimination by the federal government partly by forbidding any religious oath for offices held under the federal government² and partly by providing that "Congress shall pass no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ."³ Although these restraints were thought to be generally applicable to the territories, it was believed that the Constitution did not impose similar restrictions on the states until the adoption of the Fourteenth Amendment in 1868. Nevertheless, most state governments had abolished all religious tests for voters before or soon after

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¹John G. Fletcher, "A Look Into the Future," *Liberty* 68 (Jan./Feb. 1973):13.

²U. S. Constitution, Article VI.

³U. S. Constitution, Amendment I.

the adoption of the federal Constitution. Universal white male suffrage became the rule for the states and the territories in the nineteenth century. With the exception of the Mormon disfranchisements, it appears that during the entire history of the union there have been almost no attempts to impose religious qualifications on the voters of a state or territory.

Between 1882 and 1892, the federal government, the territorial legislatures of Idaho and Arizona, and the state legislatures of Idaho and Nevada made efforts to disfranchise Mormons because of their religious practices and beliefs. The reason most often given for those efforts was polygamy. Local non-Mormons capitalized on the national revulsion toward polygamy to further their own aims of weakening the closely-knit Mormon social order, and more importantly, of reducing the threat of Mormon political power, which took the form of block voting. The political power was dominant in Utah, very strong in Idaho, and less important in Nevada and Arizona. The final capitulation on the issue of polygamy, while greatly tempering national concern, did not quell local concern over Mormon political power.

The first step toward disfranchisement came in 1882 when Congress passed the Edmunds Act (applicable to the territories) which disfranchised any ". . . polygamist, bigamist, or any person cohabiting with more than one woman" or any woman cohabiting with a man of that description.⁴ In Utah, the act also removed jurisdiction over voting matters from the territorial government and placed it in the federally controlled Utah Commission.⁵ Two years after its creation, the Utah Commission reported that 12,000 persons had been disfranchised. Though polygamy had been a crime in the territories since 1862, few, if any, of these 12,000 had been tried for that crime.⁶

In the case of *Murphy v. Ramsey*,⁷ the Supreme Court of the United States, while sustaining the Edmunds Act as "wholesome and necessary," cut back the powers being exercised by the Utah Commission and restricted disfranchisements to those persons expressly described in the Edmunds Act.

Because the Edmunds Act did not result in the downfall of the Mormon leadership, in 1887 Congress passed the Edmunds-Tucker

⁴Edmunds Act, Ch. 47, 22 Stat. 30 (1882).

⁵Ibid., Sec. 9.

⁶Orma Linford, "The Mormons and the Law: The Polygamy Cases Part II," *Utah Law Review* 9 (1965):543.

⁷*Murphy v. Ramsey*, 114 U. S. 15, at p. 41 (1885).

Act⁸ which categorically disfranchised all women in Utah on the ground that they persisted in voting for the incumbent Mormon leadership. (Utah women had been given the vote by the territorial legislature in 1870.)⁹ In the same act, Congress provided for an oath to be administered to voters with which it intended to disfranchise most male Mormons. The test oath, which was prepared by the Utah Commission, contained the following language:

I especially will obey the [anti-polygamy laws] and . . . I will not directly or indirectly aid or abet, counsel or advise any other person to commit any of said crimes defined by acts of Congress as polygamy, bigamy, unlawful cohabitation, incest, adultery and fornication.¹⁰

But neither did this act have a great effect on practical politics in Utah. The House Committee on Territories reported that:

At the time the law was enacted the opinion was entertained by many persons that no Mormon would take such an oath without having formed a clear intention to obey it, [but that] . . . the results of the registration under the advice given by the Mormon leaders rendered the law absolutely nugatory in accomplishing the purpose for which it was enacted.¹¹

The failure of the 1887 law to wrest political control in Utah from the Mormon leadership led to recommendations for more drastic congressional action.

Outside of Utah, further federal action was not needed. The territorial legislatures of Idaho and Arizona and the state legislature of Nevada passed their own laws to disfranchise Mormons. In 1885, Idaho and Arizona each enacted laws going beyond the Edmunds Act by attempting to disfranchise all Mormons. Idaho's law disfranchised

member[s] of any . . . organization . . . which teaches . . . its members . . . to commit the crime of bigamy or polygamy . . . as a duty arising or resulting from membership in such . . . organization . . . or which practices bigamy or polygamy or plural or celestial marriage as a doctrinal rite of such organization¹²

The Arizona law, which was passed a month after Idaho's, was very

⁸Edmunds-Tucker Act, Ch. 397, 24 Stat. 635 (1887).

⁹Orma Linford, "The Mormons and the Law: The Polygamy Cases Part I," *Utah Law Review* 9 (1964):324, footnote 80.

¹⁰Edmunds-Tucker Act, Sec. 24.

¹¹U. S. Congress, House Report 1811 for H.R. 9265 #2812 at pp. 1, 22 (April 29, 1890).

¹²"An Act to Provide for Holding Elections," Idaho, *13th Session Laws* (1884-1885), Sec. 16, p. 110.

similar. It disfranchised any "member of an order, sect or organization which teaches . . . polygamy . . . as a duty or privilege resulting or arising from the faith or practice of such order. . . ." ¹³

In 1887, the Nevada State Legislature avoided the circuitry of its neighboring territorial legislatures and flatly declared that "No person shall . . . vote . . . who is a member of the 'Church of Jesus Christ of Latter-day Saints,' commonly called the Mormon Church" ¹⁴

The Arizona law was repealed in 1887 without being tested. ¹⁵ The Idaho law was challenged in the cases of *Innis v. Bolton* (1888) ¹⁶ and *Wooley v. Watkins* (1889). ¹⁷ The Nevada law was tested in the case of *Whitney v. Findlay* (1888). ¹⁸

Innis v. Bolton was a serious attempt to grapple with the issues involved in disfranchising persons because of their religious affiliation. The question was put straight to the court: Is this territorial enactment in violation of the provisions of the federal constitution which guarantee religious freedom?

The Idaho court conceded "that if the statute prohibits or interferes in any substantial manner with the free exercise of religion then it is void and of no effect." ¹⁹ The leading case on that question was *Reynolds v. United States* ²⁰ in which the Supreme Court of the United States had found that the *practice* of polygamy was not protected by the First Amendment because while ". . . the government cannot interfere with mere religious belief and opinions, [it] may [interfere] with practices." ²¹ In *Innis*, the Idaho court was urged to find that by belonging to a church which tolerated polygamy, all Mormons had crossed the line from opinion to practice.

The territorial court found that because ". . . [T]he intention of the legislature was to withdraw the right of suffrage from persons who encourage, aid and abet those who are endeavoring, not by constitutional methods, but against all law, to overthrow a sound public policy of the government . . ." the statute did not infringe upon the free exercise of religion. ²²

¹³*Arizona Laws* (1885), No. 87, Sec. 2, p. 214.

¹⁴*Nevada Laws* (1887), Ch. CX, Sec. 1, p. 107.

¹⁵Absent from subsequent editions of *Arizona Laws*.

¹⁶*Innis v. Bolton*, 2 Id. 407, 17 Pac. 264 (1888).

¹⁷*Wooley v. Watkins*, 2 Id. 555, 22 Pac. 102 (1889).

¹⁸*Whitney v. Findlay*, 20 Nev. 198, 19 Pac. 241 (1888).

¹⁹*Innis v. Bolton*, p. 414.

²⁰*Reynolds v. The United States*, 98 U. S. 145 (1897).

²¹*Ibid.*, p. 166.

²²*Innis v. Bolton*, p. 415.

