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# International Legal Experience and the Mormon Theology of the State, 1945-2012

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# International Legal Experience and the Mormon Theology of the State, 1945–2012

*Nathan B. Oman\**

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## I. INTRODUCTION

By spring 1945, the Third Reich had reached its *Götterdämmerung*. The previous summer, Allied Armies, under Dwight D. Eisenhower, landed in Normandy and began driving toward the Fatherland. The Red Army had been pushing west toward Berlin since its victory over the final German offensive at the Battle of Kursk in August 1943. On April 30, Hitler committed suicide in his bunker, and Germany surrendered seven days later. War continued on the other side of the globe. The American strategy of island-hopping had culminated in the 1944 recapture of the Philippines and the final destruction

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of the Imperial Japanese Navy at the Battle of Leyte Gulf. On April 1, 1945, American forces landed on Okinawa, a Japanese island 340 miles south of the home archipelago. After 82 days and over 142,000 deaths, the Americans declared victory. Six weeks later, the United States dropped atomic bombs on Hiroshima and Nagasaki. On September 2, 1945, the Japanese formally surrendered on the deck of an American battleship in Tokyo Bay. The war was over.

That same month, the First Presidency<sup>1</sup> of the Church of Jesus Christ of Latter-day Saints<sup>2</sup> began discretely calling men to serve as mission presidents.<sup>3</sup> Beginning in 1939, the Church shut down its overseas missions and recalled American Mormons serving as missionaries back to the United States. As war spread across the globe, the American government exercised extensive control over the U.S. economy, imposing rationing- and labor-controls. Not surprisingly, religious proselytizing was far down on the wartime government's list of priorities, and the Church ceased virtually all formal missionary work.<sup>4</sup> The mission presidents sent forth by the First Presidency in September 1945 would help to create a very different kind of Mormonism than that which had existed before World War II. In 1945, there were roughly 980,000 Mormons, living mainly in the Intermountain West. Taking advantage of the *Pax Americana* wrought by the United States' victory and the tense stability of the Cold War, the Church would seek to establish itself as a global institution. By 2013, the Church would claim more than 15 million baptized members, the majority living outside of the United States.

While little-remembered today, President George Albert Smith pointed toward the Church's post-war emphasis on international growth in December 1947. In a front-page *Church News* editorial, he stated:

I assure every man and woman of the Church that you have a great obligation to spread the word of the Lord abroad and to carry the

1. The Church of Jesus Christ of Latter-day Saints is a highly centralized institution. At the local level, Mormon congregations, called wards, and collections of congregations, called stakes, are staffed by a volunteer lay clergy. Above these local structures are so-called general authorities, who are full-time religious leaders "called" into church service from other careers. At the top of this structure is the President of the Church, whom Mormons sustain as "a prophet, seer, and revelator." He is assisted in the First Presidency by two counselors. The next highest governing body of the Church is the Quorum of Twelve Apostles, consisting of apostles who are in the line of succession to be President of the Church based on seniority.

2. Hereinafter, unless otherwise specified, all references to the "Church" are to the Church of Jesus Christ of Latter-day Saints.

3. CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, *DESERET NEWS CHURCH ALMANAC* 315 (2013). Mission presidents are ecclesiastical leaders that direct missionary work in a defined geographic area called "a mission." Like all Mormon leaders, they are drawn from the Church's lay priesthood. In places with organized "stakes," they have no ecclesiastical authority over local congregations. In places without stakes, mission presidents also have final authority over local congregations.

4. JAMES B. ALLEN & GLEN M. LEONARD, *THE STORY OF THE LATTER-DAY SAINTS* 536-38 (2d ed. 1992).

truth to every land and clime so that the power of the Priesthood will be made manifest among our Father's children in many places where it has never yet even been heard of.<sup>5</sup>

In the succeeding decades, Mormons would carry out this injunction by expanding the scope of missionary work, establishing the Church in dozens of countries where it had never previously functioned. This expansion, however, transformed the Church both institutionally and ideologically. Twenty years after Smith's 1947 editorial, Elder Franklin D. Richards remarked, "We are now 20 years into this new era of growth and development, and growth and development mean change. We must not resist change, as we believe that God 'will yet reveal many great and important things pertaining to the Kingdom of God.'"<sup>6</sup>

In discussing the interaction between law and religion, scholars and others often speak as if religion is a given, a phenomenon exogenous to law. We then ask how the law reacts to religion, either regulating it, accommodating it, or perhaps being controlled by it. Implicit in this view is the sense that law is the agent reacting to religion. The Mormon experience, however, provides an example of what this approach misses. The law not only reacts to religion, but it also shapes it. Religious traditions are not static. They evolve and reinterpret themselves over time in reaction to the world in which religious believers find themselves. Law is one of the factors that can force religious change. The Church's abandonment of polygamy in the face of legal pressure from the United States' government is a dramatic example of this kind of change. Less well-understood is the way that law has driven shifts in Mormon theological discourse in the 20th century. Thus, beyond any particular interest it may offer, the story of law and the international expansion of Mormonism since 1945 provides an example of the more general phenomenon of how law precipitates religious change.

This Essay has three goals. The first is to provide a basic narrative of post-war Mormon expansion, identifying the basic periods and major developments. The second is to summarize the main legal issues provoked by this expansion. The scholarship on Mormon legal history has overwhelmingly focused on the 19th-century experience of the Latter-day Saints, resulting in general agreement about the basic structure of the narrative.<sup>7</sup> We can divide

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5. FRANKLIN D. RICHARDS, OFFICIAL REPORT OF THE ONE HUNDRED THIRTY-SEVENTH SEMI-ANNUAL GENERAL CONFERENCE OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS 146 (1967) (quoting George Albert Smith, *Looking Ahead into a New Century of Growth and Development*, CHURCH NEWS, Dec. 20, 1947) (internal quotation marks omitted).

6. *Id.*

7. The two most important books on 19th-century Mormon legal history setting forth this narrative structure are EDWIN BROWN FIRMAGE & RICHARD COLLIN MANGRUM, *ZION IN THE COURTS: A LEGAL HISTORY OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, 1830-1900* (1988); SARAH BARRINGER GORDON, *THE MORMON QUESTION: POLYGAMY AND CONSTITUTIONAL CONFLICT IN NINETEENTH-CENTURY AMERICA* (2002). For a conceptual summary of the

the period between the lifetime of Mormonism's founder, Joseph Smith, and the subsequent legal experience of the Church in Utah. During Smith's lifetime, his personal difficulties dominate the story, particularly in the high-stakes legal maneuvering in Nauvoo, Illinois, which ultimately led to his murder;<sup>8</sup> but once in Utah, the legal story focuses on the efforts of the Mormons to create an independent commonwealth<sup>9</sup> and the struggle with the federal government over polygamy.<sup>10</sup> There is no similar narrative for Mormon legal experience in the 20th century. This Essay fills this gap by providing an overview of the legal issues involved in the post-war international expansion of the Church. The third goal is to advance an argument about the relationship between this legal experience and the development of Mormon discourse in the last half of the 20th century.

As the Church expanded into new regions of the globe, it confronted non-American legal systems. Some of these new legal environments were quite similar to the United States, while others were very different. All of them placed pressure on the Church and affected the development of Mormon discourse in the last half of the 20th century. In particular, international legal challenges created incentives that tended to moderate Mormon theologies of the state. By the turn of the 21st century, the dominant theology of the state in Mormon discourse was quietist and non-confrontational, a marked contrast from the theodemocratic ambitions of the 19th century or the Cold War apocalypticism popular among many Mormons in the middle of the 20th century. Just as law proved decisive in the development of Mormon belief and practice in the 19th century—particularly Mormon doctrines surrounding plural marriage—in the 20th century, law has again exerted its influence on Mormon teachings.

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historiography on Mormon legal experience, see Nathan B. Oman, *Three Generations of Mormon Legal History: A Historiographic Introduction* (William & Mary Law School, Working Paper, 2007), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=988178](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=988178).

8. See generally FIRMAGE & MANGRUM, *supra* note 7; DALLIN H. OAKS & MARVIN S. HILL, *CARTHAGE CONSPIRACY: THE TRIAL OF THE ACCUSED ASSASSINS OF JOSEPH SMITH* (1975); *SUSTAINING THE LAW: JOSEPH SMITH'S LEGAL ENCOUNTERS* (Gordon A. Madsen, Jeffery N. Walker, & John W. Welch eds., 2014); John S. Dinger, *Joseph Smith and the Development of Habeas Corpus in Nauvoo, 1841–44*, *J. MORMON HIST.*, Summer 2010, at 135; Marvin S. Hill, *Carthage Conspiracy Reconsidered: A Second Look at the Murder of Joseph and Hyrum Smith*, 97 *J. ILL. ST. HIST. SOC'Y* 107 (2004).

9. See FIRMAGE & MANGRUM, *supra* note 7, at 263–70; EDWARD LEO LYMAN, *POLITICAL DELIVERANCE: THE MORMON QUEST FOR UTAH STATEHOOD* 7 (1986); DALE L. MORGAN, *THE STATE OF DESERET* 9–12 (1987); Nathan B. Oman, *Preaching to the Court House and Judging in the Temple*, 2009 *BYU L. REV.* 157, 157–224.

10. See generally KATHRYN M. DAYNES, *MORE WIVES THAN ONE: TRANSFORMATION OF THE MORMON MARRIAGE SYSTEM, 1840–1910* (2001); GORDON, *supra* note 7; Ray Jay Davis, *The Polygamous Prelude*, 6 *AM. J. LEGAL HIST.* 1 (1962); Edwin B. Firmage, *Free Exercise of Religion in Nineteenth Century America: The Mormon Cases*, 7 *J.L. & RELIGION* 281 (1989); Nathan B. Oman, *Natural Law and the Rhetoric of Empire: Reynolds v. United States, Polygamy, and Imperialism*, 88 *WASH. U. L. REV.* 661 (2011).

## II. THE INTERNATIONAL EXPANSION OF MORMONISM SINCE 1945

## A. PRE-1945 MORMON EXPANSION

In 1945, despite over a century of international missionary work and well-established Mormon branches in a few European cities, the Church remained an overwhelmingly American institution. The first international Mormon missionaries were Joseph Smith Sr. and Don Carlos Smith—Joseph Smith's father and brother—who traveled across the international border from New York to Canada to preach the Restoration in September 1830.<sup>11</sup> A more ambitious effort came in 1837 with the first Mormon proselytizing mission to England. This was followed by an even more concerted effort by the Mormon apostles from 1839 to 1841.<sup>12</sup> From England, Mormon missionary work expanded to continental Europe, where it enjoyed particular success in Scandinavia.<sup>13</sup> The result was a wave of conversions and emigration to Mormon settlements in America, as European Saints<sup>14</sup> followed the counsel of successive Mormon prophets to “gather to Zion.” During the 19th century, missionaries from England and the United States also sought to spread Mormonism beyond Europe and North America. Their efforts were mainly confined to outposts of the British Empire, such as the British West Indies, South Africa, India, Australia, and New Zealand. There were also sporadic efforts at missionary work in Latin America, as well as a more sustained effort in Hawaii and other Pacific Islands.<sup>15</sup>

With the passing of the 19th century, the Mormon doctrine of a literal gathering to the Zion of the Intermountain West went into decline. This decline came gradually and without any clear theological rationale or justification. In its 1907 Christmas Letter to the Dutch Saints, for example, the First Presidency stated that “[t]he policy of the Church is not to entice or encourage people to leave their native lands; but to remain faithful and true in their allegiance to their governments, and to be good citizens.”<sup>16</sup> In 1921, the First Presidency renewed its counsel, this time to the English Mission, stating their objections in economic terms.

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11. RICHARD LYMAN BUSHMAN, *JOSEPH SMITH: ROUGH STONE ROLLING* 114 (2005).

12. *See generally* JAMES B. ALLEN ET AL., *MEN WITH A MISSION, 1837–1841: THE QUORUM OF THE TWELVE APOSTLES IN THE BRITISH ISLES* (1992).

13. *See generally* WILLIAM MULDER, *HOMEWARD TO ZION: THE MORMON MIGRATION FROM SCANDINAVIA* (2000).

14. Mormon terminology follows the New Testament in which “Saint,” rather than denoting a person of special spiritual merit, refers to any member of the Church.

15. *See generally* R. LANIER BRITSCH, *FROM THE EAST: THE HISTORY OF THE LATTER-DAY SAINTS IN ASIA, 1851–1996* (1998); R. LANIER BRITSCH, *NOTHING MORE HEROIC: THE COMPELLING STORY OF THE FIRST LATTER-DAY SAINT MISSIONARIES IN INDIA* (1999).

16. 4 JAMES R. CLARK, *THE MESSAGES OF THE FIRST PRESIDENCY OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS* 165 (1970).

