

# Reviews

*Edited by Richard L. Bushman*

*Most Mormons accept the same fundamental political principles relating to the importance of personal freedom, the inspiration of the Constitution, and the preeminence of the individual over the state. And yet there is a continuing lively debate over the application of these principles to everyday political issues.*

*By and large Mormons on the conservative side have appeared most often in print, Hyrum Andrus's LIBERALISM, CONSERVATISM, AND MORMONISM being a notable example. In the review essay below, Martin Hickman, working from the same basic assumptions, criticizes Professor Andrus, and suggests another point of view.*

## LIBERALS, CONSERVATIVES, AND HERETICS

*Martin Hickman*

*Liberalism, Conservatism, and Mormonism.* By Hyrum Andrus. Salt Lake City, Utah: Deseret Book Company. xiv + 100 pp. \$1.95. Martin Hickman has been Associate Professor in the School of International Relations at University of Southern California. Next fall he will join the Political Science Department at Brigham Young University.

Among the issues which interest and divide men, none, with perhaps the exception of religion, seems so conducive to the use of labels as politics. Each phase of American political life has had its own labels: "Federalist," "Tory," "Whig," "Progressive," "Mugwump," "New Dealer," "Old Guard" were all once current. Those old standbys "Democrat" and "Republican" have lasted each for over a hundred years, even though it is clear that they now identify political parties rather than political views. Current taste in political labels seems clearly to favor "liberal" and "conservative," sometimes preceded by "ultra," "pseudo," or "doctrinaire" when the speaker's unspoken, but clearly understood, meaning is "communist" or "fascist," terms that are beyond the pale of polite political polemics. A typical example of this fad in political labels is Professor Hyrum Andrus's book, *Liberalism, Conservatism, and Mormonism*, which seeks to identify and to clarify these political positions within the context of Mormonism.

Unfortunately, identification and clarification are not the strong points of this book. Partly this is because the book is a collection of essays which, as the author notes, "were not produced originally with the intent of publishing them together in a single volume. For this reason they may lack continuity and overlap in minor areas" (p. x). But primarily the confusion is caused by the author's penchant for over-simplification, his failure to define words carefully, and his careless use of the scriptures and historical documents.

## THE MAJOR THEMES

Before turning to specific examples, let me briefly outline the major themes of the book. The task Professor Andrus sets himself is to describe the relationship of modern liberalism and conservatism to Mormonism. He begins by noting that fundamental to all political questions is the tension between the quest for individual freedom and the needs of the community, or what he calls sometimes social union and at others social justice, the term which I will use throughout this review. This tension results in a conflict which, he argues, can only be resolved on the basis of a spiritual and moral regeneration of man. A solution of this conflict is possible in our historical era only if the world accepts the gospel, otherwise it must wait until the establishment of the Kingdom of God.

Attempts to achieve a reconciliation of this conflict in the secular world by the means of economic and social legislation are doomed to failure because the necessary prerequisite — the spiritual rebirth of man — is absent. This means that in the secular world man is confronted by a choice between individual freedom and social justice. Andrus insists that each decision must be resolved in favor of freedom; moreover, he argues, this choice is dictated by the principles of the gospel. In the secular world those who seek social justice can only achieve it by imposing limitations on individual freedom, thereby making a meaningful moral life impossible. Andrus sees this as a continuation of the eternal conflict, for he argues, "The hard and blunt fact of the matter is that Lucifer and his hosts followed a similar path in the pre-mortal conflict. . . ." (p. 5). He suggests that that for those who are not members of the Church the choice of social justice over freedom is at least understandable since some are sincere in their search for social justice, but for Mormons this choice constitutes "an actual denial of the basic foundations — spiritual, social, economic, upon which this dispensation and its program rests" (p. 5).

Andrus insists that the preference for individual freedom over social justice as the guiding principle in political affairs is embodied in the Doctrine and Covenants and in the United States Constitution. "It follows that governmental measures that foster social programs for the people are basically incompatible with the Constitution" (p. 19). Moreover, given the insistence on freedom in these documents, the search for social justice through governmental action is not only futile but is productive of evil because it involves the use of force.

Within this frame of reference, Andrus discusses the place of the religious and political liberal in the Church. He identifies a religious "liberal" as one who believes that revelation may be subjected to the scrutiny of reason and who espouses an optimistic view of the nature of man. Both of these views he finds defective: the first because it denies "the full meaning of modern revelation" (p. 75), the second because it denies the need for a spiritual rebirth and for the redemption. This trust in the power of human reason and human nature leads liberals to believe that man "is good and that he alone is capable of governing himself aright and of solving the problems of life" (p. 76).

