

bell's love of the people and of this era are apparent. There is, however, little evidence that Campbell utilized recent research (since 1978) in either the text or the bibliography. The volume does give

readers new insights into the era of the establishment of Zion in the West. It also serves as evidence that the historical community is much better off for having known Gene Campbell.

## Latter-day Saints, Lawyers, and the Legal Process

*Zion in the Courts: A Legal History of the Church of Jesus Christ of Latter-day Saints, 1830–1900* by Edwin Brown Firmage and Richard Collin Mangrum (Urbana and Chicago: University of Illinois Press, 1988), 430 pp., \$27.50.

Reviewed by Michael W. Homer, an attorney practicing in Salt Lake City, Utah.

THE ATTITUDE OF NINETEENTH-CENTURY Latter-day Saints toward lawyers and the legal process is well documented and has been widely discussed ever since Joseph Smith studied law hoping to be admitted to the bar. What has not been completely understood, until the publication of this book, is the role played by the Church's ecclesiastical courts in Mormon jurisprudence in the nineteenth century.

Firmage and Mangrum's book is divided into three parts. The first two, entitled "Early Mormon Legal Experience" and "A Turbulent Co-existence: Church and State Relations in Utah," comprise approximately 70 percent of the book. Here the authors rely almost entirely on readily available published source materials, drawing heavily from secondary sources and making no claim that their summary reinterprets the Church's attitude toward the legal process or church-state relations. Nevertheless, these sections are valuable additions to Mormon history, containing the first comprehensive legal history of Mormonism.

The most significant contribution of the book is Part 3, "The Ecclesiastical Court System of the Great Basin." This section analyzes Church court decisions not previously available to scholars, used with special permission by Firmage and Mangrum.

The authors demonstrate that Church courts during the nineteenth and early twentieth centuries dealt with a wide range of subjects, including land disputes, water rights, domestic conflicts, contract disputes, tortious conduct, and other subjects now resolved by civil courts. These courts were central to the Church's goal of establishing Zion or the "kingdom of God"; they had exclusive jurisdiction over Church members involved in civil disputes (those attempting to resolve such disputes in the civil courts were subject to excommunication), and they offered an alternative to the divisive influence of the adversarial civil legal system the Saints detested. The ecclesiastical courts enabled the Saints to resolve social conflicts using their own notions of community and temporal affairs (p. 261).

The authors claim that Church court records demonstrate that high council decisions were remarkably uniform, relying extensively on scripture and instructions from Church leaders (p. 290). Unfortunately the court decisions discussed remain unavailable to scholars; they are unpublished, and the authors have not included the names of the litigants. This makes it extremely difficult to meaningfully evaluate their conclusions.

Nevertheless, some of the authors' conclusions about the legal process in Utah Territory are questionable. For example, they contend that the Church firmly believed in the separation of church and state and that even though the municipal high councils of the Church exercised both civil and ecclesiastical authority in the State of Deseret from 1846 to 1849, the merging of

Church and state during this brief period was "out of necessity rather than theological preference" (p. 126). The authors base this conclusion on the Salt Lake High Council's voluntary relinquishment of its jurisdiction in the city administration and the establishment of the provisional State of Deseret with legislative, judicial, and executive branches similar to those in other state and territorial governments. Even though the ecclesiastical court system remained after the municipal high councils were dissolved and had exclusive jurisdiction over disputes between Church members, the authors maintain that the "Mormons deferred to secular courts in criminal affairs and in civil disputes with nonmembers" (p. 24) and that the ecclesiastical courts were meant to deal only with disputes between Church members (pp. 24, 214).

Yet there is little or no evidence that the Saints deferred to secular courts (at least those controlled by non-Mormons) in criminal cases and in civil disputes with nonmembers. Firmage and Mangrum pay little attention to the Church's attempt to enlarge the jurisdiction of the probate courts to include both civil and criminal jurisdiction and to funnel all criminal cases and disputes between members and nonmembers alike into the Mormon-controlled probate courts rather than the federal judicial system. The authors do note that Church members avoided the federal courts because of the poor caliber of territorial judges. Yet they ignore other important reasons, including the non-Mormon judges' attempts to apply the common law in Utah Territory during the nineteenth century.