We are constrained to call your attention to the state of unemployment prevailing in America generally, and especially so as it affects the western States, including Utah. This state of things is hard enough on our people here that are out of work, living in rented houses, but is particularly hard on our European immigrants who have come here during the last two or three months without sufficient means of support . . .<sup>17</sup>

Even so, Church growth beyond the borders of 19th-century Mormon settlements in Utah and surrounding states remained anemic. In 1945, the prototypical Mormon congregation outside of the United States would most likely have been a small branch located in Western Europe or among Western European communities in other countries, like the whites of South Africa or the German communities of Southern Brazil, Paraguay, and Argentina. The one large-scale exception to the racially white complexion of international Mormonism was the long-time presence of the Church in Polynesia, which dated back to 19th-century missionary successes in the Sandwich Islands (Hawaii) and New Zealand.<sup>18</sup> In the years after 1945 this all began to change.

#### B. THE POST-WAR PERIOD

The post-war expansion of the Church can be usefully divided into three periods. The first period extended from 1945 until the succession of Spencer W. Kimball to the Church presidency in 1973. The dominant leader in this period was President David O. McKay. Before World War II, the Church beyond the United States operated very differently than the Church within the United States. With the exception of the Mormon colonies in Canada and Mexico, there were only American stakes of the Church. A stake is a collection of congregations similar to a Catholic diocese that is administered by local priesthood leaders, rather than missionaries sent by Church headquarters. Mormons met in small branches, often presided over by American missionaries, and local ecclesiastical authority almost always resided with an American-born mission president.<sup>19</sup> Furthermore, the number of missionaries was relatively small compared to the post-war years.<sup>20</sup> The Church's physical footprint was similarly subdued. Church units met in rented space or in small

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17. 5 JAMES R. CLARK, *THE MESSAGES OF THE FIRST PRESIDENCY OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS 199-200* (1976).

18. See R. LANIER BRITSCH, *MORAMONA: THE MORMONS IN HAWAII* (1989); R. LANIER BRITSCH, *UNTO THE ISLANDS OF THE SEA: A HISTORY OF THE LATTER-DAY SAINTS IN THE PACIFIC* (1986).

19. See, e.g., Ross Geddes, *Before Stakehood: The Mission Years in Brisbane, Australia*, *J. MORMON HIST.*, Fall 1996, at 92, 107; Kahlile Mehr, *Enduring Believers: Czechoslovakia and the LDS Church, 1884-1990*, *J. MORMON HIST.*, Fall 1992, at 111, 115.

20. CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, *supra* note 3, at 210.

buildings built by local members without any support from Church headquarters.<sup>21</sup>

This changed in the post-war years. The Church expanded its missionary program, doubling the number of pre-war missionaries by 1946 and steadily increasing its proselytizing force thereafter. The growth in missionaries reflected more than a growth in church population. Rather, missionary service became a more common and salient feature of Mormon life.<sup>22</sup> The Church matched the increased missionary force with an expanded building program.<sup>23</sup> For the first time, non-American Latter-day Saints began to meet in chapels owned and built by the Church. More strikingly, the Church began building temples overseas, beginning in Switzerland, London, and New Zealand.<sup>24</sup> When these buildings were constructed there was not a single international Mormon stake outside of the Canadian and Mexican colonies. Thus, the early international temples were self-consciously conceptualized as anchors for future growth.<sup>25</sup> Finally, and perhaps most importantly, the decision was made to establish the full program of the Church beyond the borders of the United States. Non-American Mormons would no longer inhabit an ecclesiastically liminal “mission field.” Instead, beginning in 1958 with Auckland, New Zealand, the Church began organizing stakes beyond the United States with the same kind of autonomous local leadership seen in the Mormon heartland of the Intermountain West.<sup>26</sup>

The second period began with Spencer W. Kimball’s succession to the presidency of the Church in 1973.<sup>27</sup> David O. McKay and many of his associates in the leadership of the Church came from long-time Utah families and had long careers as pre-war general authorities. Kimball, in contrast, came from the borderlands of the Mormon corridor in Thatcher, Arizona, where he’d spent much of his life in a more culturally diverse milieu of non-Mormon Anglos, Hispanics, and Native Americans. Called as an apostle in 1943, he spent his entire career as a general authority in the internationally

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21. See GREGORY A. PRINCE & WM. ROBERT WRIGHT, *DAVID O. MCKAY AND THE RISE OF MODERN MORMONISM 199–200* (2005).

22. For example, in 1939, there was roughly one missionary for every two wards or branches in the Church. In the post-war period, that shifted to something more like 1.25 missionaries per ward or branch. See CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, *supra* note 3, at 210–13.

23. PRINCE & WRIGHT, *supra* note 21, at 206–09.

24. Mormon meeting houses or chapels function like Protestant church buildings and are open to the general public for worship services. Mormon temples, however, are not analogous to ordinary church buildings. Rather, they are special buildings dedicated solely to performing religious rituals and are open only to Latter-day Saints in good standing who are entering the building in order to participate in the rituals.

25. The Church had constructed one temple beyond the borders of the United States prior to World War II, the Cardston, Alberta, temple, which served the Canadian colonies.

26. ALLEN & LEONARD, *supra* note 4, at 606–09.

27. EDWARD L. KIMBALL, *LENGTHEN YOUR STRIDE: THE PRESIDENCY OF SPENCER W. KIMBALL 7* (2005).



expansive post-war Church.<sup>28</sup> Strikingly, both of his counselors were born outside of the United States, albeit in the Mormon colonies.<sup>29</sup> This period was marked by a number of developments. By far the most important was the 1978 revelation abandoning Mormonism's ban on ordaining Black men to its lay priesthood. This facilitated international growth in two ways.<sup>30</sup> First, it made possible the staffing of the Church with local leaders in areas with large Black populations. Second, it allowed the Church to distance itself from past racism, making itself more appealing to converts, especially in Africa and Latin America where Church growth expanded in this era.<sup>31</sup> Kimball also moved far more aggressively than his predecessors to gain access to countries previously closed to Mormonism, tapping former United States Treasury Secretary David Kennedy, a Latter-day Saint, as his personal diplomatic envoy.<sup>32</sup> For example, during this period, the Church gained formal recognition in communist Poland and was allowed to build its only temple behind the Iron Curtain in Freiberg, East Germany.<sup>33</sup>

The third period of post-war expansion began with the fall of the Berlin Wall in 1989. Unquestionably, the dominant figure in this period was Latter-day Saint President Gordon B. Hinckley.<sup>34</sup> Hinckley became an apostle in 1961, a period corresponding with the organization of the first international stakes. He was called as a counselor to the ailing Kimball in 1981 and continued to serve in the first presidencies of the aged and largely inactive Ezra Taft Benson and Howard W. Hunter, before becoming president of the Church in 1995. Hence, from the early 1980s on, the day-to-day operations of the Church were largely in the hands of Hinckley. This period saw three main developments. The first was the expansion of missionary efforts in new

28. See generally EDWARD L. KIMBALL & ANDREW E. KIMBALL, SPENCER W. KIMBALL: TWELFTH PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS (1977).

29. Marion G. Romney was born in Mexico in the Mormon colonies at Colonia Juarez. N. Eldon Tanner was a Canadian who had served in the Alberta provincial government before being called as a general authority.

30. KIMBALL, *supra* note 27, at 236–45; see also PRINCE & WRIGHT, *supra* note 21, at 94–105 (discussing the administrative and proselyting difficulties created by the ban during David O. McKay's administration).

31. Strikingly, it was in the decade immediately after the 1978 revelation that sociologist Rodney Stark claimed Mormonism represented a “new world religion.” Rodney Stark, *The Rise of a New World Faith*, 26 REV. RELIGIOUS RES. 18, 18 (1984); cf. Rodney Stark, *So Far, So Good: A Brief Assessment of Mormon Membership Projections*, 38 REV. RELIGIOUS RES. 175 (1996); see also *infra* note 36 and accompanying text.

32. MARTIN BERKELEY HICKMAN, DAVID MATTHEW KENNEDY: BANKER, STATESMAN, CHURCHMAN (1987); KIMBALL, *supra* note 27, at 130–33; Kahlile Mehr, *An LDS International Trio, 1974–97*, J. MORMON HIST., Spring 2000, at 102, 102–06.

33. KIMBALL, *supra* note 27, at 138 (discussing church recognition in Poland). See generally Raymond M. Kuehne, *The Freiberg Temple: An Unexpected Legacy of a Communist State and a Faithful People*, DIALOGUE: J. MORMON THOUGHT, Summer 2004, at 95, available at [https://www.dialoguejournal.com/wp-content/uploads/sbi/articles/Dialogue\\_V37No2\\_107.pdf](https://www.dialoguejournal.com/wp-content/uploads/sbi/articles/Dialogue_V37No2_107.pdf).

34. See generally SHERI L. DEW, GO FORWARD WITH FAITH: THE BIOGRAPHY OF GORDON B. HINCKLEY (1996).

countries, especially those in the former Soviet bloc. The second was an expansion in the number of temples around the world. Particularly after 1997, the Church built small buildings to put temple worship within relatively easy distance of the majority of Latter-day Saints.<sup>35</sup> Finally, this era saw the sharp exponential growth in Church membership taper off. The Church continued to grow but at a more modest rate. Much of the statistical growth in previous years was revealed to be hollow, with very high attrition rates among converts.<sup>36</sup> The Church responded in various ways. Two apostles—Dallin H. Oaks and Jeffery R. Holland—were dispatched to live in the Philippines and Chile respectively to supervise massive retrenchment and reorganization.<sup>37</sup> Recently, the Church has subtly redesigned its missionary program. It has jettisoned pre-scripted missionary “discussions” in favor of a more flexible approach to teaching.<sup>38</sup> There has also been a shift away from baptismal statistics as a metric of success to an emphasis on “real growth” of the Church.<sup>39</sup> Finally, in 2012, Hinckley’s successor, President Thomas S. Monson lowered the minimum age for missionaries.<sup>40</sup> This led to an increase in the number of missionaries generally, and women in particular.<sup>41</sup>

### III. LEGAL CHALLENGES AND INTERNATIONAL EXPANSION

As the Church has expanded beyond the United States, it has faced many legal challenges. Providing a concise summary of these challenges is difficult for a number of reasons. First, there is a great deal of ambiguity about what counts as “legal,” especially outside the advanced democracies of the developed world. Most people think of “law” in Weberian terms as the

35. For an account of the introduction of these small temples, see VIRGINIA HATCH ROMNEY & RICHARD O. COWAN, *THE COLONIA JUÁREZ TEMPLE: A PROPHET’S INSPIRATION* (2009) (discussing the introduction, construction, and dedication of these small temples).

36. See generally David Clark Knowlton, *How Many Members Are There Really? Two Censuses and the Meaning of LDS Membership in Chile and Mexico*, *DIALOGUE: J. MORMON THOUGHT*, Summer 2005, at 53, available at [https://www.dialoguejournal.com/wp-content/uploads/sbi/articles/Dialogue\\_V38No2\\_65.pdf](https://www.dialoguejournal.com/wp-content/uploads/sbi/articles/Dialogue_V38No2_65.pdf); Rick Phillips, *Rethinking the International Expansion of Mormonism*, *NOVA RELIGIO*, Aug. 2006, at 52.

37. Carrie A. Moore, *2 Apostles Assigned to Live Outside U.S.*, *DESERET NEWS* (Apr. 10, 2002), available at <http://www.deseretnews.com/article/906937/2-apostles-assigned-to-live-outside-US.html>.

38. See generally CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, *PREACH MY GOSPEL: A GUIDE TO MISSIONARY SERVICE* (2004), available at [https://www.lds.org/bc/content/shared/content/english/pdf/language-materials/36617\\_eng.pdf](https://www.lds.org/bc/content/shared/content/english/pdf/language-materials/36617_eng.pdf).

39. Richard C. Edgley, *The Rescue for Real Growth*, *ENSIGN*, May 2012, at 52, available at <http://media.ldscdn.org/pdf/lds-magazines/ensign-may-2012/2012-05-20-the-rescue-for-real-growth-eng.pdf>; see also Heather Whittle Wrigley, *Worldwide Leadership Training Highlights Path to Real Growth*, *ENSIGN*, Mar. 2012, at 74, available at <http://media.ldscdn.org/pdf/lds-magazines/ensign-march-2012/2012-03-23-worldwide-leadership-training-highlights-path-to-real-growth-eng.pdf>.

40. Laurie Goodstein, *More Mormon Women Enroll as Missionaries*, *N.Y. TIMES* (Nov. 2, 2012), <http://www.nytimes.com/2012/11/03/us/young-mormon-women-jump-at-the-chance-to-become-missionaries-at-19.html>.