These attitudes, Andrus says, are translated into a political liberalism which asserts that social justice can be obtained by the application of man's

intellectual powers to the problem of inequality, and, therefore, social justice can be found outside the Kingdom of God and without a moral and spiritual regeneration of man. This reliance on human economic and social systems for social justice results in "artificial measures" characteristic of the welfare state, for liberals seek to apply a human solution to a problem for which there is only a divine answer.

By implication religious conservatives accept the necessity of revelation and the need for redemption. They also recognize the need for maximum freedom if man's free agency is to have any meaning. This religious faith dictates a secular conservatism which stresses the need for freedom and which subordinates economic and social measures to this need. A modern conservative, Andrus writes, "holds that man can get nearer to a solution of the problem of social justice by maintaining a climate of freedom in which to work" (p. ix).

As a result of this investigation Andrus concludes that modern liberalism is incompatible with Mormonism because it sacrifices individual freedom in a vain quest for secular social justice. Although conservatism, with its emphasis on individual freedom, cannot be considered a final answer since it cannot ultimately reconcile the conflict between individual freedom and social justice, it is compatible with Mormonism because it places the demands of individual freedom above the search for social justice. This stress on individual freedom, Andrus say, creates the necessary political conditions in which the Church can fulfill its mission to achieve social justice through the spiritual regeneration of man. Liberalism would restrict the freedom of the members of the Church, but more seriously that of the Church itself — and thereby limit the Church in its divine mission.

### THE PROBLEMS

It is obvious that with some portions of this argument there can be little disagreement. The conflict between the needs of society and the rights of individual creates an enduring tension which can only be solved ultimately through the establishment of the Kingdom of God. There is nothing inherently wrong with a preference for individual freedom over social justice; this is an intellectual position that has a respectable place in the tradition of Western political thought. What is objectionable is Andrus's attempt to read his own political preference into the scriptures, and on the basis of that standard to condemn all those who disagree with him. This flies in the face of a long tradition of political pluralism in Mormonism which seems to me worth conserving.

I have said Professor Andrus over-simplifies, uses words without defining them, and misuses the scriptures and historical evidence. In particular his failure to define his terms makes it difficult to be precise in criticism. While one is fairly sure what he means by "liberal" and "conservative" in the abstract, one is hard put to turn them into operational terms. There is, for example, his condemnation of "liberals" who espouse "social measures" or "social programs." These are objectionable, he says, because they (1) apply to all people regardless of their desires, and (2) force minorities to conform to the will of the majority. But these standards are difficult to apply precisely because Andrus has not explicitly defined "social measures." One assumes that he in-

cludes in this term welfare laws and social security legislation, as well as open housing and civil rights statutes. But what about legislation banning the consumption and sale of alcoholic beverages, or the sale of pornography, or zoning ordinances regulating the use of private property, all of which clearly apply to all people regardless of their desires and force a minority to conform to the will of the majority? This question highlights the ambiguity of the term "social measures" as it is used in the book, and simultaneously raises an interesting dilemma for members of the Church who attempt to apply Andrus's test. On the one hand, the inclusion of prohibition statutes and similar measures in the term "social measures" would require one to oppose them as unacceptable constraints on individual freedom, a consequence which I am sure was not intended by Professor Andrus. On the other, exclusion of this legislation from the meaning of the term would mean that the test must fail since it would permit legislation which applies to all people regardless of their desires and subjects the minority to the will of the majority in some cases and rejects it in others. It very well may be that some "social measures" are objectionable, but it is clear that a test other than the one Professor Andrus suggests must be used to identify them.

#### JUSTICE AND FREEDOM IN TENSION

A further difficulty is raised by the author's insistence that social justice and individual freedom are mutually exclusive concepts (p. 1). There is indeed a continuing tension between these ideals, but this tension exists not because they are dichotomous values, but because they are linked in dynamic interaction. The question does not seem to be one of *either* social justice *or* individual freedom, but rather how in a secular world is man to keep them in a meaningful equilibrium. This can not be done by mechanically applying theoretical tests, but only by constantly reassessing their relationship in the light of existing conditions, our historical experience, and the living principles of the gospel. Man's most difficult decisions, after all, are between deeply held values which cannot be achieved simultaneously.