The authors point out that applying the common law first became an issue in the murder trial of Howard Egan before Judge Snow and that during the territorial period, the Saints fought against legislation adopting the common law for the territory (p. 217). But the authors do not discuss the Territorial Supreme Court's ruling that the English common law was to be applied in the territory. Because of this act alone,

the Saints sought to remove Chief Justice John Fitch Kinney and other judges who had participated in the decision, even though before that time the Mormons and the judges had enjoyed apparently good relations. The common law provided the federal judges with a legal basis, beyond legislative enactments of the Mormon-dominated legislature, upon which to base their decisions, effectively undermining Church authority in the territory.

Firmage and Mangrum draw no distinction between the Saints' rhetoric about separation of church and state and their simultaneous belief that the Church leaders should have control of both. The evidence suggests that the Saints used the civil mechanisms of government to strengthen their own religious structure during the governorship of Brigham Young. Although the State of Deseret was organized with three branches of government, separate and distinct from the Church, it is also true that Brigham Young was governor, Heber C. Kimball was chief justice and other Church officials held most of the seats in the legislative assembly. During the pre-territorial period, civil authorities did not hesitate to use the civil government under their control to advance the cause of Zion, adorning laws with religious values.

When Utah was made a territory instead of a state in 1850, the Saints were disappointed, not because the government structure was different from their State of Deseret but because outsiders could now control at least two branches of the civil government. Yet, for almost eight years during the territorial period, the Saints were able to effectively control all three branches of government. Brigham Young was governor until 1858, even though President Franklin Pierce had attempted to replace him on several occasions.

The judiciary remained under Mormon control largely because of frequently vacated non-Mormon positions on the court (admittedly prompted and encouraged by some Church members), leaving control of the courts in the hands of Mormon ap-

pointees or those non-Mormons content to apply Mormon standards in their courtrooms. Furthermore, the legislature during this period expanded the jurisdiction of the probate courts, allowing Church members to have their cases heard in civil courts presided over by Mormon judges.

Thus, the Latter-day Saints believed in the separation of church and state, as long as they controlled both. When in control, they mingled religious influence with civil government; when they lost control, they discouraged, even under the pain of excommunication, participation in civil government and devised ways to resolve disputes outside the government, using their religious values instead of commonly recognized civil principles.

Firmage and Mangrum conclude that their study demonstrates that, contrary to traditional Mormon historiography, Latter-day Saints continued to seek the "kingdom of God" after the Manifesto of 1890 and into the twentieth century (see pp. xvii, 263, 311, 379–80 n. 1). This conclusion is not new. In his *Great Basin Kingdom*, the pre-eminent economic history of the Church in the nineteenth century, Leonard Arrington wrote: "Despite interferences, both natural and human, the Church and its members adhered stubbornly to 'revealed' policy until to continue to do so would have brought consequences worse than leaving the Kingdom" (Cambridge: Harvard University Press, 1958, pp. 410–11). Arrington pointed out how changes occurred after the 1890 Manifesto (pp. 380–409), and that Latter-day Saints continue to believe in the eventual realization

of Zion through Church participation in the world of business and government.

In another important work, *Quest for Empire*, Klaus J. Hansen wrote that having to abolish polygamy convinced "Church leaders to postpone attempts to establish [the kingdom of God] to an undetermined future." Subsequent changes, including Church leaders' abandonment of the need for paramount ecclesiastical authority in temporal affairs, assured Mormonism's transition into the twentieth century as an acceptable, even respected, American religion (East Lansing: Michigan State University Press, 1967, pp. 149–51). According to Hansen, political control over Church members did not pass from the hierarchy to civil authorities with the Manifesto, and Church leaders actively pursued the kingdom of God even into the twentieth century (pp. 178–79).

The records of the ecclesiastical courts, now brought to light by Firmage and Mangrum for the first time, support these and other historians who have concluded, without the benefit of these records, that the fight for the kingdom continued into the twentieth century.

*Zion in the Courts* begins a meaningful discussion of the role of the ecclesiastical courts in Church history. The authors are to be commended for their analysis of historical documents unavailable to historians. Readers interested in the Latter-day Saints' participation in the legal process and the precarious relationship between Saints and the so-called "gentiles" during the territorial period will find this book enlightening and worth the price.

## A Double Dose of Revisionism

*The 1838 Mormon War in Missouri* by Stephen C. LeSueur (Columbia: University of Missouri Press, 1987), 286 pp., \$24.00, and *Mormons at the Missouri, 1846–1852: "And Should We Die . . ."* by Richard E. Bennett (Norman: University of Oklahoma Press, 1987), 347 pp., \$24.95.

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