

# Joseph Smith's Performance of Marriages in Ohio

M. Scott Bradshaw

During the 1830s, ministers from a wide range of Christian denominations performed marriages in Ohio. Attempting to compile a comprehensive list of such churches would be a mammoth task, but a sampling of the court records from several Ohio counties shows that representatives from at least a dozen religious denominations were actively solemnizing marriages. These denominations included Anabaptists, Baptists, Congregationalists, Disciples of Christ, Episcopalians, Evangelicals, German Reformed, Mennonites, Methodists, Presbyterians, Unitarians, Universalists and, of particular interest to readers here, Latter-day Saints.<sup>1</sup>

Most of these ceremonies were performed under a provision of Ohio law that prescribed procedures through which any ordained minister could be licensed to solemnize marriages. The county courts of common pleas issued licenses to perform marriages, and the granting of these licenses was a routine matter. According to law, a minister merely needed to appear before a county court and produce “credentials of his being a regular ordained minister of any religious society or congregation.”<sup>2</sup> The statute provided that, once granted, such licenses were to be valid for as long as the minister continued serving the same denomination.

A survey of Ohio county court records reveals only one denial of a request for a license. In March 1835, Sidney Rigdon made a motion for a license before the judge of his county court, Presiding Judge Matthew Birchard of the Geauga County Court of Common Pleas, which had jurisdiction over the Kirtland area. Even though Rigdon held the priesthood in the LDS Church and was a counselor to Joseph Smith in the presidency of the Church, the judge still refused Rigdon's motion, holding that he was not a “regularly ordained minister of the gospel within the meaning of the Statute.”<sup>3</sup> Whether intentionally or not, in denying Rigdon's request, the judge appears to have signaled to other Mormon elders not to bother applying: Geauga County court records do not contain any evidence that other Saints either requested or were denied licenses to solemnize marriages.

The denial of Rigdon's motion was not the only problem he had with the court over the marriage issue. Court records show that Rigdon was indicted in June 1835 and tried in October for illegally solemnizing the 1834 marriage of Orson Hyde and Marinda Johnson. Rigdon was discharged

only after it became evident that a license he received in 1826 as a Campbellite minister was still technically valid, there being no record from his previous church proving his dismissal.<sup>4</sup>

While Judge Birchard's refusal of Rigdon's motion may have dissuaded LDS elders from making similar requests in Geauga County, at least one elder was not deterred from performing marriages—even without a license. County marriage records show that on November 24, 1835, Joseph Smith solemnized the marriage of Newel Knight and Lydia Goldthwaite Bailey. These records also show that during the next two months, Joseph performed an additional ten weddings (fig. 1). By June 1837, he had married a total of nineteen couples in Kirtland.<sup>5</sup>

Joseph's decision to perform marriages surprised some of the Saints. This is particularly evident from the accounts of the Knight-Bailey wedding. Lydia's history states that Joseph's brother Hyrum was "astonish[ed]" when he learned that Joseph intended to personally marry her and Newel. Probably referring to Sidney Rigdon's legal troubles, Lydia's history explains that Ohio law "did not recognize the 'Mormon' Elders as ministers" and that LDS elders had been arrested and fined for performing marriages.<sup>6</sup> Newel was also amazed. He noted in his journal that Joseph did not have a license to perform marriages and that without this the authorities could impose a penalty.<sup>7</sup>

Joseph was not timid in announcing his intent to solemnize marriages. During the Knight ceremony, he stated that LDS elders had been "wronged" in connection with the marriage license issue and explained that from this time forth he intended to marry couples whenever he saw fit. Joseph also predicted that his enemies would never be able to use the law against him.<sup>8</sup>

Nor was Joseph silent with respect to the uncertainty over his authority to solemnize marriages. In comments made during a Sunday sermon, just days after the Knight wedding, Joseph justified his action by explaining that he had done as God commanded him. He further stated that it was his right, or "religious privilege," as he put it, to perform marriages. Not even the U.S. Congress, he said, had "power to make a law that would abridge the rights of [his] religion."<sup>9</sup>

Not surprisingly, Newel's and Lydia's comments regarding Ohio law and Mormon elders have led some historians to assume that Joseph acted without legal authority when he married couples in Kirtland. These writers have used the term "illegal" quite freely in describing these weddings, also noting that, in the case of the Knight wedding, Lydia had not obtained a divorce from her previous spouse, Calvin Bailey, an abusive husband who had abandoned Lydia several years earlier.



