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## "Secret Combinations": A Legal Analysis

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## “SECRET COMBINATIONS”: A LEGAL ANALYSIS

Nathan Oman

Since the publication of the Book of Mormon in 1830, those subscribing to an environmental explanation have sometimes argued that its account of Gadianton robbers and secret combinations is a thinly veiled attack on Masonry, reflecting the burst of anti-Masonic feeling in New York in the last half of the 1820s. Alexander Campbell seems to have been the first one to advance the anti-Masonic thesis, writing in February 1831.<sup>1</sup> However, Campbell soon rejected his original explanation in favor of the Spalding theory, which rapidly became the dominant non-Mormon explanation for the Book of Mormon in that century.<sup>2</sup> The anti-Masonic thesis, however, was revived and deepened in the opening decades of the twentieth century.<sup>3</sup> By the time of her famous 1945 biography of Joseph Smith, Fawn Brodie was confidently asserting that the Book of Mormon’s discussion of secret combinations “were bald parallels of Masonic oaths.”<sup>4</sup> Since the publication of *No Man Knows My History*, the

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1. See Richard L. Bushman, *Joseph Smith and the Beginnings of Mormonism* (Urbana: University of Illinois Press, 1984), 125.

2. See *ibid.*, 231 n. 37 (which states that Campbell accepted the “Spalding-Rigdon hypothesis” later in life) and *ibid.*, 127 (which states that the Spalding theory was the dominant non-Latter-day Saint explanation of the Book of Mormon in the nineteenth century). For a summary of the Spalding theory, see Lester E. Bush Jr., “The Spalding Theory Then and Now,” *Dialogue* 10/4 (1977): 40.

3. See Walter F. Prince, “Psychological Tests for the Authorship of the Book of Mormon,” *American Journal of Psychology* 28 (July 1917): 373–89.

4. Fawn M. Brodie, *No Man Knows My History* (New York: Knopf, 1945), 65.

anti-Masonic thesis has become common among non-Latter-day Saint writers on Mormonism.<sup>5</sup> In recent years, Dan Vogel has been its most articulate proponent.<sup>6</sup>

Scholars have disputed the thesis. Richard Bushman, Blake Ostler, Daniel Peterson, and D. Michael Quinn have been its main critics.<sup>7</sup> The basic thrust of their arguments is that the claimed parallels between Masonry and the Gadianton robbers are superficial. Peterson, for example, notes that some proponents of the thesis have argued that the fact that both Masons and Gadianton robbers wore lambskin aprons is significant (see 3 Nephi 4:7).<sup>8</sup> However, he argues that this parallel is trivial since there is but a single reference to “lambskins” as Gadianton garb, which has no particular significance in the narrative, and the Book of Mormon lists other clothing worn by the robbers.<sup>9</sup>

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5. See, for example, Thomas F. O’Dea, *The Mormons* (Chicago: University of Chicago Press, 1957), 23, 35, 57; Robert N. Hullinger, *Mormon Answer to Skepticism: Why Joseph Smith Wrote the Book of Mormon* (St. Louis: Clayton, 1980), 100–104; David Pursuitte, *Joseph Smith and the Origins of the Book of Mormon* (Jefferson, NC: McFarland, 1985), 174–80.

6. See Dan Vogel, “Mormonism’s ‘Anti-Masonick Bible,’” *John Whitmer Historical Association Journal* 9 (1989): 17–30; Dan Vogel, “Echoes of Anti-Masonry: A Rejoinder to the Critics of the Anti-Masonic Thesis,” in *American Apocrypha*, ed. Dan Vogel and Brent Lee Metcalfe (Salt Lake City: Signature Books, 2002), 275–320.

7. Bushman, *Joseph Smith and the Beginnings of Mormonism*, 128–31; Blake Ostler, “The Book of Mormon as a Modern Expansion of an Ancient Source,” *Dialogue* 20/1 (1987): 66, 73–76; Daniel C. Peterson, “Notes on ‘Gadianton Masonry,’” in *Warfare in the Book of Mormon*, ed. Stephen D. Ricks and William J. Hamblin (Salt Lake City: Deseret Book and FARMS, 1990), 181; D. Michael Quinn, *Early Mormonism and the Magic World View*, 2nd ed. (Salt Lake City: Signature Books, 1997), 202 and 511–12 n. 216. All citations in this paper are to this revised edition of Quinn’s book. Quinn takes the anomalous position that *secret combinations* in the Book of Mormon refer to black magic and occult murders, or at any rate that they were understood this way by the book’s first readers. Quinn, *Early Mormonism and the Magic World View*, 207. However, Quinn’s thesis does not seem to have caught on even with environmental critics eager to locate the Book of Mormon entirely in a nineteenth-century context. See, for example, Vogel, “Echoes of Anti-Masonry,” 276. For a recent discussion, see Paul Mouritsen, “Secret Combinations and Flaxen Cords: Anti-Masonic Rhetoric and the Book of Mormon,” *Journal of Book of Mormon Studies* 12/1 (2003): 64–77.

8. Peterson, “Notes on ‘Gadianton Masonry,’” 180.

9. *Ibid.*, 203. Matthew B. Brown, “Girded About with a Lambskin,” *Journal of Book of Mormon Studies* 6/2 (1997): 124–51, provides a much lengthier treatment of the issue. Brown argues that the lambskin passages are more important to the narrative than Peter-

The critics of the anti-Masonic thesis also point out that the Book of Mormon’s secret combinations exhibit features absent from anti-Masonic rhetoric.<sup>10</sup> For example, Blake Ostler has argued that “the Book of Mormon secret societies differ from Masons in the precise ways they are similar to ancient Near Eastern bands of robbers.”<sup>11</sup> In addition, critics of the thesis argue that certain key features of anti-Masonic rhetoric are absent from the Book of Mormon’s discussions of Gadianton robbers. For example, Quinn argues that a stock element of the anti-Masonic furor of the 1820s was a denial that Masonry had any ancient origins.<sup>12</sup> In contrast, even the opponents of secret combinations within the Book of Mormon narrative acknowledge their ancient roots (see 2 Nephi 26:22; Alma 37:21–30; 3 Nephi 3:9).

The argument over the anti-Masonic thesis is multifaceted, involving as it does attempts to find or refute parallels between two complex phenomena. In his most recent work on the subject, Vogel claims to “respond to all of the major and most, if not all, of the minor arguments against the anti-Masonic thesis.”<sup>13</sup> He then goes on to discuss no less than seventeen specific subdisputes.<sup>14</sup> A comprehensive discussion of the debate is beyond the scope of this paper. I will not survey the full range of arguments offered for or against the anti-Masonic thesis, nor will I attempt to lay the issue to rest.<sup>15</sup> Instead, I will focus on one possible line of analysis of a single issue within the debate.

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son claims. However, Brown also holds that rather than being a Masonic reference, the lambskins in the Book of Mormon may have connections with ritual clothing that was worn in ancient Israel, Egypt, and Mesoamerica.

