

REVIEWS

Edited by Edward Geary

The Law Above the Law

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Carthage Conspiracy: The Trial of the Accused Assassins of Joseph Smith. By Dallin H. Oaks and Marvin S. Hill. Urbana: University of Illinois Press, 1975. 249 pp., \$7.95.

"The murder of Joseph and Hyrum Smith at Carthage, Illinois, was not a spontaneous, impulsive act by a few personal enemies of the Mormon leaders, but a deliberate political assassination, committed or condoned by some of the leading citizens in Hancock County." Thus begins the chapter, in *Carthage Conspiracy*, titled, "Murder . . . by a Respectable Set of Men." From the beginning it is apparent that authors Dallin Oaks and Marvin Hill have escaped the traditional, legendary approach to the martyrdom of Joseph and Hyrum Smith.

For the most part, traditional Mormon accounts of the Smiths' martyrdom do little more than relate the salient facts of June 27, 1844, at Carthage Jail, and label the murderers a "mob." A mob they undoubtedly were that day, but such a constant characterization fosters their anonymity and allows members of the faith, on the theory that persecution is the fate of Saints and martyrdom the fate of prophets, to regard early Mormons as capable of no wrong and anti-Mormons as capable of no good. It is an exploited misconception.

Nonetheless, the leaders of that "mob" were subsequently arrested and tried for murder, in a case scarcely mentioned in Mormon histories. For the first time, *Carthage Conspiracy*, undertakes an in-depth analysis of *People v. Levi Williams* and in doing so makes three significant contributions to Mormon historiography.

First, the fact that a trial ever took place at all will surprise some, but the fact that the trial was conducted by a competent judge in a judicial manner, with a good prosecuting attorney, will astonish many. Presiding was Judge Richard M. Young, a former United States Senator, who was "probably the best known and most experienced of the justices of the Illinois Supreme Court." For the prosecution was Josiah Lamborn, a former Illinois Attorney General, who was regarded as "one of the most colorful, successful, and feared criminal lawyers of his day," and who "had a reputation for winning impossible cases."

Second, the fact that the defendants were men of respectability and had notably successful careers following the trial shatters the "mob" concept and the "persistent Utah myth" that the fate of the persecutors of the Prophet Joseph Smith was tragic. For example, following the trial the most out-spoken anti-Mormon of the day, Thomas C. Sharp, went on to become an educator, lawyer, mayor, candidate for Congress, and judge of Hancock County, where he was "greatly esteemed." Another defendant became president of the Arizona territorial legislature, and another became the United States' Attorney for the eastern district of Missouri. Hardly tragic, and hardly the type of people we generally tend to associate with a "mob."

Third, regard for the law was a fundamental element in the Mormon non-Mormon conflict while the Mormons occupied Nauvoo. Many examples of Mormon political and economic hegemony can be cited, but when Joseph Smith had the *Nauvoo Expositor's* printing press destroyed, "this act infuriated the non-Mormons of Hancock County, who saw it as a final act of contempt for their laws." As one citizen expressed, following the martyrdom, "Why be so concerned that extra-legal process was used against the Smiths when law had been long dead in the county?"

Details of the trial obviously constitute the major portion of the book. All the while the reader has the benefit of Oaks' legal commentary as he analyzes the legal arguments, explains the law, and criticizes the attorney's handling of the case. For the lawyer and layman alike, it is an interesting treatise.

The theory by which the prosecution had to link the defendants to the murders was conspiracy; for without conspiracy only the man who pulled the trigger would be guilty. But the task of proving conspiracy with unfriendly witnesses in a hostile environment was extremely difficult and not made easier by Church leaders' refusal to help. For the sake of peace not even Apostle John Taylor, one of the two men with the Smiths at the time of their deaths, would testify at the trial, and he went to unusual lengths to avoid being subpoenaed.

This may very well provide a fundamental key to understanding why non-Mormon witnesses seemed to know more than they told, and why the non-Mormon jury voted for an acquittal. "If peace was so important to the Mormons that they wouldn't press for convictions, why should the non-Mormons risk their future accord with powerful groups in the county in order to convict men like Thomas C. Sharp, especially when a conviction would almost surely shatter the uneasy peace in Hancock County?"