It had not been clear in *Innis v. Bolton* that the disfranchised persons involved in the case were themselves innocent of personally encouraging polygamy. Therefore, in the case of *Wooley v. Watkins*, it was expressly stipulated that the disfranchised plaintiff "... does not teach, advise, counsel or encourage persons to commit the crime of bigamy . . . unless he does so by the bare fact that he is a member of the Mormon Church."²³

The court again relied on *Reynolds* and this time specifically concluded that simple membership in the Mormon Church was itself an unprotected putting of beliefs into practice.²⁴

The court declared:

Organizations, . . . by whatever name they may be called, which teach . . . the practice . . . of acts forbidden by law, are criminal organizations. To become and continue to be members of such organizations are such overt acts as make them [the members] as guilty, as though they actually engaged in . . . unlawful . . . purposes.²⁵

The Nevada Mormons were more successful in attacking the law that disfranchised them. In *Whitney v. Findlay* the Supreme Court of Nevada held that the state constitution prescribed the qualifications for electors and that the legislature could not abridge these by adding new and different qualifications. The court did not say, however, that had the state constitution allowed this legislative action, the Nevada law would have violated the Fourteenth Amendment to the Constitution through which the First Amendment is thought to apply to the states.

In 1890, efforts to disfranchise Mormons in Utah and Idaho came to a peak. The United States Supreme Court was considering the case of *Davis v. Beason*²⁶ in which the Idaho territorial law disfranchising Mormons was again being challenged; the Territory of Idaho was petitioning for statehood with a proposed state constitution which contained an irrevocable provision disfranchising all Mormons; and the Territorial Committees of the House and Senate were considering a similar law to be applied to Utah—the Cullum-Strubble Bill.

The case of *Davis v. Beason* arose when Samuel D. Davis, a member of the Church, took the Idaho oath in order to vote and was jailed for conspiracy to violate the election laws. Davis asked

²³*Wooley v. Watkins*, p. 560.

²⁴*Ibid.*, p. 566.

²⁵*Ibid.*

²⁶*Davis v. Beason*, 133 U. S. 333 (1890).

for a writ of Habeas Corpus on the ground that that part of the law which disfranchised "members" was in violation of the First Amendment and void. The Idaho Court did not free him. He appealed to the Supreme Court of the United States, which in an opinion by Justice Stephen J. Field, bitterly attacked polygamy and reiterated that it was an overt criminal act, apparently overlooking the fact that the man in jail never had been a polygamist.

In his enthusiasm to attack polygamy, Justice Field also overlooked Davis' argument that the *Reynolds* case, if anything, supported his position. In *Reynolds*, Chief Justice Morrison R. Waite had written that because polygamy is a crime, practicing it as part of one's religion does not protect a person from criminal liability. The other side of this principle is the proposition that if an act is not a general wrong or does not generally result in disqualification from voting, it cannot become a grounds for disqualification simply because it is done for a religious purpose. Davis argued that by the language of the Idaho statute

. . . simple encouragement to commit crime by an organization of which the citizen is a member does not disqualify him from voting, because, by the language of the act, the encouragement must be offered upon the ground of duty, or religious obligation arising from membership in the organization, or the latter must teach the commission of these acts from religious motives, otherwise the exclusion does not operate. And so, also the practice must be "as a doctrinal rite" or the member is not excluded.²⁷

The force of this argument would appear overwhelming, but Field ignored it and concluded that the law

. . . simply excludes from the privilege of voting, or of holding any office of honor, trust or profit . . . those who advocate a practical resistance to the laws of the Territory and justify and approve the commission of crimes forbidden by it.²⁸

The disfranchisement of Mormons had been a critical issue in the 1890 state constitutional convention of Idaho. The inclusion of a provision to that effect in the proposed state constitution drew nationwide comment.²⁹ When the petition for statehood reached Congress, hearings were held by both House and Senate committees on what had become known as the anti-Mormon test oath.³⁰

²⁷Ibid., p. 339.

²⁸Ibid., p. 347.

²⁹"Trouble Ahead in Idaho," *New York Times*, 24 June 1889, p. 5.

³⁰The term "test oath" has not been used nor have the implications of such a device been explored in this article. However, to many the most offensive characteristic of these laws was the use of test oaths. It was thought that by their nature they

Fred T. Dubois, Idaho's territorial representative to Congress, told the Senate committee, "There is no desire on my part to deny the fact that this law was intended to disfranchise the Mormons, that is the plain intention of the law."³¹ The committee hearings proceeded with that understanding.

Prominent non-Mormons and at least one Idaho Church leader appeared on behalf of the Idaho Mormons before the House Committee on the Territories. It was pointed out that approximately 25,000 Mormons lived in Idaho. Of these, perhaps 150 were polygamists. One of the non-Mormons, Jeremiah Wilson, presented the substance of the case:

It is not the prohibition of bigamy and polygamy that they object to, . . . but they do protest that they shall not be disfranchised when they have not committed any offense against the law. . . .³²

The introduction of the Idaho Statehood bill to the floors of the House and Senate led to heated debates. For the Republican majority, Congressman George Washington Dorsey from Nebraska began by declaring that "the only opposition to the admission of Idaho under the constitution, which the legal voters of the Territory adopted almost unanimously, came from the Mormons." He neglected to mention that the vote was almost unanimous because the Mormons weren't allowed to vote. He pointed out that Justice Field's opinion in *Davis v. Beason* settled any constitutional problems with "preventing polygamous Mormons from voting" and added "that the admission of Idaho by this Congress under the Constitution adopted by its people will give encouragement to other territories that contain Mormon population."³³

On the other side, Charles H. Mansur of Missouri for the Democratic minority, saw the proposition before the House to be whether "a man will be struck down . . . because of an alleged belief in certain doctrines, when the fact is the constitution does not say what in reality they intend, which is that it shall strike down the Mormon

interfered with the free exercise of religion. However, the view taken by the courts was that " . . . the oath required was a proper mode of ascertaining the disqualifications imposed by law, and that it did not interfere with the free exercise of religion." *Innis v. Bolton*, p. 418. In 1961 the Supreme Court of the United States in the case *Torasco v. Watkins*, 367 U. S. 488 (1961) declared religious test oaths unconstitutional.

³¹U. S. Congress, House Committee on the Territories, Feb. 8, 1890, 51st Congress, 1st Sess, p. 4. Only the House Committee Hearing was printed.

³²*Ibid.*, p. 5.

³³U. S. Congress, House Congressman Dorsey speaking for passage of the bill, 51st Congress, 1st session, *Congressional Report*, 51st Congress, p. 2931 (1890).

Church.”³⁴ Mr. Mansur’s argument was answered by Mr. Dubois from Idaho who said that Mormon political activity made the disfranchisement of Mormons imperative. Dubois claimed that Mormonism was a theocracy and contrary to good government and that until Mormons as a church stopped meddling in politics, they should not be allowed to vote.³⁵ “Mormons are a peculiar people,” he said, “and [should] be subjected to peculiar laws.”³⁶

The final house vote on the Idaho statehood bill was 120 to 1, with 67 present and not voting, the majority of which were southern Democrats.³⁷ Idaho became a state with the Mormons disfranchised.