**BE it Remembered, that on the** *Twenty fourth day of November*  
in the year of our Lord one thousand eight hundred and *thirty five*, *Newell*  
*Knight* and *Lydia Goldthwaite* of the County of Geauga, were legally  
joined in Marriage, by competent authority, in conformity to the provisions of the Statutes of the State of  
Ohio in such cases made and provided; and a certificate of the said Marriage, signed by *Joseph Smith Jr.*  
who solemnized the same, has been filed in the office of the Clerk of the  
Court of Common Pleas for said County of Geauga, this *Twenty second* day of *February*  
Anno Domini, one thousand eight hundred and *thirty-six*

ATTEST,

*Clerk.*

*C. E. Aiken*

**BE it Remembered, that on the** *Third* day of *December*  
in the year of our Lord one thousand eight hundred and *thirty five*, *Warren*  
*Parrish* and *Martha H. Raymond* of the County of Geauga, were legally  
joined in marriage, by competent authority, in conformity to the provisions of the Statutes of the State of  
Ohio in such cases made and provided; and a certificate of the said marriage, signed by *Joseph Smith Jr.*  
who solemnized the same, has been filed in the office of the Clerk of the  
Court of Common Pleas for said County of Geauga, this *Twenty second* day of *February*  
Anno Domini, one thousand eight hundred and *thirty-six*

ATTEST,

*Clerk.*

*C. E. Aiken*

FIG. 1. Geauga County records of marriages solemnized by Joseph Smith Jr. in Kirtland, Ohio, from November 1835 through January 1836. These and the records that follow were filed in Geauga County within the ninety-day term prescribed by law. The first two are for the marriages of Newel Knight and Lydia Goldthwaite and of Warren Parrish and Martha H. Raymond. Typically, the county clerk, D. D. Aiken, recorded four marriages per page, but the pages are split here for ease of reading. Courtesy Judge Charles E. Henry, Geauga County Probate Court, Chardon, Ohio.



**BE it Remembered, that on the** *Thirtieth* **day of** *December*  
in the year of our Lord one thousand eight hundred and *thirty five*, *Ebenezer*  
*Robinson* and *Angeline Eliza Works* of the County of Geauga were legally  
joined in marriage, by competent authority, in conformity to the provisions of the Statutes of the State of  
Ohio in such cases made and provided; and a certificate of the said marriage, signed by *Joseph Smith Jr.*  
who solemnized the same, has been filed in the office of the Clerk of the  
Court of Common Pleas for said County of Geauga, this *Twenty second* day of *February*  
Anno Domini one thousand eight hundred and *thirty six*  
ATTEST, *R. D. Aiken* Clerk.

**BE it Remembered, that on the** *Thirtieth* **day of** *December*  
in the year of our Lord one thousand eight hundred and *thirty five*, *Edwin*  
*Webb* and *Eliza Ann McWhitney* of the County of Geauga, were legally  
joined in marriage, by competent authority, in conformity to the provisions of the Statutes of the State of  
Ohio in such cases made and provided; and a certificate of the said marriage, signed by *Joseph Smith Jr.*  
who solemnized the same, has been filed in the office of the Clerk of the  
Court of Common Pleas for said County of Geauga, this *Twenty second* day of *February*  
Anno Domini, one thousand eight hundred and *thirty six*  
ATTEST, *R. D. Aiken* Clerk.

Marriage records of Ebenezer Robinson and Angeline Eliza Works and of Edwin Webb and Eliza Ann McWhitney. Courtesy Judge Charles E. Henry, Geauga County Probate Court, Chardon, Ohio.



**BE it Remembered, that on the** *fourteenth* **day of** *January*  
in the year of our Lord one thousand eight hundred and *thirty-six*, *Thomas*  
*Carrico* and *Betsy Baker* of the County of Geauga, were legally  
joined in Marriage, by competent authority, in conformity to the provisions of the Statutes of the State of  
Ohio in such cases made and provided; and a certificate of the said Marriage, signed by *Jos. Smith Jr.*  
who solemnized the same, has been filed in the office of the Clerk of the  
Court of Common Pleas for said County of Geauga, this *twenty-second* day of *February*  
Anno Domini, one thousand eight hundred and *thirty-six*.

ATTEST,

*R. R. Aiken*

Clerk.

