

INTERPRETER

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A JOURNAL OF MORMON SCRIPTURE

Volume 6 · 2013 · Pages 49-84

Toward a Mormon Jurisprudence

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Offprint Series

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TOWARD A MORMON JURISPRUDENCE

John W. Welch

Preface: *The following article was published in the Regent University Law Review in the first number of its 2008-2009 volume, pages 79-103. The article is reprinted here by permission without any substantive modifications. Because law reviews are not easily available on the Web or elsewhere to most readers, I am pleased to give wider exposure to this first foray into the idea of a Mormon jurisprudence. Regent University is an Evangelical Christian institution.*

This article grew mainly out of a talk that was delivered on February 14, 2004, to the first national meeting of the student chapters of the J. Reuben Clark Law Society, held at Harvard Law School. Four years later, on February 13, 2008, Scott Adams, a third-year member of the law review at Regent University Law School contacted me and said that he was hoping to “put something together on Mormonism and the law,” to see if the law review might publish it. Scott rightly indicated that, according to his research, “no one has ever attempted to tackle the ambitious project of considering Mormonism, in general, and analyzing its potential implications on law (for example, how might an LDS judge see the law, as opposed to a Catholic).” Scott was thinking about writing a paper himself on natural law from an LDS perspective. I responded by suggesting that he contact Cole Durham, Francis Beckwith, and Nate Oman; and I offered to send him a copy of my Harvard speech, expressing interest in publishing that paper as a companion piece with his.

As it would soon turn out, the editor-in-chief and board of the Regent law review were very eager to publish my piece, especially if it could appear with another article presenting an

“opposing viewpoint.” They suggested a member of their faculty, and after brief deliberations, all was agreed. In the end, however, no opposing or additional articles were forthcoming, and so this article was published on its own. I thank Scott and his fellow students for their help in checking and enriching the footnotes. They also had hopes that this publication would build good relationships between Evangelicals and future LDS students, which I too hope has occurred.

This essay tries to identify what a “Mormon” jurisprudence would, and would not, look like. Beyond its immediate relevance to legal thought, this article might have broader applications in helping LDS scholars in other disciplines to think about, for example, what a Mormon theory of literary criticism might look like, or what would be distinctive about a Mormon approach to political theory or to any other discipline. I believe that any such Mormon academic approach (1) would be solidly rooted in all LDS scripture, (2) would be inclusivistic, privileging fullness and openness over closure and completeness, and (3) would be fundamentally pluralistic and not reductionistic.

Obviously, this piece is just a beginning. There is much more to be done here. I have continued to work along these lines for the past decade and have published other things growing out of this paper, for example, a talk about rights and duties given at Stanford Law School, published in the Clark Memorandum (Fall, 2010), 26, http://www.jrcls.org/publications/clark_memo/issues/cmF10.pdf, and my Maeser lecture at Brigham Young University, available at <http://byustudies.byu.edu/PDFLibrary/50.3WelchThy-08f4ba7e-d3a2-444f-bc8c-0ce842c12fc4.pdf>.

I would hope next to articulate the specific implications of these ideas with respect to legal attitudes toward statutory construction, judicial activism, the spirit and letter of the law, justice and mercy, equality and freedom, pacifism and justifiable use of force, corrections and forms of punishment, degrees of fiduciary duties, types of contracts, the foundations of family

law, the principles of constitutional law, and many other topics. This development would utilize historical, scriptural, logical, ethical, and other analyses.

Naturally, this article is neither complete nor comprehensive in scope. How could it truly exemplify my theory if it were otherwise? This was all I could cover in a brief presentation even to a group of bright law students gathered on a Valentine's Day at Harvard. And I probably already had included enough here to bewilder most Baptist readers of the Regent University Law Review who were just then hearing for the first time about Mitt Romney and wondered how a Mormon might approach the law as the president of the United States.

That question, of course, is still up for grabs; and Latter-day Saints are more interested in political and legal issues than ever before. So I hope that readers may find this article still to be stimulating and, as reader Sid Unrau has commented, "well worth reading, contemplating, and building upon, ... a valuable start for those who wish to further the subject."



Introduction

Many lawyers and law students are interested in the intersection of their religious faith and values with their responsibilities and duties in the legal profession. The mere fact that many people intuitively sense a connection between law and religion is prima facie evidence that these domains are at least relevant to each other, if not fundamentally linked.

In this article, I hope to make a pioneering contribution to the intellectual progress of my own religious tradition, Mormonism. Recent political events have amplified the fact that to many Americans, Mormonism is still seen today as a bizarre religion, or worse, a "cult with a heretical understanding

of Scripture and doctrine.”¹ This article does not seek to answer such criticisms² or to explain Mormon tenets,³ as is readily available elsewhere. Instead, this article explores a broad jurisprudential perspective of the relatively young religion that is very rich in potential and now emerging more often on national and international scenes. This article raises the following questions: What would a Mormon jurisprudence look like? How would one recognize a Mormon jurisprudence? What would distinguish it from other jurisprudential approaches? My comments will necessarily be brief and introductory. I will strive to say something without saying too little or too much.

1 Nancy Gibbs, “The Religion Test: Is It Sheer Bigotry to Say You Won’t Vote for Someone Because He’s a Jew? A Muslim? What About a Mormon?,” *TIME* (May 21, 2007), 41. For additional discussion, see also “Mormonism and American Politics,” the Conference at Princeton University Center for the Study of Religion (Nov. 9–10, 2007), <http://www.princeton.edu/~csrelig/mormonism&politics>.

2 See generally Craig L. Blomberg and Stephen E. Robinson, *How Wide The Divide? A Mormon and an Evangelical; In Conversation* (1997); Robert L. Millet, *A Different Jesus? The Christ of the Latter-day Saints* (2005); Robert L. Millet and Gerald R. McDermott, *Claiming Christ: A Mormon-Evangelical Debate* (2007); David L. Paulsen and Donald W. Mussers, eds., *Mormonism in Dialogue with Contemporary Christian Theologies* (2007) (offering models of interfaith conversation, through a collection of eleven extended theological exchanges between leading Protestant and Latter-day Saint scholars, including a foreword by Martin E. Marty); Francis J. Beckwith et al., eds., *The New Mormon Challenge* (2002); Stephen E. Robinson, “LDS Doctrine Compared with Other Christian Doctrines,” in Daniel H. Ludlow, ed., *Encyclopedia Of Mormonism* (1992), 399; Jan Shippo, “Is Mormonism Christian? Reflections on a Complicated Question,” *BYU Studies* (1993), 33:3, 438.

3 See generally Richard Lyman Bushman, *Mormonism: A Very Short Introduction* (2008); Douglas J. Davies, *An Introduction to Mormonism* (2003); *Encyclopedia of Mormonism* (containing clear, non-polemical definitions and explanations of hundreds of Latter-day Saint doctrines, practices, and beliefs); John W. Welch, ed., *The Worlds of Joseph Smith, A Bicentennial Conference at the Library of Congress* (2006) (a compilation of essays related to the life and teachings of Joseph Smith).

Much remains to be said and done along this line of inquiry, though a start has been made.⁴

In outlining the basics of a Mormon jurisprudence, I am entering into a broader conversation that has been ongoing for some time. Catholics and Protestants are respected for wrestling to understand jurisprudence in terms of the premises and beliefs of their respective faiths; serious Jewish, Buddhist, and Islamic contributions are also welcomed.⁵ Rigorous Mormon efforts should be no less regarded and may have much to offer in today's world.

1. What a Mormon Jurisprudence Is Not

Consider first what a Mormon jurisprudence is not. For one thing, it would need to be more than a jurisprudence that just happens to be composed by a Mormon. Just because a song is written by a Mormon, a Baptist, or a Jew, does not necessarily make it a Mormon, Baptist, or Jewish song. And while Mormons may well have the greater interest in and access to Mormon ideas than do others, a Mormon jurisprudence could be developed or articulated by a member of another faith. I have benefited from my long-standing membership in the Jewish Law Association and from my associations with biblical

4 In 2001, a first-ever conference was held at Brigham Young University entitled "Latter-day Saint Perspectives on Law," *BYU Law Review* (2003), 3:829. The papers presented at that conference stimulated reflection on the basic question: "What is a Latter-day Saint perspective on the law?" Many answers to that question are possible. In offering exploratory thoughts on this subject, the views expressed there and here are personal and should not necessarily be attributed to The Church of Jesus Christ of Latter-day Saints, any other Mormon group, Brigham Young University, or anyone else. See also Nathan B. Oman, "Jurisprudence and the Problem of Church Doctrine," *Element: The Journal of the Society for Mormon Philosophy and Theology* (Fall 2006), vol. 1, 16–17 (describing the basis of the emerging discussion of a Mormon jurisprudence).