10. See, for example, Ostler, “Book of Mormon as a Modern Expansion,” 73–76.

11. *Ibid.*, 74. While Ostler rejects a crude version of the anti-Masonic thesis and regards the Book of Mormon as at least in part an authentic ancient text, he believes that anti-Masonic rhetoric had some influence on the Book of Mormon. He writes: “[Certain passages about secret combinations] appear to be influenced by anti-Masonic terminology and concerns. They may be explained best, it seems to me, as Joseph Smith’s independent commentary on Masonry, sparked by his reflection on Nephite secret combinations.” *Ibid.*, 76.

12. Quinn, *Early Mormonism and the Magic World View*, 203.

13. Vogel, “Echoes of Anti-Masonry,” 277.

14. See *ibid.*, 277–305.

15. Participants on both sides have claimed that the debate has been decisively settled. Compare William J. Hamblin, “An Apologist for the Critics: Brent Lee Metcalfe’s

One claim made by the proponents of the anti-Masonic thesis is that during the late 1820s the term *secret combination* had a unique and nearly exclusive association with Masonry. Vogel claims that “after extensive reading in the primary pre-1830 sources” he was “unable to find another use for the term and doubted that one would be found.”<sup>16</sup> It is, of course, undisputed that the term *secret combination* was used in the late 1820s to refer to Masonry.<sup>17</sup> What critics of the anti-Masonic thesis question is whether or not it had an exclusively Masonic meaning.<sup>18</sup> I hope to throw light on this question by examining the use of the phrase *secret combination* in legal materials both from before the publication of the Book of Mormon and from the subsequent period of Joseph Smith’s lifetime. This approach has been taken and criticized before.<sup>19</sup> However, I hope to show that previous attempts to use legal materials have been incomplete and in some ways mistaken. I also seek to respond to the claim that such legal materials are irrelevant to the anti-Masonic thesis. I conclude that the phrase *secret combination* did not have an exclusively anti-Masonic meaning either before or after the publication of the Book of Mormon and that, on the contrary, it was a term used to discuss hidden, criminal conspiracies.

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Assumptions and Methodologies,” *Review of Books on the Book of Mormon* 6/1 (1994): 499–500 (which states that Daniel Peterson’s work had definitively laid the anti-Masonic thesis to rest) with Vogel, “Echoes of Anti-Masonry,” 275 (which states that the truth of the anti-Masonic thesis has “long [been] regarded as obvious”). I will take the fact that ink continues to be spilled after more than 170 years as evidence that the question remains open to fruitful discussion.

16. Vogel, “Echoes of Anti-Masonry,” 318 n. 75. Compare with Peterson, “‘Secret Combinations’ Revisited,” *Journal of Book of Mormon Studies* 1 (1992): 184, 185 n. 5. Peterson writes, “On 26 August 1989, Vogel and his sometime coauthor Brent Metcalfe, in a Salt Lake City conversation with me and my colleague, Prof. Stephen D. Ricks, declared flatly that the phrase ‘secret combination’ was never used at the time of the translation and publication of the Book of Mormon, except to refer to Freemasonry.” *Ibid.*, 185 n. 5.

17. Dan Vogel, as quoted in Peterson, “‘Secret Combinations’ Revisited,” 184.

18. See Peterson, “Notes on ‘Gadianton Masonry,’” 189–97; Quinn, *Early Mormonism and the Magic World View*, 511–12 n. 216.

19. See Peterson, “Notes on ‘Gadianton Masonry,’” 191–93; and Vogel, “Echoes of Anti-Masonry,” 300–301.

## Background

In 1826, Captain William Morgan, a resident of Canandaigua, a town a short distance from Palmyra, New York, prepared to publish an exposé of secret Masonic rituals after quarreling with members of his Masonic lodge.<sup>20</sup> However, he never printed his tell-all account. In September of that year, he disappeared near Niagara, and it was almost universally believed that he had been murdered by vengeful Masons. When those indicted for the murder were either acquitted or received light sentences, there was a wave of anti-Masonic agitation in response. New York State saw repeated conventions, mass meetings, and newspaper articles denouncing Masonry as a threat to the Republic and a criminal fraternity bent on protecting its own. In particular, people were outraged at the perceived infiltration and perversion of the legal system by Masons in the Morgan case.<sup>21</sup> The epicenter of all this activity was just a few miles from Joseph Smith’s home in Palmyra. Anti-Masonry even became, for a short time, a national political issue in the late 1820s and early 1830s.<sup>22</sup> Anti-Masons repeatedly referred to Masonry as a “secret combination.”<sup>23</sup> Proponents of the anti-Masonic thesis have pointed to this phrase as one piece of evidence supporting their argument, claiming that the term was so closely tied with Masonry as to constitute an intentional reference.<sup>24</sup>

In order to effectively criticize the claim that the phrase *secret combination* refers exclusively to Masonry, Quinn has argued that “it is necessary to find someone (preferably a non-Mason) using the phrase ‘secret combination’ in a non-Masonic context before the . . . murder of William Morgan in 1826.”<sup>25</sup> Peterson has found one 1826 reference to “secret combination” that is arguably outside of the

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20. See Allen E. Roberts, *Freemasonry in American History* (Richmond, VA: Macoy and Masonic Supply, 1985), 228–29.

21. Vogel, “Mormonism’s ‘Anti-Masonick Bible,’” 21.

22. *Ibid.*, 19–21.

23. See, for example, *ibid.*, 22.

24. Vogel, “Echoes of Anti-Masonry,” 300.

25. Quinn, *Early Mormonism and the Magic World View*, 511 n. 216.

context of anti-Masonry.<sup>26</sup> On 15 December 1826, Andrew Jackson wrote a letter to Sam Houston, attacking his long-time political opponent Henry Clay.<sup>27</sup> In it, he accused Clay of “secrete [*sic*] combinations of base slander” to smear Jackson’s wife in the press.<sup>28</sup> Peterson has pointed to this letter as an instance of a non-Masonic context in which the phrase *secret combination* was used.<sup>29</sup> Quinn has criticized this conclusion.<sup>30</sup> According to Quinn, Jackson was an active Mason attacking Clay, a lapsed Mason.<sup>31</sup> He thus speculates that Jackson may have been using the phrase *secret combination* as a sarcastic dig at Clay.<sup>32</sup> Although there is no direct evidence that Jackson meant the term to convey any Masonic subtext, Vogel refers to Quinn’s argument appreciatively.<sup>33</sup> He also states that “regardless, the term ‘secret combination’ did not take on its full anti-Masonic meaning until 1827–28.”<sup>34</sup> This is a strangely inconsistent addition to Quinn’s analysis since Vogel seems, in effect, to argue that Jackson’s comment was an ironic play on a common political phrase that would not become a common political phrase for another two years.