41. See *id.*

subjugation of the state's monopoly on the legitimate use of force to a system of formal rules enforced by specialized, rule-following bureaucracies.<sup>42</sup> On this view, state and private action are sharply differentiated, as are law and politics. To be sure, the distinction between law and politics has been strenuously questioned even in mature legal systems like the United States.<sup>43</sup> In countries where states and the rule of law are weak, however, insisting on a sharp distinction between law and politics makes little sense. Often law has little meaning beyond the discretion of local political elites. The problem of defining the boundaries of law points toward the other difficulty: the many different contexts in which the Church has operated during the post-war period. The differences of institutions, legal culture, and political pressures faced by the Church in different countries make generalizations difficult. Nevertheless, the Church did face a series of broadly similar legal challenges as it expanded internationally. First, it faced restrictions on missionaries' and general authorities' ability to enter countries, most commonly in the form of visa restrictions. Second, it faced laws limiting missionaries' ability to proselytize. Third, it faced laws restricting Church members from meeting and worshipping together. Finally, it faced challenges in acquiring and owning property for Church buildings.

A. *LEGAL CHALLENGES FACED BY THE CHURCH*

Among the first steps in establishing the Church in a new country has been for missionaries and Church leaders to enter the country. This has often been preceded by the baptism of a national abroad who then assists the Church's initial access to a country or Latter-day Saint expatriates who introduce Mormonism to the country.<sup>44</sup> Governments, however, often restricted access to foreign missionaries. For example, in 1963, the Church sought to establish a mission in Nigeria to serve self-proclaimed Mormon congregations that had formed after reading materials about the Church and its doctrines.<sup>45</sup> The effort was blocked, however, when the Nigerian government refused to issue visas to the assigned mission president.<sup>46</sup> During most of the Cold War the Church was unable to send missionaries to most of the nations behind the Iron Curtain, although there were notable

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42. See generally MAX WEBER, *LAW IN ECONOMY AND SOCIETY* (1925), reprinted in MAX WEBER ON *LAW IN ECONOMY AND SOCIETY* (Max Rheinstein ed. & trans., Edward Shils trans., 1954).

43. See ROBERTO MANGABEIRA UNGER, *THE CRITICAL LEGAL STUDIES MOVEMENT* (1986).

44. For example, the first missionaries to enter Slovenia, which declared independence from Yugoslavia in 1991, were aided by Albin Lotric, a Slovenian national who had joined the Church in Norway. Interview by Jeffrey L. Anderson with Jeffrey Grant Moore in Provo, Utah (Jan. 18, 1992) (transcript in the Church History Library of the Church of Jesus Christ of Latter-day Saints).

45. PRINCE & WRIGHT, *supra* note 21, at 81-94; see also James B. Allen, *Would-Be Saints: West Africa Before the 1978 Priesthood Revelation*, 17 J. MORMON HIST. 207, 207-47 (1991).

46. Allen, *supra* note 45, at 228-30.

exceptions—Poland and the German Democratic Republic—as well as sporadic visits by Church authorities.<sup>47</sup> Some governments only allow missionaries to visit on short-term tourist visas or require local citizens to formally invite missionaries into the country. In the 1990s, for example, Russian converts frequently spent hours waiting in long lines to fill out the paper work necessary to formally invite foreign missionaries into the country.<sup>48</sup>

In some instances, governments have expelled missionaries after previously allowing them. In 1946, the Church sent missionaries into Czechoslovakia to re-establish missionary work in that country.<sup>49</sup> After a communist coup in 1948, however, the secret police began monitoring missionaries, and in 1950, two missionaries were arrested and imprisoned for a month on suspicion of espionage. The government passed a law banning non-Czech pastors and all American missionaries were withdrawn after the release of the two imprisoned elders.<sup>50</sup> Similarly, Mormon missionaries were expelled from Ghana by the government in 1989, although foreign LDS missionaries were allowed back into the country a year later.<sup>51</sup> In other cases, visas have been so difficult to obtain that the Church has simply withdrawn non-native missionaries. This happened in 2005, for example, when the Church withdrew over 200 missionaries from Venezuela as a result of actions by the government of Hugo Chavez.<sup>52</sup>

Second, the Church has faced restrictions on missionaries' ability to openly proselytize. For example, the Church obtained permission to send missionaries to Poland and Yugoslavia in the 1970s, but the government would not allow them to proselytize.<sup>53</sup> More recently, the Church called missionaries to work among members in Israel, many of whom are Eastern European guest workers and European and North American expatriates, but the Church does not allow them to proselytize.<sup>54</sup> The situation in Israel illustrates the complex relationship between legal and other pressures on the

47. RAYMOND KUEHNE, *MORMONS AS CITIZENS OF A COMMUNIST STATE: A DOCUMENTARY HISTORY OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS IN EAST GERMANY, 1945–1990*, at 331–34 (2010); Mehr, *supra* note 32, at 107. In 1978, the Church also sent missionaries into Yugoslavia. They arrived on student visas and could answer questions but not openly proselytize. They wore ordinary clothes and grew their hair to shoulder length to avoid drawing undue attention. *Id.* at 112.

48. Gary L. Browning, *Out of Obscurity: The Emergence of the Church of Jesus Christ of Latter-day Saints in "That Vast Empire" of Russia*, 33 *BYU STUD.* 675, 678 (1993).

49. Mehr, *supra* note 19, at 139–40.

50. *Id.* at 141.

51. EMMANUEL ABU KISSI, *WALKING IN THE SAND: A HISTORY OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS IN GHANA*, at xxvii–xxviii (2004).

52. U.S. COMM'N ON INT'L RELIGIOUS FREEDOM, *ANNUAL REPORT 2009*, at 216 (2009).

53. KIMBALL, *supra* note 27, at 138; Mehr, *supra* note 32, at 112.

54. Interview with Joseph Bentley, Elder, Jerusalem Branch (June 2011). At the time of this conversation, Elder Bentley and his wife were serving as missionaries in Israel.

Church. The Israeli Supreme Court has recognized a basic right to religious conversion, and religious proselytizing is legal under Israeli law, subject to various restrictions.<sup>55</sup> Beginning in 1979, however, Brigham Young University, a Church-sponsored school, sought to build a study-abroad center in Jerusalem. The building became hugely controversial in Israel, with conservative groups opposing it and claiming it was part of a broader effort to evangelize Jews to Mormonism. The Knesset Interior Committee<sup>56</sup> took up the issue and demanded a pledge from the Church not to proselytize as a condition for being allowed to build the center. The Mormons agreed, and in 1985, Jeffery R. Holland, then president of Brigham Young University, promised on behalf of the Church that Mormons in Israel would refrain from proselytizing, regardless of Israeli law.<sup>57</sup>

Third, the Church has faced restrictions on the ability of Latter-day Saints to meet and worship together. In some cases, restrictions on proselytizing have included restrictions on public meetings.<sup>58</sup> In other cases, Church members were allowed to meet but subject to varying levels of harassment. During its history, for example, the German Democratic Republic generally allowed Latter-day Saints to meet for worship services, only occasionally prohibiting services, although from time to time services were prohibited. However, the police frequently monitored services, which scared away some members. In other cases, the police required onerous and detailed reports from Church leaders on each meeting.<sup>59</sup> In 1989, the government in Ghana issued decrees prohibiting all church meetings, rescinding the decrees in 1990.<sup>60</sup> In Nicaragua, hostility toward the Church spiked in the 1980s in response to the Reagan Administration's support for the right-wing Contra rebels who were battling the socialist Sandinista government. Anti-American hostility by local Sandinista leaders was directed against Nicaraguan Mormons, who lost control of their own meetinghouses. Thereafter, according to one Latter-day Saint, "[w]e met in secret in the homes of some

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55. See HCJ 1031/93 Passaro (Goldstein) v. Minister of the Interior 49(4) IsrSC 661 [1995] (Isr.). For an English language summary of the case, see Rahel Rimón, *Non-Orthodox Conversions in Israel*, JUSTICE: THE INT'L ASS'N OF JEWISH LAWYERS & JURISTS, Dec. 1997, at 43, 43-48, available at <http://www.intjewishlawyers.org/main/files/Justice%20No.15%20December1997.pdf>. A 1977 law prohibits inducing religious conversation by offering something of value. See Giving Benefits to Include Change of Religion, 5757-1977, 7 Penal Law 70 (2011) (Isr.); Peter G. Danchin, *Of Prophets and Proselytes: Freedom of Religion and the Conflict of Rights in International Law*, 49 HARV. INT'L L.J. 249, 279 n.114 (2008).

56. The Knesset is the Israeli parliament. See Basic Law (The Knesset), 5718-1958, 12 LSI 85 § 1 (1957-1958) (Isr.).

57. Matthew L. Sandgren, Note, *Extending Religious Freedoms Abroad: Difficulties Experienced by Minority Religions*, 8 TULSA J. COMP. & INT'L L. 251, 268-72 (2001).

58. See, e.g., Mehr, *supra* note 19, at 134.

59. KUEHNE, *supra* note 47, at 69-70.

60. KISSI, *supra* note 51, at 181, 239.

members. . . . We always met in the house of members. . . . We didn't meet very often."<sup>61</sup>

Finally, the Church has faced restrictions on its ability to own and use property. As the Church expanded beyond the United States, it has had to fragment its legal personality in order to own property. Mexico, for example, has legal restrictions on foreigners' ability to own land.<sup>62</sup> Furthermore, successive waves of Mexican reform in the 19th and early 20th centuries directed at the land holdings of the Catholic Church resulted in mortmain provisions complicating the ecclesiastical ownership of land.<sup>63</sup> Other jurisdictions often have legal prerequisites for church ownership of property. Accordingly, one of the first legal tasks for the Church upon entering a new country was to incorporate or otherwise gain the ability to own land.<sup>64</sup> This has often required a native member or group of members that have been the formal titleholders for Church property. Furthermore, the process of registration has often been chaotic, with early missionaries and Church leaders not fully understanding the legal status that they obtained.<sup>65</sup>

61. Henri Gooren, *Latter-day Saints Under Siege: The Unique Experience of Nicaraguan Mormons*, DIALOGUE: J. MORMON THOUGHT, Fall 2007, at 134, 145 (2007), available at [https://www.dialoguejournal.com/wp-content/uploads/sbi/articles/Dialogue\\_V40No3\\_144.pdf](https://www.dialoguejournal.com/wp-content/uploads/sbi/articles/Dialogue_V40No3_144.pdf). According to Gooren:

Between 1982 and 1990, most members were afraid to tell co-workers or relatives that they were Mormons. Mormons in Nicaragua were effectively under siege from their own government. In the process, only the most committed core members remained. All the other members, active and inactive, put their LDS identity on hold or took on membership in another church.

*Id.* at 147.

62. See Constitución Política de los Estados Unidos Mexicanos [C.P.], art. 27, pt. I, 5 de febrero de 1917 (Mex.) ("For no reason may foreigners acquire the direct ownership over lands or waters within a zone of one hundred kilometers along the frontiers and of fifty [kilometers] along the shores." (translated by Adela Staines et al.) (Spanish words omitted)).

63. William D. Signet, *Grading a Revolution: 100 Years of Mexican Land Reform*, 16 L. & BUS. REV. AMS. 481, 487–88 (2010).

64. For example, in Albania, the Church created an entity called the Liahona Foundation of the Church of Jesus Christ of Latter-day Saints, which gives the Church a legal personality under Albanian law. Interview by Matthew K. Heiss with David & Joan Haymond, in Springville, Utah (Mar. 12, 1996) (audio available in Church History Library).

65. As one long-time leader of the Church in Belgium has noted:

Indeed, the understanding behind "recognitions" can be bizarre. In Belgium an American mission president confirmed in a letter that the Church was officially recognized as a Church (copy in my possession). He based his claim on the fact that the Church had registered as a non-profit organization (something anyone can do) and that the statutes had appeared in the State Paper. In the Netherlands I was shown the "official document of recognition": a perfunctory form-letter from the Dutch Ministry acknowledging receipt of the Church's request for recognition, sent shortly after the request had been submitted.

Wilfried Decoo, *Issues in Writing European History and in Building the Church in Europe*, J. MORMON HIST., Spring 1997, at 139, 144, 165 n.20.

In many countries, especially in Europe, there is a hierarchy of possible legal statuses that a church can have. At the bottom are simple non-profit corporations that allow a religious organization to own property and carry out basic collective actions. At the top are well-established churches that may receive financial support from the government or can enter into formal concordats with the state.<sup>66</sup> In addition to these concrete legal benefits, the higher levels of official recognition confer a certain social legitimacy on a religion, something that can be of particular importance in Europe, where an active anti-cult movement targets the Church from time to time.<sup>67</sup> In 1955, the Church was able to achieve the highest status of recognition in Austria, capitalizing no doubt on pro-American sentiment in the immediate post-war period.<sup>68</sup> For most of its history in Europe, however, the Church was content with its legal status as long as it could own property and carry out basic church functions. In the final decades of the 20th century, however, this approach shifted. In 1979, for example, the Catholic Church reached a concordat on education with the post-Franco government in Spain. In 1992, the Spanish government entered into similar agreements with the largest Jewish, Muslim, and Evangelical Christian groups in the country. In the wake of the 1992 agreements, the Church sought unsuccessfully to gain the same status.<sup>69</sup> In 2012, however, the Church was successful in obtaining the highest level of official recognition—called an *intesa*—from the Italian government.<sup>70</sup> Interestingly, this potentially gave the Church the right to receive a share of the taxes levied on Italian citizens for the support of religious and cultural groups, although the Church has reportedly declined to accept this money.<sup>71</sup>

In owning property the Church has faced legal challenges ranging from the regulatory issues it might face in the United States to the confiscation of

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66. See W. Cole Durham, Jr., *Legal Status of Religious Organizations: A Comparative Overview*, 8 REV. FAITH & INT'L AFF. 3, 3–14 (2010).