5 For example, the *Journal of Law and Religion* has published numerous articles on Christian, Islamic, Jewish, Buddhist, and even Bahá'í religious perspectives on the law. See *Journal of Law and Religion*, Subject Index 1-20, 1, available at <http://law.hamline.edu/files/Subject%20Index%20Vol.1-20.pdf>.

scholars of many faiths in the Society of Biblical Literature as I attempt to explain elements of Jewish jurisprudence or Biblical law to my law students at Brigham Young University. I would hope that scholars of other faiths might find Mormon thought worthy of study in a similar outsider fashion. The works of non-Mormon scholars such as Jan Shipps,⁶ Douglas Davies,⁷ and a number of others⁸ show this is possible. It might even help to articulate a better Mormon jurisprudence if it were coauthored by Mary Ann Glendon or some other sympathetic collaborator.⁹

At the same time, it is doubtful that any Mormon jurisprudence will ever receive an official stamp of approval from the leadership of the Church of Jesus Christ of Latter-day Saints or any other church in the Mormon tradition. Whether one sees jurisprudence as a branch of philosophy and ethics, social science, psychology, or anthropology, an official Latter-day Saint jurisprudence would no sooner exist than any officially sanctioned approach to philosophy, economics, or any other academic discipline. Latter-day Saint scripture, doctrine, ideas, and assumptions, of course, will and should influence any Mormon thinker who engages the mind with the perennially perplexing problems of jurisprudence, but one should not expect any Latter-day Saint leader to speak

6 See Jan Shipps, *Mormonism: The Story of a New Religious Tradition* (1985) (explaining the chronology and development of the Mormon tradition).

7 See Douglas J. Davies, *The Mormon Culture Of Salvation* (2000) (presenting a new interpretation of the origins of Mormonism and offering insight into how Mormons work towards their own salvation).

8 See, e.g., *Mormonism in Dialogue*.

9 See, e.g., Mary Ann Glendon, "Catholic Thought and Dilemmas of Human Rights," in Robert E. Sullivan, ed., *Higher Learning & Catholic Traditions* 113, 113–14 (2001) (elaborating on her previous writing about rights concepts).

*ex cathedra*¹⁰ or to issue a *nihil obstat*¹¹ regarding approaches and solutions to jurisprudential issues and topics.

Thus, using the word “Mormon” (instead of “Latter-day Saint”) is preferable in this situation. The term “Mormon” is best used in reference to cultural phenomena, such as the Mormon Tabernacle Choir, the Mormon Trail, Mormon history, or big fat Mormon weddings.¹² The term “Latter-day Saint” is better reserved for official doctrines, policies, or programs of the Church of Jesus Christ of Latter-day Saints.¹³

When one goes looking for a Mormon jurisprudence, one is looking for more than a description of Mormon historical experiences with the law (Joseph Smith’s numerous appearances in court,¹⁴ anti-

10 Donald Attwater, ed., *A Catholic Dictionary* (3d ed., 1961), 181, (an official pastoral utterance of the most solemn kind).

11 Attwater, *Catholic Dictionary*, 343 (nothing hinders it from being printed, certifying a work is not contrary to faith or good morals).

12 See Donald K. Jarvis, Mormonism, Mormons, in *Encyclopedia of Mormonism*, 941–42. This is how the term “Mormon” is used in editing the *Encyclopedia of Mormonism*, although that editorial policy was never made explicit. Attwater, *Catholic Dictionary*.

13 See Jarvis, “Mormonism.” This is how the term “Latter-day Saint” is used in editing the *Encyclopedia of Mormonism*, although that editorial policy was never made explicit.

14 For various reasons, between 1819 and 1844, Joseph Smith had numerous court appearances in New York, Ohio, Missouri, and Illinois, either as a witness, a defendant, a party to a business transaction, or a judge. See, e.g., Richard L. Bushman, *Joseph Smith: Rough Stone Rolling* passim (2005) (describing the life of Joseph Smith from birth to death, detailing his numerous encounters with the law); David W. Grua, “Joseph Smith and the 1834 D.P. Hurlbut Case,” *BYU Studies* (2005) 44:1, 33–34 (describing Joseph Smith’s first legal experience in Ohio); Gordon A. Madsen, “Joseph Smith and the Missouri Court of Inquiry,” *BYU Studies* (2004) 43:4, 93, 95–96 (detailing the events surrounding Joseph Smith’s legal trouble in Missouri); Gordon A. Madsen, “Joseph Smith’s 1826 Trial: The Legal Setting,” *BYU Studies* (Spring 1990) 30:2, 91 (describing the charges against Joseph Smith in South Bainbridge, NY); Dallin H. Oaks, “The Suppression of the Nauvoo Expositor,” *Utah Law Review* (1965), vol. 9, 862 (examining the legal basis for the charges brought against Joseph Smith and others in Nauvoo, Illinois); Nathaniel Hinckley Wadsworth, “Copyright Laws and the 1830 Book of Mormon,” *BYU Studies*, (2006) 45:3, 77, 91 (describing the legal dispute over the copyright to the Book of Mormon); Jeffrey N. Walker, “Mormon Land Rights in Caldwell and Daviess Counties and the Mormon Conflict of 1838: New Findings and

polygamy legislation,¹⁵ J. Reuben Clark's service in the State Department,¹⁶ comments on the Equal Rights Amendment,¹⁷ abortion, same-sex marriage,¹⁸ or the United Nations Doha Declaration on the Family);¹⁹ and more than an articulation of what Joseph Smith meant when he said that the Constitution of the United States was an inspired document.²⁰ Although these legal topics are typical discussion topics,²¹ jurisprudence

New Understandings," *BYU Studies* (2008) 47:1, 4, 46–47 (explaining the events surrounding Joseph Smith's settlement in Missouri). See generally Edwin B. Firmage and Richard C. Mangrum, *Zion in the Courts* (1988) (describing Joseph Smith's legal encounters throughout his lifetime); Joseph I. Bentley, "Legal Trials of Joseph Smith," in *Encyclopedia of Mormonism*, 1346–48 (providing a summary of Joseph Smith's interactions with the courts).

15 See, e.g., Ray Jay Davis, "AntiPolygamy Legislation," *Encyclopedia of Mormonism*, 52; Ray Jay Davis, "The Polygamous Prelude," *American Jurisprudence Legal History* (1962) 6:1; Richard D. Poll, "The Legislative Antipolygamy Campaign," *BYU Studies* (Fall 1986) 26:4, 107.

16 See generally Frank W. Fox, *J. Reuben Clark: The Public Years* (1980).

17 See generally Rex E. Lee, *A Lawyer Looks at the Equal Rights Amendment* (1980).

18 See generally Lynn D. Wardle, "Multiply and Replenish: Considering Same-Sex Marriage in Light of State Interests in Marital Procreation," *Harvard Judicial Law and Public Policy* (2001) 24:771 (discussing and advocating a global interest in the protection of traditional marriage).

19 See, e.g., Richard G. Wilkins, "The Principles of the Proclamation," *BYU Studies* (2005) 44:3, 5, 8, 16–19; cf. Richard G. Wilkins, "Protecting the Family and Marriage in a Global Society," *Encounters: Judicial Inter-Cultural Perspectives* (2000), 6:223, 224–26 (discussing the effect of the 1996 United Nations proposals and policy initiatives that impacted the international definition of the family, women's rights, and child welfare).

20 Doctrine and Covenants 98:7, 101:77, 101:80; Joseph Fielding Smith, ed., *Teachings of the Prophet Joseph Smith*, 1976, 147; Rex E. Lee, "The Constitution and the Restoration," *BYU Speeches, 1990–91*, 1:1, 17–18. See generally Panel Discussion, "What Is the Proper Role of the Latter-day Saint with Respect to the Constitution?" *BYU Studies* (1962) 4:2, 151 (a compilation of discussions on Mormonism and the United States Constitution).

21 See, e.g., James B. Allen, "J. Reuben Clark, Jr.: American Sovereignty and International Organization," *BYU Studies* (1973) 13:3, 347; Christopher L. Blakesley, "Terrorism and the Constitution," *BYU Studies* (1987) 27:3, 197; Panel Discussion. Additional Mormon legal scholarship can be found in the *BYU Studies* online archives, <http://byustudies.byu.edu/>.

goes beyond the historical and political domain, probing into questions of theory and meaning.

In the Western tradition, jurisprudence typically asks: What is truth? What is law? How does law differ from custom or manners? What is justice? What are rights? It produces books like Ronald Dworkin's, *Taking Rights Seriously*.²² Western tradition asks: What constitutes an actionable offense? What is causation? What is intention? What is legitimate? Why do bad things happen to good people? When and why do we punish? What do we mean by equality?

A Mormon jurisprudence would, of course, offer its answers to such questions. But at the same time, a Mormon jurisprudence would not just begin or end with the questions that Western jurisprudence has preferred to ask. We should not expect every tradition to ask the same questions. In addition to the questions typically posed by Western tradition, a Mormon jurisprudence would be more inclined to ask: What is goodness? What is love? How does law differ from covenants or principles? What is mercy? What are duties? It might produce a book titled *Taking Duties Seriously*. What constitutes repentance and restitution? What is responsibility? What is free agency? What is authority? It questions why bad things happen at all.²³ When and how do we offer assistance? What do we mean by equanimity and harmony? In sum, Mormon jurisprudence asks overlooked questions, advancing these often underrepresented topics.