**BE it Remembered, that on the** *fourteenth* **day of** *January*  
in the year of our Lord one thousand eight hundred and *thirty-six*, *John*  
*Webb* and *Catharine Willcox* of the County of Geauga, were legally  
joined in marriage, by competent authority, in conformity to the provisions of the Statutes of the State of  
Ohio in such cases made and provided; and a certificate of the said marriage, signed by *Jos. Smith Jr.*  
who solemnized the same, has been filed in the office of the Clerk of the  
Court of Common Pleas for said County of Geauga, this *twenty-second* day of *February*  
Anno Domini, one thousand eight hundred and *thirty-six*.

ATTEST,

*R. R. Aiken*

Clerk.

Marriage records of Thomas Carrico and Betsy Baker and of John Webb and Catharine Willcox. Courtesy  
Judge Charles E. Henry, Geauga County Probate Court, Chardon, Ohio.



**BE it Remembered, that on the** *Twentieth* **day of** *January*  
in the year of our Lord one thousand eight hundred and *thirty-six*, *John F.*  
*Boynton* and *Susan Lowell* of the County of Geauga were legally  
joined in marriage, by competent authority, in conformity to the provisions of the Statutes of the State of  
Ohio in such cases made and provided; and a certificate of the said marriage, signed by *Jos. Smith Jr.*  
who solemnized the same, has been filed in the office of the Clerk of the  
Court of Common Pleas for said County of Geauga, this *twentieth* day of *February*  
Anno Domini one thousand eight hundred and *thirty-six*  
ATTEST  
*R. L. Aiken* Clerk.

**BE it Remembered, that on the** *Third* **day of** *February*  
in the year of our Lord one thousand eight hundred and *thirty-six*, *Joseph W.*  
*Kingsbury* and *Caroline Whitney* of the County of Geauga, were legally  
joined in marriage, by competent authority, in conformity to the provisions of the Statutes of the State of  
Ohio in such cases made and provided; and a certificate of the said marriage, signed by *Jos. Smith Jr.*  
who solemnized the same, has been filed in the office of the Clerk of the  
Court of Common Pleas for said County of Geauga, this *third* day of *February*  
Anno Domini, one thousand eight hundred and *thirty-six*  
ATTEST  
*R. L. Aiken* Clerk.

Marriage records of John F. Boynton and Susan Lowell and of Joseph C. Kingsbury and Caroline Whitney.  
Courtesy Judge Charles E. Henry, Geauga County Probate Court, Chardon, Ohio.



1844.

**BE it Remembered, that on the** *First* **day of** *February*  
in the year of our Lord one thousand eight hundred and *thirty six*, *Levi*  
*Loveland* and *Hannah Pierce* of the County of Geauga, were legally  
joined in Marriage, by competent authority, in conformity to the provisions of the Statutes of the State of  
Ohio in such cases made and provided; and a certificate of the said Marriage, signed by *Chas. Burr*  
*a Justice of the Peace* who solemnized the same, has been filed in the office of the Clerk of the  
Court of Common Pleas for said County of Geauga, this *twenty fifth* day of *February*  
Anno Domini, one thousand eight hundred and *thirty-six*  
ATTEST  
*R. A. Rice* Clerk.

**BE it Remembered, that on the** *Seventeenth* **day of** *January*  
in the year of our Lord one thousand eight hundred and *thirty six*, *Wm. F.*  
*Cahoon* and *Nancy M. Gibbs* of the County of Geauga, were legally  
joined in marriage, by competent authority, in conformity to the provisions of the Statutes of the State of  
Ohio in such cases made and provided; and a certificate of the said marriage, signed by *J. S. Smith Jr.*  
who solemnized the same, has been filed in the office of the Clerk of the  
Court of Common Pleas for said County of Geauga, this *twenty second* day of *February*  
Anno Domini, one thousand eight hundred and *thirty-six*  
ATTEST  
*R. A. Rice* Clerk.

Marriage records of Levi Loveland and Hanna Pierce, who were married by a justice of the peace, and of  
William F. Cahoon and Nancy M. Gibbs, who were married by Joseph Smith. Courtesy Judge Charles E.  
Henry, Geauga County Probate Court, Chardon, Ohio.