67. See Massimo Introvigne, *Blacklisting or Greenlisting? A European Perspective on the New Cult Wars*, NOVA RELIGIO, Oct. 1998, at 16, 16–23.

68. Wilfried Decoo, *Mormonism in Europe*, in THE OXFORD HANDBOOK TO MORMONISM (Phillip Barlow & Terryl Givens eds., forthcoming) (discussing recognition of the Church under Austrian law); see also Richard Potz, *State and Church in Austria*, in STATE AND CHURCH IN THE EUROPEAN UNION 391–418 (Gerhard Robbers ed., 2nd ed. 2005) (providing a general introduction to the treatment of religious organizations under Austrian law).

69. Javier Martínez-Torrón, *School and Religion in Spain*, 47 J. CHURCH & ST. 133, 138 n.11 (2005).

70. See Decoo, *supra* note 68 (noting the Church's *intesa* with the Italian government in 2012); see also Michael W. Homer, *New Religions in the Republic of Italy*, in REGULATING RELIGION: CASE STUDIES FROM AROUND THE GLOBE (James T. Richardson ed., 2003) (discussing the development of *intesa* under Italian law and their use by non-Catholic religious groups in the country).

71. Homer, *supra* note 70, at 208–09 (discussing the rights of religious organizations to receive financial support from the government under *intesa* agreements with the state); E-mail from Michael W. Homer, Attorney & Managing Partner, Suttner Axland, PLLC, to author (Oct. 6, 2014, 8:03 PST) (on file with author).

Church property by revolutionary militias. One of the first major legal problems related to land ownership that the Church faced in the post-war period involved the tax status of the London Temple, which was litigated to the House of Lords in *Church of Jesus Christ of Latter-day Saints v. Henning*.<sup>72</sup> If *Henning* is close to the kind of legal issues faced by the Church in the United States, then the experience of the Church in Nicaragua in the 1980s represents the opposite end of the spectrum. Responding to widespread allegations that the Church was associated with the CIA, which was supporting the Contra insurgency against the Sandinista regime in the country, local Sandinista party bosses occupied LDS meeting houses without formal legal support but with the connivance of government officials.<sup>73</sup>

Individual Latter-day Saints have also faced legal problems not directly related to the institutional Church but flowing out of their Mormon faith. For example, in 2008, the Court of Appeals (Civil Division) of the United Kingdom heard an appeal by a Muslim convert to Mormonism from Afghanistan who sought asylum in Britain, arguing that he would face religious persecution if forced to return to his homeland.<sup>74</sup> There are similar cases in other countries.<sup>75</sup> In Belgium, Mormons employed by Catholic schools lost their jobs because of their religion. In these cases, the members found other employment rather than pursuing legal claims under Belgian law. Belgian Latter-day Saints have also found their religion used against them in divorce proceedings, where courts have awarded custody of children to non-Mormon parents to avoid religious indoctrination or placing restrictions on religious activities during child visits.<sup>76</sup> In these cases, Latter-day Saints receive no formal assistance from the Church.<sup>77</sup> Church attorneys represent

72. *Church of Jesus Christ of Latter-day Saints v. Henning*, [1964] A.C. 420 (H.L.) (Eng.). In 2008, the Church re-litigated the issue to the House of Lords for the Preston Temple in order to set up an appeal to the European Court of Human Rights. *Gallagher v. Church of Jesus Christ of Latter-day Saints*, [2008] UKHL 56 (H.L.) (appeal taken from Eng.); see also Case Note, *Gallagher v. Church of Jesus Christ of Latter-day Saints*, 9 ECCLESIASTICAL L.J. 241, 241–42 (2007). The appeal to Strasbourg proved unsuccessful. *Church of Jesus Christ of Latter-day Saints v. United Kingdom*, App. No. 7552/09 (2014), available at <http://hudoc.echr.coe.int/webservices/content/pdf/001-141369?TID=lupqoawep>.

73. Gooren, *supra* note 61, at 142–45.

74. *MT (Afg.) v. Sec'y of State for the Home Dep't*, [2008] EWCA (Civ) 65 (Eng.). The convert in this case was successful in obtaining a rehearing before an immigration judge after his first, unsuccessful bid for asylum. *Id.*

75. In New Zealand, a Russian covert sought asylum on the grounds that he would face persecution if returned to his home country. Refugee Appeal No. 70097/96, Refugee Status Appeals Authority, 26 Mar. 1997 (N.Z.), available at [www.refworld.org/pdfid/477cfb80d.pdf](http://www.refworld.org/pdfid/477cfb80d.pdf). The New Zealand court found that while Mormons were subject to discrimination in Russia this harassment did not rise to the level of persecution. *Id.*

76. E-mail from Wilfried Decoo, Professor, Brigham Young Univ., to author (Oct. 15, 2013) (on file with author).

77. The Church does provide welfare assistance to members that are struggling economically, including cash assistance in some cases. The Church does not permit welfare funds



the Church as an institution, and Church handbooks discourage local priesthood leaders from becoming involved in members' legal proceedings.<sup>78</sup> Furthermore, in some contexts—such as discrimination by religious employers—the Church's institutional interests are not necessarily aligned with the interest of members. So, for example, in *Obst v. Germany*, the Church successfully defended its right to dismiss an employee for failing to comply with Church standards before the European Court of Human Rights, arguing that religious discrimination was necessary to maintain its institutional integrity.<sup>79</sup>

### B. CAUSES OF THE CHURCH'S LEGAL CHALLENGES

Given the unique political and legal cultures of the various jurisdictions in which the Church has operated in the post-war era, it is difficult to generalize about the causes of the legal difficulties that Mormonism has faced. There have been, however, at least three recurring themes. The first is the difficulty of fitting the programs of the Church into legal systems that have specific assumptions about how religions operate that are at odds with Latter-day Saint practices. This results in attempts to shove the square peg of Mormonism into the round hole of a foreign legal system. The second source of legal friction has been the Church's status as an American institution. Despite its efforts to internationalize, Mormonism is generally regarded as an American church. Accordingly, it has often proved a lightning rod for international resentments against American government policies and American cultural influence. Finally, the Church has found itself caught up in political and legal disputes internal to the societies where it has sought to expand. In many cases, all three factors are present, reinforcing one another.

The difficulty of fitting Latter-day Saint practices into legal systems with differing assumptions about how religions should behave has been a recurring theme in Mormon legal history. For example, it took the Church nearly a century to find an adequate way of owning property in the United States. During the 19th century, American law had a strong Protestant and

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to be spent on attorneys. However, the fungible nature of money means that Church assistance for food, shelter, and the like may, in some cases, indirectly help to defray legal expenses.

78. "To avoid implicating the Church in legal matters to which it is not a party, leaders should avoid testifying in civil or criminal cases reviewing the conduct of members over whom they preside." CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, HANDBOOK 1: STAKE PRESIDENTS AND BISHOPS 66 (2010). This policy, however, does not always preclude members and Church leaders from providing assistance in legal proceedings. For example, in the New Zealand case, the Latter-day Saint asylum-seeker was supported by testimony from a local Mormon. See *supra* note 75.

79. See *Obst v. Germany*, App. No. 425/03 (2010), available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=002-834>. For an account of the historical and theological importance of institutional autonomy for the Church, see W. Cole Durham & Nathan B. Oman, *A Century of Mormon Theory and Practice in Church-State Relations: Constancy Amidst Change* (Nov. 7, 2006) (unpublished working paper), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=942567](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=942567).

congregational bias, and sharply limited the ability of churches to own property.<sup>80</sup> The assumption was that a church corporation would exist for a single congregation that might own a glebe or other income-producing asset to pay a single pastor. The law assumed that all churches were decentralized like the Congregationalists or the Baptists. The Mormon Church operated as a single, integrated community in which resources could be centralized under the control of general authorities.<sup>81</sup> During the lifetime of Joseph Smith this proved impossible. In Utah, the Mormons abandoned the American congregational model in favor of a corporate charter giving the Church unlimited power to hold property.<sup>82</sup> Congress, however, nullified this statute in 1862, and Church property was thereafter held in a complex network of local corporations or priesthood leaders acting as trustees for the Church.<sup>83</sup> It was only in the early 20th century that the Church assumed its modern form as a corporation sole.<sup>84</sup>

The 1964 decision of the House of Lords in *Church of Jesus Christ of Latter-day Saints v. Henning* illustrates a similar dynamic. Beginning in the 17th century, the English government began assessing local property taxes to finance poor relief. Property belonging to the Church of England was exempt from this tax, but properties belonging to dissenting sects were assessed for the tax. In 1833, parliament eliminated the special treatment for the Church of England by exempting all places of “public religious worship” from assessment, and the exemption was codified in subsequent English revenue

80. See SUSTAINING THE LAW: JOSEPH SMITH’S LEGAL ENCOUNTERS, *supra* note 8, at 113–40; Paul G. Kauper & Stephen C. Ellis, *Religious Corporations and the Law*, 71 MICH. L. REV. 1499, 1503–27 (1973); Jesse St. Cyr, William & Mary Sch. of Law, Presenter at the Forty-Third Annual Mormon History Association Conference: Brief Corporate History of the Church of Jesus Christ of Latter-day Saints (May 24, 2008).

81. The Mormon settlement of Nauvoo provides an example of this problem. Joseph Smith, on the credit of the Church, borrowed money with which to purchase land for the city in Illinois. The hope was that this loan could then be repaid from the revenues of the Church, which consisted of tithing and receipts from the retail sale of lots in Nauvoo. GLEN M. LEONARD, NAUVOO: A PLACE OF PEACE, A PEOPLE OF PROMISE 54–61 (2002). Under Illinois law at the time, however, it was impossible for a church corporation to own such extensive assets. See St. Cyr, *supra* note 80. The result was a hopeless entanglement of Church and personal assets in Joseph Smith’s estate upon his death. Dallin H. Oaks & Joseph Bentley, *Joseph Smith and Legal Process: In the Wake of the Steamboat Nauvoo*, 1976 BYU L. REV. 735, 767–82.

82. The charter is reproduced in MORGAN, *supra* note 9, at 185.

83. See Kauper & Ellis, *supra* note 80, at 1516–20; St. Cyr, *supra* note 80. According to Kauper and Ellis:

The early corporate history of the Mormon Church is a prime example of governmental regulation with a vengeance. The federal government effectively stripped the Mormon Church of the use of the corporate privilege primarily because of the Church’s advocacy of polygamy, a form of marriage considered by many non-Mormons to be immoral.

Kauper & Ellis, *supra* note 80, at 1516.

84. Franklin S. Richards, Address to the High Priests Quorum of Ensign Stake (Nov. 13, 1932).

law.<sup>85</sup> After the London Temple was dedicated in 1958, the local English taxing authority took the position that the temple did not qualify as a “public place of worship” because it was closed to everyone except members in good standing. The House of Lords rejected the Church’s argument that public worship meant corporate as opposed to private, household worship and accepted the local taxing authority’s interpretation of the law. As the Church’s barrister pointed out, this placed the London temple in the odd position of being the only house of worship in the United Kingdom subject to taxation.

In some instances, friction was exacerbated by a lack of legal sophistication on the part of the Church. For example, the Church had been organized as a *Verein*, a kind of non-profit corporation, under pre-war German law.<sup>86</sup> After the war, the Church reorganized itself in the Federal Republic of Germany by obtaining a corporation under the laws of one of the West German Lander. Under West Germany’s federal constitution, this corporation could act for the Church throughout the Federal Republic. The Church then dissolved its *Verein*. The law of the German Democratic Republic, however, continued to recognize pre-war *Verein* in at least some situations. Thus, as a result of what Church leaders thought of as a minor bit of bureaucratic tidying up in West Germany, the Church lost its legal existence in East Germany.<sup>87</sup> Thereafter, local leaders in East Germany repeatedly petitioned communist authorities for recognition, and Church property was either held by individuals in trust for the Church or by legal entities that lacked general recognition in the GDR. The Church dissolved its *Verein* in 1952 and did not gain general recognition again in the GDR until 1985.<sup>88</sup> Over the course of the post-war period, however, the Church gradually professionalized its international legal operations. In the late 1970s, it began opening area offices in cities such as Frankfurt or Hong Kong and developed

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85. The Poor Law Act of 1601 provided that property owned by the Church of England was exempt from taxation. See Poor Relief Act, 1601, 43 Eliz. 1, c. 2 (Eng.). In 1833, Parliament extended this exemption to all “premises exclusively appropriated to public religious worship,” regardless of whether they belonged to the established church. See Poor Rate Exemption Act, 1833, 3 & 4 Will. 4, c. 30, §1 (Eng.).