In Utah the Church still held political control. If Utah Mormons were to be disfranchised, Congress would have to do it. To that end the Cullum-Strubble Bill was reported out of the territorial committees of the House and Senate with recommendation for passage. The Senate version provided that:

No person who is . . . a member of, or contributes to the support, aid, or encouragement of, any . . . organization . . . which teaches, . . . any person to enter into bigamy, polygamy, or such patriarchal or plural marriage, . . . shall either vote, serve as juror, or hold any civil office in the Territory of Utah.³⁸

Included in the House committee’s report on its version of the bill was a copy of the recently reported Supreme Court decision in the case of *Davis v. Beason*. The Committee report contended that the decision had resolved all questions in favor of the proposed act’s constitutionality. The bill was never voted on. Before Congress could act, the Church officially proscribed polygamy for its membership.

The Idaho Legislature had planned for this day. Notwithstanding the announcement on polygamy, the local concern over Mormon political power had not abated.³⁹ The Idaho state election law was

³⁴Ibid.

³⁵Ibid., Territorial Representative Dubois speaking for passage of the bill, p. 2943. In the House Committee Hearings a possible reason for Dubois’ stubbornness on this issue was suggested by an Idaho Mormon: “Why, it is a battle for political life with Mr. Dubois. He would not give the Mormons the right to vote because they would not vote for him, not because he is a Republican, but because he is a determined and persistent enemy to that people.” U. S. Congress, House Committee on Territories, p. 38.

³⁶Ibid., p. 2941.

³⁷Ibid., p. 3005.

³⁸S. 3480 (1890). 51st Congress, 1st Sess. The House version was much more descriptive.

³⁹The Idaho Legislature, in 1889, worked on an amendment to section 501 of the *Idaho Revised Statutes* which would have provided that all persons who had been Mormons on 1 January 1888 were disqualified from office, voting, and jury duty.

changed to provide that no member of any organization which "... teaches or *has* taught . . ." any person to commit polygamy, could vote, hold office or serve as juror.⁴⁰ This law which would have even disfranchised members who joined the Church after the Manifesto on polygamy, was immediately challenged by Idaho Mormons. To their surprise it cleared all legal hurdles placed before it. In the case of *Shepherd v. Grimmer*⁴¹ the Supreme Court of Idaho sustained the constitutionality of this seemingly *ex post facto* law by holding that only the Fifteenth Amendment, which prevented states from denying the vote to persons because of race, limited the state's otherwise unlimited power to fix the qualifications of voters.

Two years later the Idaho election law was changed back to its original version. There is evidence that this followed a decision by Idaho Mormons to discontinue the practice of voting as a block, thus to some extent satisfying Mr. Dubois' decree that to vote, the Mormons as a church must stay out of politics.

The final case to interpret this Idaho law was *Toncray v. Budge*⁴² which reached the Supreme Court of Idaho in 1908. The Idaho constitution then, as it does to this day,⁴³ disqualified from voting or holding public office members of any organization which practices "patriarchal or celestial marriage." It was claimed that the Mormon Church still met this description. For the first time an appellate Court considered that question, and concluded that the Church was not such an organization. The court found that the terms "patriarchal or celestial marriage" were used in the Idaho constitution only to get at the practice of polygamy. They were not applicable to the current Mormon marriage practices. Mere belief in a future life with more than one wife could not be prevented. There were no further efforts in Idaho to disfranchise Mormons.

In summarizing the events of this period one realizes that only the Mormons themselves seriously contended that the Constitution protected them from the loss of valued rights and privileges which were theirs as American citizens. They were genuinely surprised to discover that it did not. But most Americans were concerned with stopping the practice of polygamy and with curtailing local church political power. They were not at all concerned with pre-

Merrill D. Beal and Merle W. Wells, *History of Idaho* 3 vols. (New York: Lewis Historical Publishing Company, 1959), 1:605.

⁴⁰*Idaho General Laws* (1891), Sec. 43, pp. 67-70.

⁴¹*Shepherd v. Grimmer*, 2 Id. 1123, 31 Pac. 793 (1892).

⁴²*Toncray v. Budge*, 14 Id. 261, 95 Pac. 26. (1908).

⁴³*Idaho Constitution*, art. VI, sec. 4.

serving religious liberty for persons who appeared to be threatening cherished institutions and challenging basic public policy. Consequently, the nation's leaders and judges were not disturbed that their laws and decisions were in large part extinguishing religious liberty for Mormons. In the context of a great popular concern, Mormonism was excluded from the First Amendment meaning of religion, and the rule from the *Reynolds* case, i.e., that the government cannot interfere with religious opinion but may interfere with illegal conduct based on religious conviction, was stretched to justify disfranchisement merely on the grounds of membership in the Church.

A conflict very similar in principle to that which existed in the 1880s recently arose between the Amish people and the state of Wisconsin.⁴⁴ The Amish refused to allow their children to attend public school beyond the eighth grade. Although this violated Wisconsin law and public policy, the Supreme Court of the United States heard the case and found for the Amish on the ground that their conduct was protected by the Free Exercise Clause of the First Amendment and therefore was beyond the power of the state to control, thus apparently weakening the cases of *Reynolds* and *Davis v. Beason*. But the education of Amish children was not a significant concern to most Americans, and for a number of reasons the court was of the opinion that the Amish were not seriously threatening basic public educational policy. Consequently it remains not only possible but probable that if a church's position seriously conflicted with and threatened a basic public policy of great popular concern, religious liberty would again be subordinated to that concern, trampled upon by the legislatures, and ignored by the courts. This is the lesson of 1882 to 1892.

⁴⁴*Wisconsin v. Yoder*, et al., 406 U. S. 205 (1972).

The Historians Corner

Edited by James B. Allen

In this issue of the Historians Corner, we present two quite different items. The first, by Ted J. Warner, suggests the continuing need for historians to reevaluate the printed word and update their research. His essay on the historiography of B. H. Roberts is not a criticism of Roberts but, rather, a reminder that continued scholarly research and the frequent discovery of new resources creates a continuing need for historical revision. Professor Warner is a nationally known scholar of the Spanish borderlands. Recently he has been deeply involved in editing for publication the journal of the Domínguez-Escalante expedition, in connection with the 1976 bicentennial observance of that expedition.

The second item, submitted by Richard O. Cowan, should be enjoyed by those who are interested in the strictly human side of Latter-day Saint history. The problem of maintaining personal physical fitness is one that confronts us all, and Professor Cowan gives us a brief insight into how Presidents Heber J. Grant and Joseph Fielding Smith felt about it.

B. H. ROBERTS ON A NON-MORMON TOPIC: AN EXERCISE IN HISTORIOGRAPHY

Ted J. Warner

For more than forty years B. H. Roberts' *Comprehensive History of the Church* has been accepted by readers almost as an official interpretation of LDS Church history. One recent historical assessment of it concluded that even if modern scholarship has left certain chapters obsolete, the work is still an important starting point, is still worth reading, and no Mormon need be ashamed of Roberts as a scholar or historian.¹ This thoughtful appraisal of the

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¹Davis Bitton, "B. H. Roberts As Historian," *Dialogue, A Journal of Mormon Thought* 3(Winter 1968):25-44.

Comprehensive History is clearly justified insofar as its coverage of the Mormons is concerned, but there are some weaknesses and even some errors in topics on which Roberts was not an expert. In such cases, almost all of Roberts' problems stem from his relying upon secondary sources, rather than doing the kind of primary research he did in Mormon history.