In exploring and answering such questions, a Mormon jurisprudence would not be an American jurisprudence or a British jurisprudence. Mormonism is both a worldwide and an eternally-oriented movement. Thus, Mormons must begin

22 See generally Ronald Dworkin, *Taking Rights Seriously* (1977).

23 See, e.g., David L. Paulsen, "Joseph Smith and the Problem of Evil," *BYU Studies* (2000), 39:1, 53; John Sutton Welch, "Why Bad Things Happen at All: A Search for Clarity Among the Problems of Evil," *BYU Studies* (2003), 42:2, 75.

thinking in terms of “Mormon jurisprudences”—members of the Latter-day Saint Church, as jurists in various countries and cultures, must work to understand and utilize principles of the gospel within the context of their own legal system. The number of Latter-day Saints in South and Central America now rivals those in North America, and those Latin countries follow a jurisprudence much more closely tied to the civil law tradition, which, as Harvard Law Professor Mary Ann Glendon (“Professor Glendon”) has noted, places emphasis on “equality and fraternity (or, as we would say today, solidarity)”; whereas Anglo-American thinkers place “greater emphasis on individual liberty and property.”²⁴ Dallin H. Oaks, now a high ranking Latter-day Saint church official and previously a law professor, university president, and member of the Utah Supreme Court, was surprised to learn that the concept of a fiduciary is quite foreign to Mormons coming out of civil law backgrounds; this situation means that different presumptions might apply when explaining to these people doctrinal concepts such as stewardship, to say nothing of the practical assumptions involved in training them to handle funds as fiduciaries.²⁵ Local differences aside, a Mormon jurisprudence must also begin thinking in terms that transcend and unify Mormon jurisprudential thought across all cultures. Will that be in a universal, catholic (little ‘c’) sense, or in a worldwide, umbrella or tabernacle sense? One would suspect the latter.

Various approaches to law are taken in different cultures, reflecting to a large extent the received views of those cultures on the ultimate characteristics and values of the human condition and civilization.²⁶ Accordingly, a Mormon jurisprudence

24 Mary Ann Glendon, “The Forgotten Crucible: The Latin American Influence on the Universal Human Rights Idea,” *Harvard Human Rights Journal* (2003), vol. 16, pp. 27, 32.

25 Comment to the author in an informal conversation.

26 Surya Prakash Sinha, *Jurisprudence: Legal Philosophy in a Nutshell* (1993), 7–8.

would not be independent of Latter-day Saint ideals and values. The insights of comparative anthropology may be helpful. In ancient Greece, individualism, rationality, debate, the city-state, public opinion, creativity, choice, and adventure predominated. These values have heavily influenced Western jurisprudence,²⁷ although not always beneficially. Professor Glendon rightly said, the extreme form of “hyper-individualism” sends the message that rights are absolute “without responsibilities, . . . in radical isolation from other individuals, freedom from the past, and recklessness toward the future.”²⁸ In ancient Israel, a different set of legal norms and concepts arose in the Jewish tradition because such values as collective responsibility, law (*torah*, “teaching,” or “instruction”), holiness, purification, belonging to God, brotherhood, redemption, remembrance, and wisdom were of the essence.²⁹ In China, however, concepts of decorum, self-control, relationships, interdependence, ceremony, mediation, persuasion, conciliation, conscience, and harmony with nature’s events have traditionally prevailed.³⁰ In India, concepts of caste, purity, cosmic order, dharma, conformity, allotment, and the performance of inherent duties have shaped thinking about social order.³¹ In Japan, honor, rules of behavior, prestige, courage, endurance, and loyalty are preeminent.³² In all cultures, whether in Africa or in Islam, other arrays of values shape and give distinctive textures to jurisprudence and law in each of these societies. Thus, it is fair to begin asking what factors will emerge at the crux or

27 Sinha, *Jurisprudence*, 21–22; Huntington Cairns, *Legal Philosophy from Plato to Hegel* (2d printing, 1949), 24–30, 50–51.

28 Mary Ann Glendon, “What’s Wrong with ‘Rights?’” *BYU Today* (July 1990), 23, 54 (defining “hyper-individualism” as envisioning “the possessor of rights as a person alone against the world”).

29 See Ze’ev W. Falk, *Hebrew Law in Biblical Times* (2d. ed. 2001), 1–16. See generally Joel S. Kaminsky, *Corporate Responsibility in the Hebrew Bible* (1995).

30 Sinha, *Jurisprudence*, 24, 31, 33–36.

31 Sinha, *Jurisprudence*, 37, 46–49.

32 Sinha, *Jurisprudence*, 49–51, 53.

bedrock of a Mormon jurisprudence. By studying comparative jurisprudence, we may well learn how to recognize those still implicit contours of a Mormon jurisprudence.

Finally, it is worth clarifying that a jurisprudence is not the same thing as an ideology, but it is not easy to sustain the distinction between the two. Jurisprudence asks how we think, not what we think. In this regard, this Article turns attention to three fundamental features that would significantly shape any Mormon jurisprudence. First, such a jurisprudence would be rooted in Mormon scripture. Second, such a jurisprudence would be inclusive, though not eclectic. And third, such a jurisprudence would be fundamentally pluralistic, though not polycentric.

2. Rooted in Mormon Scripture

Whatever else one may say, a Mormon jurisprudence must be based solidly in scripture; and, indeed, Latter-day Saint scriptures are filled with seminal statements about the nature and operation of law, both divine and human, spiritual and temporal. Studying scripture will be the closest ally of Mormon jurisprudence, and not just a casual level of scripture study, or a selective proof-text approach of pulling out one's favorite passage as an aphoristic touchstone. Flimsy readings will not bear the needed weight in order to function as part of a jurisprudence.

A primary issue then becomes, "And what is scripture?"³³ The premises of a Mormon jurisprudence must be based in the first instance in all Latter-day Saint canonical works, namely the Old and New Testaments, the Book of Mormon, the Doctrine and Covenants, and the Pearl of Great Price.³⁴

33 See W. D. Davies and Truman G. Madsen, "Scriptures," *Encyclopedia of Mormonism*, 1277.

34 Clyde J. Williams, "Standard Works," *Encyclopedia of Mormonism*, 1415–16. Mormon belief holds that the Book of Mormon is a translation of an ancient

Elaborations may be found in intentional, relevant statements by high-ranking Latter-day Saint church leaders, but these may be less universally applicable than the canonical revelations. As is done in Jewish law, which recognizes levels of authority between Torah, Mishnah, Gemara, midrash, responsa, and so on,³⁵ a Mormon jurisprudence will eventually need to articulate its own “rules of recognition” among its various kinds of scriptural statements. And indeed, inconveniently, Mormons do not believe in a monolithic concept of scripture.³⁶

No scripture is for personal interpretation³⁷ and yet neither is it self-interpreting. A Mormon jurisprudence will need to extract from the body of scripture “correct principles” that will appropriately govern human life.³⁸ Unique rules of Mormon interpretation may in time be developed. Rules of statutory

document written as a witness of the divinity and the atonement of Jesus Christ by former prophets and Christian disciples living on the American continent between 600 B.C. and A.D. 421. Introduction to *The Book of Mormon: Another Testament of Jesus Christ* (Joseph Smith, trans., The Church of Jesus Christ of Latter-day Saints, 1989) (1830). The *Doctrine and Covenants* is a compilation of 138 separate revelations received by Mormonism’s founder, Joseph Smith, and, in a few cases, by other Mormon leaders. Introduction to the *Doctrine and Covenants*. The *Pearl of Great Price* is comprised of other texts translated or written by Joseph Smith. Introduction to the *Pearl of Great Price* (Joseph Smith, trans., 1981).

35 See George Horowitz, *The Spirit of Jewish Law* (1953), 15–17, 31. See generally Jacob Neusner, *Invitation to the Talmud* (rev. ed. 1984).

36 See Cheryl B. Preston, “The Canon, Lawmakers and the Right to Interpret in the Church of Jesus Christ of Latter-day Saints,” *Daimon: Annuario Diritto Comparato Delle Religioni* (Dec. 2006), vol. 6, 115, 121–22; John W. Welch and David J. Whittaker, “Mormonism’s Open Canon: Some Historical Perspectives on Its Religious Limits and Potentials,” *Preliminary Report for the Foundation for Ancient Research and Mormon Studies* (1987), 4–6 (presented at the annual meeting of the American Academy of Religion and the Society of Biblical Literature in Atlanta, Georgia, Nov. 1986).

37 2 Peter 1:20.