86. KUEHNE, *supra* note 47, at 59. The organization had taken place in 1938 and resulted in a legal entity called Verein Der Deutschen Mission der Kirche Jesu Christi Der Heiligen der Letzten Tage. *Id.*

87. Spencer W. Kimball recorded in his diary on August 25, 1955:

When we incorporated in West Germany we had to relinquish our association status and did not realize what that would do to our status in East Germany, but it seems to have had the effect of disenfranchising us there and losing for us our recognition. . . . Cannot buy buildings. Difficulty in getting land.

*Id.* at 60.

88. *Id.* at 59–61.

a cadre of internal attorneys to handle Church affairs, as well as developing long-term relationships with competent local law firms.<sup>89</sup>

As an American denomination, the Church has often served as a target of convenience for those hostile to American policies and cultural influence. Initially, the Church enjoyed much of the international goodwill directed toward the United States in the immediate post-war years. But as the Cold War continued, confrontation with the Soviets and other communist movements pushed the United States to take actions that ultimately dissipated much of this goodwill, particularly in the Third World countries where the Church was expanding most rapidly. In 1953, the CIA, in cooperation with Britain's MI-6, toppled the elected government in Iran after it sought closer ties with the Soviet Union. Thereafter, the CIA supported a coup in Guatemala (1954) and worked covertly to overthrow Fidel Castro's regime, culminating in the disastrous Bay of Pigs invasion of 1961. The CIA also made covert interventions in Iraq (1960–1963), the Dominican Republic (1961), and South Vietnam (1963). In addition, the United States backed often-brutal anti-communist strongmen, most notably in South Korea and Chile, where the Nixon administration tacitly supported Augusto Pinochet's violent coup against Salvador Allende's elected government. Eventually, American involvement went beyond the covert machinations of the CIA. Across the Third World, the United States faced off against the Soviet Union in a series of bloody proxy wars in southern Asia, Africa, and Central America. The United States also fought a full-fledged war in Vietnam from 1964 to 1973.<sup>90</sup> Deeply unpopular both at home and abroad, Vietnam, more than any single event, generated hostility and suspicion toward the United States across the world.

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89. Perry H. Cunningham, *Area, Area Presidency*, in *ENCYCLOPEDIA OF MORMONISM* 65–66 (Daniel H. Ludlow ed., 1992), available at [http://com.byu.edu/index.php/Area,\\_Area\\_Presidency](http://com.byu.edu/index.php/Area,_Area_Presidency); Mehr, *supra* note 32, at 119. The year-end summaries prepared by Randy Ayre, a Church lawyer who worked first in Frankfurt and later in Chile, provide a rare document giving a flavor for the kinds of tasks Church attorneys in area offices have performed. Ayre recounts traveling throughout Russia and Ukraine to acquire property on behalf of the Church and negotiate with local government officials over the construction of LDS buildings. His recounting of his Chilean experience provides less detail, but it also focused mainly on issues related to the purchase of land and the construction of buildings. See Randy Ayre, 2005 in Review (unpublished manuscript) (on file with the Church History Library); Randy Ayre, 2001 in Review (unpublished manuscript) (on file with the Church History Library); Randy Ayre, 1994 in Review (unpublished manuscript) (on file with the Church History Library); Randy Ayre, 1993 in Review (unpublished manuscript) (on file with the Church History Library).

90. Dating the beginning of the Vietnam War is tricky. American military personnel were involved in Indochinese conflicts as early as 1955, and there was a substantial military presence beginning in 1961–1962. In 1964, however, the Gulf of Tonkin incident prompted congressional authorization for military operations in Southeast Asia. American troops were withdrawn in 1973, again as a result of congressional action, and Saigon fell in 1975, marking the final victory for North Vietnam.

Anti-American sentiment directed against the Church has sometimes been violent. In 1977, there was an unsuccessful attempt to assassinate Church president, Spencer W. Kimball, with a bomb during a visit to Santiago, Chile. Chilean officials foiled the plot, killing three of the plotters. In all likelihood, the plotters were seeking to embarrass the Pinochet government by killing a prominent American leader.<sup>91</sup> More tragically, in the 1980s and early 1990s, leftist guerilla groups murdered both American and Latin American missionaries in Peru and Bolivia.<sup>92</sup>

In addition, dozens of Church buildings in Bolivia, Peru, Chile, and Colombia were bombed in the 1980s.<sup>93</sup> Although all of these groups had complex local ideologies, they were also driven by hostility toward American policies in Latin America and historical resentment against the *gringos* and *yanquis*.<sup>94</sup> Elsewhere, it was quite common for Mormon missionaries to be identified in the media or political debate as CIA agents.<sup>95</sup> At times, this diffuse association between espionage and Mormonism led to concrete action, as when Mormon missionaries were arrested as spies by the Czechoslovakian government in 1950.<sup>96</sup> It has also led to overt symbolic actions against the Church by politicians eager to exploit popular resentment against the United States. For example, in the early 1980s, leftist MPs made Mormonism the topic of questions in the Finnish parliament, and in 1970, when a *coup d'état* brought the populist general Juan Jose Torres to power in Bolivia, he threatened to ban Mormonism in the country, insisting that it was an agent for American imperialism. (A right-wing military putsch deposed Torres in 1971 before he could act on these threats.)<sup>97</sup>

Finally, the Church has been subject to legal pressure because of internal political or social dynamics in the countries where it has sought to expand. Two examples illustrate this dynamic. On December 8, 1989, the Church sent the first fulltime missionaries from Finland into the Soviet Union. The Mormons were not the only group moving into the rapidly crumbling Soviet bloc in this era. Mikhail Gorbachev's policy of *glasnost*, which eased

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91. The assassination attempt and its connection with Pinochet's government is discussed in KIMBALL, *supra* note 27, at 16–17.

92. David Knowlton, *Missionaries and Terror: The Assassination of Two Elders in Bolivia*, SUNSTONE, Aug. 1989, at 10, available at <http://www.sunstonemagazine.com/pdf/072-10-15.pdf>.

93. See David Clark Knowlton, *Mormonism and Guerrillas in Bolivia*, J. MORMON HIST., Fall 2006, at 180, 181.

94. See *id.* at 181–82.

95. For example, on rumors surrounding Mormon missionaries and the CIA in India, see BRITTSCH, FROM THE EAST, *supra* note 15, at 542–43. For a detailed analysis of the politics of Mormonism and espionage in Finland, see generally Kim B. Östman, *The Mormon Espionage Scare and Its Coverage in Finland, 1982–84*, J. MORMON HIST., Winter 2008, at 82. For a general discussion of the relationship between religion and espionage, see generally Nikolas K. Gvosdev, *Espionage and the Ecclesia*, 42 J. CHURCH & ST. 803 (2000).

96. See Mehr, *supra* note 19, at 142.

97. See Knowlton, *supra* note 92, at 187.

restrictions on religion, and the subsequent dissolution of the Soviet Union, led to a religious land rush in Central and Eastern Europe.<sup>98</sup> American churches were particularly aggressive in proselytizing the former communist world, with Baptists, Seventh Day Adventists, and Jehovah's Witnesses all sending missionaries into the former Soviet bloc.

This led to a backlash as the Russian Orthodox Church recovered from Soviet era repression and the public odium of forced cooperation with the communist state.<sup>99</sup> In the 1990s, the Russian economy went into free fall and a mafia-infested economic oligarchy emerged, souring the optimism about Western-inspired reforms. The sense of social and cultural dissolution was exacerbated by Russia's two bloody wars (1994–1996 and 1999–2000) against the breakaway province of Chechnya and the resulting terrorist attacks in Moscow and elsewhere. This hostility often focused on western churches, including the Mormon Church.<sup>100</sup> In 1996, Alexander Lebed, a former general, ran in the presidential elections on a nationalist and authoritarian

98. Emily B. Baran, *Negotiating the Limits of Religious Pluralism in Post-Soviet Russia: The Anticulf Movement in the Russian Orthodox Church, 1990–2004*, 65 *RUSSIAN REV.* 637, 639–40 (2006).

99. See *id.* at 653; W. Cole Durham, Jr. et al., *Introduction: A Comparative Analysis of Religious Association Laws in Post-Communist Europe*, in *LAWS ON RELIGION AND THE STATE IN POST-COMMUNIST EUROPE*, at vii (W. Cole Durham, Jr. & Silvio Ferrari eds. 2004).

100. Metropolitan Kirill of Smolensk and Kaliningrad stated the Russian Orthodox Church's reaction to religious proselytizing before the World Conference of Churches Conference on World Mission and Evangelism in November 1996:

As soon as freedom for missionary work was allowed, a crusade began against the Russian church, even as it began recovering from a prolonged disease, standing on its feet with weakened muscles. Hordes of missionaries dashed in, believing the former Soviet Union to be a vast missionary territory. They behaved as though no local churches existed, no Gospel was being proclaimed. They began preaching without even making an effort to familiarize themselves with the Russian cultural heritage or to learn the Russian language. In most cases the intention was not to preach Christ and the Gospel, but to tear our faithful away from their traditional churches and recruit them into their own communities. Perhaps these missionaries sincerely believed that they were dealing with non-Christian or atheistic communist people, not suspecting that our culture was formed by Christianity and that our Christianity survived through the blood of martyrs and confessors, through the courage of bishops, theologians, and laypeople asserting their faith.

Missionaries from abroad came with dollars, buying people with so-called humanitarian aid and promises to send them abroad for study or rest. We expected our fellow Christians would support and help us in our own missionary service. In reality, however, they have started fighting with our church, like boxers in a ring with their pumped-up muscles, delivering blows. The annual budget of some of the invading missionary organizations amounts to dozens of millions of dollars. They have bought time on radio and television and have used their financial resources to the utmost in order to buy people.

Metropolitan Kirill, *Gospel and Culture*, in *PROSELYTISM AND ORTHODOXY IN RUSSIA: THE NEW WAR FOR SOULS*, 73 (John Witte, Jr. & Michael Bourdeaux eds., 1999). For a summary of the attitudes of cultural hostility toward Mormon missionaries, see Decoo, *supra* note 65, at 154–57.

platform.<sup>101</sup> After finishing third, he was installed by his rival, President Boris Yeltsin, as security chief. In a widely reported speech before a nationalist rally, he said: “We have the established, traditional religions—Russian Orthodox, Islam, Buddhism. . . . As to all these Mormons, Aum Supreme Truth . . . , all this is mold and scum that is artificially brought into our country with the purpose of perverting, corrupting and breaking up our state.”<sup>102</sup>

Lebed’s linking of Mormons with Aum Supreme Truth, a Japanese group associated with fatal gas attacks in a Tokyo subway, was telling. Beginning in the 1990s, Russian activists—many of them associated with the Russian Orthodox Church—began forming ties with American and Western European anti-cult activists. In the 1990s and 2000s, these ties generated a political movement within Russia directed against so-called “totalitarian cults” that allegedly corrupted the morals of their victims through brainwashing, thus undermining Russian society.<sup>103</sup>

In 1997, the Russian Duma passed a new law governing religious associations.<sup>104</sup> It threatened to revoke the status of all religious groups that could not demonstrate a presence within the country for 15 years, limiting their ability to hold property or publish their views. The law provoked widespread concern in the United States. Senator Gordon Smith, a Mormon representing Oregon, introduced a law that would make U.S. foreign aid contingent on a finding that “the Russian Federation has enacted no statute or promulgated no executive order that would discriminate . . . against religious minorities . . . in violation of accepted international agreements on human rights and religious freedoms.”<sup>105</sup> Acting independently of the Church, another Mormon Senator, Utah’s Robert F. Bennett, traveled to Russia on behalf of the U.S. State Department, where he met with the chairman of the Duma committee on religious affairs, President Yeltsin’s chief of staff, and lawyers from the Russian Ministry of Justice. These officials assured him that—despite its language—the law would not be applied to

101. Lebed famously claimed that Russia could benefit from a military dictatorship modeled on that of Augusto Pinochet.

102. Richard Boudreaux, *Yeltsin Aide Denounces Foreigners, Urges Curbs*, L.A. TIMES (June 28, 1996), [http://articles.latimes.com/1996-06-28/news/mn-19451\\_1\\_yeltsin-foreign-urges](http://articles.latimes.com/1996-06-28/news/mn-19451_1_yeltsin-foreign-urges).

103. See Baran, *supra* note 98, at 638 (internal quotation marks omitted).

104. An unofficial English translation of the law has been published in LAWS ON RELIGION AND THE STATE IN POST-COMMUNIST EUROPE, *supra* note 99, at 279–300. For background on the law, see generally T. Jeremy Gunn, *Caesar’s Sword: The 1997 Law of the Russian Federation on the Freedom of Conscience and Religious Associations*, 12 EMORY INT’L L. REV. 43 (1998). For an early but comprehensive analysis of the law’s provisions, see generally W. Cole Durham Jr. & Lauren B. Homer, *Russia’s 1997 Law on Freedom of Conscience and Religious Associations: An Analytical Appraisal*, 12 EMORY INT’L L. REV. 101 (1998).