One example of an historiographic problem is the section "The Salt Lake Region Before the Advent of the 'Mormon' Pioneers."² In a long footnote on the first page of this chapter, Roberts states that it is customary to begin any explanation of Spanish penetration of the present Utah region with a discussion of the 1540 expedition of Captain García López de Cárdenas, noting that this expedition dispatched from "Cibola"³ by Don Francisco Vázquez de Coronado sought to locate a large river reported by the Indians as lying far to the northwest of their village. Roberts says that with "twelve men" [there were actually twenty-five horsemen in the party], López de Cárdenas proceeded in a northwesterly direction until after many days his progress was halted by a huge canyon of the Colorado River which lay within the boundaries of the present state of Utah, thus implying that the actual discovery of what is now Utah occurred in 1540.⁴ But Roberts does not discuss this further, because "the expedition led by López de Cárdenas did not enter the Great Basin," which was the area of his immediate concern. His mere mention of this expedition has helped perpetuate among some Church members a major error concerning the first "known" white men in Utah. The 1540 expedition of García López de Cárdenas did not, in fact, enter Utah. Because of Dr. Katharine Bartlett's careful 1949 study of the old Indian trails in this region, we now know that López de Cárdenas, guided by Hopi Indians, followed a

²B. H. Roberts, *A Comprehensive History of the Church of Jesus Christ of Latter-day Saints, Century I*, 6 vols. (Provo, Utah: Brigham Young University Press, 1965), 3:244-47.

³Roberts is referring to the Zuni village of Hawikuh, the ruins of which are located thirteen miles south of the present pueblo of Zuni on the Arizona-New Mexico border, some thirty-nine miles south of Gallup, New Mexico. The Spaniards renamed this pueblo, "Granada." See Frederick W. Hodge, *History of Hawikuh* (Los Angeles: The Southwest Museum, 1937).

⁴See Hubert Howe Bancroft, *History of Utah* (San Francisco: San Francisco History Company, 1889), pp. 2-6. On page 5 Bancroft includes a map he labels "Probable Route of Cardenas," which shows the expedition reaching the Colorado River in what is presently the state of Utah. This was apparently the source used by Roberts and subsequent early writers on Utah history. See also Orson F. Whitney, *History of Utah* (Salt Lake City: George Q. Cannon & Sons, 1892), p. 289, and Levi Edgar Young, *The Founding of Utah* (New York: Charles Scribner's Sons, 1933, 1924), p. 46.

well-travelled trail from waterhole to waterhole in a more westerly direction than was formerly believed and was finally stopped on the south rim of the Grand Canyon of the Colorado River at a place called "Grand View" in Arizona.⁵

While it is customary to accord the honor of the discovery of Utah to the expedition of two Franciscan friars, Fray Francisco Atanasio Domínguez and Fray Silvestre Vélez de Escalante, who came into this region in 1776, scholars are convinced by documents in the Spanish Archives of New Mexico and Mexico that Spanish traders penetrated the southeastern corner of the present state some years prior to that date. There are allusions to such expeditions in the extant documents, but it is not yet possible to identify these traders.

Roberts' discussion of the Domínguez-Vélez de Escalante expedition also contains a number of important errors because he relied on the first English translation of the Domínguez-Vélez de Escalante journal published in 1909 by the Reverend W. R. Harris in his *The Catholic Church in Utah*,⁶ which was assessed by an historian in 1930 as "practically worthless."⁷ Roberts' reliance on this work rather than a copy of the original manuscript or even the Spanish version published in Mexico in 1854 is responsible for many of his mistakes.

The leader of the expedition, Father Domínguez, arrived in New Mexico in 1775 as canonical visitor of the Custody of the Conversion of St. Paul, an appointment given only to clergymen of the

⁵Katharine Bartlett, "How Don Pedro de Tovar Discovered the Hopi and Don García López de Cárdenas saw the Grand Canyon with Notes upon their Probable Route," *Plateau* 12(January 1949):37-45.

⁶Manuscript copies of the Domínguez-Vélez de Escalante Journal *Diario y Derrotero* are located in the Archivo General de Mexico, *Historia*, Tomos 26 and 62. Another manuscript is in Seville, Spain, in the Archivo General de Indias, Audiencia de Guadalajara, legajo 516. The Ayer Collection in the Newberry Library, Chicago, has the earliest known manuscript copy of the journal. It is in the hand of Father Domínguez' secretary and was copied from the original in January 1777. The original journal has not been located. The journal was first published in Spanish in *Documentos para la historia de Mexico*, Segunda serie, Tomo I (Mexico: n.p., 1854). The first attempt at an English translation was that of the Reverend W. R. Harris in *The Catholic Church in Utah* (Salt Lake City: Intermountain Catholic Press, 1909). Two later English translations of the journal have been published. Herbert S. Auerbach, *The Journal of Father Escalante, 1776-1777* (Salt Lake City: Utah Historical Quarterly, 1943), and Herbert E. Bolton, *Pageant in the Wilderness* (Salt Lake City: Utah State Historical Society, 1950). Neither of these translations and notes is entirely accurate or satisfactory despite the statement by the Utah Historical Society in the preface to Bolton's work that "the present study very nearly approaches the ideal and the final word" on the subject. There are numerous errors in Bolton's translation as well as in his long "Historical Introduction."

⁷Joseph J. Hill, "Spanish and Mexican Exploration and Trade Northwest from New Mexico into the Great Basin, 1765-1853," *Utah Historical Quarterly* 3(January 1930):8.

highest caliber. In addition to his instruction to visit and inspect each of the New Mexico missions, he was to investigate the possibilities of opening a land route from Santa Fe to the newly-founded Franciscan missions in California. Learning that the missionary friar serving in the village of Zuni was interested in such an enterprise and had in fact made some preliminary expeditions in that direction, Domínguez ordered that priest, Fray Silvestre Vélez de Escalante, to report to him in the capital to discuss plans for such an expedition and to accompany him on it. Roberts was not the only writer to mistakenly accord the leading role in this expedition to Vélez de Escalante. Even later scholars, including Herbert E. Bolton, have tended to minimize the role played by Father Domínguez. The journey is generally referred to as the Escalante expedition with Vélez de Escalante receiving the lion's share of credit.⁸ Roberts recognized that Atanasio Domínguez was there, but did not give him the leading role he held.

On 15 April 1776, Father Domínguez ordered Vélez de Escalante to join him in Santa Fe as soon as possible for discussion of the project of locating a route from Santa Fe to Monterey. Escalante arrived on 7 June. Plans were completed and the date set for the departure was 4 July 1776. There were several unavoidable delays, however, including a sudden illness which struck Escalante, so the expedition did not get underway until 29 July 1776, although for some unknown reason Roberts says 29 August.

By following the Harris translation, Roberts gets particularly snarled in his discussion of the rivers in Utah Valley. The original journal mentions four rivers which discharge into the lake and calls them the Río de Aguas Calientes (identified today as the Spanish Fork), the Río de San Nicolás (Hobble Creek), the Río de San Antonio de Padua (the Provo River), and the Río de Santa Ana (the American Fork River). Harris and Roberts call the Río de San

⁸Today in Utah there is an Escalante Desert, an Escalante Valley, an Escalante River, the Escalante Mountains, the town of Escalante, and the Escalante Petrified Forest. None of these names was affixed by the travelers themselves, all being given later by others who assumed that Escalante was the leader of the expedition. To my knowledge there is not a single place name in Utah which perpetuates the name of Domínguez. Even some of the other members of the expedition had their names commemorated, but not Domínguez. It is as if he had not even been on the expedition and yet not only was he a full partner in the enterprise, he was the senior partner. The journal which should be referred to as the Domínguez-Vélez de Escalante Journal is generally referred to as Escalante's Journal, but a careful reading of it as well as Vélez de Escalante's later letters reveals that Escalante himself always referred to the account as "our diary." He understood his role in the expedition, even if later scholars did not.