38 John Taylor, “The Organization of the Church,” *Millennial Star*, Nov. 15, 1851, 337, 339 (quoting Joseph Smith).

construction exist in the American legal tradition,³⁹ and the Jewish tradition has rules for analyzing and resolving halachic disputes.⁴⁰ How will Mormons go about the task of finding, revealing, distilling, articulating, understanding, or applying correct principles? How should that process differ from the procedures followed in other jurisprudences? These questions remain open because the sources of jurisprudential wisdom in each and all of the scriptures are copious and variegated. But what is clear is that Mormon scripture will play a preeminent role in that process. If an idea cannot be located and substantiated within the purview of scripture, the idea may still be true, but it probably should not be counted as particularly or bindingly Mormon.

In this process, the scriptures must be carefully and broadly studied. A passage's original intent is important, but so is its reception, history, and its use as canon within Mormon communities. In his article on viewing criminal sanctions through Latter-day Saint thought, Martin Gardner, a Latter-day Saint law professor at the University of Nebraska College of Law, leans heavily on The Doctrine and Covenants Section 42, which tells Mormon leaders that if one of their members commits a crime "he or she shall be delivered up unto the law of the land."⁴¹ But this still leaves us wondering, what does that scripture tell us about what kinds of punishment the state should impose?

Marguerite Driessen, another Latter-day Saint legal educator, responded to Professor Gardner invoking the Pauline

39 See Ruggero J. Aldisert, *The Judicial Process* (2d ed. 1996), 193, 205–08; Benjamin N. Cardozo, *The Nature of the Judicial Process* (1921) 9, 14–18, as reprinted in Philip Shuchman, *Cohen and Cohen's Readings in Jurisprudence and Legal Philosophy* (1979) 245, 246–47.

40 Horowitz, *Spirit of Jewish Law*, 8–17, 745–46.

41 Martin R. Gardner, "Viewing the Criminal Sanction Through Latter-day Saint Thought," *BYU Law Review* (2003), 861, 872 (quoting Doctrine and Covenants 42:79).

mantra, “by the law no flesh is justified.”⁴² But the words and meanings of the Greek word *nomos*, like the English word “law,” are legion and often misleading, so I and most New Testament scholars are still puzzling over what Paul meant.⁴³

Likewise, one must wonder: What was the Book of Mormon prophet Nephi’s intent when he said that “all are alike unto God”?⁴⁴ His pronouncement sounds like the beginnings of a jurisprudence of critical race theory,⁴⁵ but how revolutionary and transformational is Mormonism?⁴⁶ Indeed, Joseph Smith said that Mormonism will revolutionize the world but by making all men friends.⁴⁷

Does Lehi, another Book of Mormon prophet, agree with Plato’s Philebus that pleasure is the purpose of life and basis of a jurisprudence when he says, “[M]en are, that they might have joy”?⁴⁸ Not likely. But what did Lehi mean?

What is the scriptural content of the doctrine of agency? Latter-day Saint Michael Young, former dean and professor of comparative law and jurisprudence at George Washington University Law School, rightly detects the centrality of free will

42 Marguerite A. Driessen, “Response, Not for the Sake of Punishment Alone: Comments on Viewing the Criminal Sanction Through Latter-day Saint Thought,” *BYU Law Review* (2003), 941, 954 (quoting 2 Nephi 2:5).

43 See, e.g., A. Andrew Das, *Paul, the Law, and the Covenant* (2001); Hans Hübner, *Law in Paul’s Thought* (1984); Veronica Koperski, *What Are They Saying About Paul and the Law?* (2001); Frank Thielman, *A Contextual Approach: Paul and the Law* (1994).

44 2 Nephi 26:33.

45 See Sinha, *Jurisprudence*, 341: “[Critical race theory] analyzes the relationship of law and racial subordination in the United States.”

46 See generally Dwight N. Hopkins and Eugene England, “A Dialogue on Black Theology,” *Mormonism in Dialogue*, 341; Dwight N. Hopkins et al., “A Dialogue on Womanist Theology,” *Mormonism in Dialogue*, 303; Rosemary Radford Reuther and Camille Williams, “A Dialogue on Feminist Theology,” *Mormonism in Dialogue*, 251.

47 Joseph Fielding Smith, *Teachings of Joseph Smith*, 316, 366.

48 2 Nephi 2:25.

as a philosophical principle in a Mormon jurisprudence.⁴⁹ But one must still ask, how free are we really, given the inevitability of most consequences?⁵⁰

Perhaps most directly pertinent to the law, legal cases in the scriptures need to be carefully analyzed: What rules of law and holdings emerge from the scriptural account of the trial and execution of Naboth;⁵¹ of the action of Boaz on behalf of Ruth;⁵² from the trial of Jeremiah at the temple;⁵³ or in the Book of Mormon, the case of Sherem against Jacob;⁵⁴ or the trials of Abinadi, Nehor, or Korihor?⁵⁵ The same could be asked of the trials of Jesus, Paul, and others.⁵⁶ Why are there so many legal cases in the scriptures, and what would a Mormon jurisprudence draw from them?

Equally difficult to understand—historically, linguistically, literarily, comparatively, collectively, and practically—are the various and often conflicting or changing bodies of rules or legal codes in the scriptures. What is one to make today of Jehovah’s rules of judicial ethics found at the end of the Code of Covenant in Exodus 23,⁵⁷ or the concept of social justice found

49 Michael K. Young, “Legal Scholarship and Membership in the Church of Jesus Christ of Latter-day Saints: Have They Buried Both an Honest Man and a Law Professor in the Same Grave?” *BYU Law Review* (2003), 1069, 1093–94.

50 See C. Terry Warner, “Agency,” *Encyclopedia of Mormonism*, 26–27.

51 1 Kings 21:1–14.

52 Ruth 4:1–13.

53 Jeremiah 26:8–24. This is discussed in John W. Welch, “The Trial of Jeremiah: A Legal Legacy from Lehi’s Jerusalem,” *Glimpses of Lehi’s Jerusalem* (2004), 337.

54 Jacob 7:1–20.

55 Mosiah 12–17; Alma 1:10–15, 30:20–56. See generally John W. Welch, *The Legal Cases in the Book of Mormon* (2008) (providing detailed discussions of each legal case in the Old Testament and Book of Mormon).

56 See generally John W. Welch, “Latter-day Saint Reflections on the Trial and Death of Jesus,” *Clark Memorandum* (Fall 2000), 2; John W. Welch, “Miracles, Maleficium, and Maiestas in the Trial of Jesus,” in James H. Charlesworth, ed., *Jesus and Archaeology* (2006), 349.

57 Exodus 23; see also John W. Welch, “Jehovah’s Code of Civil Justice,” *Clark Memorandum* (Spring 2005), 12. For a more detailed discussion, see *The*

in the laws of Deuteronomy,⁵⁸ or the legal elements concerning divorce and perjury in the Sermon on the Mount,⁵⁹ or the statement published as The Doctrine and Covenants Section 134 on government?⁶⁰ One must look carefully at these issues, not only to determine what the word “kill” or “false witness” actually meant in Hebrew in the Ten Commandments, but also what the implications of those meanings are. Does one cheer (can one cheer, should one cheer) when it becomes clear that Section 134 of the The Doctrine and Covenants reflects Madisonian constructions of revolution, natural law, and freedom of conscience?⁶¹

The scriptures are filled with laws, teachings, statutes, ordinances, commandments, and testimonies, in all their varieties. Legal topics in the scriptures often appear or are assumed in prophetic texts, revelations, ethical admonitions, speeches, sermons, proverbs, parables, psalms, histories, and narratives.⁶² In many ways, the Mormon scriptural package is

Legal Cases in the Book of Mormon, 55, 57–76

58 See generally Léon Epsztein, *Social Justice in the Ancient Near East and the People of the Bible* (1986); Moshe Weinfeld, *Social Justice in Ancient Israel and in the Ancient Near East* (1995), 154, 154–55.

59 See Bernard S. Jackson, “Holier than Thou? Marriage and Divorce in the Scrolls, the New Testament and Early Rabbinic Sources,” *Essays on Halakhah in the New Testament* (2008), no. 16, 167, 169–70 (Jewish and Christian Perspectives Series); John W. Welch, *Illuminating the Sermon at the Temple and Sermon on the Mount* (1999), 67, 69–70.

60 Rodney K. Smith, “James Madison, John Witherspoon, and Oliver Cowdery: The First Amendment and the 134th Section of the Doctrine and Covenants,” *BYU Law Review* (2003), 891, 929–33.

61 Frederick Mark Gedicks, “The ‘Embarrassing’ Section 134,” *BYU Law Review* (2003), 959, 959–60.

62 See generally James K. Bruckner, *Implied Law in the Abraham Narrative: A Literary and Theological Analysis* (2001); David Daube, *Studies in Biblical Law* (2004); Falk, *Old Testament Law*, (1985), 29; Raymond Westbrook, “Biblical Law,” *An Introduction to the History and Sources of Jewish Law* (1996), 1. For several thousand references to books and articles about legal topics in the Bible, see John W. Welch, *Biblical Law Cumulative Bibliography* (2005), Brigham Young University Press & Eisenbrauns CD-ROM.

endless. Exactly what do these texts say? And not say? Is there a scriptural position on tolerance? On struggle and resistance? On analogical reasoning? On legal analysis? On collective intention? On social choice? On human dignity? On the boundaries of democratic pluralism? Unpacking it all remains a daunting task. But herein lies an important recognition of the next main observation concerning the open-endedness of a Mormon jurisprudence.