The ultimate problem is that all secular legislation imposes restrictions on individual freedom. To attack social legislation on the grounds that it is objectionable because it takes from men the possibility to commit social and economic sins, thus depriving them of their freedom, is to call all legislation into question. The secular world is replete with restrictions on our freedom: criminal laws limit the right to commit crimes; tax laws expropriate our money; compulsory education legislation limits our control of our children; public health measures restrict our use of property; and draft laws subject us to military service. If this legislation is an acceptable restriction on individual freedom for the good of society, then it seems to me that many "social measures" which require some limitation on individual freedom are neither unconstitutional nor morally wrong. This view recognizes the existence of inviolable human rights which must be immune from governmental or private control, but it also recognizes that some restrictions on individual freedom are absolutely necessary. "The most stringent protection of free speech," Justice Holmes said, "would not protect a man in falsely shouting fire in a theater and causing a panic."<sup>1</sup> But between these two imperatives of meaningful

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<sup>1</sup> *Schenck v. United States*, 249 U.S. 47 (1919).

human existence there is a "grey area" where reasonable man may differ as to which of these values should take precedence. It is precisely in this "grey area" where the battle over "social measures" takes place and where, therefore, there is the most difficulty in reaching a consensus on public policy. When a consensus is lacking, democratic theory entrusts the decision to a majority of the people or of their elected representatives. This theory is validated not only by American political and constitutional experience, but also by the scriptures: "Now it is not common that the voice of the people desireth anything contrary to that which is right," King Mosiah cautioned his people, "but it is common for the lesser part of the people to desire that which is not right; therefore, this shall you observe and make your law — to do your business by the voice of the people."<sup>2</sup>

Another argument crucial to the book is that the Constitution of the United States was designed by the founding fathers

to check the influence of political parties, large or small, in their effort to use government for private or popular welfare measures, etc.

It follows that governmental measures that foster social programs for the people are basically incompatible with the Constitution. Social measures may require majority approval, but they affect the lives and property of *all people* within the body politic, regardless of whether or not the individual desires to be so affected. Minority groups are, therefore, very often forced to conform to the majority opinion, either by the pressure of popular sentiment or by the direct influence of government doing the will of the people. Hence the socialized state stands in opposition to the ideal of freedom, and the pluralistic society espoused by the Constitution. (p. 19; italics in original)

Andrus's grounds for this argument are principally scriptural. He appeals to the Doctrine and Covenants 101:77-78, which states that the "laws and constitution of the people" were established so "that every man may act in doctrine and principle pertaining to futurity, according to the moral agency which I have given unto him, that every man may be accountable for his own sins in the day of judgment." Andrus assumes that these verses forbid measures designed to achieve social justice. It is not at all clear that this is the intent of these verses. Remembering the danger of giving the scriptures a private interpretation, I would suggest that these passages from the Doctrine and Covenants are concerned with the problem of moral choice and the necessity to preserve for individuals the right to freedom of speech and of the press, and above all to the right to exercise their religion — in the supreme expression of free agency — without hindrance. I find support for this reading in the comments on verse seventy-eight found in the *Doctrine and Covenants Commentary*: "The Lord suffered, that is, permitted the establishment of the constitutional government in the United States for the protection of everybody in the enjoyment of religious liberty."<sup>3</sup>

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<sup>2</sup> Mosiah 29:26.

<sup>3</sup> Hyrum M. Smith and Janne Sjodahl (Salt Lake City: Deseret Book Company, rev. ed., 1961), p. 650. The original edition was revised in 1951 by the Church Publication Committee consisting of Joseph Fielding Smith, Harold B. Lee, and Marion G. Romney. Also of some interest is the gloss put on v. 79: "In the United States no man should be in bondage to another in matters over which conscience is the sole judge." *Ibid.*

## THE CONSTITUTION OR THE LAW

Moreover in his use of this passage the author does not distinguish between the Constitution and the constitutional law of the land. This is an important distinction: the first is primary; the second derivative. The first is a statement of principles; the second is the attempt of men to translate those principles into action. The first the Lord established by the hands of wise men; the second has no such warrant, but yet the Lord told the Prophet that he was justified in obeying the constitutional law of the land. When the passages in the Doctrine and Covenants are examined carefully it becomes apparent that section 101:80 refers to the Constitution and is the scriptural basis for the Mormon belief that the Constitution is an inspired document. Section 101:77-78, quoted above, refers to both the Constitution and the laws, and Section 98:4-8 — which Andrus frequently quotes in support of his views of the Constitution — refers solely to the “constitutional law of the land.” Let me quote the latter verses in full in order to show the way Andrus has used them:

4. And now, verily I say unto you concerning the laws of the land, it is my will that my people should observe to do all things whatsoever I command them.
5. And that law of the land which is constitutional, supporting that principle of freedom in maintaining rights and privileges, belongs to all mankind, and is justifiable before me.
6. Therefore, I, the Lord, justify you, and your brethren of my church, in befriending that law which is the constitutional law of the land;
7. And as pertaining to law of man, whatsoever is more or less than this, cometh of evil.
8. I, the Lord God, make you free, therefore ye are free indeed; and the law also maketh you free.