Nicolás the Provo River, the Río de San Antonio de Padua the American Fork, and the Río de Santa Ana the Jordan, which places the Provo too far from the Spanish Fork, ignores Hobble Creek, and has the Jordan flowing in the wrong direction.

Roberts accurately reports that the fathers established friendly relations with the natives living on the eastern shores of Utah Lake, whom they met in great numbers. They told them of God, and of obedience, and promised that they would send priests to teach of Christ, and Spaniards to live among them and teach them to cultivate the soil and raise cattle, "so that they could be able to eat and to dress like Spaniards, to obey the law, and to live as God had commanded."⁹

The padres were not able to fulfill this promise to the Utah Lake or Laguna Indians because when they returned to Santa Fe on 3 January 1777, they found conditions so bad that it was all they could do to maintain what missions they already had. Some years earlier missionaries had requested funds to extend the mission frontier but had been told that "for colonial purposes the faith was sufficiently spread out," and that if "every proposal for the foundation of presidios (and missions) were acceded to, the treasury of Midas would not suffice."¹⁰ The expulsion of the Jesuits from the New World in 1767 had made it necessary that their missions be taken over by other orders and there were simply not enough missionaries available or money in the treasury to extend the Spanish mission frontier into Utah. Since the Spaniards did not return to establish the missions and villages which Domínguez and Vélez de Escalante had promised, the Utah Indians were left alone for another seventy-one years except for an occasional illegal visit made by Spanish traders from northern New Mexico to the Laguna de los Timpanoguitsis.¹¹

Roberts states that the Indians told the padres of the Salt Lake in the next valley northward and of the "wonders of it to the native mind." Since they did not visit the lake, Roberts apparently as-

⁹Domínguez-Escalante Journal in Bolton, *Pageant in the Wilderness*, p. 180.

¹⁰Pedro de Rivera to Viceroy Casafuerte, El Paso, 26 September 1726, AGN, Historia 394.

¹¹From the standpoint of the future history of Utah, the failure to follow up on the promises made to these Indians had important results. When Brigham Young led his followers to a new home in the West in 1847, he was looking for isolation. Had the Spaniards returned to Utah with missions, pueblos, and presidios, we would no doubt have on the Utah map today such place names as Santa Catarina, Dulce Nombre de Jesus, San Andres, and San Antonio de Padua, instead of Lehi, Nephi, Moroni, and Bountiful.

sumed that the fathers "did not become sufficiently curious to visit this wonderful lake."¹² On the contrary, the Spaniards were very interested in the body of salt water which the Indians informed them was "noxious and extremely salty," and that a "person who moistens any part of his body with the water of lake immediately feels much itching in the part that is wet."¹³ But they were not curious enough to take the time to journey north because of the lateness of the season, the distance they had yet to travel, and the primary purpose of the expedition which precluded their making unnecessary sidetrips.

Roberts does not mention at least one important observation in his interpretation of the expedition. Bernardo Miera y Pacheco, the retired military captain and engineer who accompanied the group, produced a map of the regions traversed and included some intriguing descriptive notes on it, one that tantalized the Spaniards by reporting:

They say there are many large tribes of Indians on the other side [of Utah Lake] who live in organized communities. The timpanogos Indians say that the tribes living on the west side of their lake, and on the high ridge of mountains which is seen in that direction from their huts were formerly their friends and that they make the tips of their arrows, lances and macanas of a yellow metal, in accordance with ancient traditions.

Surely the mention of yellow metal, which might be gold (but was probably copper from the Bingham Copper area), would have interested the gold-hungry Spaniards. No doubt it did, but conditions were such in New Spain in the last quarter of the eighteenth century that they could do nothing to confirm these reports. This is a further indication of how far the Spanish regime in the New World had slipped, and one of the reasons the Mormons and the Indians had Utah all to themselves in 1847.

Certainly B. H. Roberts' minor errors and omissions are not serious enough to challenge his credibility as a historian, but they do serve as a worthwhile exercise in historiography and a reminder to the rest of us historians that no matter how well done a history seems to be, continued research and updating will always be necessary.

¹²Roberts' *Comprehensive History*, p. 247.

¹³Domínguez-Escalante Journal in Bolton, *Pageant in the Wilderness*, p. 186.

ADVICE FROM A PROPHET: TAKE TIME OUT

Richard O. Cowan

Keeping fit is an ideal that has been advocated prominently during recent years both in and out of the Church. Yet some Latter-day Saints wonder if there is time for physical recreation or relaxation when there is so much that needs to be accomplished. Many cite the examples of Church leaders who "labor tirelessly in the Lord's work."

Two letters, found at the Church Historical Department, may bring perspective to our understanding of how some of the General Authorities have dealt with the pressures confronting them. In this exchange of letters eighty-year-old Heber J. Grant counsels a younger apostle, Joseph Fielding Smith, who some thirty years later would himself become the President of the Church. Notice the spirit in which the President's advice was given and received.

President Grant spoke from experience when he gave counsel respecting rest and physical activity. His interest in sports began early. For example, as President Grant spoke of overcoming difficulties through persistent effort (one of his favorite themes), he often cited his accomplishing the goal of playing on a championship baseball team.¹

In his mature years Heber J. Grant faithfully exercised thirty to forty-five minutes each morning before leaving his room. In 1931 he observed:

I have excellent health, and attribute part of it to the fact that for several years past I have seldom missed a day without taking exercise unless I had the privilege of playing a game of golf.²

Without a doubt golf was one of President Grant's favorite pastimes, and he found time for this game as often as he could. His diary records a sense of pride when he was able to win a game and post a respectable score. "There is no question about it," he wrote, "golf does take one's mind off everything else and refreshes the body and the mind."³ Nevertheless President Grant often combined business with pleasure, discussing important ecclesiastical or business

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¹See, for example, Heber J. Grant, *Gospel Standards* (Salt Lake City: Improvement Era, 1941), pp. 342-43.

²Heber J. Grant Diary, 19 May 1931, Church Historical Department.

³*Ibid.*, 2 April 1930.

matters with his golfing companions; this was especially true during his frequent trips to southern California.

Another feature of President Grant's regimen was a one or two hour nap taken each afternoon in his office. He recalled: "I got a new lease on life when I was in England by learning to take a nap after my noon meal, which I still do nearly always."⁴ The following is President Grant's letter:⁵

December 31, 1938

Elder Joseph Fielding Smith
Building

My dear Joseph:

I was delighted last night to listen to you and your good wife sing. I am thankful to think you are going to take a little bit of time to sing and to visit with your loved ones, instead of working, working, working. I am sure that the singing will prolong your life.

I don't want to flatter you, Joseph, but I want you to know that I consider you the best posted man on the scriptures of the General Authorities of the Church that we have. I want you to prolong your life, I want you to make a business of trying to take care of yourself.

Now I am not overworking so long as I can get my quota of good sleep. I am not the least bit alarmed if I go on singing and traveling around releasing myself from the steady grind of work. I want you to do the same to the best of your ability. Your father worked altogether too hard. If he had taken a little more exercise, moving around, traveling away from home, and getting away from the cares and troubles of other people, it would have been better for him. He took a greater interest in the welfare of other people than almost any man who ever lived. He was my ideal of all the brethren from my childhood up to the day of his death. I am very grateful indeed for the fine letters I have had from him, my dear cousin.

May the blessings of the Lord be and abide with you perpetually, and may you be enabled to work less and accomplish more, is the prayer of my heart. I am,

Your affectionate relative,

HEBER J. GRANT

⁴Ibid., 31 December 1935.