3. Not Random or Eclectic, But Inclusive

In 1931, the German mathematician Gödel proved an important hypothesis known as the incompleteness theorem.⁶³ He demonstrated that any system can be either complete or consistent, but not both.⁶⁴ Applying his theorem to systems of thought, it has been noted that systematic theologies and strictly rational philosophies may well achieve a satisfying sense of internal consistency, but they do so at the expense of completeness. The standard objections to Aquinas' naturalism, Kant's idealism, or Hart's positivism is that they exclude too much of the picture of life,⁶⁵ saying more and more about less and less, until they say virtually everything about nothing. Abstractions may be clean and clear, but they are also just that, extractions of selected parts from an unmanageable and

63 Ernest Nagel and James R. Newman, *Gödel's Proof*, 94–95 (1964), New York University Press.

64 Nagel and Newman, *Gödel's Proof*. Gödel's work as a young mathematician at the University of Vienna successfully proved the "axiomatic" approach to mathematical thought as unsound, pp. 3-5. The original proofs of Gödel attacked the ancient Greek approach to mathematics, which accepts as true certain unproven axioms and then derives from those axioms all other propositions as theorems, pp 4–5. This approach was successfully used in geometry and, in Gödel's time, was being applied to other forms of mathematics. Gödel's proof showed this approach unsound and his theories have since been extended beyond mathematics to other disciplines, including philosophy and systematic theology, pp 6–7.

65 See, e.g., Sinha, *Jurisprudence*, 202–04.

perhaps naturally inconsistent whole. And the answer is not, with critical legal studies,⁶⁶ or perhaps legal polycentrism,⁶⁷ to say less and less about more and more, until one is left to say nothing about everything.

Mormon thought, in contrast, privileges fullness, abundance, completeness, and all that the Father has, even if that means that Mormon thought, like Mormon life, appears to be overloaded, inconsistent, in many ways rationally unprovable and torn by competing values and obligations that pull, stretch, and expand in many ways. This may produce episodes of cognitive dissonance, ethical quandaries, confusion, mystery, and unknowability, but Mormonism boldly recognizes that there must be an opposition in all things,⁶⁸ including rationality and irrationality, as paradoxical as that may seem.⁶⁹

Faced with a choice, a Mormon jurisprudence will always prefer fullness over mere coherence, choosing to circumscribe all truth into one great whole. For this very reason, Joseph Smith objected to the limiting effects of denominational creeds, rational and consistent though they may be: "I want to come up into the presence of God, and learn all things; but the creeds set up stakes, and say, 'Hitherto shalt thou come, and no further'"⁷⁰

66 Sinha, *Jurisprudence*, 297, 307–14 (defining the major tenants of Critical Legal Studies); Lewis A. Kornhauser, "The Great Image of Authority," *Stanford Law Review* (1984), vol. 36, 349, 364–71.

67 Sinha, *Jurisprudence*, 347–49. See generally Arend Soeteman, ed., *Pluralism and Law* (2001) (containing a series of articles addressing the problems and issues posed to the law in a global community); Warwick Tie, *Legal Pluralism: Toward a Multicultural Conception of Law* (1999).

68 2 Nephi 2:11.

69 See David L. Paulsen, "Harmonization of Paradox," in *Encyclopedia of Mormonism*, 402–03. See generally Terry L. Givens, *People of Paradox: A History of Mormon Culture* (2007).

70 Smith, *Teachings of Joseph Smith*, 327. For a developmental analysis of the Christian creeds from a Latter-day Saint perspective, see John W. Welch, "All Their Creeds Were an Abomination": A Brief Look at Creeds as Part of the

A logical result of this inclusivism can be found in one of the basic impulses of Mormonism—gathering.⁷¹ Joseph Smith and Brigham Young, the first two Presidents of the Latter-day Saints Church, gathered people from various places to Kirtland and Nauvoo, to Utah and Zion. But the principle of gathering embraces not only gathering groups of people but also bodies of truth. Brigham Young once said:

It is our duty and calling, as ministers of the same salvation and Gospel, to gather every item of truth and reject every error. Whether a truth be found with professed infidels, or with the Universalists, or the Church of Rome, or the Methodists, the Church of England, the Presbyterians, the Baptists, the Quakers, the Shakers, or any other of the various and numerous different sects and parties, all of whom have more or less truth, it is the business of the Elders of this Church (Jesus, their Elder Brother, being at their head) to gather up all the truths in the world pertaining to life and salvation, to the Gospel we preach, to mechanism of every kind, to the sciences, and to philosophy, wherever it may be found in every nation, kindred, tongue, and people and bring it to Zion.⁷²

Some people will say that a Mormon jurisprudence is eclectic. But there is a difference between being eclectic and being open or willing to be inclusive. A Mormon “rule of inclusion” may need to be developed. It will fall back, at a

Apostasy,” *Prelude to the Restoration: From Apostasy to the Restored Church* (2004), Sperry Symposium Series No. 33:228.

71 Ronald D. Dennis, “Gathering,” *Encyclopedia of Mormonism*, 536.

72 Brigham Young, *Discourses of Brigham Young*, 382. For a balanced, scholarly discussion of the history and meanings of the idea that Jesus Christ is a brother to all mankind, who all with him have God as their Father as stated in Matthew 6:9 and 7:21, see Corbin Volluz, “Jesus Christ as Elder Brother,” *BYU Studies* (2006), 45:2, 41.

minimum, onto the Mormon concept of scripture, which is both open and canonical, transcendent and immanent.

As a Mormon jurisprudence reads various theories of law, it will find useful elements in each that are true and can be supported by scripture:

Divine Law Theory. Divine law theory will certainly be a primary part of this mix.⁷³ God is a lawgiver in the Bible. Furthermore, the Doctrine and Covenants 88:42 expansively affirms, “[God] hath given a law unto all things,”⁷⁴ and Section 130:20 fundamentally speaks of a law “irrevocably decreed in heaven before the foundations of this world.”⁷⁵ Moreover, Joseph Smith clearly asserted, God “was the first Author of law.”⁷⁶

Natural Law Theory. Natural law theory will have its solid truths to offer and is therefore an essential part of a Mormon jurisprudence.⁷⁷ Law naturally exists to some extent independent even of God, for in Alma’s *reductio ad absurdum*, if God somehow were to be unjust, “God would cease to be God.”⁷⁸

73 See generally Carl S. Hawkins & Douglas H. Parker, “Divine and Eternal Law,” *Encyclopedia of Mormonism*, 808, 809–10. The article explains traditional divine law theory and places it in current Mormon thought, primarily by comparing and applying it to Mormon scripture.

74 Doctrine and Covenants 88:42.

75 Doctrine and Covenants 130:20.

76 Smith, *Teachings of Joseph Smith*, 56.

77 See W. Cole Durham, Jr., “Kantian Justice: The Dynamic Tension of Natural and Positive Law,” 32, 59 (senior thesis, Harvard University, 1972. On file with Brigham Young University) for a brief discussion of the relationship between natural law and positive law. See also Francis J. Beckwith, Paper Presentation at the Princeton University Center for the Study of Religion Conference: “Mormonism and American Politics” (Nov. 10, 2007), http://fora.tv/2007/11/10/Politics_and_Religious_Identity (commencing at minute 51:30), relying on Doctrine and Covenants 130:20–21, 134:1–5; Smith, *Teachings of Joseph Smith*, 181 (“Every principle proceeding from God is eternal....”), to refute Damon Linker, “The Big Test: Taking Mormonism Seriously,” *New Republic*, Jan. 1–15, 2007, 18–19 (asserting Mormonism does not have the resources to deal with moral law).

78 Alma 42:13.

God is also bound when people do what he says.⁷⁹ Law is necessary, Lehi argued: “[I]f ... there is no law there is no God.”⁸⁰ And in some sense, law or its effects are immutable or fixed: “And again, verily I say unto you, he hath given a law unto all things, by which they move in their times and their seasons; [a]nd their courses are fixed, even the courses of the heavens and the earth, which comprehend the earth and all the planets.”⁸¹

Legal Idealism. Idealist views of law seem enticing, for God is a God of order.⁸² He invites us to come and reason together with him.⁸³ But he reminds us that his thoughts are not our thoughts.⁸⁴ Still, law strives for ideal harmony, and “[t]he law of the Lord is [ideally] perfect.”⁸⁵

Legal Positivism. Positivist formulations abound in Mormon scripture and rhetoric. On one hand, God’s sovereign commands are coupled with explicit sanctions (as epitomizes the positivist jurisprudence of John Austin)⁸⁶ and on the other hand, with rewards upon which that blessing is predicated.⁸⁷ In the Book of Mormon, Lehi even goes as far to say that where there is no law, there is no punishment.⁸⁸

Sociology. Sociological theories of jurisprudence look to the instrumental values of law in furthering the purposes of life, in promoting the inner order of human associations, or

79 Doctrine and Covenants 82:10 (“I, the Lord, am bound when ye do what I say; but when ye do not what I say, ye have no promise.”).