### Looking at Legal Materials

Peterson has also looked at legal materials. In 1990, John W. Welch, a professor at Brigham Young University’s J. Reuben Clark Law School, conducted a computerized search of nineteenth-century legal materials for Peterson.<sup>35</sup> In his piece, Peterson noted the limitations of his research: “Unfortunately, . . . many states did not begin printing reports with any degree of comprehensiveness until midway through

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26. Peterson, “‘Secret Combinations’ Revisited,” 186–87.

27. *Ibid.*

28. *Ibid.*, 187.

29. *Ibid.*

30. Quinn, *Early Mormonism and the Magic World View*, 511–12 n. 216.

31. *Ibid.* But Peterson noted the connections of Jackson and Clay to Masonry in his article. See Peterson, “‘Secret Combinations’ Revisited,” 187 and 187 n. 11.

32. Quinn, *Early Mormonism and the Magic World View*, 512 n. 216.

33. Vogel, “Echoes of Anti-Masonry,” 301–2.

34. *Ibid.*, 302.

35. Peterson, “Notes on ‘Gadanton Masonry,’” 219 n. 74.

the nineteenth century, and a large number of the older opinions are not on computer since they are not of current legal interest.”<sup>36</sup>

Nevertheless, Peterson located ten legal cases from the nineteenth century that used the phrase *secret combination*.<sup>37</sup> The earliest reported opinion he located was from 1850,<sup>38</sup> and all but one of the cases he cited were from federal courts, half of them being from the United States Supreme Court.<sup>39</sup> Although he does not mention it, the exclusively federal nature of the materials that Peterson seems to have examined is potentially significant because during the nineteenth century, there was comparatively little federal law. The amount of federal criminal law was miniscule. Finally, very few criminal cases made their way to the U.S. Supreme Court.<sup>40</sup> Indeed, under the Judiciary Act of 1789 in force during the lifetime of Joseph Smith, the U.S. Supreme Court lacked appellate jurisdiction in criminal cases,<sup>41</sup> an important point since the term *combination* was often used to refer to conspiracy<sup>42</sup>—one would expect it to appear more often in criminal matters. In 1990, Welch did not have extensive access to computerized versions of early nineteenth-century state opinions,<sup>43</sup> although at least partial federal coverage—mainly Supreme Court decisions—would

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36. Ibid., 191–92.

37. Ibid., 190–93.

38. The case is *Marshall v. Baltimore & Ohio Railroad Co.*, 57 U.S. 314 (1850); Peterson, “Notes on ‘Gadianton Masonry,’” 192.

39. Peterson, “Notes on ‘Gadianton Masonry,’” 190–93.

40. Today the Supreme Court’s docket always includes a contingent of criminal cases. However, most of these cases involve a federal constitutional challenge to a state criminal conviction. Prior to the passage of the Fourteenth Amendment in the wake of the Civil War, none of the federal constitution’s rights for criminal defendants applied to state convictions. Even after the passage of the Fourteenth Amendment, it wasn’t until well into the twentieth century that the Supreme Court interpreted it as applying the Bill of Rights to the states.

41. Richard H. Fallon Jr., Daniel J. Meltzer, and David L. Shapiro, *Hart and Wechsler’s The Federal Courts and the Federal System*, 5th ed. (Westbury, NY: Foundation, 2003), 32. The Supreme Court could take jurisdiction in criminal cases by issuing a writ of habeas corpus, although this was extremely rare. Ibid.

42. Peterson, “Notes on ‘Gadianton Masonry,’” 189.

43. John W. Welch, memorandum to Daniel Peterson, 18 September 1989 (copy in my possession) (“a lot of the older opinions are not on computer”).



have extended into the eighteenth century. Thus, the legal universe that Peterson's research covered was severely constrained, and his results were understandably inconclusive.

In his book *Digging in Cumorah*, Mark Thomas also examines early legal materials as a potential source for alternate uses of "secret combination."<sup>44</sup> He concludes that "Peterson's hypothesis that 'secret combinations' is a vague, generalized symbol with no specific referent cannot be substantiated by the very legal documents where he suggests that evidence will be found."<sup>45</sup> Unfortunately, Thomas's examination of legal sources is too narrow to be of any real value. Apparently taken with Peterson's discussion of labor disputes and the possible connection of the phrase *secret combination* with early labor unions, Thomas turned his attention exclusively to six early nineteenth-century cases dealing with striking workers.<sup>46</sup> Thomas claims that Peterson "is certain that an examination of precedent-setting cases of labor unions ('combinations') will support his broad interpretation that excludes Masonry."<sup>47</sup> While Peterson does discuss unions, the late nineteenth-century cases he cites deal with a variety of subjects.<sup>48</sup> Nevertheless, Thomas's research is limited to labor cases. This choice is puzzling. The proto-unionists that Thomas discusses were prosecuted under the common law of conspiracy. The labor cases simply use the term *combination* to refer to the agreement necessary to form the conspiracy. There is nothing special about its application to labor unions. Once this point is understood, Thomas's choice to limit his research to labor disputes makes little sense. What is more, since labor cases formed only a miniscule fraction of all early nineteenth-century litigation,<sup>49</sup> the fact that the phrase *secret combi-*

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44. Mark D. Thomas, *Digging in Cumorah: Reclaiming Book of Mormon Narratives* (Salt Lake City: Signature Books, 1999), 209–12.

45. *Ibid.*, 212.

46. *Ibid.*, 210–11.

47. *Ibid.*, 210.

48. See Peterson, "Notes on 'Gadanton Masonry,'" 191–93.

49. Lawrence M. Friedman, *A History of American Law*, 2nd ed. (New York: Simon and Schuster, 1985), 553: "The labor problem . . . was practically speaking of major legal importance only after the Civil War."

*nation* does not occur in a sample of those cases has limited significance since the vast majority of nineteenth-century cases involving combinations of any kind had nothing to do with labor unions. For example, I was able to locate only one appellate case from *anywhere* in the United States before 1826 involving labor unions and the word *combination*,<sup>50</sup> yet during just the period of the 1820s, the supreme court of New York alone used the term in over thirty cases.<sup>51</sup>

### Combinations and Secret Combinations in Early Judicial Opinions

Since Peterson made the first foray into legal materials in search of secret combinations more than a decade ago, the availability of early judicial opinions in computerized format has dramatically expanded. It is now possible to search the decisions of many state and federal courts from the closing decades of the eighteenth and early decades of the nineteenth centuries. However, there are still reasons to be cautious about the results of such searches. First, coverage remains very incomplete both because not all early case reporters are available in computerized format and because coverage of cases in the early reporters themselves is very incomplete.<sup>52</sup>

Second, the vast majority of the available cases come from appellate courts, which fact distorts any searches in a variety of ways. Appellate decisions make up only a small fraction of all litigation. Judges decide most cases without any published opinion, and this was more markedly the case in the early nineteenth century than today. Most cases are never appealed. Furthermore, the cases in the appellate reports tend to be exceptional. This does not mean that they were the high-profile cases of the time, although sometimes they were. Rather

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50. *People v. Melvin*, Yates Selected Cases 112 (N.Y.Sup. 1809) (involving an attempted strike by cordwainers).