**BE it Remembered, that on the** *Seventeenth* **day of** *January*  
in the year of our Lord one thousand eight hundred and *thirty-six*, *Harvey*  
*Stanley* and *Luna Cahoon* of the County of Geauga were legally  
joined in marriage, by competent authority, in conformity to the provisions of the Statutes of the State of  
Ohio in such cases made and provided; and a certificate of the said marriage, signed by *J. D. Smith Jr.*  
who solemnized the same, has been filed in the office of the Clerk of the  
Court of Common Pleas for said County of Geauga, this *twenty second* day of *February*  
Anno Domini one thousand eight hundred and *thirty-six*  
ATTEST *R. Atkins* Clerk.

**BE it Remembered, that on the** *Seventeenth* **day of** *January*  
in the year of our Lord one thousand eight hundred and *thirty-six*, *Tunis*  
*Rappleye* and *Louisa Cutler* of the County of Geauga, were legally  
joined in marriage, by competent authority, in conformity to the provisions of the Statutes of the State of  
Ohio in such cases made and provided; and a certificate of the said marriage, signed by *J. D. Smith Jr.*  
who solemnized the same, has been filed in the office of the Clerk of the  
Court of Common Pleas for said County of Geauga, this *twenty second* day of *February*  
Anno Domini, one thousand eight hundred and *thirty-six*  
ATTEST *R. Atkins* Clerk.

Marriage records of Harvey Stanley and Leronah Cahoon and of Tunis Rappleye and Louisa Cutler.  
Courtesy Judge Charles E. Henry, Geauga County Probate Court, Chardon, Ohio.



No historian has been more direct in questioning the propriety of Joseph's performance of marriages than Michael Quinn:

[I]n November 1835 he [Joseph] announced a doctrine I call "theocratic ethics." He used this theology to justify his violation of Ohio's marriage laws by performing a marriage for Newel Knight and the undivorced Lydia Goldthwaite without legal authority to do so.

Quoting Newel's surprise at Joseph's performance of the marriage, Quinn continues:

In addition to the bigamous character of this marriage, Smith had no license to perform marriages in Ohio. . . .

Two months later Smith performed marriage ceremonies for which neither he nor the couples had marriage licenses, and he issued marriage certificates "agreeable to the rules and regulations of the Church of Jesus Christ of Later-day Saints." Theocratic ethics justified LDS leaders and (by extension) regular Mormons in actions which were contrary to conventional ethics and sometimes in violation of criminal laws.<sup>10</sup>

Historian John Brooke has made similar observations:

Specifically prohibited from performing the marriage ceremony by the local county court, Smith brushed aside a state-licensed church elder to perform the rites of marriage between Newell and Lydia himself. She was not divorced from her non-Mormon husband, so this technically bigamous marriage also challenged a broader moral code. . . . Over the next two months Joseph Smith performed five more illegal marriages.<sup>11</sup>

Richard Van Wagoner has likewise accused Joseph of disregarding the law:

Smith's performance of this marriage was one of his earliest efforts to apply heavenly guidelines on earth despite legal technicalities. Not only was Smith not a lawfully recognized minister, but Lydia Bailey, whose non-Mormon husband had deserted her, was never formally divorced.<sup>12</sup>

Although these and other historians have concluded that Joseph was acting illegally in marrying the Knights, no writer to date has tested this assertion.<sup>13</sup> In view of the negative spin that Quinn, Brooke, and Van Wagoner have put on Joseph's actions, it seems appropriate to study this issue and related circumstances in greater detail. The results of this research may surprise some readers. As it turns out, Joseph was indeed within his statutory rights in assuming the authority to solemnize marriages. Moreover, he was correct when he stated that performing marriages was his "religious privilege." Ohio's marriage statute and the history and evolution of such laws in other states provided clear grounds for these conclusions.

### **The Knight-Bailey Marriage**

As is evident from the main quotes above, much of the controversy surrounding Joseph's decision to solemnize marriages stems from his



performance of the Knight-Bailey wedding. While some of the primary sources do seem to cast doubt on the Prophet's legal authority, they also contain facts which attest to a general concern for legal compliance on the part of all parties involved. Newel in particular exhibited a grasp of legal issues which, though flawed, seems to have set the tone for events leading to his marriage.

According to Lydia's account, when Newel proposed, he attempted to persuade Lydia that her prior marriage to Calvin Bailey was not a legal impediment. Newel explained that "according to the law she was a free woman, having been deserted for three years with nothing provided for her support." Lydia seems to have been unimpressed with these arguments based on human law. She was more concerned with the "law of God," apparently fearing the moral implications of remarriage.<sup>14</sup> Possibly Lydia had in mind the Savior's teaching that "if a woman shall put away her husband, and be married to another, she committeth adultery" (Mark 10:12; see also Rom. 7:3).