⁵Ibid., 31 December 1938, and following pages for Grant's letter and Smith's reply. The reader may wonder why these two Church leaders referred to each other as "relative" and "kinsman." Joseph Fielding Smith was a grandson of Hyrum Smith, Joseph Smith's brother. Heber J. Grant's mother had been sealed to the Prophet Joseph Smith before her marriage to Jedediah M. Grant; thus, in terms of the temple sealing line, Heber was an adopted son of Joseph Smith and a first cousin, once removed, of Joseph Fielding Smith.

Elder Joseph Fielding Smith, the recipient of President Grant's counsel, was also physically active and "vigorously interested in sports." He regularly enjoyed swimming and other activities at the Deseret Gymnasium next door to the Church Administration Building. He was "an able and enthusiastic handball player."⁶

In his later years, President Smith found relaxation in flying in jet airplanes. One of his biographers recalled:

I remember my surprise one day when I called at his office in Salt Lake City. His secretary . . . said, "Step to the window here and maybe you can see him." Curious, I walked to the window. But all that I could see was a jet streaking through the blue sky high above the Great Salt Lake. Its trail of white vapor clearly marked some steep climbs, loops, dives, rolls and turns. . . .

"You mean he's in that plane?" I asked incredulously.

"Oh yes, that's him all right. He's very fond of flying. Says it relaxes him. A friend in the National Guard calls him up and says, 'How about a relaxing?' and up they go. Once they get in the air he often takes over the controls. . . ."

I could not resist driving to the airport to be there when he landed. As the two-place T-bird roared down the runway to a stop, from the rear cockpit, in suit and helmet, climbed this benign old gentleman, then about 80, smiling broadly. "That was wonderful!" he exclaimed. "That's about as close to heaven as I can get just now."⁷

Joseph Fielding Smith had married Jessie Evans, a well-known opera singer, on 12 April 1938. President Grant's letter indicates that the apostle and his bride were already singing together. Elder Smith did heed the President's counsel to continue singing, but in later years he sometimes referred to singing in public with his wife as a "do it" rather than a duet.

Here is Elder Smith's reply:

January 3, 1939

President Heber J. Grant
Presidents Office

Dear President Grant:

Words fail me in attempting to express to you the great joy that came to me when I read your very kind letter of December 31st. I felt a lump come up in my throat and was touched deeply.

⁶Richard L. Evans, "Joseph Fielding Smith, President of the Quorum of the Twelve," *Improvement Era*, September 1951, p. 627.

⁷Joseph Fielding Smith, Jr. and James J. Stewart, *The Life of Joseph Fielding Smith* (Salt Lake City: Deseret Book, 1972), pp. 1-2.

I shall try to profit by your counsel, and let me assure you that I prize this letter among the greatest of my earthly possessions.

It is needless for me to say to you that my father has always been my greatest inspiration. Never has temptation come before me in any form that the first thought that crossed my mind was "What would *Papa* (for that is what we children called him) say?" I have tried always never to do anything that I felt would grieve him or cause him sorrow.

Now that he is not here, I appreciate your many kindnesses and pray the Lord to bless you abundantly. I uphold and sustain you with all my heart and wish you every blessing that in righteousness you could wish, and prolonged life to guide Israel.

With sincere appreciation, I remain,

Your kinsman and brother,

JOSEPH FIELDING SMITH

Mormon Bibliography

1975

Chad J. Flake

Ralph Hansen has recently announced his intention to resign after ten years of editing *Dialogue's* "Among the Mormons: A Survey of Current Literature." Ralph has made many important contributions to Mormon bibliography during the past sixteen years. In his work with *Dialogue*, he published bibliographies of theses and dissertations as well as general bibliography: his work was always witty, informative, and concerned with an amazingly wide range of topics. In addition to "Among the Mormons," he initiated "Mormon Bibliography" in *BYU Studies*, and edited that column from 1960 to 1962.

With his resignation, Ralph will be able to devote more time to projects relative to his work as acquisitions chief at Stanford University Library. We shall all miss his column.

In the current "Mormon Bibliography," most references to Church periodicals (except selected references from the *Ensign* and the *New Era*) have been omitted, inasmuch as they are published in a separate index. As always, great reliance has been placed on *Mormon Americana*, Volume 16.

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Book Reviews

INSTANT EXPERTISE ON BOOK OF MORMON ARCHAEOLOGY

A review article by John L. Sorenson, professor of anthropology and sociology at Brigham Young University.

One of the cultural tragedies of these times is the looting of the sites and monuments of the past. A prime force behind this piracy is the desire of foolish people of wealth to possess tangible emblems of taste and refinement. They rarely invest their own efforts in order to understand history or to sense meaning in the art of past civilizations. They are satisfied with the mere externals—with instant evidence of being cultured. And the gluttony of these ignorant rich is at least as condemnable as the looting itself.

The LDS book market shows similar swashbuckling. Many Mormons are willing to spend money for instant evidence of knowledge rather than to labor for the knowledge themselves. The result is consumer demand for intellectual loot. This is especially true about scholarly study of Book of Mormon archaeology. At least from the time of George Reynolds the Saints have avidly bought books which claim to offer them inside information on this scripture, particularly on its geography or what are termed "external evidences." Some of these sources have actually been helpful to the serious reader. Many more, and these are the concern here, have harmed more than helped.

In terms of sales, these works have been dominated by the books by Dewey Farnsworth and his wife Edith, whose *The Americas before Columbus* has recently been reissued ("Fourth Printing," Sacramento, California: Rich Publishing Co., 1975, \$4.95, 176 pp.), nearly thirty years after its first appearance, but unchanged except for muddier-looking plates and a soft cover. Long ago I wrote a detailed review of Farnsworth's *Book of Mormon Evidences in Ancient America*, which differed little from the one now on sale. The naive use of sources, logical inconsistencies, cut-and-paste quotations, and harmful effects on the Church are pointed

out there (*University Archaeological Society Newsletter* No. 18 [25 February 1954]:2-5; and in the UAS anthology *Progress in Archaeology*, 1963) in excruciating detail which I have not the heart to repeat.

Another perennial favorite in the same class has also reappeared: Jack West's *Trial of the Stick of Joseph* (Sacramento: Rich Publishing Co., 1975, \$2.90, 92 pp.). An expanded, cartoon-illustrated version appeared in 1971 as *The Book of Mormon on Trial* (Compiled by John W. Rich, Sacramento: Rich Publishing Co., 1971, \$4.95, 245 pp.). The evidence and argument in either version are, if anything, more distressing than those in the Farnsworth book. At least the latter only reprints snippets from outdated sources to construct a picture which is thoroughly confused but not hostile to anyone. The West books use a "trial" format to misrepresent scholarship and show scholars as at best bumbling fools and at worst as willing enemies of truth. The assertions put into the mouths of the experts cannot be checked for accuracy because of inadequate documentation, but many of the statements are implausible and some are absurd. The overall impression given is that if Latter-day Saints use a few rhetorical tricks and imaginative selection of "evidence" in the worst tradition of the trial lawyer, those so-called experts who refuse to believe the Book of Mormon can easily be put in their places and we'll live happily ever after.