51. On 19 July 2002 I ran the search “DA(BEF 01/01/1830 & AFT 01/01/1820) & COMBINATION!” in the NY-CS database on Westlaw, which for this period includes reports from the state supreme court and the chancery court. The search produced thirty-four opinions. Note that during the early nineteenth century the high court of New York was called the supreme court, as opposed to the court of appeals, as it is now known.

52. Friedman, *History of American Law*, 322–25.

it means that they have a different character than most litigation. Generally cases turn on questions of fact. “Did John actually steal Abner’s cow?” However, appellate cases generally turn on issues of law. “Can multiple defendants be joined in a single suit at equity?” Although the categories of law and fact were more fluid in the early nineteenth century, appellate cases from the period still tend to contain involved legal discussion. This does not mean that the cases were exclusively technical or that they were devoid of discussion of events. On the contrary, they often provide fascinating windows into bits of late eighteenth- and early nineteenth-century life. However, in evaluating the virtues and the limitations of searching such materials, it is important to remember that we are looking at a narrow and, in some ways, unrepresentative slice of the legal past.

Webster’s 1828 dictionary defines the word *combination* as an

Intimate union, or association of two or more persons or things, by set purpose or agreement, for effecting some object, by joint operation; in a *good sense*, when the object is laudable; in an *ill sense*, when it is illegal or iniquitous. It is sometimes equivalent to league, or to conspiracy. We say a *combination* of men to overthrow government, or a *combination* to resist oppression.<sup>53</sup>

It is generally acknowledged that *combination* was a widely used word in the 1820s. Certainly, a review of judicial opinions from the period bears this out. For example, a search of pre-1826 legal opinions reveals that the term *combination* was used in conjunction with conspiracy or fraud in more than 150 cases.<sup>54</sup> Thus the New

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53. Quoted in Peterson, “Notes on ‘Gadianon Masonry,’” 189, emphasis in original.

54. On 18 July 2002, a search of the Westlaw ALLCASES-OLD database using the search term “DA(BEF 01/01/1826) & COMBINATION! /S (FRAUD! CONSPIRI!)” produced 154 opinions. This search would produce all cases in the database from before 1 January 1826 in which any permutation of the word *combination* appeared in the same sentence with any permutation of the words *fraud* or *conspiracy*. Thus the search included terms such as *conspiracies*, *conspirator*, *conspirators*, *frauds*, *fraudulent*, *fraudulently*, and so forth.

York Supreme Court wrote in 1823 of a “case of a combination or conspiracy,”<sup>55</sup> and the high court of Maryland in 1821 referred to a statute that “declaring . . . to be conspirators, [those] who should be engaged in certain combinations, subjected them to the law of conspiracy as it then existed.”<sup>56</sup> The most common formulation seems to have been *fraudulent combination*. For example, during the period from 1820 to 1823 alone, there were twelve cases in the high court of Joseph Smith’s New York containing that phrase.<sup>57</sup>

The word *combination* also seems to have had connotations of secrecy. First, as already noted, there is its ubiquitous association with fraud, which always carries with it such connotations. In addition, *combination* was frequently used as though it were synonymous with *secret agreement*. For example, the supreme court of Pennsylvania, writing in 1810, while summarizing the Roman law of fraud for its common law readers, noted “that fraud, according to the understanding of civilians, consisted in combination and secrecy, benefit to ourselves, and injury to others.”<sup>58</sup> In another fraud case decided in the same year, the same court used the term *secret contract* as a synonym for *combination*.<sup>59</sup> The cases also frequently laid emphasis on the secrecy in which combinations conduct their affairs. Thus, in an 1820

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55. *McDonald v. Neilson*, 2 Cow. 139, 179 (N.Y.Sup. 1823). For direct quotations from court decisions, the first number represents the opening page of the decision, and the second represents the cited page number. Occasionally, I was unable to determine the exact pagination from the electronic versions I used.

56. *State v. Buchanan*, 5 H. & J. 317, 334 (Md. 1821).

57. See *McDonald v. Neilson*, 2 Cow. 139 (N.Y. 1823); *James v. Morey*, 2 Cow. 246 (N.Y. 1823); *Clark v. Henry*, 2 Cow. 324 (N.Y. 1823); *Henry v. Davis & Clark*, 7 Johns.Ch. 40 (N.Y.Ch. 1823); *Bacon v. Bronson*, 7 Johns.Ch. 194 (N.Y.Ch. 1823); *Hadden v. Spader*, 20 Johns. 554 (N.Y. 1822); *Slee v. Bloom*, 20 Johns. 669 (N.Y. 1822); *Neilson v. McDonald*, 6 Johns.Ch. 201 (N.Y.Ch. 1822); *Star v. Ellis*, 6 Johns.Ch. 393 (N.Y.Ch. 1822); *Tiernan v. Wilson*, 6 Johns.Ch. 411 (N.Y.Ch. 1822); *Slee v. Bloom*, 5 Johns.Ch. 366 (N.Y.Ch. 1821); and *Myers v. Bradford*, 4 Johns.Ch. 434 (N.Y.Ch. 1820). Note that this list includes cases from both the highest state law court and the highest state court of equity, which prior to 1848 were separate. In Joseph Smith’s day, law and equity still occupied different courts in the New York system.

58. *Cheriot v. Foussat*, 3 Binn. 220 (Pa. 1810).

59. *Lazarus v. Bryson*, 3 Binn. 54, 58 (Pa. 1810).

salvage case, the court discussed the way in which the law created incentives to avoid “combination[s] to secrete” shipwrecked valuables and referred to such combinations as an example of “covert malversation [“corrupt administration”].”<sup>60</sup> Likewise an early Kentucky case speaks of the land transfers “secretly made” by a “fraudulent combination.”<sup>61</sup> In 1799, the Maryland Chancery, in a case involving the various financial misdeeds of an insolvent debtor, spoke of the “secret act” of a “fraudulent combination” directed at his creditors.<sup>62</sup> Perhaps the most bizarre case that I located was decided by the Connecticut Superior Court in 1793. The case involved a slander lawsuit in which the plaintiff alleged that the defendants falsely accused him of complicity in rape in order to “cover the shame” of the supposed rape victim. In its opinion, the court discusses the alleged “wicked combination” and its relationship to the “secret assault on the body of Marcia Maples.”<sup>63</sup>

Broadening the review to include cases from after the outbreak of anti-Masonic agitation but still within the lifetime of Joseph Smith reveals the same patterns of use. Four years after the publication of the Book of Mormon, in one of the ubiquitous cases involving shady land deals, the supreme court of Virginia discussed a “secret understanding and a combination” between real estate speculators.<sup>64</sup> A year earlier a Kentucky court heard a case regarding “the combination . . . to secrete” debt from creditors.<sup>65</sup> An opinion written by the Illinois Supreme Court during the period Joseph Smith resided in the state speaks of a crooked attorney who, “secretly combining” with another against his client, formed a “corrupt combination.”<sup>66</sup> A Missouri case from 1840, in discussing litigation regarding real estate transactions,

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60. *Hollingsworth v. Seventy Doubloons & Three Small Pieces of Gold*, 12 F.Cas. 380, 381 (D.C.Pa. 1820).