None of the accounts clarify what exactly Newel meant when he assured Lydia that the law made her "free"; however, a review of Ohio statutes shows what he likely had in mind. According to a definition of the crime of bigamy adopted in Ohio in 1831, individuals previously married could legally remarry, without any necessity of obtaining a divorce, if the prior spouse had been "continually and willfully absent for the space of three years."<sup>15</sup> Newel may also have had in mind a provision of state divorce law which allowed abandonment for three years to serve as grounds for divorce, though this alternative seems less likely.<sup>16</sup> Divorces require time-consuming judicial action, a fact which would have been common knowledge even in the nineteenth century. Moreover, Lydia would not have met the residence requirements mandated in Ohio before she could file.

Judging by the terms of the 1831 bigamy statute, Newel's assessment of Lydia's rights was unquestionably correct. Lydia could indeed have remarried without fear of prosecution and without first obtaining a divorce. The exact date Bailey left her is unknown, but facts contained in her history and Newel's journal suggest that she had been abandoned for at least three years and possibly four.<sup>17</sup> Nevertheless, Newel seems to have been unaware that earlier in 1835 the state legislature adopted a new bigamy statute.<sup>18</sup> This law lengthened to five years the time required to constitute abandonment—a requirement which Lydia would not have met. Of course, the terms of that bigamy statute still required that, in order to be convicted, a married person had to have "a husband or wife living," which Lydia probably did not have, but she would have had no way of proving that in court at that time.



While Newel may have been mistaken in his understanding of the three-year-abandonment provision under the prevailing Ohio bigamy statute, his reference to Lydia being “free” under the law forms an important part of the context for subsequent events. After Lydia rebuffed Newel’s proposal, Newel turned to God in fasting and prayer and then decided to seek the advice of the Prophet Joseph.<sup>19</sup> Lydia’s account describes what happened next:

Accordingly, Joseph presented his petition to the Lord, and the reply came that Lydia was free from that man. God did not wish any good woman to live a life of loneliness, and she was free to marry. Also that the union of Newel and Lydia would be pleasing in His sight.<sup>20</sup>

Joseph’s use of the precise word that Newel employed—free—would seem to tie his response to Newel’s initial legal argument. Joseph’s confident response also laid to rest the moral concerns which Lydia had. The Prophet assured her that she would not lose her salvation in remarrying; in fact, God would be pleased with her marriage to Newel.

Trusting in Joseph’s word, the two made immediate plans to marry. Lydia’s history reports that their confidence in the Prophet was soon vindicated. Shortly after their marriage on November 24, 1835, the couple learned of the death of Calvin Bailey, Lydia’s previous husband, a fact which they took as convincing proof of the inspiration in Joseph’s reply.<sup>21</sup> Oddly, Quinn and Brooke characterized this union as “bigamous,” yet omitted Lydia’s highly significant mention of Bailey’s actual death. Because of the death of Lydia’s former husband prior to her remarriage, bigamy would have been a nonissue if it had been raised. Without evidence that his death occurred after the marriage, the state could not have borne its burden of proof in prosecuting Lydia for bigamy. Consequently, any liability which Joseph otherwise might have incurred for solemnizing such a marriage—if in fact it had been bigamous—thereby probably became a moot issue.<sup>22</sup>

Newel’s journal shows that he was concerned with another legal issue besides Lydia’s right to remarry, namely compliance with the Ohio marriage statute. Newel reports having gone by horse to the county clerk in order to obtain a marriage license (not to be confused with a license to solemnize marriages), returning by 3 P.M. on the day of the marriage.<sup>23</sup> A search of county records confirms that Newel did indeed comply with sections 6 and 7 of the Ohio statute and received a license for his marriage to Lydia.<sup>24</sup>

### **Joseph Smith’s Compliance with the Ohio Marriage Statute**

The accounts of marriages that Joseph later performed are not as detailed as those of the Knight-Bailey wedding. However, some of these later accounts contain important facts. For example, an entry in Joseph’s



journal contains a transcription of a marriage certificate he issued in January 1836 to William Cahoon and his bride, Nancy Miranda Gibbs.<sup>25</sup> This is the same certificate that Quinn refers to (quoted above), seemingly suggesting that there was something improper in the issuance of these certificates. In reality, the wording of this certificate and of the Ohio marriage statute helps prove the legality of Joseph's performance of this marriage. A brief examination of Ohio marriage law will demonstrate this point.