One of the highlights of the book is the treatment given the philosophical questions posed by the issues at trial: "What is the ultimate source of authority in a democratic society—who should have the final say?" Should men seek their guidance from a "higher law"—a law above the law? Should "jurors, as spokesmen for the community, enforce the law . . . (or should) they excuse the crime by recourse to a supposed higher law of popular approval?"

Carthage Conspiracy discusses these questions exclusively in the introduction and concluding chapter, providing the answers of such noted authorities as Henry David Thoreau, John C. Calhoun, Abraham Lincoln, Thomas Jefferson, and Roscoe Pound. However, the reader is advised to be alert throughout the entire book for some of the most perspicacious answers—those provided by the very participants in the trial themselves. The treatment afforded the attorney's, defendant's, and witnesses' own statements is excellent.

Nonetheless, the book does have one weakness, and that is in the paucity of parallels between the acts of the anti-Mormons and the Mormons. Better perspective to just what kind of people the citizens of Hancock County were facing would have been given had the authors devoted a chapter to similar Mormon acts. If only a scintilla of the evidence regarding the Danites, Orrin Porter Rockwell, Bill Hickman, or the perpetrators of Mountain Meadows Massacre is true, it is quite likely some Mormons, and Mormon leaders, would not fare any better under close scrutiny than do the defendants.

Notwithstanding the above, the authors are to be commended for their analytical approach and the contribution they make to a more objective understanding of

Mormon history. In the Preface, they state, "We have tried to look at the trial as a significant legal event in Mormon and American history." Though the book will undoubtedly have a greater drawing among Mormon historiographers than strictly American historiographers, the authors' goal, in this reviewer's opinion, has been admirably achieved. First, because they have examined a trial which provides an insight into the nature of law, justice, and civil disobedience, not only on the pre-Civil War, western frontier, but in the American democratic society. Second, because they have provided much new and needed information regarding an important aspect of Mormon history.

For those who like their history salted with a little philosophy, this book is suggested reading. For those who like Mormon history, philosophy, and the law, this book is a "must."

This book has not been the authors' first venture into Mormon legal history. *Carthage Conspiracy* picks up where Oaks left-off in an article titled, "Suppression of the Nauvoo Expositor" (*Utah Law Review* 9 (1965), 862). Hill has written an article titled, "Joseph Smith and the 1826 Trial: New Evidence and New Difficulties" (*BYU Studies*, Winter 1972, p. 223). If the authors are open to suggestions for their next book, may I suggest they begin where Hill left off with Joseph Smith's 1826 trial.

A Quality Lacking

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Polygamist's Wife. By Melissa Merrill, as told to Marian Mangum. Salt Lake City: Olympus Publishing Co., 1975. 167 pp., \$7.95.

"Oh Mother, Father will look so pretty for his wedding!" In these words this book begins and one feels instantly the poignant picture of the woman, Melissa, pressing her husband's suit, a job she had done many times before, "but this particular evening he would wear the well-worn garment to marry another woman. . . . We were entering the practice of polygamy and Frank was taking a second wife." From this time forward Melissa's somewhat ordinary life—a very young bride who on the day of her marriage was having morning sickness, and mother of four before she was twenty-five—would take on a very different tone. From this time forward she would live outside the law of her country and her church.

The book, which is a compelling chronicle of one woman's experiences in modern day polygamy, is well worth reading. It is a true story, dictated onto a tape using the personal journal which Melissa had kept over the years. The narrative moves well, with almost no editorializing, as it recounts the day to day crises and tedium of caring for a large family with meagre supplies, constantly on the move, and with a husband who provides only sporadically and then not too amply. From the pages of this extraordinarily well edited account of constant struggles which grew more difficult as Frank took other wives, a tender, loving woman emerges. It must be noted that Melissa loves "not wisely" and perhaps "too well." One keeps turning the pages, sometimes in disbelief, sometimes in anger, sometimes in sympathy, sometimes in tears, but driven to the last page hoping against hope for a turn