Andrus uses these verses and particularly verse seven to substantiate an argument that any government which provides more or less than the Constitution comes from evil. The Articles of Confederation, he argues, provided less; the welfare state more. But this argument, as we have noted, encounters the immediate objection that this passage refers not to the Constitution as such but to the constitutional law of the land. But there is a more profound objection: the argument does not distinguish between constitutions and legislation. The Articles of Confederation and the American Constitution are constitutions and as such create the fundamental framework within which legislation may be enacted, and it is therefore legitimate to compare them as Professor Andrus has done. Legislation on the other hand must be judged in terms of its compatibility with the fundamental law which authorized its enactment. The legitimacy of legislation which is generally considered as creating the “welfare state” is to be determined then by its “constitutionality.” In the passage quoted above the Saints are justified in upholding the constitutional law of the land, but are warned against legislation which does not meet this requirement. The crucial problem for Latter-day Saints then becomes: what is the constitutional law of the land? American constitutional practice and tradition has reserved this question to the courts under a system of judicial review. Andrus rejects this tradition and would have us measure the constitutionality of the law against a standard of individual freedom which he does not define, but yet which he insists is enshrined in the scriptures. Per-

haps I am old fashioned, but I prefer the comments in the *Doctrine and Covenants Commentary* on verses 4-10, and particularly that on verse 5:

The first duty of loyal citizens is to keep the commandments of God. Their next is to keep every law of the land which is constitutional. In the United States, every State makes its own laws, and Congress legislates for all. It is the duty of the Saints to keep the laws which are Constitutional; that is, which do not conflict with the Constitution. If either Congress or a State Legislature should enact an unconstitutional law, there are certain constitutional means provided by which it can be set aside. Loyal citizens will avail themselves of these means, if necessary, in preference to revolutionary measures. If there is any doubt as to the constitutionality of a law, the Supreme Court will pass upon it, if appealed to for a decision, and when the Supreme Court has spoken, the doubt is removed, and the controversy ended.<sup>4</sup>

### THE CONSTITUTION OR THE BILL OF RIGHTS

There is an aspect of Andrus's treatment of the Constitution as an inspired document which needs some comment. He argues that the Constitution "is primarily concerned with the problem of granting and upholding individual freedom." In addition, he asserts that

Latter-day Saints understand that while the Constitution was brought forth under the inspiration of God, it was not in every respect a perfect document. Nor have the qualifying amendments, with the varying interpretations assigned to given sections thereof, necessarily been born of that same inspiration. (pp. 21-22)

These two assertions present a major problem if Andrus's argument is accepted uncritically, since the protection of individual freedoms which he argues is the primary concern of the Constitution is not found in the Constitution itself but in the first ten amendments. The exclusion of the Bill of Rights from the body of the Constitution by the framers was deliberate: a motion to appoint a committee to consider the desirability of including a Bill of Rights was defeated by ten votes to none. Specific protection of individual's rights therefore found its way into the document only after ratification, and ratification was obtained only on the explicit promise that such amendments would be adopted, a promise extracted from the framers of the Constitution by the demands of public opinion. For as James Madison the "father of the Constitution" explained to Jefferson, "My own opinion has always been in favor of a bill of rights. . . . At the same time I have never thought the omission a material defect, nor been anxious to supply it even by subsequent amendment for any other reason than that it is anxiously desired by others."<sup>5</sup> If the "qualifying amendments" are not inspired then what does this do to Andrus's thesis about the primary concern of the Constitution? It is possible of course that when Andrus uses the term "qualifying amendments" he means those adopted after the first ten, but if so he cannot leave the reader guessing on so important a point. Moreover, it is incumbent on him to discuss the basis on

<sup>4</sup> Ibid., p. 617.

<sup>5</sup> Quoted in Edward Dumwald, *The Bill of Rights: And What It Means Today* (Norman, Oklahoma: University of Oklahoma Press, 1957), p. 7.