105. 143 CONG. REC. S7518 (daily ed. July 16, 1997) (introducing amendment language as moved by Sen. Gordon Smith); see also Durham & Homer, *supra* note 104, at 237–40 (discussing implications of the Smith Amendment).

Mormons and other new religions.<sup>106</sup> In addition, officials from the Church's Area Office in Frankfurt flew to Moscow to lobby members of the Duma.<sup>107</sup> Shortly after the law was passed, the Church was recognized under an exemption in the law for "centralized religious organization," a provision originally designed to exempt the Russian Orthodox Church from the law's restrictions on other religious groups.<sup>108</sup> Notwithstanding official recognition, however, the U.S. State Department reported that after the passage of the 1997 law, the Church routinely faced difficulties with officials in proselytizing and obtaining property.<sup>109</sup>

The experience of the Church in West Africa provides another example of legal difficulties flowing out of unique local political concerns. As early as the 1950s, people in Nigeria and other West African countries found materials about the Church and began converting to "Mormonism" without baptism or any interaction with missionaries.<sup>110</sup> Within the religious economy of sub-Saharan Africa, such religious entrepreneurialism based on new religious texts and revelations is fairly common, and reflects widespread

106. Interview with Robert F. Bennett, Former U.S. Senator, Utah (Nov. 15, 2013). Bennett also met with an official he described as "the secretary of state for the Russian Orthodox Church," who claimed that the law would exclude new religious groups but only for 15 years, enough time to give the Russian Orthodox Church "breathing space." *Id.*

107. *Id.*

108. Mark Elliott & Sharyl Corrado, *The 1997 Russian Law on Religion: The Impact on Protestants*, 27 RELIGION, ST. & SOC'Y 109, 111-12 (1999), available at [http://biblicalstudies.org.uk/pdf/rss/27-1\\_109.pdf](http://biblicalstudies.org.uk/pdf/rss/27-1_109.pdf). Indeed, Elliott and Carrado concluded in 1999 that "Mormons actually appear for the moment to be enjoying something of a privileged status, despite the minimal response of the Russian people to their missionaries." *Id.* at 111. For a summary of the treatment of religious minorities under the law during its first ten years, see Wallace L. Daniel & Christopher Marsh, *Russia's 1997 Law on Freedom of Conscience in Context and Retrospect*, 49 J. CHURCH & ST. 5, 5-17 (2007).

109. Government officials obstruct efforts to rent or build property. See U.S. COMM'N ON INT'L RELIGIOUS FREEDOM, ANNUAL REPORT 2013, at 256 (2013). Renting and building places of worship is difficult. See U.S. COMM'N ON INT'L RELIGIOUS FREEDOM, ANNUAL REPORT 2012, at 318 (2012). Government officials take an inordinate interest in fire and other safety regulations to assess fines and shut down services. See U.S. COMM'N ON INT'L RELIGIOUS FREEDOM, ANNUAL REPORT 2011, at 293 (2011). Members face difficulty in obtaining places of worship, restrictions on visas for missionaries, vandalism of Church buildings, and the perception that law enforcement will not protect Church services or property. See U.S. COMM'N ON INT'L RELIGIOUS FREEDOM, ANNUAL REPORT 2010, at 279-81 (2010). Members face difficulty obtaining worship space. See U.S. COMM'N ON INT'L RELIGIOUS FREEDOM, *supra* note 52, at 183. Pro-Kremlin demonstrations have gathered outside a Mormon building in Saratov. See U.S. COMM'N ON INT'L RELIGIOUS FREEDOM, ANNUAL REPORT 2008, at 254 (2008). The Church faces chronic problems obtaining legal recognition. See U.S. COMM'N ON INT'L RELIGIOUS FREEDOM, ANNUAL REPORT 2007, at 50 (2007). Government officials warn that Mormons are a threat to "spiritual security." See U.S. COMM'N ON INT'L RELIGIOUS FREEDOM, ANNUAL REPORT 2006, at 155 (2006). Mormons and other minority religions must secure permission of local Russian Orthodox leaders before the government will allow them to obtain places of worship. See U.S. COMM'N ON INT'L RELIGIOUS FREEDOM, ANNUAL REPORT 2005, at 91 (2005).

110. See KISSI, *supra* note 51, at 3-4; PRINCE & WRIGHT, *supra* note 21, at 81-82; Allen, *supra* note 45, at 211-12.



syncretism and “Africanization” of foreign religious traditions.<sup>111</sup> When Church leaders in Salt Lake City became aware of these African Mormons, they had to decide how to respond given the Church’s policy at the time of denying the priesthood to Blacks.<sup>112</sup> After nearly a decade of internal debate, President David O. McKay decided to open missionary work in Nigeria.<sup>113</sup> At this point, however, the Church faced legal difficulties in Nigeria. Nigerian students studying abroad had learned about the Church and denounced attempts to formally introduce Mormonism into Nigeria. A local newspaper, *The Nigerian Outlook*, published an editorial entitled “Evil Saints”:

They believe as a cardinal [tenet] of their faith that the Negro race is not equal to any other race in the eyes of God. Our correspondent has gone into great pains to expose this organization because he fears it may come to Nigeria thoroughly disguised. These so-called Latter Day Saints must be recognized for what they are—godless Herrenvolkismter Day Saints.<sup>114</sup>

The government responded by restricting visas for potential missionaries, and the Church eventually abandoned the proposed Nigerian mission.<sup>115</sup> The West African Mormons had to wait until November 1978 for baptism.<sup>116</sup>

Given the Church’s priesthood ban and the racist theology that was commonly used to defend it in the post-war years, the Nigerian government’s negative reaction to Mormon proselytizing is understandable.<sup>117</sup> The *Nigerian Outlook*, however, framed the issue in uniquely African terms. Africans, especially in the immediate post-colonial period, were sensitive to how European churches had generated racial hierarchies, the so-called veranda missionaries.<sup>118</sup> More telling was the association of Mormonism with

111. See generally Philip Jenkins, *Letting Go: Understanding Mormon Growth in Africa*, J. MORMON HIST., Spring 2009, at 1. See generally Rosalind I. J. Hackett, *Prophets, “False Prophets,” and the African State: Emergent Issues of Religious Freedom and Conflict*, NOVA RELIGIO, Apr. 2001, at 187.

112. PRINCE & WRIGHT, *supra* note 21, at 81–83; Allen, *supra* note 45, at 213–16.

113. PRINCE & WRIGHT, *supra* note 21, at 82–88; Allen, *supra* note 45, at 227.

114. Allen, *supra* note 45, at 230 (alteration in original) (internal quotation marks omitted).

115. The Nigerian government’s action in restricting visas was not the only reason for abandoning the proposed Nigerian mission. There was also disagreement in high Church councils about the wisdom of organizing Mormon congregations where there could be no local leadership. Finally, the proposed African mission came at a time when rumors were circulating in the American media that the Church was about to abandon its racial restrictions on the priesthood. Some in the Quorum of the Twelve were eager to quell these rumors and thought opening a mission in West Africa would lend them credence. PRINCE & WRIGHT, *supra* note 21, at 92–94.

116. Allen, *supra* note 45, at 246.

117. For an example of the kind of racial theologizing common within Mormonism at the time, see JOHN L. LUND, *THE CHURCH AND THE NEGRO: A DISCUSSION OF MORMONS, NEGROES AND PRIESTHOOD* (1967). For a discussion that places Mormon racial teachings in a historical and social perspective, see ARMAND L. MAUSS, *ALL ABRAHAM’S CHILDREN: CHANGING MORMON CONCEPTIONS OF RACE AND LINEAGE* (2003).

118. See Jenkins, *supra* note 111, at 19.

“Herrenvolkism.” Herrenvolk means “master race,” and in the African context it was associated with Apartheid in South Africa, especially with its most strident proponents among the Afrikaner population.<sup>119</sup> The editor of the *Nigerian Outlook* was thus viewing Mormonism’s racial theologizing through a peculiarly West African lens, one that saw itself fighting for a new post-colonial space between the tradition of European imperialism to the north and Apartheid to the south.

In the decade after the 1978 revelation on the priesthood, Mormon missionaries were particularly successful in Ghana, a former British colony west of Nigeria.<sup>120</sup> As is often the case throughout sub-Saharan Africa, politics in Ghana can become infused with religious content.<sup>121</sup> The country’s first post-independence leader created a quasi-religious cult of personality. A pro-government newspaper, for example, insisted that “the whole phenomenon of Nkrumah’s emergence is second to none in the history of world messiahs from Buddha and Mohammed to Christ.”<sup>122</sup> Thereafter, different regimes took different positions vis-à-vis Ghana’s religious culture, sometimes favoring mainline religious establishments and sometimes cultivating indigenous African religions or syncretic local forms of Christianity.<sup>123</sup> In 1981, J.J. Rawlings led a successful military coup. He actively sought to legitimate his regime religiously, calling the coup a “Holy War” and garnering the popular nickname of “Junior Jesus.”<sup>124</sup> His regime soon found itself in conflict with mainline Christian churches, and in 1989, the government promulgated a law requiring that all churches register with the National Commission on Culture, which was given discretion to recognize the churches or not.<sup>125</sup> Unrecognized churches were forbidden from operating.<sup>126</sup>

As soon as the government announced the new law, it banned all actions of the Church in Ghana and expelled its foreign missionaries.<sup>127</sup> The government also outlawed three other religious groups: the Jehovah’s Witnesses and two indigenous religious movements, the Nyamae Sompah Church of Ekwam-krom and the Jesus Christ Church of Dzorwulu.<sup>128</sup> The reasons for banning the Church are unclear. The pro-government press

119. The term was also used by the Nazis to designate the Aryan master race. In Nigeria, however, the reference was likely South African, rather than German.

120. See KISSI, *supra* note 51.

121. See ABAMFO OFORI ATIEMO, RELIGION AND THE INCULTURATION OF HUMAN RIGHTS IN GHANA 85–110 (2013); Hackett, *supra* note 111.

122. ATIEMO, *supra* note 121, at 87–88.

123. *Id.* at 88–91.

124. *Id.* at 92.

125. *Id.* at 93; Elom Dovlo, *Religion in the Public Sphere: Challenges and Opportunities in Ghanaian Lawmaking, 1989–2004*, 2005 BYU L. REV. 629, 642–46; E.K. Quashigah, *Legislating Religious Liberty: The Ghanaian Experience*, 1999 BYU L. REV. 589, 594–95.

126. ATIEMO, *supra* note 121, at 93.

127. See Kissi, *supra* note 51.

128. ATIEMO, *supra* note 121, at 94.

attacked the Church as racist, accused the missionaries of being CIA agents, and suggested that the Church was buying converts with cars and lavish buildings.<sup>129</sup> The 1989 law, however, seems to have been primarily directed against mainline Christian denominations.<sup>130</sup> It proved unenforceable against these groups, and was ultimately invalidated by the country's 1992 constitution.<sup>131</sup> It seems likely that the government chose to make an example of four relatively weak religious organizations—two foreign and two indigenous—to intimidate the larger mainline denominations.<sup>132</sup> The so-called “freeze” of the Church in Ghana lasted 18 months. The Church lost many members, and its property was vandalized. Local leaders, however, maintained basic Church organization and, assisted by representatives from Church headquarters, negotiated an end to the “freeze” and the return of missionaries in 1990.<sup>133</sup>

#### IV. LAW AND THE MORMON THEOLOGY OF THE STATE

It is impossible to recount the development of Mormon theology in the 19th century without acknowledging the profound influence of the law on Latter-day Saint teachings. Most dramatically, the concerted effort of the federal government to suppress polygamy from 1862 to 1890 forced the Church to abandon the practice of plural marriage and ultimately its teaching as well. The power of the law, however, was also deployed against other aspects of the 19th-century Mormon commonwealth. Forced to abandon theocratic ambitions, the Church reinterpreted Zion in less literal terms and postponed its utopian hopes to an ever-receding millennium. For the Latter-day Saints, the American ideal of a religiously neutral law and an autonomous religious

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129. KISSI, *supra* note 51, at 199. Atiemo, the head of the religious studies department at the University of Ghana, Legon wrote:

The LDS suffered apparently on the basis of suspicion and alleged misdeeds in countries where they had been before coming to Ghana. It is clear also that public sentiments against these bodies played an important role in influencing the decision of the government. One of the official reasons given for the promulgation of the law was to protect the public from ‘too many bogus churches’ and to control corruption.

ATIEMO, *supra* note 121, at 94 (citation omitted).

Kissi, the local leader of the Church during the “freeze” who subsequently became a general authority of the Church, speculates that the government's action may have been instigated by local ministers and anti-Mormon propaganda from America. Ed Decker, a prominent anti-Mormon activist, has confirmed that his organization was active in Ghana at the time. KISSI, *supra* note 51, at 187.

130. Dovlo, *supra* note 125, at 643–44.

131. *Id.* at 645–46.