80 2 Nephi 2:13.

81 Doctrine and Covenants 88:42–43.

82 See Doctrine and Covenants 88:119 (stating that the Lord’s house is “a house of order”).

83 Isaiah 1:18.

84 Isaiah 55:8.

85 Psalms 19:7.

86 See John Austin, *The Province of Jurisprudence Determined and the Uses of the Study of Jurisprudence* (1954), 157–59. For examples of commandments or laws coupled with punishments, see Alma 30:10; Deuteronomy 22:22; Genesis 9:6.

87 Doctrine and Covenants 130:21.

88 2 Nephi 2:13.

strengthening the conditions of social solidarity.⁸⁹ Similarly, the intellectual generativeness of Mormon scriptures on social order, the plan of salvation, the purpose of life, community, Zion, and the relativity of revelations in different dispensations and languages all invite sociological insights into a Mormon jurisprudence.

Pragmatism. Pragmatic views of law are prescriptive (as in the jurisprudence of John Chipman Gray⁹⁰); so are the scriptural “be ye therefores” and the rules of conduct prescribed for members of the church throughout scripture.⁹¹

Legal Realism. Even legal realism may have a place in a Mormon jurisprudence. Realist views are predictive, or at least attempt to predict future judicial outcomes based on past experience (as in the work of Oliver Wendell Holmes and Karl Llewellyn⁹²). Likewise, the prophecies about how the final judgment will proceed and what the consequences of human choices will be are also predictive.⁹³

Psychology and Phenomenology. Psychological and phenomenological constructs of law⁹⁴ seem consonant with the scriptural injunctions to find and do justice, not in or with law books and past precedents, but “in the fear of the Lord, faithfully, and with a perfect heart.”⁹⁵

And so it goes: Wherever truth may be found, it will be embraced and utilized by a Mormon jurisprudence.

89 Sinha, *Jurisprudence*, 223–45.

90 See generally John Chipman Gray, *The Nature and Sources of the Law* (1921), Macmillan.

91 See, e.g., Doctrine and Covenants 105:41; Exodus 22:31; Luke 6:36; Matthew 5:48; 3 Nephi 12:48.

92 Oliver W. Holmes, Jr., *The Common Law* (1887), reprinted in Jeffrey A. Brauch, *Is Higher Law Common Law?: Readings on the Influence of Christian Thought in Anglo-American Law* (1999), 79, 79–80; Karl Llewellyn, “Some Realism About Realism,” 47 *Harvard Law Review* (1931), 47:1222, as reprinted in Brauch, 80, 82, 85.

93 Alma 12:13–18; Mosiah 3:24–27.

94 Sinha, *Jurisprudence*, 284–95.

95 2 Chronicles 19:9; see also Doctrine and Covenants 97:21.

Jurisprudential conflict usually stems from different answers to the following question: Where do we look for truth? Various theories provide answers such as universality,⁹⁶ consistency,⁹⁷ rationality,⁹⁸ stateability,⁹⁹ as well as enforceability, predictability, or measurability. Others say, look to experience; but to whose experience do we look? Again, various answers range from looking to the experience of the courts,¹⁰⁰ of officials,¹⁰¹ of legislators,¹⁰² of ordinary citizens, or of social scientists.¹⁰³ A Mormon jurisprudence would not exclude a priori any of these answers and would include others as well, which leads to one final main point.

4. Fundamentally Pluralistic

As one may readily discern from the foregoing discussion of the Latter-day Saint concept of open canon and from the

96 See Cairns, *Legal Philosophy*, 118–20 (discussing Aristotle’s concept of universal justice).

97 See Aldisert, *Judicial Process*, 313–414 (discussing examples of observing precedent when making decisions in law).

98 Aldisert, *Judicial Process*, 428–46 (explaining the use of logic in the law); see also Morris R. Cohen, “The Place of Logic in the Law,” *Harvard Law Review* (1916), 29:622, 630–38, reprinted in *Cohen and Cohen’s Readings in Jurisprudence and Legal Philosophy*, at 412–18.

99 See Aldisert, *Judicial Process*, 604–75 (justifying judicial decision-making in judicial opinions).

100 Aldisert, *Judicial Process*, 527–28.

101 Aldisert, *Judicial Process*, 121–80.

102 See William Robert Bishin, “The Law Finders: An Essay in Statutory Interpretation,” *Southern California Law Review* (1965), 38:1, 2–3, 13–17, as reprinted in *Cohen and Cohen’s Readings in Jurisprudence and Legal Philosophy*, 340–46; Julius Cohen, “Towards Realism in Legisprudence,” 59 *Yale Law Journal* (1950), 59:886, 886–97, as reprinted in *Cohen and Cohen’s*, 346–53; Sir Henry Maine, *Early History of Institutions* (3d. ed. 1880), as reprinted in *Cohen and Cohen’s*, 339–40.

103 Alvin K. Klevorick, “Law and Economic Theory: An Economist’s View,” 65 *American Economy Review* (1975), 65:237, as reprinted in *Cohen and Cohen’s Readings in Jurisprudence and Legal Philosophy*, 882–91; Laurence H. Tribe, *Philosophy and Public Affairs* (Fall 1972), 66, as reprinted in *Cohen and Cohen’s*, 839–40.

strong Latter-day Saint preference for fullness, the main philosophical assumptions that will drive the engine of a Mormon jurisprudence are all distinguished by a strong inclination, not necessarily toward pluralism, but toward pluralistic manifolds.

Over the years, I have spoken with many scholars of various faiths. These discussions have made me keenly aware that words and phrases, concepts and presuppositions, all of which seem perfectly obvious and intuitively valid to me, may mean something completely different, or perhaps even nothing at all, to a person of another persuasion. Frequently, this results in frustration, misrepresentation, or abandonment of the topic.

As I sat listening to intellectual ships passing in the night, it dawned on me why so many points of disjunction exist between Mormonism and traditional Christian orthodoxy. The common element present in Evangelical objections against Mormon thought is this: Evangelicals, including such notables as C. S. Lewis, are monists, where Mormons are pluralists. Over and over again, Mormon doctrine relishes multiplicity. Many words found in traditional Christianity are principally understood in the singular; whereas, the same words in Mormon doctrine are understood predominantly as plurals:¹⁰⁴ priesthoods and priesthood offices;¹⁰⁵ kingdoms, powers, and principalities;¹⁰⁶ intelligences, two creations, and worlds without number;¹⁰⁷ hosts of heaven; messengers;¹⁰⁸ continuing

104 Mormons typically rely on the King James version of the Bible published by The Church of the Latter-day Saints. All English translations of the Bible, including the New International Version, sometimes singularize words, even though the ancient Hebrew or Greek might have used a plural. I do not mean to imply that Evangelicals do not rely on the King James version, rather I simply wish to draw attention to the different doctrinal implication of the singular and the plural.

105 Ephesians 4:11; Hebrews 7.

106 Titus 3:1.

107 Compare Hebrews 1:2, 11:3 (New International Version), with Hebrews 1:2, 11:3 (King James, The Church of Jesus Christ of Latter-day Saints).

108 Amos 3:7.

revelations and gifts of the spirit;¹⁰⁹ scriptures, dispensations, covenants, ordinances, two Jerusalems, and two deaths; heavens;¹¹⁰ degrees of glory;¹¹¹ many “mansions”;¹¹² eternal lives; and even, in certain senses, saviours,¹¹³ and gods.¹¹⁴ It is second nature for Latter-day Saints to think, comfortably, in terms of manifold pluralities. In contrast, it is first nature for Evangelicals to think, readily, in terms of singularity: one kingdom, one scripture, one priesthood of all believers, one saving act, and one sanctifying human response of faith to God’s singular grace.¹¹⁵

The debate over whether truth, reality, being, and matter are ultimately one or many has a very long and sagacious history. Greek philosophy traces its earliest origins to the debate over whether essence is ultimately one or many. Parmenides, Heraclitus, Thales, Anaximander, Democritus, and others argued over whether matter is one or many, and if many, how many.¹¹⁶ Medieval alchemists subscribed to the view that matter

109 1 Corinthians 12:4–11.

110 Matthew 5:3, 10:10, 6:9. Although “heaven” is used in the singular in both the New International version and the King James version as published by The Church of Jesus Christ of Latter-day Saints, Mormon doctrines rely on the original Greek, *ouranos*, which is often referred to in the plural, *ouranoi*. *New Bible Dictionary* (1982), 465–66.

111 1 Corinthians 15:40–42.

112 John 14:2. The original Greek word is *monai*. *New Bible Dictionary*, 735.

113 Compare Obadiah 1:21 (New International Version) (translated as “deliverers”), with Obadiah 1:21 (King James, The Church of Jesus Christ of Latter-day Saints) (translated as “saviours”).