61. *Bradley v. Buford*, 2 Ky. 12, 12 (Ky.App. 1801).

62. *Cheston v. Page's Executors & Devisees*, 4 H. & McH. 466, 480 (Md.Chan. 1799).

63. *Monroe v. Maples*, 1 Root 553, 553 (Conn.Super. 1793).

64. *Spengler v. Snapp*, 32 Va. 478, 487 (1834).

65. *Bibb v. Smith*, 31 Ky. 580, 581 (Ky.App. 1833). The words omitted by the ellipses are “between Smith and Allen.”

66. *Frisby v. Ballance*, 5 Ill. 287, 298 (1843).

mentions a “combination” between speculators and “other persons to secrete” deeds to land.<sup>67</sup>

These cases suggest three things. First, in the period prior to the anti-Masonic outcry of the late 1820s, *combination* was widely used and had a richer meaning than simply conspiracy or agreement. It could also carry strong overtones of secrecy, deception, and covertness. Second, *combination* was not a term specific to any one branch of activity. The opinions speak with equal ease about combinations to take abandoned shipwrecks and combinations to avoid debt. Third, the anti-Masonic rhetoric of the 1820s does not seem to have had any effect on the general use of the term. Judging by the judicial materials, the term has absolutely no association with Masonry either before or after Morgan’s 1826 disappearance. Nothing indicates that the term carried any Masonic subtext in later cases. Given this background meaning, *combination* was a natural choice for anti-Masons seeking an epitaph with which to label the objects of their propaganda. However, the same background meaning also provides a plausible explanation of why in translating the Book of Mormon Joseph Smith would have chosen the word to describe the Gadianton robbers.

Although both Masons and Gadiantons were referred to simply as a “combination” (see Helaman 2:8; Ether 8:18), the disputed phrase in the controversy over the anti-Masonic thesis is *secret combination*. However, this phrase also appears repeatedly in judicial opinions from the period. I was able to locate two cases from before 1826 using the precise term. In addition several cases from after the publication of the Book of Mormon use the term in substantially the same way as the pre-1826 cases. This in turn suggests that, contrary to what proponents of the anti-Masonic thesis have implied, the anti-Masonic uproar of the 1820s did not dramatically change the meaning or usage of the term, although any such claim must be qualified by the conservative nature of legal language.

The first opinion using the term that I located was the case of *Duval v. Burtis*, decided by the Kentucky Court of Appeals in 1819.<sup>68</sup> The

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67. *Truesdell v. Callaway*, 6 Mo. 605, 612 (1840).

68. *Duval v. Burtis*, 9 Ky. 120 (Ky.App. 1819).

case revolved around a confused set of transactions involving negotiable instruments, cross-boarder attachments of property, lawsuits in two states, an attempt to assign the rights from one lawsuit to another, an alleged double- and triple-crossing assistant to a con man, and an expensive Kentucky horse named Porto. According to the plaintiff, the defendant had been in league with a shady character from Tennessee who purchased Porto on credit and then left the state. In his response to the suit, the defendant denied that there was any “secret combination” between himself and the Tennessean. Although the case touches on a wide variety of issues in a comparatively short opinion (two pages), one of the issues about which there is not even the slightest hint is Masonry. Absolutely nothing in the opinion suggests that the court is using the term *secret combination* to refer to anything other than a covert pact to steal a horse.

The second pre-1826 case that I located was much closer to the publication of the Book of Mormon in both time and space. In July 1825, just fourteen months before Morgan’s disappearance in the same state, the supreme court of New York issued its opinion in *Fellows v. Fellows*.<sup>69</sup> This opinion is a much grander document than the brief ruling of the court in *Duval v. Burris*. Modeled on the early opinions of the House of Lords, it contains a lengthy summary of the case by the clerk of the court, excerpts from the speeches offered by counsel during oral argument, and a string of separate opinions by the court’s judges. The case involved a bitter family dispute that stretched over more than a decade. Stripping away the complex financial machinations of all parties, the story is simple. A son, in order to sell real estate encumbered with various obligations, transferred title to his father, who was to hold the property in trust during the course of the sale, which was to extend over several years. The father, however, swindled his son, sold the property, and pocketed the proceeds. The son then died, and his widow obtained a judgment against the father. The father, in a vain attempt to avoid the judgment, transferred his property to another son, who was to hold it in trust for him. The widow then brought a second suit against all her in-laws, arguing that the whole

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69. *Fellows v. Fellows*, 4 Cow. 682 (N.Y.Sup. 1825).

scheme was a fraud. In the case before the supreme court upholding her victory in the second lawsuit, the judges and attorneys used various terms to describe the erring members of the Fellows clan. They were guilty of “combining and confederating.” They constituted a “fraudulent combination,” an “unlawful combination,” a “combination and confederacy,” and a “secret and fraudulent combination.” Finally, Justice Woodworth referred to them as a “fraudulent and secret combination.”

The *Fellows* case is especially instructive for two reasons. First, it provides a clear and obviously non-Masonic use of the term *secret combination* from the immediate vicinity of Joseph Smith that is almost contemporaneous with the outbreak of the anti-Masonic agitation that is supposed to have inspired the Gadianton robbers. Second, the involved discussion of the various actors in the reported opinion and their frequent use of differing phrases to describe the same criminal activity provide a marvelous study of how the phrase *secret combination* was understood in relation to other terms. What *Fellows* shows is that *secret combination*, far from being a bit of jargon newly coined for the exclusive use of anti-Masons in the late 1820s, fits comfortably into a set of very common terms that had been used for decades to describe all kinds of criminal activities.

Furthermore, if we compare these cases with others using the term *secret combination* in the two decades after the publication of the Book of Mormon, we find that the use and meaning of the term seems untouched by anti-Masonry and carries no new overtones. In 1833, members of the Tennessee Supreme Court considered a case in which they expressed concern about adopting a rule that would expose sureties to the risk of ruin at the hands of “secret combinations.”<sup>70</sup> Seven years later, a Kentucky court, in discussing “robbers, thieves, etc.,” suggested that those using common carriers were exposed to a special risk from such “secret combinations.”<sup>71</sup>

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70. *Wells v. Grant*, 12 Tenn. 491, 494 (1833). Although the identity of the secret combinations is not clear, from context the court seems to have in mind combinations between debtors and creditors against sureties.

71. *Frankfort Bridge Company v. Williams*, 39 Ky. 403, 405 (1840).



