

## Mormonism and the American Constitution

*By the Hands of Wise Men: Essays on the U. S. Constitution.* Ray C. Hillam, Ed. Provo, Utah: Brigham Young University Press, 1979. 128 pp. \$4.95

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Mormons have long embraced the Constitution of the United States as a special document, even at times citing its various provisions as quasi-scripture. While scriptural evidence supports the view that the Constitution was, or perhaps is in some sense the "inspired" product of "wise men whom God raised up," neither the meaning of this Mormon Constitutional view nor its theological relevance has ever been carefully worked out. A host of questions require consideration in order to understand the place the Constitution plays in Mormon thought. Was the "inspiration" exhausted with the drafting of the original text in 1787, or was the later addition of the Bill of Rights also sanctioned by divine blessing? What about the post-Civil War amendments? Do the courts in giving content to the open texture of the Constitution qualify as "wise men" for Mormon purposes so that their decisions, like those of the Founding Fathers, also bear the stamp of inspiration? Or, is it fundamentally misguided to search for the hand of God in the substantive specifics of the Constitution rather than in the formal procedures and institutions which it establishes? If Providence shaped the American system of government, does it follow that all other systems are generated without supernatural influence? If so, how should Mormons view such political systems?

Answers to such questions are important not only as clarifications of abstract theology but also because the questions influence the way Mormons relate to one

another. Within the doctrine of an "inspired" American Constitution are at least two risks. In the first place, the doctrine might divide American Mormons into rival camps, each seeking theological justification for partisan political ideologies by appeals to the "inspired" Constitution. Secondly, this doctrine of special status for the American political order may alienate American Mormons and their international co-religionists if non-American social, political and economic systems are disparaged in light of the divine blessing given America and her Constitution. Whatever the significance of the doctrine in earlier times when Mormons were almost exclusively American and politically monolithic, the political diversity among American Mormons and the growth of the Church into an international organization necessitate a careful analysis of its present meaning. Thus, clarification of the Mormon view of the American Constitution should be welcomed by all Latter-day Saints. *By the Hands of Wise Men*, essays written by Mormon scholars from a variety of academic backgrounds, makes significant steps towards such clarification.

In his essay, *Virtue and the Constitution*, historian Richard L. Bushman assesses the importance of the American Constitution to Mormons in terms of the general framework of government created by the document rather than in its particular provisions. Thus, the Constitution provides little if any divine authority for resolving particular legal or political issues. Rather, it is the system of separation of powers and checks and balances, established by the Constitution in order to check selfish tendencies on the part of the American people as well as their political leaders, which accounts for the Lord's statement that the Constitution evidences "just and holy principles." It is God's commitment to "free agency" which explains His interest in the American politi-

cal order. But while Bushman sees the institutions and mechanisms created by the Constitution as neutralizing selfishness, he also emphasizes the ongoing importance of virtue in the American people lest they permit corrupting laws, those which restrict free agency, to be enacted. He admonishes us to be virtuous and selfless in order that free agency might flourish. We are to be "patriots", not in the chauvinistic sense of zealous loyalty to one's country in relation to other countries of the world, but in that kind of patriotism espoused by the early American revolutionaries which expresses itself in loyalty to one's country rather than to one's self.

Similar views are expressed in Martin B. Hickman's essay, *J. Reuben Clark, Jr.: The Constitution and the Great Fundamentals*. Hickman suggests that Clark saw the divine hand in the Constitutional grant of sovereignty to the people within a scheme of separation of powers tempered by checks and balances. Such a system permits the emergence of the rule of law, a legal order comprised of general and prospective rules binding upon all, which in turn protect civil liberty. Clark not only praised the governmental framework created by the Constitution but also saw divine inspiration in the substantive provisions of the Bill of Rights, particularly the First Amendment protections of speech and religion. Again, as with Bushman, the underlying theological concern is the promotion of free agency through a governmental system affording political and religious liberty. Hickman notes Clark's sensitivity to history as evidenced by his perception of the American Constitution as the culmination of a long historical process born in Anglo-Saxon political and legal experience.

In *The Enduring Constitution: A Document for All Ages*, Rex E. Lee, Dean of the Law School at Brigham Young University, agrees that while certain provisions of the Bill of Rights reflect divine principles, the "inspiration" of the Constitution rests essentially in the general system of government it creates. With Bushman and Clark, Lee finds divine wisdom in the concept of separation of powers as he also does with federalism. Lee also provides an interesting Mormon defense of judicial review as a necessary mechanism for imparting con-

tent to the vagueness and breadth of Constitutional language. As the courts are required to interpret the open-ended Constitutional text, the document is constantly being revitalized to fit the needs of an ever-changing society. Thus the vagueness inherent in the language of the Constitution is itself evidence of divine inspiration since a dynamic system of Constitutional law is thereby made possible. But lack of precision of the Constitutional text is not without its risks. Lee concludes his essay by cautioning against appealing to the Constitution as divine and irrefutable authority to support one's own political or economic views. Such appeals are tempting because divine countenance has been given to the Constitution and its breadth of language lends itself to a variety of interpretations supporting particular political or economic positions.

A somewhat different perception of the Constitution is presented by William Clayton Kimball in his essay, *The Constitution as Change*. Kimball, a political scientist, argues that a synergistic relationship exists between the written Constitution and the totality of social conditions at any given time. While the Constitution may have some effect in shaping political behavior, it is clear to Kimball that political behavior also has a great deal to do with defining the content of the Constitution at any given time. "[T]he Constitution is what the people say it is and what they will sustain it to be."

