

2015

## Book Review of Sustaining the Law: Joseph Smith's Legal Encounters

Nathan B. Oman

*William & Mary Law School*, nboman@wm.edu

---

### Repository Citation

Oman, Nathan B., "Book Review of Sustaining the Law: Joseph Smith's Legal Encounters" (2015). *Faculty Publications*. Paper 1755.  
<http://scholarship.law.wm.edu/facpubs/1755>

---

Gordon A. Madsen, Jeffrey N. Walker, and John W. Welch, eds., *Sustaining the Law: Joseph Smith's Legal Encounters*, Provo, Utah: BYU Studies, 2014. Pp. Xix + 573. \$24.95 cloth (ISBN: 978-1-93896-70-5). doi:10.1017/S0738248015000188

Since his murder in 1844, historians have presented Joseph Smith, Jr., the founder of Mormonism, as everything from a beatified prophet to a lecherous charlatan to, in the assessment of Harold Bloom, "an authentic religious genius" (*The American Religion: The Emergence of the Post-Christian Nation* [New York: Simon & Schuster, 1993], 96–97). Few historians, however, have appreciated the extent to which Smith was a legal actor.

This volume illustrates the central role of law in Smith's life and in the founding of the movement he created. In recent years, The Church of Jesus Christ of Latter-Day Saints has been methodically producing a scholarly edition of all of Smith's known papers, including all of the legal documents related to his life. This volume of essays consists largely of research flowing out of this project. It reveals, to an extent not previously appreciated, how ubiquitous legal conflict was in Smith's life.

As is often the case with collections, the quality of these essays is uneven. The best of them uses a sophisticated reading of new legal sources to reframe key events in Mormon history. Jeffery Walker's paper on land law in Missouri is a good example. Beginning in 1831, Mormons began settling in Jackson County, Missouri as part of Smith's effort to build the New Jerusalem. Cosmic ambition soon clashed with local politics, however, and in 1833, mobs pushed Smith's followers out of Jackson County. They relocated in northern counties in the state and began once again building their new Zion.

Walker shows that the Mormons chose this portion of the state because it had not yet been surveyed, and Smith's followers hoped that they would have sufficient time to make the improvements that would give them the right to purchase the land at discounted prices once the federal survey was made. Violence broke out against the Mormons again in 1838, just as the survey was completed and the improved Mormon land went up for sale. The sieges of Mormon settlements by Missouri militias and the arrest of Smith and other Mormon leaders corresponded exactly to the time of the federal land auctions. Accordingly, the Mormons were unable to purchase their improved land, much of which was acquired by the leaders of the anti-Mormon movement. Walker thus shows that the Mormon War in Missouri, which has often been presented in terms of religious, cultural, or political conflict, in fact included very concrete economic motives rooted in the complexities of mid-nineteenth century land law.

The book is weakest when the authors adopt an implicitly apologetic framework. Persistent debates about the credibility of Latter-Day Saint academics and historians have long poisoned Mormon historiography, particularly with the rise of the so-called New Mormon History in the 1970s and 1980s. On the whole, accusations of religious propagandizing by Mormon historians are unwarranted and unfair. Nevertheless, at times, defensiveness about Smith's reputation drives these essays. The main model is an early article by then-University of Chicago law professor Dallin H. Oaks, "The Suppression of the *Nauvoo Expositor*," reproduced in this volume. In the crescendo of events leading to his murder, Smith, acting as mayor of the Mormon city of Nauvoo, ordered the suppression of an anti-Mormon newspaper, the *Nauvoo Expositor*. Historians assumed that in doing so, Smith acted illegally. Writing in 1965, Oaks provided a useful corrective by showing that under federal and state jurisprudence at the time, Smith was for the most part acting well within the bounds of the law.

Oaks's influence can be seen in this volume. Some essays see legal events through the prism of persistent attacks on Smith's character, and defend him by demonstrating that the legal instantiations of these attacks were mistaken. Hence, for example, showing that the young Smith was deemed an honest witness in a trial in which he was called to testify, implicitly refutes the claim that he was dishonest. Likewise, the accusation that Smith was unpatriotic is refuted by attacking the legal basis of the decision to charge him with treason based on the 1838 Mormon War. Certainly these essays are meticulously researched and scrupulously deal with evidence pointing toward a less charitable reading of Smith's character. Ultimately, however, law is a poor religious apologetic, and viewing the legal events in Smith's life through the lens of attacks on his character does little to illuminate our understanding of nineteenth century law and its role in the founding of America's most successful indigenous religion.

On the whole, the essays contained in this volume should be of interest to historians of law and religion. As the voluminous corpus of Smith's legal papers is published, those interested in the role of law in the formation of religious community and identity will have much new material to study. To use a biblical phrase that Smith surely would have appreciated, the field is "white already to harvest" (John 4:35).

**Nathan B. Oman**

William & Mary Law School

---