Interestingly, this case used the term specifically to refer to conspiracies between legitimate businesses and outlaws on the highway, which is suggestive, given the Book of Mormon's repeated references to the Gadiantons as robbers (see Helaman 6:18; 3 Nephi 1:27; 4 Nephi 1:17) and their sometime association with respectable elites (see Helaman 1–2).<sup>72</sup> An 1843 case from South Carolina uses the phrase in a different context. After the Bank of South Carolina suspended specie payments three times during the financial panics of the 1830s, the state attorney general claimed that the bank had violated its charter and should be dissolved. A circuit court that ruled in the bank's favor discussed the various legitimate reasons a bank might suspend specie payments. Among them it listed "secret combinations" of predatory foreign corporations.<sup>73</sup> These cases suggest that contrary to the position occasionally adopted by Quinn and Vogel,<sup>74</sup> one need not assume that every post-1826 reference to secret combinations carries an anti-Masonic subtext or has an anti-Masonic rhetorical pedigree. Rather, the legal materials suggest that the phrase carried a fairly constant meaning both before and after the outbreak of anti-Masonic agitation.

### On Legalese

Vogel has questioned the usefulness of examining legal documents at all for understanding the language of the Book of Mormon. "Legalese," he declares, "was not the language of Joseph Smith, nor

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72. Indeed, John W. Welch has argued that the Book of Mormon's choice of the word *robbers* to designate the Gadiantons draws on an ancient legal distinction between outlaw bands and mere thieves. See his "Theft and Robbery in the Book of Mormon and in Near Eastern Law" (FARMS paper, 1989). See also Thomas, *Digging in Cumorah*, 196, who argues that Gadianton robbers were identified with social elites.

73. The circuit court's opinion is included in the introductory notes to the intermediate court of appeals of South Carolina's opinion in *State v. The Bank of South Carolina*, 1 Speers 433 (S.C.Err. 1843). Because there was doubtless some time between the decision of the circuit court and the court of errors, the date of the circuit court may be earlier—for example, 1842; however, it is undated.

74. Quinn, *Early Mormonism and the Magic World View*, 511–12 n. 216; Vogel, "Echoes of Anti-Masonry," 302.

was it the language of his intended audience.”<sup>75</sup> There is some merit to this criticism. Certainly, lawyers have a well-deserved reputation for tortured prose, and as I indicated earlier, appellate cases such as those I have examined are more likely to be technical. Likewise, while Joseph Smith studied law later when he was serving as a judge in Nauvoo<sup>76</sup> and some of his revelations from that period use legal terms (see D&C 132:7),<sup>77</sup> there is no evidence that he had any extensive familiarity with legal materials in the Palmyra period.<sup>78</sup> Nor is there any reason to suppose that the Book of Mormon is (generally speaking) written in technical legal language.<sup>79</sup>

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75. Vogel, “Echoes of Anti-Masonry,” 301.

76. See Scott H. Faulring, ed., *An American Prophet's Record: The Diaries and Journals of Joseph Smith* (Salt Lake City: Signature Books, 1989), 321. See also Dallin H. Oaks, “The Suppression of the *Nauvoo Expositor*,” *Utah Law Review* 9 (1964–1965): 862, 875 (which discusses Joseph Smith’s exposure to Blackstone’s *Commentaries* in Nauvoo City Council meetings). By the Nauvoo period, Joseph was deeply involved in quite complex civil litigation, and it is unlikely that he would have escaped familiarity with at least some technical legal terms. See Dallin H. Oaks and Joseph I. Bentley, “Joseph Smith and Legal Process: In the Wake of the Steamboat *Nauvoo*,” *Brigham Young University Law Review* 1976/3 (1976): 735 (which discusses in depth Joseph Smith’s civil litigation in Nauvoo).

77. Truman Madsen has noted: “Some of the verses [from section 132] describe the conditions of the everlasting covenant in such terms as an attorney might use who had spent days thinking up every possible synonym, nuance, and contingency so that no loophole would remain.” Truman G. Madsen, *Joseph Smith the Prophet* (Salt Lake City: Bookcraft, 1989), 22–23.

78. However, it is worth noting in this regard that Joseph had had experience with the law by 1826. In that year he was charged with being a “disorderly person” in connection with money-digging activities in Pennsylvania. See Gordon A. Madsen, “Joseph Smith’s 1826 Trial: The Legal Setting,” *BYU Studies* 30/2 (1990): 91.

79. John Welch, however, has noted the existence of legal materials and legal concepts in the Book of Mormon, although he identifies elements of ancient Hebrew law, rather than early American jurisprudence. See John W. Welch, “Law and War in the Book of Mormon,” in *Warfare in the Book of Mormon*, ed. Stephen D. Ricks and William J. Hamblin (Salt Lake City: Deseret Book and FARMS, 1990), 46–102; John W. Welch, “Lehi’s Last Will and Testament: A Legal Approach,” in *The Book of Mormon: Second Nephi, The Doctrinal Structure*, ed. Monte S. Nyman and Charles D. Tate Jr. (Provo, UT: BYU Religious Studies Center, 1989), 61–82; John W. Welch, “Legal Perspectives on the Slaying of Laban,” *Journal of Book of Mormon Studies* 1 (1992): 119–41; John W. Welch, “Law in the Book of Mormon: The Nephite Court Cases” (FARMS paper, 1996); John W. Welch, “‘If a Man . . .’: The Casuistic Law Form in the Book of Mormon” (FARMS paper, 1987); John W. Welch, “Series of Laws in the Book of Mormon” (FARMS paper, 1987); John W. Welch, “Judicial Process in the Trial of Abinadi” (FARMS paper, 1981).

However, it would be unwise to overstate the force of this argument. Despite its reputation among lay people, legal language is not an impenetrable mass of exclusively technical jargon. Certainly, legal writing can be turgid, but much of it uses words in their ordinary senses. To evaluate the strength of the “legalese” criticism, it is important to understand something about legal language. While we should be cautious in generalizing about ordinary language on the basis of legal materials, it is simplistic to assume that all judicial opinions can be dismissed as irrelevant “legalese.” Rather, attention to the way specific words are used and an appreciation for what is—and is not—technical about legal language is needed.