Paul Cheesman's books are bidding to take the place of Farnsworth's in current LDS publishing. His *These Early Americans: External Evidences of the Book of Mormon* (Salt Lake City: Deseret Book, 1974, \$5.95, 298 pp.) was heavily promoted last year in the wake of an earlier book of pictures. *These Early Americans* is based directly on a thesis he completed at BYU. More a catalog or compilation than an exposition, the writing is disjointed, and a consistent argument is hard to discern. If there is a central idea, it is that certain cultural features mentioned in the Book of Mormon are indeed attested by non-LDS scholars. Quotations from or paraphrases of those scholars constitute a very large part of the text (one quote is three pages long). In some instances the intent of the scholar is turned on its head. For example, Robert Wauchope of Tulane University, who wrote a chapter in his *Lost Tribes and Sunken Continents* (1962) which pokes fun at the Book of Mormon, is made by Cheesman (page 24) to appear to support an Old World origin for New World civilization, which he absolutely does not. In others the "evidences" are of doubtful significance,

although in some cases information of value is conveyed, as concerning wheeled "toys," for example. The sources cited, though somewhat more frequently sound than Farnsworth's, still indiscriminately mix oddballs with reliable scholars. Too often the latter's statements are torn from context.

An inquiry about whether permissions had been solicited for the extensive quotations drew the response that it was not felt necessary. This loose procedure should be challenged on ethical grounds.

I do not presume to judge the motives of Farnsworth, West, Cheesman and others who publish in this vein. They seem to be zealous believers in the Book of Mormon. But zeal does not improve poor scholarship.

Then what is the harm from such publications? First, they train the reader that serious, critical thought is unnecessary and maybe even undesirable, that any source of information will serve no matter how unreliable, and that logical absurdity is as good as sound analysis. Second, the reader gets the false impression that all is well in Zion, that the outside world is being forced to the LDS point of view, and that the only role LDS scholars need play in Book of Mormon-related studies is to use scissors and paste effectively. Third, the underlying complexity and subtlety of the Book of Mormon are masked by a pseudo-scholarship to which everything is simple. This third effect encourages critics—e.g. John Price in *The Indian Historian* (1975) or Michael Coe in *Dialogue* (1973)—to set up a straw-man Book of Mormon to attack based on what Mormons have said about it instead of what it says itself. Coe, for example, knows little about the book, but he wrote from Mormon sources, after all. If we are willing to settle for surface reading and shallow study, why should a non-Mormon scholar expend energy to dig seriously into the Book of Mormon?

The Book and the Map. New Insights into Book of Mormon Geography, by Venice Priddis (Salt Lake City: Bookcraft, 1975, \$3.95, 169 pp.), differs in focus from the volumes discussed above, but the quality of scholarship is similar. Ignoring all past serious study on Book of Mormon geography, Priddis picks one "key" statement and builds a fanciful picture of the Book of Mormon lands to accord with it alone—a picture, incidentally, that requires the Amazon and the Plate River basins to lie entirely under water. The evidence adduced is trivial, and the arguments are fatally flawed at point after point. Anyone willing to be this selective in

what is to be noted and what ignored could construct at least two dozen other geographical correlations for the Nephite scripture which could be equally (im)plausible.

As with ancient art for the ignorant rich, the "demand" from large numbers of Saints for easy explanations of difficult subjects which they are unwilling to pay the price to understand lies behind the exploitation represented by these volumes. Ancient Israel insisted Samuel give them a king, and with equal impatience, LDS readers today bring down on their heads the kind of books that serve them right.

But all this criticism may be too narrow. There is plenty of evidence that we Latter-day Saints are gullible on many subjects, not just this one. President Harold B. Lee expressed impatience with the rumor-mongering which is endemic among Mormons. Our folklore is rich from similar impulses. The too-generous standing ovations at BYU are becoming legendary. Salt Lake City has earned a nationwide reputation as a center for stock fraud, and Douglas Stringfellow beguiled Utahns for years. Now, if these tendencies are necessary accompaniments of the naivete of the meek, it is a small price to pay: far better to associate with a people having enough faith left that they *can* be gulled than to endure the company of the permanently cynical who fill so much of the world. But couldn't we find a compromise position in which the wisdom of the serpent protected us more often from the consequences of dove-like innocence? Hyrum Smith observed in 1844, "It is better not to have so much faith as to have so much as to believe all the lies." The burden of repentance, I suggest, rests upon us all: on the reader who must be more critical and demanding of the writer whose work he buys, and on the writer who must be more critical and demanding of himself.

ELIASON, JOYCE. *Fresh Meat/Warm Weather*. New York: Harper & Row, 1974. 145 pp. \$6.95.

Reviewed by Mary L. Bradford, editor of *Dialogue: A Journal of Mormon Thought*.

The jacket on *Fresh Meat/Warm Weather* proclaims this book a "novel." But "Notes for a Therapist" would be a more fitting designation: a collection of dreams, jottings, letters, poems, reminiscences and jokes prepared by the patient in the hope that the

therapist will be able to stitch them into a life. This form puts all the burden on the reader, who, playing the therapist, must ask "What is this troubled, disoriented young woman trying to tell me?"

Born in Manti, Utah of "Jack Mormon" parents, the heroine of this autobiographical novel disappoints her father by being a girl, tries unsuccessfully to win the approval of her beautiful older sister, wonders fleetingly about various doctrines of the Mormon faith, and goes off to college in the big city—Salt Lake City. There, she contracts a disastrous marriage, becomes a mother, divorces and decides to move to Los Angeles. Somewhere on the Hollywood freeway she loses her acting ambitions, becomes a script writer and marries again—again disastrously. All of this is told in one or two paragraph flashbacks, complete with irritating switches in point of view.

As the reader-therapist, I would want to explore her relationship with her sister; I would want to know more about her feelings for her father. Mourning becomes her at the end of his life and at the end of her book, when she identifies herself by the pet name he called her in her childhood, and says, "And then she knew who she was." Does this mean that she was just Daddy's little girl all along? If so, so what? Does this represent growth on her part?

And what am I to make of the passage, a few pages later, when she visits her therapist and sums up her life in these words: "I don't want to immobilize a man in order to keep him anymore. Maybe I don't even want a man anymore. Maybe I just want me. It is clear now. Clear as the green glass bookends that look like water."

An admirably liberated statement I think at first, and then I look at the choice of words. The use of "maybe" twice in one passage seems to cancel out the assurance of "It is clear now." And are the bookends simply a weak attempt at metaphor or an ironic lack of clarity?

I am alarmed that she would simply divest herself of her relationships with men, or threaten to, without exploring her reasons for always choosing weak men instead of strong ones like her father and her grandfather, while at the same time harking back to her pioneer heritage in a seeming attempt to find her own strengths. Why else would fitful installments from a letter supposedly by her dead grandfather keep turning up on the left hand pages, and finally ending the book? (on the right hand side).

She seems to blame the system into which she was born (the

Mormon Church and Manti) for her mixed-up life and yet leaves that unexplored as well. The childhood memories, of her dog, her playmates, the town dentist, the store, the Church, the Temple, all seem tame and normal and undeserving of blame. Yet she rails away: "Another lesson learned from the Mormons: Don't go thinkin' you're too good. Don't tell your daughter she's pretty or it may go to her head. Don't get the big hat. Be humble." This is a few pages after "We had been baptized into the Church but didn't believe it. But it was a good way of life." A clear inconsistency, but consistent with her disorientation.

Much of her trouble seems to stem from a frustrating search for her identity as a woman. She is unsure of her appearance and worried about growing older. Her relationships with other women are unsatisfying; and remembering a certain Aunt Reba who died of cancer, she fears her own death. These attitudes often bring on self-conscious litanies like this one (masquerading as a poem): "There is something dead/about the way I do the dishes/ and wipe off counter tops/ and move my legs/ and sit and stand."

The writing is often as flaccid as a teenager's diary, the figures trite: "Sometimes I feel completely flat like something just ran over me," and "He looked like a piece of paper." There are old jokes, one attributed to her daughter: "No, I'm not a Mormon, I'm just a human being"; and one to her grandfather: "When God passed the rule about not drinking coffee, he didn't mean the Danes." The scenes dealing with sex are awkwardly written. The writer seems to be watching herself writing and thinking "How daring!"