The Ohio marriage statute in force during Joseph Smith's Ohio years was entitled "An Act Regulating Marriages."<sup>26</sup> Passed by the Ohio legislature on January 7, 1824, this act specified rules for marriage age, consanguinity, and licensing and specified who could solemnize marriages. It also prescribed when and how records of marriages were to be filed, and it stipulated penalties for various violations.<sup>27</sup> Because of the importance of this law to this article, its provisions are reproduced in appendix 1. The crucial language in section 2 of the act provides:

It shall be lawful for any ordained minister of any religious society or congregation, within this State, who has, or may hereafter, obtain a license for that purpose, as hereinafter provided, *or* for any justice of the peace in his county, *or* for the several religious societies, agreeably to the rules and regulations of their respective churches, to join together as husband and wife, all persons not prohibited by this act.<sup>28</sup>

Accordingly, the language of this act specifies that "ordained ministers" could receive licenses to solemnize marriages from the local courts of common pleas. But even if Judge Birchard were not inclined to grant these licenses to Latter-day Saint elders, the Mormons still had other avenues open to them under this statute. According to this same section, a justice of the peace could also perform marriages and so could the "several religious societies, agreeably to the rules and regulations of their respective churches." For those acting under the second half of section 2, there was no requirement for the person or religious society performing the marriage to hold a license from a county court.<sup>29</sup> Ohio state law granted them the privilege.

An examination of entries in Joseph Smith's journal suggests that he intended the marriages he performed to be valid under this latter category. The Cahoon's marriage certificate, for example, shows that Joseph explicitly used the precise language of the Ohio statute. The Prophet stated that he married the Cahoons "agreeably to the rules and regulations of the Church of Christ of Latter-Day Saints on matrimony."<sup>30</sup> Likewise, a marriage Joseph performed in January 1836 included similar language: Joseph's journal states that he married John Boynton and Susan Lowell "according to the rules and regulations of the church of the Latter-day Saints."<sup>31</sup> His use of statutory wording on these two occasions would not seem to have been coincidence. Rather, Joseph seems to have intended to show unequivocally that the marriage was valid under section 2 of the state of Ohio's marriage statute.<sup>32</sup>



While the case for the legality of these later marriage ceremonies may be clear, what of the Knight-Bailey marriage? The accounts contain no evidence that Joseph used the language of the statute on this occasion. Such language, however, was not necessary. No provision of the law required such a reference, and other denominations, such as the Quakers, performed marriages in Ohio under the “rules and regulations” clause without making explicit reference to the statute in their marriage certificates.<sup>33</sup> Thus, under the law, Joseph needed only to act according to the rules of the Church. If Joseph did this, then the Knight-Bailey marriage would have been legally performed, regardless of whether Joseph knew of his statutory authority or made any explicit reference to it.

The Church's rules for marriage were included in the section entitled “Marriage” near the end of the 1835 Doctrine and Covenants<sup>34</sup> (for the relevant portions of these rules, see appendix 2). These rules were drafted earlier in 1835 and adopted in August of that year at an assembly of Saints in Kirtland.<sup>35</sup> The Church rules likely were the “rules . . . on matrimony,” that Joseph followed in marrying the Cahoons and may well have served as Joseph's guide in marrying the Knights.<sup>36</sup> This latter possibility is suggested by a comparison of the rules to the accounts of the Knight event. Such a process reveals many similarities, the most significant of which is that the substance of the actual ceremony, as recorded in Joseph's accounts, has wording similar to that prescribed in the rules. For example, the rules and Joseph's accounts all speak of the bride and groom agreeing to be each other's “companion” and Joseph committing them to carry out their obligations as husband and wife. One account states that Joseph “p[r]onounced them husband & Wife in the name of God and also ~~pronounced~~ the blessings that the Lord conferred upon adam & Eve . . . with the addition of long life and prosperity.” In spirit and substance, this pronouncement also is similar to the form prescribed by the rules in the Doctrine and Covenants. These rules state that the officiator should unite the couple “in the name of the Lord Jesus Christ” and invoke God's blessings upon them.<sup>37</sup>

Even if Joseph deviated from the rules found in the Doctrine and Covenants, his status as prophet of the Church would arguably have qualified his wording per se as “rules and regulations” under the statute. This follows from passages in the Doctrine and Covenants that established Joseph as a revelator and a “Moses” to his people and passages that instructed the people to be obedient to Joseph's word (D&C 21:1; 28:2–3). Using this additional reasoning, the Knight wedding would again have been valid because Joseph, the recognized revelator for the Church, performed it under a claim of divine authority.