114 Psalms 82:6.

115 This should come as no surprise, since Evangelicalism is firmly rooted in Protestantism and its general affirmation of the five “*solas*”: *sola scriptura* (scripture alone), *solus Christus* (Christ alone), *sola gratia* (grace alone), *sola fide* (faith alone), and *sola Deo gloria* (glory to God only).

116 See generally *The Cambridge Dictionary of Philosophy*, Robert Audi, ed. (1995), 624–25. Cf. Daniel W. Graham, *Explaining the Cosmos: The Ionian Tradition of Scientific Philosophy* (2006), 186, 220–23. (positing a new practice of cosmology, which, according to the standard interpretation of Anaxagoras’ and Empedocles’ later Ionian philosophy, is best termed *Eleatic pluralism*).

was essentially homogenous, so one form of matter could be transmuted into another.¹¹⁷ Newtonian science, Bohr's atomic theory, and now high energy nuclear physics, have offered views on ultimate valences of matter.¹¹⁸ Scientific models, of course, do not control theology, but they do provide points of reference in understanding the nature of existence, or better said, of existences. Mormon thought would come down on the side of the pluralists in several important ways:

Epistemology. A Mormon jurisprudence will draw on multiple sources of knowledge. Logic, reason, and rationalism are sources of knowledge, judgment, and wisdom, but they are not exclusive sources. Revelation, inspiration, spirituality, and emotion are among sources of knowledge that all have important places at the Mormon jurisprudential roundtable. None of these places necessarily hold the right to trump the input of any of the other places, although in matters of reason, the rules of reason trump, and in matters of revelation, gifts of the spirit would hold sway. As I have written elsewhere, both are necessary: just as it takes two hands to play a violin, it takes both mind and spirit to approach truth.¹¹⁹ One must “seek learning, even by study and also by faith.”¹²⁰ Thus, I am dubious of compartmentalization.¹²¹

117 See E. J. Holmyard, *Alchemy* (1957), 15–16, Dover.

118 See John L. Brooke, *The Refiner's Fire: The Making of Mormon Cosmology 1644-1844* (1994), 27, 95, 106. See generally William J. Hamblin et al., Book Review, *BYU Studies* (1994-95), 34:4, 167. Quantum String Theory has recently jumped into this debate, postulating that the universe is made of only one kind of thing—“strings” that vibrate at different frequencies to become the different particles we observe. Brian Greene, *The Elegant Universe: Superstrings, Hidden Dimensions, and the Quest for the Ultimate Theory* (2003), 15–17.

119 John W. Welch, *Nurturing Faith Through the Book of Mormon: The Twenty-Fourth Annual Sidney B. Sperry Symposium* (1995), 149, 149–86, as reprinted in *Echoes and Evidences of the Book of Mormon*, Donald W. Parry et al., eds. (2002), 17, 26.

120 Doctrine and Covenants 88:118.

121 Cf. Young, *Legal Scholarship*, 1069–95 (arguing that compartmentalization of faith and scholarship stems, inter alia, from the historical separation of

Cosmology. A Mormon jurisprudence presumes a complex layering of multiple worlds or kingdoms, which necessarily entails multiple laws. Especially important and interesting is the revelation in the Doctrine and Covenants which reads as follows:

All kingdoms have a law given; [a]nd there are many kingdoms; for there is no space in the [sic] which there is no kingdom; and there is no kingdom in which there is no space, either a greater or a lesser kingdom. And unto every kingdom is given a law; and unto every law there are certain bounds also and conditions. All beings who abide not in those conditions are not justified.¹²²

What one finds here is a very profound and important approach to law, which can be called, with apologies to Einstein, a general theory of *legal* relativity. Natural law cannot be universalized specifically because all creation is not in fact one homogenous universe, but a multiverse. Every kingdom has a law, yet it is a natural law, at least in the sense that it is consistent with the nature of the matter within that kingdom. A Mormon jurisprudence would recognize that many laws pertinent to this world are quite possibly irrelevant in the setting of another kingdom. Do laws against murder have anything to do with another world of immortal beings?

This point could be multiplied many times over. Metaphysically, Mormon thought uses time and eternity perspectives and realizes that justice may still be just, even if it is delayed. This diachronic factor solves a classic paradox of justice and mercy, of God being both just and merciful,

religion and academia, the tendency of man to compartmentalize competing demands, and the inevitability of bias; but that Latter-day Saint scholars should make a courageous effort to juxtapose vocation and faith).

122 Doctrine and Covenants 88:36–39.

for, as the prophet Alma explains, mercy resides in the fact that God stays his hand during a probationary time allowing people to choose to repent and accept the benefits of the grace and atonement of Jesus Christ.¹²³ Of course, only a God who exists and acts in time can do this, allowing such a stay in the execution of the demands of justice.¹²⁴

A binary world is presumed in the opposites that constituted the Creation (dark and light, wet and dry, male and female), with both sides of these pairs of opposites being not only descriptive of the nature of this world, but also necessary to permit choice. As Lehi famously stated, “For it must needs be, that there is an opposition in all things.”¹²⁵ A Mormon metaphysics, therefore, would address and include such concepts as causation, determinism, fate, freedom, influence, addiction, and relinquishment of freedom, accepting as fundamental the axiom that human nature is changeable, both for better or worse:

And again, verily I say unto you, that which is governed by law is also preserved by law and perfected and sanctified by the same. That which breaketh a law, and abideth not by law, but seeketh to become a law unto itself, and willeth to abide in sin, and altogether abideth in sin, cannot be sanctified by law, neither by mercy, justice, nor judgment. Therefore, they must remain filthy still.¹²⁶

A Mormon jurisprudence would work from a basic understanding of human nature that recognizes the seed of

123 See Alma 42:4.

124 See generally David L. Paulsen, “The Doctrine of Divine Embodiment: Restoration, Judeo-Christian, and Philosophical Perspectives”, *BYU Studies* (1996), 35:4, 7, 8 (arguing for a rational acceptance of the divine embodiment of an infinite God).

125 2 Nephi 2:11.

126 Doctrine and Covenants 88:34–35.

divinity and therefore of eternal value in every human being, however faint it may sometimes seem.¹²⁷ The jurisprudence of Thomas Hobbes begins with the premise that human nature is evil and needs to be contained and controlled by benevolent ruling forces.¹²⁸ While recognizing that evil forces influence and shape human decisions and that the natural or mortal element in man stands in a state of enmity toward the immortal or divine, a Mormon jurisprudence still assumes that humanity is in essence beneficent and that most of the people most of the time will prefer to choose good over evil.¹²⁹

A Mormon jurisprudence would pluralistically place equal weight on rights and duties. In the United States, people speak often, and sometimes loudly, in behalf of rights: civil rights, human rights, legal rights, the right to bear arms, the right to assemble, the right to counsel. Less frequently, if at all, do people speak of duties. While I am a strong supporter of the Bill of (individual) Rights, I wonder if one should not begin to promote the idea of a “Bill of Communitarian Duties.” I suspect that the twentieth century will go down in jurisprudential history as the century of personal rights (equal rights, voting rights, civil rights, etc.). I hope that the twenty-first century will become a century of legally recognizing and strengthening civic duties.

Ultimately, duty analysis turns on how people view other people. If other people are optional and all relationships are voluntary, duties are spineless. A Mormon jurisprudence, however, rejects the prevailing view of radical individualism and operates upon the fundamental assumption that all

127 See generally Truman G. Madsen, “The Latter-day Saint View of Human Nature,” *On Human Nature: The Jerusalem Center Symposium* (2004), Truman G. Madsen et al., eds., 95. (exploring the Latter-day Saint view of human nature in a collection containing nine different religious traditions’ views on the same).

128 Thomas Hobbes, *Leviathan*, Edwin Curley, ed. (1994), 74–78, 84–85, Hackett Publishing.

129 Mosiah 29:26.

human beings are children of God, irrevocably brothers and sisters. In this view, other people are not optional.¹³⁰ Indeed, through the atonement of Jesus Christ, every human being may become fully exalted and receive all that he and his Father have. Moreover, these involuntary relationships may be sanctified by volitional, holy, and eternal covenantal bonds. This potent Latter-day Saint view supports not just ordinary but indeed robust views of communitarian social justice.

An ethics of merit and responsibility goes hand in hand with this Mormon self-perception, for no one will get to a state of justice by getting there alone. Permissiveness is not a blessing if it encourages self-destruction, and we mourn each loss as a loss of part of ourselves.