Obviously, legal language contains many technical terms. These fall into essentially three different categories. First, there are those words that are specific to the law itself. In Joseph Smith’s day most of these terms were drawn from the common law of England, which was inherited by Americans at the time of the Revolution. The exclusively technical terms of this body of law, in turn, date back to the late medieval period and consist of a pastiche of Latin words and what is known as “law French.” Law French was a strange linguistic descendant of the medieval French spoken by the eleventh-century Norman conquerors of England. A mongrel language that reminded one modern legal scholar of “the taunting Frenchman from *Monty Python and the Holy Grail*,”<sup>80</sup> law French was the official spoken language of the English courts from about 1250 until about 1500, and it continued to be the language of written reports for about another

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80. David Franklin, “Pardon My Law French,” *Greenbag* (Summer 1999): 421. This article contains the following example of seventeenth-century law French, which gives one some sense of its bizarre quality: “Richardson Chief Justice de Common Banc al assises de Salisbury in Summer 1631 fuit assault per prisoner la condemne pur felony, que puis son condemnation ject un brickbat a le dit justice, que narrowly mist, et pur ceo immediately fuit indictment drawn per Noy envers le prisoner et son dexter manus ampute et fix al gibbet, sur que luy mesme immediatement hange in presence de Court.” Ibid. This kind of tortured language led one distraught French diplomat to write in the time of Elizabeth I that law French “may be worthily compared to some old ruines of some faire building, where so many brambles and thorns are grown, that scarcely it appeareth that ever there had bin any house.” Ibid.

century thereafter.<sup>81</sup> From it are drawn terms such as *replevin*,<sup>82</sup> *trover*,<sup>83</sup> *larceny*,<sup>84</sup> and *trespass*.<sup>85</sup> Other technical terms such as *habeas corpus*,<sup>86</sup> *assumpsit*,<sup>87</sup> and *nisi prius*<sup>88</sup> are either Latin or have Latin roots. All of these terms are purely technical and have no English meaning outside of the common law. In the case of some of the words drawn from law French, they have no nonlegal meaning at all, having never been natural words in any tongue other than the unique language of the medieval English courts.

The second class of technical terms includes those words that have meanings in ordinary English but have substantially different meanings in the law. A classic example of this kind of term is the word *malice*. In ordinary speech *malice* has the connotation of malevolence and

81. Franklin, “Pardon My Law French,” 421.

82. “An action whereby the owner or person entitled to repossession of goods or chattels may recover those goods or chattels from one who has wrongfully . . . taken [them].” *Black’s Law Dictionary*, 6th ed. (St. Paul, MN: West, 1990), 1299. For an example, see *Henderson v. Ballantine*, 4 Cow. 549 (N.Y.Sup. 1825) (a New York case from Joseph Smith’s period that uses the term *replevin*).

83. “In common-law practice, the action of trover . . . is a species of action on the case, and originally lay for the recovery of damages against a person who had *found* another’s goods and wrongfully converted them to his own use.” *Black’s*, 1508. For an example, see *Ex Parte Ward*, 5 Cow. 20 (N.Y.Sup. 1825) (a New York case from Joseph Smith’s period that uses the term *trover*).

84. “Felonious stealing, taking and carrying, leading, riding, or driving away another’s personal property, with intent to convert it or to deprive [the] owner thereof.” *Black’s*, 881. For an example of such technical language, see *Mills v. McCoy*, 4 Cow. 406 (N.Y.Sup. 1825) (a New York case from Joseph Smith’s period that uses the term *larceny*).

85. “An unlawful interference with one’s person, property, or rights.” *Black’s*, 1502. For an example, see *Hodges v. Chace*, 2 Wend. 248 (N.Y.Sup. 1829) (a New York case from Joseph Smith’s period that uses the term *trespass*).

86. “The name given to a variety of writs . . . having for their object to bring a party before a court or judge.” *Black’s*, 709. For an example, see *Ex parte Tayloe*, 5 Cow. 39 (N.Y.Sup. 1825) (a New York case from Joseph Smith’s period that uses the term *habeas corpus*).

87. “A promise or engagement by which one person assumes or undertakes to do some act or pay something to another.” *Black’s*, 122. For an example, see *Gourley v. Allen*, 5 Cow. 644 (N.Y.Sup. 1825) (a New York case from Joseph Smith’s day that uses the term *assumpsit*).

88. “The *nisi prius* courts are such as are held for the trial of issues of fact before a jury and one presiding judge.” *Black’s*, 1047. For an example, see *Flower v. Allen*, 5 Cow. 654 (N.Y.Sup. 1825) (a New York case from Joseph Smith’s period using the term *nisi prius*).

conscious ill will. In the common law, however, *malice* is an element of the crime of murder—famously defined as “the unlawful killing of any reasonable creature in being with malice aforethought”<sup>89</sup>—and has a significantly different meaning. *Malice* specifically refers to the state of mind necessary for a homicide to become a murder. Generally, this has been understood at a minimum as knowledge that the actions one is engaged in will result in the death of another. What has been universally agreed is that subjective ill will is not a necessary component of the legal concept of malice. Thus, the loving child who poisons her dying mother in order to ease her suffering from a terminal illness has acted with “malice” under the law, regardless of her subjective altruism. However, the man who, in a fit of rage, insults his worst enemy who then, as a result of a rare disease, dies of a heart attack has not acted with “malice,” despite his hatred and ill will.

Third, there are those terms that have substantially the same meaning in ordinary English and in the law but which the law defines with greater precision. For example, in ordinary speech the word *assault* means “to attack.” In the law, it has essentially the same meaning but is refined with greater precision. An assault is an action by one person that causes another person to have a reasonable fear of serious bodily injury. Thus a man who takes a swing at his wife’s face with a baseball bat has assaulted her in both the ordinary and legal sense of the word. On the other hand, a toddler who kicks an NFL linebacker has not committed an assault because while he attacks the linebacker, any fear of serious bodily injury that the linebacker might have is not reasonable. Likewise, a man who brandishes a machete threateningly over his victim’s head has not assaulted him if the victim is looking the other way. This is because the victim’s ignorance of the machete means that it cannot cause him to have any fear of bodily injury at all. Such examples of precise definitions that substantially track ordinary speech but that occasionally produce anomalous results could be multiplied endlessly. For example, the technical definition of murder given in the preceding paragraph falls into this category.

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89. The definition is attributed to the great seventeenth-century chief justice Sir Edward Coke.

Armed with this more nuanced understanding of the technicality of legal language, it is possible to better appreciate the usefulness of early judicial opinions for evaluating the anti-Masonic thesis. The phrases *combination* and *secret combination* do not seem to fall into any of these classes of technical “legalese.” *Combination* was not a specifically legal term of art such as words drawn from Latin or law French. Nor does it seem to have had a technical meaning in either of the two ways explained above.

Perhaps significantly, none of the cases that I reviewed involved jury instructions regarding the meaning of the word *combination*, which further strengthens the claim that the word was not being used in a technical sense. In instructing juries, judges often provide explanations of technical legal terms. I qualify the significance of this absence for two reasons. First, the coverage of published opinions during this era is incomplete.<sup>90</sup> Second, prior to the American Revolution, juries enjoyed a great deal of autonomy and were relatively free from strict judicial oversight.<sup>91</sup> In the late eighteenth and early nineteenth centuries, however, this changed as judges began to “rein in” juries with, among other things, more technical instructions.<sup>92</sup> Juries in the 1820s still enjoyed a greater amount of autonomy than do modern juries. Thus even though judges were seeking to more tightly control juries, we should expect fewer cases involving jury instructions than we see today. Nevertheless, New York opinions from before 1826 included discussion of jury instructions related to trespass on the case,<sup>93</sup> larceny,<sup>94</sup> and the distinction between theft and ordinary trespass.<sup>95</sup> It is thus not unreasonable to expect that there would be jury instructions defining *combination* if it were in fact a technical term. The absence of

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90. Friedman, *History of American Law*, 322–25.