I must admit, however, that I am attracted by the immediacy of some of the descriptions of people and places—Manti often comes alive—and to the insight the writer shows in dealing with certain cultural discomforts. Her definition of a Jack Mormon:

Jack Mormons are Mormons who aren't really. Or aren't all the way. It usually means they are Mormons but they don't keep the Word of Wisdom which forbids the use of tobacco, alcohol, coffee, tea, Coca-Cola, drinks too hot or too cold or anything that's bad for the body. When you ask somebody "Are you a Mormon?" and he says he's a Jack Mormon, that means he takes a drink. It also excuses him for almost everything.

Later at a Hollywood party she is thrilled to be noticed by a "famous man with a legendary background." As he approaches, she wonders if he is attracted by her purple dress or by her legs.

"I understand you are from Salt Lake City," he says, and then rhapsodizes over the mountains, the Temple, and the Sky Room at Hotel Utah. When he asks the inevitable "Are you a Mormon?" she thinks the right answer is "No." But he is disappointed and moves away with the words, "I have always loved the Mormons."

"Well, actually I WAS I wanted to yell out to him. I could have said Yes, but now he is gone. . . . It wasn't my legs."

Such flashes of humor and insight make me wish that Joyce Eliason had been able to turn these notes into a novel.

MERRILL, MELISSA [pseud.]. *Polygamist's Wife: The True Story of One Woman's Struggle with Modern-Day Polygamy*. Salt Lake City: Olympus Publishing Company, 1975. 167 pages. \$7.95.

Reviewed by Elouise M. Bell, assistant professor of English, Brigham Young University.

Polygamist's Wife is the true story of a woman married to a modern-day polygamist for more than twenty years. Now, a good book about the problems, lifestyles, conflicts and circumstances of contemporary polygamy is long overdue. Though obviously no reliable statistics are available, reasoned estimates tell us that several thousand men and women in Utah and surrounding states are currently living in plural marriage. Theological considerations aside for a moment, from a purely scholarly point of view, an accurate account of a polygamous marriage of the 1970s would be valuable—clearly important for scholars of history, psychology, sociology, women's studies, and other disciplines. And without question, such an account would be interesting to laymen both in and out of the Church, given America's stormy background on the principle. Sadly, *Polygamist's Wife* is not even a start in the right direction.

The story is written as a first-person account of "Melissa Merrill's" twenty-two year marriage to "Frank Merrill." (Real names are not used.) In actuality, however, the book was written by a second party, from conversations with the wife and from her journals and diaries. And herein lies the problem of the book.

"Melissa Merrill," if one can judge from this account, is an extremely hardworking, long-suffering woman, steadfastly devoted to her twelve children and, through most of her life, almost superhumanly obedient and submissive to her husband. But "Melissa" is obviously not a woman of even ordinary perception, perspective, or judgment. We cannot fault her stalwart spirit; we cannot help

but question her common sense. She is not the kind of person who could look at the highly melodramatic events of her life and put them together with any insight. Thus, she herself could not very well have written a meaningful book firsthand. But that does not mean her story lacks value, or could not be effectively told.

Two methods, at least, lay open to the publishers. If "Melissa's" diaries and journals were ample enough, these could have formed the core of the book. They could have been shaped by the hand of a skilled editor who knew how to select judiciously and how to supply in footnotes or in narrative links the material needed for smooth transition between journal entries.

If such material were not available in quantity, the book could have been written as a biography, by an author using "Melissa's" account as a point of departure, but supplementing her words with much other material—research into her background, conversations with some of her twelve children (several of whom are now grown and married), talks with bishops and other Church leaders who knew of "Melissa's" situation, interviews with some of the other wives, etc.

The first sort of book, the diary version, would have given the reader "Melissa's" own words, so that he could judge for himself the mind and spirit of a woman who could live a life like this—a woman who was uprooted thirty-eight times in twenty-two years, who let her children sleep on the floor for two years, though her husband was driving a new car, who watched her spouse become so greatly concerned about numbers and so little concerned about individuals that at one point he asked, "How many children have we now?" For it is the motives, the rationale, the inner workings of the mind and the emotions that are absorbing in a situation like this. "Melissa's" life itself—a seemingly endless round of childbirth, bone-crushing physical work, deprivation, deception, and mistreatment—is not one that a reader cares to hear about in detail. For one thing, it rapidly grows monotonous, and one becomes impatient with the trivia of all the crowded, infested houses, the sicknesses, the unpaid bills, the petty wranglings between wives. No, the story, though staggering, is not very interesting. But if we could have had insight into the minds behind the story—"Melissa's" and those of her husband, sister-wives, their many children—then we might have had enlightenment. A diary or journal account would have challenged the reader to construct from the excerpts the true nature of this valiant, if misguided, soul.

On the other hand, a straightforward biography of "Melissa" would have given us what every good biography gives us: a perception of the pattern of a life. A talented, intelligent writer could have brought judgment and understanding to bear in such a way as to explain how and why such things could happen in our Rocky Mountain West in the 1970s.

As it is, we hear neither the pure, unadorned voice of "Melissa" herself, nor the reasoned, illuminating voice of a skilled biographer. What we have instead is a make-believe voice—a first person, an "I," who comes across as superficially lucid, coherent, and reasoned, yet in reality offering neither the undiluted, experienced emotion and authenticity of the real wife, nor the perceptions of a trained objective researcher.

Of course, one feels sympathy toward "Melissa." We cringe at her attempts to overcome "selfishness" as the first sister-wife comes along, aggressive and domineering. We see her toil unremittingly while sick and underfed, see her hand-cleaning two tons of wheat dumped in her garage as payment for some of her husband's nebulous services to someone. We sympathize as she sends her children out to beg rags from neighbors, on the pretext of needing them to make rugs, but actually using them to make clothing enough to send her brood to school. We marvel at her obedient efforts to make a home in Southern Utah "on a hundred-acre farm where we could be self-sufficient and separate from the sins of the world." There, she and her little ones move into a trailer with broken windows, torn screens, rat droppings, holes in the ceiling, a nonfunctioning refrigerator, sinks that don't drain, no running water and no electricity. What they did have were black flies, mosquitoes, and 107° temperature. Her husband made two visits in six months to provide her with the incentive to carry on.

Yes, we feel sympathy for "Melissa." But a book is not a fundraising pamphlet. Its purpose is not primarily to arouse our sympathies. Instead, it should inform us, enlighten us, teach us—or perhaps just delight and entertain us. We should feel something when we finish reading a book—we should say, "That was exciting," or "That was stimulating," or "I know much now that I didn't know before," or "I have experienced vicariously some things that I would never have experienced otherwise." But *Polygamist's Wife*, since it does not, like fiction, recreate experience for us, nor, like biography, interpret experience for us, nor, like journals and

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.

OAKS, DALLIN H., AND MARVIN S. HILL. *Carthage Conspiracy: The Trial of the Accused Assassins of Joseph Smith*. Urbana, Chicago, London: University of Illinois Press, 1975. xiv + 248 pp. \$7.95.

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 assuring 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*

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

This, indeed, is a fair representation of the position of the gentiles in Hancock County. And it is also a fair description of the light in which they perceived their adversaries. The Mormon concept of the "higher law," however, is somewhat more complex than the authors make it out to be. The extreme reluctance of the Mormons 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 professed 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, according 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 servants." 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 example, that at least some of the Mormon participants in the Mountain 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.

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