A pluralistic Mormon jurisprudence would reject the idea that all law can be reduced to economics.¹³¹ In fact, one cannot buy anything and everything in this world for money. This irreducibility transforms a jurist's approach to damages, equity, remedies, fairness, justice, and punishment. A Mormon jurisprudence will likewise make room for multiple theories of punishment, not just the one right theory or approach (as seems to be the premise in the exchange between Martin Gardner and Steven Huefner¹³²). Individual circumstances and needs

130 See Smith, *Teachings of Joseph Smith*, 159; see also *Doctrine and Covenants* 132:15–19.

131 But see C. Edwin Baker, "The Ideology of the Economic Analysis of Law," *Philosophy and Public Affairs* (Autumn 1975), 3, reprinted in *Cohen and Cohen's Readings in Jurisprudence and Legal Philosophy*, 870; Thomas C. Heller, "The Importance of Normative Decision-Making: The Limitations of Legal Economics as a Basis for a Liberal Jurisprudence—as Illustrated by the Regulation of Vacation Home Development," *Wisconsin Law Review* (1976), 385, 468–73, as reprinted in *Cohen and Cohen's*, 891, 893; Klevorick, *Law and Economics*, 883–85, 890–91; Richard A. Posner, "Observation, The Economic Approach to Law," 53 *Texas Law Review* (1975), 757, 759–78, as reprinted in *Cohen and Cohen's*, 853; Laurence H. Tribe, "Policy Science: Analysis or Ideology," *Philosophy and Public Affairs* (Fall 1972), 66, reprinted in *Cohen and Cohen's*, 836.

132 Compare Gardner, *Viewing Criminal Sanction*, 861–62, 889 (arguing that a retributivist view of punishment best serves the Latter-day Saints Church

will call for the use of an arsenal of various punishments. A Mormon jurisprudence might even favor a talionic approach to punishment, on some occasions having the punishment match the crime. The scriptures are full of examples of talionic justice, especially in cases involving divine or natural justice.¹³³ As I have suggested elsewhere, under a Mormon jurisprudence, if a person litters the highway he or she would be sent out to clean up roadways.¹³⁴ If a person lies under oath, that person should not be allowed to hold positions of trust, such as service on a board or as a trustee. We might punish those who commit perjury by having the IRS audit their tax returns,¹³⁵ a fitting penalty; since tax returns are filed under penalty of perjury, if one has lied on the witness stand, “the government might want to presume that such a person would also have likely lied on his or her tax returns.”

5. Concluding Comments

In conclusion, I come back to a few things I passed over quickly at the beginning of this Article. While one may agree with Dean Michael Young that the task of articulating a Mormon jurisprudence may be much more difficult and perhaps even riskier than people might have assumed, I do not think that people should be hesitant or reluctant in trying. Offering a Mormon approach need not be a “conversation stopper.” Members of all faiths should be engaged in the ongoing process of understanding jurisprudence. Indeed, anyone who asserts a

doctrine), with Steven F. Huefner, “Reservations About Retribution in Secular Society,” *BYU Law Review* (2003), 973, 973–74, 988, 992. (disagreeing with Gardner that a retributivist view justifies punishment and instead arguing that Latter-day Saints Church doctrine strongly supports a utilitarian justification).

133 Bernard S. Jackson, *Studies in the Semiotics of Biblical Law* (2000), 271–97.

134 John W. Welch, “Biblical Law in America: Historical Perspectives and Potentials for Reform,” *BYU Law Review* (2002), 611, 641.

135 Welch, “Biblical Law,” 611, 641.

right or advances a worldview bears the duty to articulate the implications of their exercise of that right or of adopting that worldview.

Mormonism, of course, is a young tradition, little more than 175 years old. Think where Christianity was when it was only 175 years old. No Mormon Thomas Aquinas has appeared yet. Latter-day Saints still have much homework to do, and in this they will need the help of many intellectual friends. However, Mormonism is extraordinarily rich in potential. It is deeply devoted to both truth and goodness. How rich is the idea that people should become eventually like God (an idea not unique to Mormonism, as reflected in 1 John 3:2). Whatever a person's view of God's true character or characteristics might be, how much better the world would be if that person would strive to the extent possible in this present mortal experience to be like God.

The jurisprudential potential of Mormonism remains to be actualized. I mentioned several passages, such as the words of Alma, the founding Nephite chief justice, in Alma 42, regarding justice and mercy. A Latter-day Saint might see his words as jurisprudential matter unorganized and awaiting organization, and others may see these ideas as Wittgensteinian¹³⁶ notations; filled with choice kernels that in the Lord's time may blossom, containing nuggets that still need to be mined, and arrayed with loose gems that still need to be set.

Most of all, one may see in Mormon jurisprudence a potential to be pluralistic without degenerating back into chaos. In the post-modern world, Mormonism offers a logical alternative to the two prevailing paradigms—relativism and absolutism.

136 For a resource detailing the intricacies of Wittgenstein's philosophical contribution to logic and language, see generally *Deepening Our Understanding of Wittgenstein*, Michael Kober, ed. (2006).

Post-modernism is heavily entrenched in relativism, despite the fact that relativism has its own philosophical problems.¹³⁷ Following Nietzsche and others, the relentless search for rationally-based truth has been basically eliminated. Things are now “true” inasmuch as they correspond to their systems (for example, Wittgenstein’s language games¹³⁸)—but there is no single system that dominates all other systems.

Based on this, what is true for one person can be false for another. Despite this entrenched relativism, however, few actually believe it when taken to its logical conclusion. For example, the New Testament states that Christ died on the cross. The *Qur’an* is equally emphatic that he did not. Few believe that the two statements can both be true, and hence people are absolutist in at least some weak sense of the word. But how is one to determine which of the two, or if both, are false?

The Enlightenment has failed in several important respects—unaided rationality cannot lead to ultimate truth. This failure has called into question whether there is ultimate truth.¹³⁹ But what replaced the mindset of the Enlightenment—namely, post-modernism—has plenty of problems of its own. This again is another one of the places where the Mormon worldview, and hence a Mormon jurisprudence, allows people to have their cake and eat it too. There is ultimate truth—in the Latter-day Saints view—in statements such as God exists; Jesus is the Christ, the Son of the living God; God speaks through prophets; the Bible contains the word of God; and so on. Though

137 I use “relativism” here as the various philosophical systems that deny ultimate truth. Any such system will necessarily have problems, like the fact that the sentence “all truth is relative” makes itself relative.

138 Ludwig Wittgenstein, *Philosophical Investigations* (1969), 5e, Macmillan 3d ed.

139 The argument runs something like this: Rationality cannot lead to ultimate truth, therefore there is no ultimate truth. This is obviously fallacious. Many post-moderns have thrown out the baby with the bath water.

the ultimate goal, for Mormons and all other Christians, however, is to have every member of the human race hear and accept all ultimate truths, the emphasis for Latter-day Saints is not on immediately arriving at that truth and changing one's life instantaneously. The Latter-day Saints scriptures are replete with statements that those who continually seek after more light and knowledge are those who grow line upon line,¹⁴⁰ will increase in light and holiness,¹⁴¹ and will eventually enter into the rest of God. Those who continually seek further light and knowledge will not be blamed.

This allows a Mormon jurisprudence to create a mediating position between relativism and absolutism. Two mutually contradictory facts are not true in the sense that they both represent reality, but depending on the individual circumstances of each human being, what is helpful in the development of one person's spirituality might not be helpful to another's. Ultimately, of course, the judgment of how well we have done is left to God.

An analogy from Romans is useful: Paul compares in Romans 12 the church of Christ to a body.¹⁴² Extending that analogy, the human race itself is a body, and not all have the same office. Though Latter-day Saints believe they have the fullness of the gospel, they do not equate that fullness with all truth, as was mentioned above by Brigham Young.¹⁴³ The Latter-day Saint Church teaches that the great thinkers and religious leaders of the world—Muhammad, Zarathustra, Lao Tzu, Socrates, and others—were sent by God to bring further light and knowledge to their respective peoples inasmuch as those people were ready to receive.¹⁴⁴ Consequently, Latter-day

140 2 Nephi 28:30.

141 Doctrine and Covenants 82:14.

142 Romans 12:4–5.

143 See *Discourses of Brigham Young*, 382.

144 See generally Cardell Jacobson, "Official Declaration—2," *Encyclopedia of Mormonism*, 423–24 (discussing the revelation to President Spencer W.

Saints hope to learn much from the teachings of such great men.

This emphasis on doing the best one can, spiritually and intellectually, with what one has been given allows the Latter-day Saint to emphasize aspects of both the Enlightenment worldview, namely that there is ultimate truth, and the post-modern worldview, namely that what is “true” for one person might not be “true” for another, with the disclaimer that one must always be moving towards the ultimate truth inasmuch as it is revealed to him or her. Mormon thought is pluralistic without degenerating into chaos.

A pluralistic theology or jurisprudence should uniquely appeal to and serve the needs and interests of the ever-increasingly complex world in which various cultures, ideologies, interest groups, cultures, ethnicities, modalities, and religions abound. Indeed, it should serve the needs of all God’s children, in every nation, kindred, tongue, and people. Is it too much to think that a Mormon jurisprudence might serve those ends even better than the other options that have been put on the jurisprudential table thus far?

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Kimball, Official Declaration—2, which made it possible for all worthy males—including black males—to hold the priesthood).