Kimball's view may be open to attack since it seems to condemn policymakers to a neglectful conservatism. For Kimball, law compelling radical social change should not be passed until society, as evidenced by the totality of social conditions, is prepared to comply with the change. Of course, when this point is reached, passage of the law may become unnecessary. Such examples as the Civil Rights Acts of the 1960's would seem to pose problems for Kimball's theory. Clearly that legislation caused momentous change in a society, particularly in the South, not otherwise willing to afford equal rights and opportunities to all citizens.

Kimball does not relate his views specifically to Mormonism. But he does join Bushman in admonishing the polity to be virtuous so that virtue may find its way into the Constitution.

In his essay, *Some Thoughts about Our Constitution and Government*, Neal A. Maxwell joins the plea for a virtuous citizenry, particularly one which loves and respects liberty and is informed about the vital issues of the day. Only such a citizenry can protect against corrupt political leaders and unwise governmental programs. Maxwell therefore urges individuals to live the gospel and to be involved in governmental and community affairs.

Perhaps the most ambitious of the essays is political philosopher Noel B. Reynolds's *The Doctrine of an Inspired Constitution*, which attempts to clarify exactly what it is about the American Constitution that justifies it in the eyes of the Lord. Reynolds focuses on the general governmental framework established by the Constitution, rather than its substantive provisions, as the essence of its "inspiration." Specifically, Reynolds equates the rule of law, made possible by such principles as the separation of powers and the system of checks and balances, with the "just and holy principles" sanctioned by God. He sees the virtue of a system governed by the rule of law in its promotion of individual freedom to pursue one's own ends without fear of being frustrated by impositions of the arbitrary will of others. One is able to shape one's own future through reliance on protections granted by rules derived through common agreement. The rule of law is theologically relevant because it protects free agency. Thus it is God's commitment to free agency which explains this interest in the American political/legal order. "[M]en are morally responsible for their acts only when they are free from the arbitrary compulsion of others." Unfortunately, Reynolds provides no criterion for defining "arbitrary compulsion," a defect in his theory to which one hopes he will attend in the future. But other problems are also left unanswered. If Reynolds is right in seeing the essence of Mormon commitment to the Constitution in terms of the pro-

cedural justice afforded by the rule of law, are Mormons ever justified in disobeying laws, upheld by the courts as Constitutional, which require actions or omissions inconsistent with religious obligation? Does Mormon constitutional theory provide a basis for morally justified civil disobedience as well as a theory of *prima facie* obligation to obey the law?

Because the theological importance of the Constitution rests in its protection of formal rather than substantive justice, it follows for Reynolds that there is no reason to assume that American government is necessarily the only one sanctioned by God. So long as a political system embodied the rule of law, "we [would] find that [such] forms of government [would] be established 'according to just and holy principles' in nations with different political cultures or social compositions." It would also follow that no particular economic order is necessary for government to be based on "just and holy principles" so long as political and religious liberty is protected by the rule of law.

A different perception of the role secular economic orders play in Mormon political theory is presented by economist L. Dwight Israelsen in *Mormons, the Constitution, and the Host Economy*. Israelsen argues that only capitalism can act as a suitable secular "host" economic system which will protect such present Mormon economic practices as tithing and the church welfare program. While these practices are temporary "lesser laws," serving as transitional substitutes until the utopian economic and political order of the "City of God" is fully established, tithing and the welfare program are, for now, essential aspects of Mormon practice which must be unhindered by secular political and economic influences. Capitalism, with its unplanned economy and legal protections of private property, is to Israelsen the best secular system from which Mormons can "withdraw" to practice their interim communitarian economic system of tithing and church welfare. "Withdrawal" from the host society does not mean physical removal or political secession but behavioral and institutional retreat from the secular society.

Israelsen goes further by suggesting that *D&C* 134:2, which gives God's blessing to "the right and control of property" as protected by the American Constitution, provides scriptural support for capitalism as the appropriate host system to support interim Mormon economic practices. Moreover, Mormon history offers evidence of a commitment to capitalistic institutions by church leaders when it became clear that the utopian religious system could not be immediately established. The Church's commitment to capitalistic institutions is, for Israelsen, most easily explained as a recognition by church leaders that a capitalistic "host" would best support Mormon communitarian economic interests (tithing and church welfare) until such time as the utopian order emerges. Hence it is religious doctrine which required, and still requires, Mormons to support capitalistic secular economies.

To illustrate these points, Israelsen identifies two necessary conditions for any host system compatible with Mormon interests in building their own economic order. First, the host economy must be basically devoid of central planning. Second, the rights of private use and disposition of property must exist. Given these assumptions, capitalism, a system viewed by Israelsen as grossly inferior to the utopian "City of God," clearly qualifies as the best secular host to accommodate temporary economic "withdrawals" in the form of tithing and church welfare.

One encounters a variety of problems with this thesis. In the first place, Israelsen never demonstrates why unplanned economies and protection of private property are *necessary* conditions for a host economy compatible with Mormon religious interests. On the contrary, it would seem that tithing and church welfare could be practiced within any society affording *religious* liberty, whatever the society's economic order. It is difficult to understand why systems of centrally planned economies with some protections of private property above the subsistence level could not permit tithing and church welfare to be practiced. But even if private property were absolutely precluded, church members could still donate ten percent of their time, talents or labor to the Church and to fellow church members as "tithing." Personal services in excess of ten percent could count as "welfare" contributions. Of course, such a system may not result in the accumulation of church wealth which occurs when tithing and church welfare are practiced in capitalistic contexts. However, Israelsen makes clear that the point of tithing and church welfare is not the accumulation of church wealth but rather the teaching of selflessness to individual members. It would seem that selflessness could be taught through tithing in the context of any economic order which did not force citizens to mere subsistence levels with no free time, so long as religious liberty is respected.