91. Morton J. Horwitz, *The Transformation of American Law, 1780–1860* (Cambridge: Harvard University Press, 1977), 28.

92. *Ibid.*, 141–43.

93. See *Merritt v. Brinkerhoff*, 17 Johns. 306 (N.Y.Sup. 1820) (which discusses the rights and duties of a mill owner vis-à-vis downstream users of the millstream).

94. *People v. Anderson*, 14 Johns. 294 (N.Y.Sup. 1817) (which discusses what must be found by the jury in order to hold the accused guilty).

95. *Dexter v. Taber*, 12 Johns. 239 (N.Y.Sup. 1815) (which discusses the distinction between theft and trespass in the context of an allegedly slanderous accusation).

such instructions is suggestive. All of this points to the conclusion that, contrary to what some have suggested,<sup>96</sup> *combination* and *secret combination* were not technical legal terms in the first half of the nineteenth century. They were used in legal opinions, but they were not “legalese.” Rather they were similar to terms such as *trade*,<sup>97</sup> *business*, or *livelihood*<sup>98</sup> that appeared in legal opinions without taking on any special legal meaning. Far from being “irrelevant” for understanding normal language, such nontechnical legal materials can provide us with valid samples of how common words and phrases were understood.

### Limitations, Implications, and Conclusions

Legal materials suggest that contrary to the claims of proponents of the anti-Masonic thesis, the term *secret combination* did not have an exclusively anti-Masonic meaning. Rather it seems to have been used as a general term to refer to hidden criminal agreements and conspiracies. It was used this way prior to the disappearance of Captain Morgan and continued to be used in the same way after the outbreak of anti-Masonic agitation. The continuity of meaning in the legal opinions suggests that those who see in every post-1826 use of the term an anti-Masonic subtext are probably overplaying the linguistic influence of anti-Masonry. Rather, in the absence of specific evidence linking a use of the term to anti-Masonry, the best way of reading post-1826 uses of *secret combination* is probably to simply look at their contexts and take the plain meaning at face value. Admittedly, there are more post-1826 occurrences of the term than pre-1826 occurrences in the legal materials. It might be tempting to attribute this increase to the influence of anti-Masonic rhetoric. However, it is probably a mistake to do so. A more likely explanation

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96. For example, Vogel argues, “It is irrelevant what the phrase ‘secret combinations’ meant in technical language at the time, even if it did have a separate legal definition.” Vogel, “Echoes of Anti-Masonry,” 301.

97. See, for example, *Smith v. Lusher*, 5 Cow. 688 (N.Y.Sup. 1825) (referring to “partners in trade”).

98. See, for example, *Seymour v. Ellison*, 2 Cow. 13 (N.Y.Sup. 1823): “His business was . . . very limited; affording him but a scanty livelihood.”

is simply that there were more judicial opinions as the century progressed. As the American population and the American economy grew during the first half of the century, the amount of litigation increased accordingly. In addition, as the century progressed, the publication of judicial opinions became more regular and comprehensive. The influence of anti-Masonry as an explanation is simply dwarfed in comparison to the explosion in the volume of published opinions during the nineteenth century.<sup>99</sup>

Still, it is important to understand the limitations of legal materials. Judicial opinions tell us something about the way in which language was understood at different periods of time. However, the meaning of the phrase *secret combination* is only one part—and not the most important part—of the debate over the anti-Masonic thesis. Obviously, analysis of legal materials is not the same thing as analysis of the Book of Mormon, and an interpretation of the phrase *secret combination* is not the same thing as an interpretation of the Gadianton robbers. These are important issues, but they are clearly beyond the scope of this paper. Likewise, legal materials can be technical. Their use will require a nuanced sense of when it is—and is not—possible to generalize based on legal writings.

It is also important to understand how narrow the scope of materials covered by even my comparatively comprehensive search is. The reported decisions of the appellate courts from the early nineteenth century form a very small part of the legal universe. Legal language, in turn, forms only a narrow part of all language. The narrowness of my research cuts both ways. Proponents of the anti-Masonic thesis can point out that a review of such materials does not constitute extensive reading in the primary pre-1830 sources.<sup>100</sup> On the other hand, the repeated appearance of the phrase *secret combinations* in such a narrow slice of language also suggests that its use may have been much more widespread.

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99. See, for example, Friedman, *History of American Law*, 409 (which discusses the rise of the West's reporter system).

100. Vogel, “Echoes of Anti-Masonry,” 301.



Finally, it is important to understand the way in which previous discussions of legal materials in the context of the anti-Masonic thesis have been mistaken. Neither *combination* nor *secret combination* were technical legal terms. Their use was not confined to any one area of the law. It is thus a mistake to expect to find them especially concentrated in one kind of litigation. It is also a mistake to assume that their use in judicial opinions would have been unintelligible or foreign to lay people. Nor should we expect to find some alternate exclusive use of the term. Thus, while the anti-Masonic thesis posits that *secret combination* was a term with an exclusively (or nearly exclusively) anti-Masonic meaning, in using legal materials to criticize the thesis, it is a mistake to go looking for an alternative exclusive meaning, whether it be describing labor unions or guerrilla fighters.

Ultimately, I think that the issue of the term *secret combination* and the anti-Masonic thesis comes down to a choice between two options. First is the claim that *secret combination* carried such an exclusively anti-Masonic meaning that its use in the Book of Mormon, especially with regard to latter-day prophecies, was a direct and intentional reference to Masonry.<sup>101</sup> This position depends on the exclusivity and uniqueness of the anti-Masonic use of the term. The second position is that the term had a broader meaning and cannot be read as a simple reference to Masonry. This position does not involve a denial that anti-Masonry may have changed the connotation of the term in some contexts or that anti-Masonic uses of the phrase are useful in understanding the original language of the Book of Mormon translation. However, it does involve the claim that *secret combination* had a broader meaning than that attributed to it by proponents of the anti-Masonic thesis. I believe that the legal materials discussed in this paper

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101. Interestingly, Vogel's earlier treatment of anti-Masonic readings of the Book of Mormon is considerably more tentative and less strident than his later response to critics. In 1989, he wrote, "Right or wrong, it's certain that Martin Harris and other early readers held anti-Masonic interpretations of the Book of Mormon's contents. How deep these went is not entirely clear." Vogel, "Mormonism's 'Anti-Masonick Bible,'" 28. In 2002, although he offers substantially the same evidence, Vogel wrote more certainly that "Joseph Smith was aware of the Masonic connotation, and his use of the phrase [*secret combinations*] was clearly intentional." Vogel, "Echoes of Anti-Masonry," 300.

severely undermine the first position and suggest that the phrase *secret combination* cannot be read as a simple reference to Masonry. On the contrary, judicial opinions from the early nineteenth century provide numerous, concrete examples of non-Masonic uses of the term.