132. In the absence of more direct sources on the government's motivations, however, this conclusion is necessarily speculative.

133. KISSI, *supra* note 51, at 263.

sphere free of government coercion proved illusory. Law was a causal force in the development of Mormon practices and teachings.<sup>134</sup>

Law was also a powerful influence on Mormon teachings in the latter half of the 20th century. As Mormonism achieved a grudging cultural acceptance in the United States after 1904, it could avail itself of the freedom of religion, speech, and association protected by the First Amendment of the U.S. Constitution. At the same time, the Supreme Court steadily began expanding those freedoms.<sup>135</sup> In 1938, the Court signaled the beginnings of its mid-century “rights revolution” with the famous footnote four of *United States v. Carolene Products*, stating that the deferential attitude of the courts toward legislation entrenched by the constitutional settlement of the New Deal didn’t extend to laws aimed at “discrete and insular minorities.”<sup>136</sup> By the late 1960s and 1970s, this judicial attitude had produced decisions such as *Sherbert v. Verner*,<sup>137</sup> *Wisconsin v. Yoder*,<sup>138</sup> and *National Labor Relations Board v. Catholic Bishop of Chicago*,<sup>139</sup> all of which took a deferential stance toward individual and institutional religious practice. Indeed, the Church was an important agent in creating the post-rights revolution Religion Clause jurisprudence, fighting the case of *Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints v. Amos*<sup>140</sup> to the Supreme Court, establishing the legitimacy of statutory exemptions designed to accommodate religious practice and protecting the independence of religious institutions.<sup>141</sup>

134. See Elizabeth Harmer-Dionne, *Once a Peculiar People: Cognitive Dissonance and the Suppression of Mormon Polygamy as a Case Study Negating the Belief-Action Distinction*, 50 STAN. L. REV. 1295, 1300 (1998).

135. See *infra* notes 136–41 and accompanying text.

136. *United States v. Carolene Prods. Co.*, 304 U.S. 144, 152–53 n.4 (1938). Footnote four is widely recognized as the most famous footnote in American law and has been the subject of a massive amount of scholarly literature. For a summary of the footnote’s legal and historical significance, see Felix Gilman, *The Famous Footnote Four: A History of the Carolene Products Footnote*, 46 S. TEX. L. REV. 163, 168–225 (2004). For historical treatments of the “rights revolution” in general in American constitutional law, see generally CHARLES R. EPP, *THE RIGHTS REVOLUTION: LAWYERS, ACTIVISTS, AND SUPREME COURTS IN COMPARATIVE PERSPECTIVE* (1998); GERALD N. ROSENBERG, *THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE?* (2d ed. 2008).

137. *Sherbert v. Verner*, 374 U.S. 398, 403 (1963) (holding that laws burdening the free exercise of religion—in this case, a law requiring a Seventh Day Adventist to work on the Adventist Sabbath—were subject to strict scrutiny).

138. *Wisconsin v. Yoder*, 406 U.S. 205, 234–36 (1972) (holding that Old Order Amish could be excused from compulsory education laws on the basis of freedom of religion).

139. *NLRB v. Catholic Bishop of Chi.*, 440 U.S. 490, 507 (1979) (holding that religious institutions were constitutionally protected from invasive laws governing their administration).

140. *Corp. of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 339 (1987) (holding that the exemption of religious institutions from laws prohibiting discrimination on the basis of religion did not violate the Establishment Clause of the First Amendment).

141. Entities outside of the United States, including the European Court of Human Rights, have also considered and addressed the relationship between religious requirements and the law. Press Release Issued by Registrar: Dismissal of Church Employees for Adultery: Domestic Courts Required to Balance Rights of Both Parties and Take Account of Specific Nature of Post

It is one of the unappreciated ironies of Mormon history, however, that just at the moment when Mormonism had, after more than a century of struggle and accommodation, achieved maximal freedom and flexibility under American law, the Church was increasingly constrained and influenced by non-American legal systems. In navigating this bewildering new legal environment, the Church had to change. The changes, however, went beyond ecclesiastical structures or an increasingly professionalized apparatus of international lawyers. Interactions with non-American legal systems also had an influence on Mormon teachings. In particular, the necessity of accommodating Mormonism to a multiplicity of legal regimes, required Church leaders to articulate a largely apolitical Mormon theology of the state, one that emphasized the role of Latter-day Saints as good citizens and sought to reassure often skeptical government officials that the Church was uninterested in operating as an agent of radical political or social change. This apolitical theology of the state triumphed over the apocalyptic millennialism of the 19th-century Church and its mid-20th-century theological counterparts.

A. EARLIER MORMON THEOLOGIES OF THE STATE

During much of the 19th century the dominant Mormon theology of the state was theodemocratic.<sup>142</sup> Originally articulated by Joseph Smith during the Nauvoo period, it envisioned the Mormon community as the Kingdom of God on Earth, a government in waiting, ready to step into the breach when the imminent end-times destroyed all secular competitors. A regime of theodemocracy would be put in place to build Zion in the last days and redeem all human communities that survived the coming deluge. With fierce literalism and commitment to Joseph's vision, Brigham Young sought to realize the Mormon Kingdom in the isolation of the Intermountain West.<sup>143</sup> Mormon theodemocracy, however, was already declining in the decades after the Civil War and ended in the first decade of the 20th century during the Smoot Hearings.<sup>144</sup> In effect, President Joseph F. Smith committed the

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Concerned, European Court of Human Rights (Sept. 23, 2010), *available at* <http://hudoc.echr.coe.int/webservices/content/pdf/003-3272505-3650095?TID=qqwuxcarkq>.

142. See Patrick Q. Mason, *God and the People: Theodemocracy in Nineteenth-Century Mormonism*, 53 J. CHURCH & ST. 349, 350 (2011). For accounts of Mormon governments and political maneuvering in the 19th century, see LYMAN, *supra* note 9; MORGAN, *supra* note 9.

143. See LEONARD ARRINGTON, GREAT BASIN KINGDOM: AN ECONOMIC HISTORY OF LATTER-DAY SAINTS 1830-1900, at 39-62 (1993); LEONARD J. ARRINGTON ET AL., BUILDING THE CITY OF GOD: COMMUNITY AND COOPERATION AMONG THE MORMONS (2d ed. 1992) (discussing the United Order's development and Nauvoo and Salt Lake Basin pioneer movement); JOHN G. TURNER, BRIGHAM YOUNG: PIONEER PROPHET 372-407 (2012).

144. KATHLEEN FLAKE, THE POLITICS OF AMERICAN RELIGIOUS IDENTITY: THE SEATING OF SENATOR REED SMOOT, MORMON APOSTLE 2 (2004) (arguing that "the Smoot hearing casts in high relief a number of changes to Protestantism, Mormonism, and the U.S. Senate that made

Church to behaving like an ordinary Protestant denomination. Theocratic ambitions were abandoned along with polygamy, the expansive jurisdiction of Church courts over civil disputes, and the cooperative economic institutions of Brigham Young's Deseret.<sup>145</sup>

In the immediate post-war period and for a decade or two thereafter, the main Mormon theology of the state could be called Cold War apocalypticism. The most articulate proponent of this view was Ezra Taft Benson, who leavened his Mormonism with the paranoid anticommunism of the John Birch Society.<sup>146</sup> Benson's output on the subject of communism and America was prodigious, but he was far from the only Church leader who made anti-communism an important theme in his preaching.<sup>147</sup> The dominant Church figures in the immediate post-war period—J. Reuben Clark and David O. McKay—were both staunch anti-communists.<sup>148</sup> In 1959, for example, McKay, speaking in the Church's general conference, quoted from Salt Lake City's arch-anticommunist police chief W. Cleon Skousen's book *The Naked Communist*: "The conflict between communism and freedom is the problem of our time. It overshadows all other problems. This conflict mirrors our age, its toils, its tensions, its troubles, and its tasks. On the outcome of this conflict depends the future of mankind."<sup>149</sup> He also added, "I admonish everybody to read that excellent book of Chief Skousen's."<sup>150</sup>

Other general authorities admonished against communists who sought to "overthrow the government and forfeit all safeguards,"<sup>151</sup> insisted that "the spirit of communism is unquestionably wholly foreign to the spirit of true

settlement possible and paradoxically reveal the continuity of 19th- and 20th-century Mormonism").

145. See generally Nathan B. Oman, *supra* note 9 (discussing the rise and fall of civil disputes in Mormon Courts).

146. See generally D. Michael Quinn, *Ezra Taft Benson and Mormon Political Conflicts*, DIALOGUE: J. MORMON THOUGHT, Summer 1993, at 1, available at [https://www.dialoguejournal.com/wp-content/uploads/sbi/articles/Dialogue\\_V26No2\\_15.pdf](https://www.dialoguejournal.com/wp-content/uploads/sbi/articles/Dialogue_V26No2_15.pdf).

147. EZRA TAFT BENSON, A PLEA FOR AMERICA (1975) (discussing God, family, and the country through a Church of the Latter-day Saints perspective); EZRA TAFT BENSON, AN ENEMY HATH DONE THIS (1969); EZRA TAFT BENSON, GOD, FAMILY, COUNTRY: OUR THREE GREAT LOYALTIES (1974); EZRA TAFT BENSON, STAND UP FOR FREEDOM (1964); EZRA TAFT BENSON, THE CONSTITUTION: A HEAVENLY BANNER (1986) (discussing the Constitution through a religious lens); EZRA TAFT BENSON, THE RED CARPET (1969) (discussing the dangers of socialism in the United States); EZRA TAFT BENSON, THIS NATION SHALL ENDURE (1977) (delivering speech discussing American heritage, challenges, and destiny).

148. PRINCE & WRIGHT, *supra* note 21, at 279–323; D. MICHAEL QUINN, ELDER STATESMAN: A BIOGRAPHY OF J. REUBEN CLARK (2002) (discussing J. Reuben Clark and his distaste for communism).

149. David O. McKay, Ninth President of the Church of Jesus Christ of Latter-day Saints, Remarks at the 129th Semi-Annual Conference of the Church of Jesus Christ of Latter-day Saints (Oct. 9, 1959), available at <https://archive.org/details/conferencereport1959sa>.

150. *Id.*

151. Stephen L. Richards, *The Wayward*, CONF. REP., Apr. 1957, at 95, available at <http://scriptures.byu.edu/gettalk.php?ID=902&era=yes>.

Americanism,”<sup>152</sup> and affirmed that “knowledge of the [communist] enemy teaches us wariness and caution.”<sup>153</sup> The Manichean struggle between good and evil in the last days, which was a consistent theme of the early theodemocratic vision, was transposed to the mid-century struggle between the superpowers. In the 19th century, American democracy had been identified with the degenerate end-times regimes. In the vision of Cold War apocalypticism, however, America became the primary agent of God’s work in history. To be sure, she was an uncertain agent, in constant danger of moral and political collapse from within.<sup>154</sup> The Church and Mormonism were cast as agents of American righteousness in the global struggle against satanic communism. Even Mormon liberals, such as Hugh B. Brown of the First Presidency, who opposed Benson’s politics, sounded anticommunist themes in their sermons.

There are three things worth noting about Cold War apocalypticism. First, it was intensely political. It provided a tightly intertwined set of theological and political narratives in which Mormonism spoke to pressing current concerns. Second, it was intensely American. Indeed, at times it seemed to tie the destiny of the Church to the destiny of the United States. Finally, and ironically, it was intensely local. Despite the international scope of the superpower struggle, Cold War apocalypticism ultimately spoke to American anxieties. In other words, it not only associated the Church closely with America, it was almost exclusively directed toward an American audience.

#### B. A QUIETIST MORMON THEOLOGY OF THE STATE

As the Church continued to expand, however, Cold War apocalypticism proved a theological luxury that Mormonism could not afford. Domestically, the fiery anti-communist rhetoric backfired. In July 1965, for example, the NAACP adopted a resolution at its national conference calling on all Third World nations “to refuse to grant visas to missionaries and representatives of The Church of Jesus Christ of Latter-day Saints . . . until such time as the doctrine of non-white inferiority is changed and rescinded by that church and a positive policy of support for civil rights is taken.”<sup>155</sup> Although the NAACP was critical of the Church’s racial policies, the resolution itself was passed at the urging of the Utah chapter of the NAACP in response to Ezra Taft Benson accusing the Civil Rights Movement of acting as a communist front.<sup>156</sup> As the

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152. Joseph F. Merrill, *The Gloomy Outlook and a Remedy*, CONF. REP., Oct. 1946, at 73, available at <http://scriptures.byu.edu/gettalk.php?ID=260&era=yes>.

153. Ezra Taft Benson, *The Threat of Communism*, CONF. REP., Apr. 1960, at 100, available at <http://scriptures.byu.edu/gettalk.php?ID=1072&era=yes>.

154. See BENSON, AN ENEMY HATH DONE THIS, *supra* note 147; BENSON, THE RED CARPET, *supra* note 147, at 15.

155. Quinn, *supra* note 146, at 35 (quoting *Critical of Church: NAACP Studies Action*, DESERET NEWS, July 2, 1965, at A-6).

156. *Id.*

Cold War eroded the immediate post-war good will toward the United States abroad, any close association of the Church with American policy became a liability. This was especially true as Mormonism moved into the Third World, a geopolitically liminal space between the superpowers. Mormon missionaries were seeking the same hearts and minds that American diplomats sought to win, but the Church found it best to decouple its efforts from U.S. policy. This was especially true as it began to deal with governments that might or might not be friendly to the United States or, perhaps worse, governments that oscillated back and forth depending on the last coup or election. The Church's preferred strategy was to become as small a political and legal target as possible.

The Church sought to limit its exposure to legal and political hostility abroad by adopting an apolitical theology of the state. At its center was the Church's 12th Article of Faith. In 1842, Joseph Smith concluded a letter to Joseph Wentworth, editor of *The Chicago Democrat*, with a list of Mormonism's basic beliefs, what became the Articles of Faith. The penultimate article declared, "We believe in being subject to kings, presidents, rulers, and magistrates, in obeying, honoring, and sustaining the law."<sup>157</sup> Written in Illinois, amidst Smith's increasingly desperate legal maneuverings to avoid extradition to Missouri and the rising chorus of complaints about Mormon political machinations in the state, the statement made good political sense. Smith was pouring oil on troubled political waters. In the mid-20th century, this text was repurposed to suit the rhetorical needs of the internationally expanding Church.

As early as 1950, Church leaders cited the 12th Article of Faith in response to the expulsion of missionaries from Czechoslovakia.<sup>158</sup> In 1956, the First Presidency invoked the same text to negotiate legal requirements abroad. Stephen L. Richards, first counselor in the First Presidency, told a general conference audience that year:

Within the past few weeks, in order to meet the requirements of a distant foreign country for the Church to hold property and otherwise carry forward its activities within that country, the First Presidency has caused to be prepared and submitted to the governing authority of the foreign country a statement of beliefs and objections of the Church.<sup>159</sup>

After repeating the 12th Article of Faith, the statement affirmed that "the Church of Jesus Christ of Latter-day Saints builds and maintains churches, temples, educational institutions for all ages . . . . It teaches loyalty to country

157. *Articles of Faith* 1:12 (THE PEARL OF GREAT PRICE).

158. Joseph F. Merrill, *Repentance . . . or Slavery*, CONF. REP. 57–62 (1950), available at <http://scriptures.byu.edu/gettalk.php?ID=443&era=yes>.

159. Stephen L. Richards, *Our Message to the World*, CONF. REP. 40 (1956), available at <http://scriptures.byu.edu/gettalk.php?ID=856>.



and fosters good citizenship in all communities where it is established.”<sup>160</sup> Tellingly, the 12th Article of Faith was invoked in a context where the Church was particularly vulnerable—the acquisition and use of real property. Hugh B. Brown, soon to be a counselor in the First Presidency, likewise told a general conference audience in the late 1950s that he had used the 12th Article of Faith to answer questions about the Church’s beliefs posed to him during the dedication of the London Temple.<sup>161</sup>

By the 1970s, this apolitical message was the dominant Mormon theology of the state. To be sure, there were still sermons and articles that drew on the images of Cold War apocalypticism,<sup>162</sup> but increasingly, the message to both insiders and outsiders was that, above all, Mormons were law-abiding citizens uninterested in radical change.<sup>163</sup> The text of the 12th Article of Faith is uniquely well-suited for conveying this message for two reasons. First, the reference to “being subject to kings, presidents, rulers, and magistrates” is institutionally capacious. In contrast to philosophical liberalism, for example, it does not condition allegiance to the law on a particular institutional structure. If anything, the reference to “kings” and “rulers”—two models of authority that run counter to liberal ideas of legitimacy—suggests an almost unlimited allegiance to established authority.<sup>164</sup> Second, the emphasis on law

160. *Id.*

161. Hugh B. Brown, *We Affirm Our Faith*, CONF. REP. 61 (1958), available at <http://scriptures.byu.edu/gettalk.php?ID=963&era=yes>.

162. It’s worth noting that what I am calling Cold War apocalypticism went beyond Ezra Taft Benson’s Mormonization of the paranoid visions of the John Birch Society. During the bi-centennial celebrations of the United States in 1976, Spencer W. Kimball published a first presidency message that was sharply critical of American materialism and castigated the United States and the Saints for being “a warlike people.” See Spencer W. Kimball, *The False Gods We Worship*, ENSIGN, June 1976, available at <https://www.lds.org/ensign/1976/06/the-false-gods-we-worship?lang=eng>.

163. This does not mean, of course, that this has always been an accurate description of the political beliefs of Latter-day Saints. Prior to the 1980s, for example, many Mormons in Nicaragua were supporters of the opposition Sandinistas, although many of these Latter-day Saints became disenchanted with the Sandinistas after they came to power and targeted the Church. See Gooren, *supra* note 61.

164. Compare the 12th Article of Faith, for example, with the Declaration of Independence. According to Jefferson’s document:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.—That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed,—That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.

THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776). On this view the legitimacy of the government depends on both its procedural institutions—“deriving their just power from the consent of the governed”—and the substantive content of its acts—“secure these rights” and “effect their Safety and Happiness.” See *id.*

as the primary mediator of Latter-day Saint relationships to the state further suppresses any idea of political activism. Law has traditionally been presented as the antithesis of politics, a realm in which both obedience and authority are mediated through a system of impersonal principles that can be logically applied and obeyed without political judgment. To be sure, this ideal has always been something of an illusion, as critical theorists from Marx to realists of various stripes have been eager to point out. Still, as a rhetorical matter invoking law as a central trope tends to emphasize the apolitical character of the Church.

Even at its most politically quietist, however, Mormon allegiance to established authority was not absolute. David Kennedy, who spent as much time thinking about these issues as any Latter-day Saint in the 1970s and 1980s, wrote:

[S]o long as the government permits me to attend church, so long as it permits me to get on my knees in prayer, so long as it permits me to baptize for the remission of sins, so long as it permits me to partake of the sacrament of the Lord's Supper, and to obey the commandments of the Lord, so long as the government does not force me to commit crime, so long as I am not required to live separately from my wife and children, I can live as a Latter-day Saint within that political system.<sup>165</sup>

To be sure, the Church has avoided states that cannot meet these minimal requirements, and thus, avoided direct conflict.<sup>166</sup> Still, Kennedy's formulation provided a floor for the kinds of legal regimes within which the Church was willing to exist. Ideally, this near complete abandonment of a critical stance toward constituted authority reduced the probability of hostile

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165. HICKMAN, *supra* note 32, at 340–41 (internal quotation marks omitted).

166. For example, the Church's presence in the Islamic countries of the Middle East is muted, as is its presence in China. However, even in the Middle East there are Church units of expatriates and a smattering of local converts baptized abroad. In China, the population of native Latter-day Saints baptized abroad is sufficiently large that the Church has begun producing Chinese language materials giving them guidance on how to operate as Latter-day Saints within China. See *The Church of Jesus Christ of Latter-day Saints in China*, CHURCH JESUS CHRIST LATTER-DAY SAINTS, <http://www.mormonsandchina.org> (last visited Oct. 24, 2014). The website affirms:

The Church of Jesus Christ of Latter-day Saints teaches its members everywhere to lead Christ-like lives of faith, virtue, compassion, and integrity as indicated in the 13 Articles of Faith. One important tenet is for members to obey, honor and sustain the laws of the land. In more than 180 countries around the world, including in the People's Republic of China, the Church teaches members to be good citizens and good parents.

*Id.* (answering "What are the basic principles of the Church in China?"). It goes on to describe the restrictions under which native Chinese Latter-day Saints must function, including prohibitions on joint worship with expatriate Mormons in China, the distribution of Church literature, blogging or microblogging on religious subjects, and baptizing friends or family members in China. *Id.*

action by the state directed against Latter-day Saints. Mormons, according to this apolitical theology, pose no threat to the powers that be and those powers may safely ignore them.

As the legal experience of the Church in the last half of the 20th century shows, however, its apolitical theology of the state has never been wholly successful. The Church has been unable to shed its widespread association with America in general and, to a lesser extent, United States policy. In large part, this is an inevitable result of the Church's history and the geographic location of its administrative and demographic heartland in Utah. The American feel of the Church was further reinforced in the late 1960s and early 1970s by a comprehensive effort to simplify Church programs, known as correlation. This allowed the institution to husband and focus its scarce resources but also homogenized Mormonism along lines that marked it as an American institution abroad.<sup>167</sup> In contrast to the international expansion of other denominations, Mormonism has made very few concessions to local culture in terms of worship or ecclesiastical structure. Given these factors, the rhetorical weight placed on an apolitical Mormon theology of the state has not surprisingly proven too great at times. With a few exceptions, it has protected Latter-day Saints from the kind of violent persecution they suffered in the 19th century or that other religious groups have faced in the 20th century.<sup>168</sup> It has, however, not always shielded the Church from less dramatic forms of legal harassment.

A 1994 general conference address by Russell M. Nelson of the Quorum of the Twelve nicely illustrates this problem. As early as the 1970s, before being called as an apostle, Nelson negotiated with governments in Eastern and Central Europe on behalf of the Church.<sup>169</sup> Nelson reported:

While in Moscow in June 1991, in that spirit of preparation and with sincere respect for leaders of other religious denominations, Elder Dallin H. Oaks and I had the privilege of meeting with the presiding official of the Russian Orthodox Church. We were accompanied by Elder Hans B. Ringger and the mission president, Gary L. Browning. Patriarch Aleksei was most gracious in sharing a memorable hour with us. We perceived the great difficulties endured for so many years by this kind man and his fellow believers. We thanked him for his perseverance and for his faith. Then we assured him of our good intentions and of the importance of the message that missionaries of The Church of Jesus Christ of Latter-day Saints would be teaching

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167. For a discussion of the history of the correlation movement, see ALLEN & LEONARD, *supra* note 4, at 593-624.

168. The most obvious exceptions to this statement in the post-war period were the politically-motivated murders of Mormon missionaries in Latin America in the 1980s.

169. See Browning, *supra* note 48, at 675-76; Mehr, *supra* note 32, at 106; Kahlile Mehr, *Keeping Promises: The LDS Church Enters Bulgaria, 1990-1994*, 36 BYU STUD. 69, 71 (1996).

among his countrymen. We affirmed that ours is a global church and that we honor and obey the laws of each land in which we labor.<sup>170</sup>

This was essentially the same message that Hugh B. Brown had reported giving during the London Temple dedication over 30 years earlier. Yet as the political situation in Russia soured in the 1990s and the Russian Orthodox Church reasserted some influence over the law, Mormon protestations of apolitical law-abidingness proved insufficient to counter religious hostility. Indeed, despite the 1991 meeting with Oaks, Nelson, and Ringger and the assurances that they offered, Patriarch Aleksei was one of the most ardent supporters of the Duma's unsuccessful 1997 attempt to suppress new religions in Russia.<sup>171</sup>

## V. CONCLUSION

After 1945, the Church went through some of the most dramatic changes in its history. Over the course of two generations, it transformed itself from a community concentrated overwhelmingly within the confines of the Intermountain West into a global institution with ambitions to expand into every nation. This international expansion has created one of the unappreciated ironies of Mormon history. The post-war decades represent something of a high-water mark for the level of protection and autonomy enjoyed by the Church within the American legal system. Yet at precisely the moment when the Church successfully located itself within the legal culture of the United States, it found itself increasingly confronted by non-American legal systems. International expansion spawned a host of legal difficulties, and in trying to minimize itself as a target of potentially hostile governments, the Church crafted an apolitical theology of the state that has largely come to dominate internal and external Mormon discourse on the relationship between Latter-day Saints and legal authority. This late-20th-century approach, however, has never entirely minimized the Church's exposure to legal hostility.

The Mormon experience illustrates the power of law in shaping religion. From 1862 until 1890, the federal government pursued a massive legal crusade against the Latter-day Saints in an effort to force the Church to abandon polygamy. These federal laws were ultimately successful, forcing a revolution in Mormon practice and theology. Since 1945, Mormon discourse has again responded to legal pressure this time from a host of jurisdictions around the world. Both stories illustrate the complex interaction between law and religion. Religion is not a "given" to be punished, accommodated, or ignored by the state. Rather, religions are dynamic, constantly adapting and reinterpreting themselves in the face of circumstances. This does not mean

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170. Russell M. Nelson, 'Teach Us Tolerance and Love', *ENSIGN* (May 1994), available at <https://www.lds.org/ensign/1994/05/teach-us-tolerance-and-love?lang=eng>.

171. Daniel & Marsh, *supra* note 108, at 7.

that the claims of religion are infinitely malleable. Even the Mormons, with their extremely deferential stance toward the law in the 20th century have been willing to articulate limits to the authority of the state. Nevertheless, their experience powerfully illustrates the role of law in shifting religious discourse over time.