While it is evident that Joseph acted in accordance with Ohio's marriage statute when he married the Knights, it is less clear whether he did so



knowingly. Joseph's account is silent on the issue of legality of this particular action, and Newel and Lydia seem to have assumed that Joseph was knowingly acting contrary to state marriage law, even if he did believe that performing the marriage was his religious right. At the same time, Newel and Lydia's accounts do not tell the whole story. Neither of them recorded the wording of the ceremony itself. Moreover, as lay persons not trained in the law, the Knights could easily have overlooked a simple comment or two—such as a reference to “rules and regulations of the Church”—that may have had legal significance.

If Joseph did not know his actual legal rights in November 1835, one wonders what the source of confusion over this issue was in the first place. Why did not Newel, Lydia, Joseph, and others know of the Church's right to perform marriages under the “religious societies” clause?<sup>38</sup> This question is particularly perplexing given that Newel exhibited an acquaintance with aspects of Ohio marriage and bigamy law.

One plausible explanation for this possible lack of understanding is suggested by the wording of printed marriage license forms used by the clerk of the court in Geauga County. These forms contained a blank for the names of the parties intending to marry and stipulated that the ceremony was to be performed either by a justice of the peace or a minister of the gospel holding a license to solemnize marriages issued by any Ohio county court (fig. 2). Once the names were filled in and the clerk signed and dated the form, the marriage license became valid. What these forms did not state is that “religious societies” also had authority to perform marriages.<sup>39</sup> Possibly this omission was the source of some of the confusion in Kirtland.

Lest the mention of this omission raises doubts as to Joseph's authority under the “religious societies” clause, it must be pointed out that these forms did not hold the force of law. The wording on the forms was not prescribed by Ohio statute.<sup>40</sup> Rather, forms seem to have been printed locally, in the case of Geauga County, creating a time-saving convenience for county clerk D. D. Aiken.<sup>41</sup>

Regardless of whether Joseph knew of his statutory rights at the time of the Knight-Bailey marriage, other facts attest to his knowledge of the legality of the marriages he performed. For example, he submitted the certificates for marriages he performed to the county clerk for recording. Section 8 of the Ohio marriage act required that a certificate be submitted, within three months of each wedding, signed by the minister or justice who had performed the ceremony. Joseph's journal and county marriage records show that the Prophet complied with this requirement, submitting marriage records on numerous occasions (see fig. 1). The first of these was the certificate for the Knight-Bailey marriage, recorded by Aiken on February 22, 1835, two days prior to the deadline. That Joseph's submission of



The State of Ohio,  
Geauga County, ss.

PERMISSION IS HEREBY GIVEN TO

*Robert B. Thompson & Mercy R. Fielding*

of the County of Geauga aforesaid, to be joined together in the bonds of MATRIMONY, and any Minister of the Gospel, resident in the State of Ohio aforesaid, who has a license from any of the Courts of Common Pleas within said State, in conformity to the provisions of an act entitled "An act to regulate Marriages;" or any Justice of the Peace in said County, who has been duly commissioned and sworn, is hereby authorized to solemnize the Marriage contract between the parties aforesaid.

GIVEN from under my hand, and the seal of my Office, at the town of Chardon, in said County, the 2<sup>d</sup> day of *June* Anno Domini one thousand eight hundred and thirty seven

Clerk.

*Shurba & Lott, printers, Cleveland.*

FIG. 2. Marriage license of Robert B. Thompson and Mercy R. Fielding, the last recorded couple Joseph Smith married in Kirtland. Courtesy Daughters of Utah Pioneers Museum, Salt Lake City, Utah.



this record was not an almost-belated afterthought is suggested by the fact that he transmitted several others at the same time and, furthermore, that these were the first marriage records that bear Joseph's name.<sup>42</sup>

Evidence of scrupulous adherence to legal standards can also be seen in the case of at least one person whom Joseph married, William Cahoon. Unlike Newel Knight, who rode miles to obtain a marriage license for his wedding, Cahoon's autobiography recounts that he found a legal way to avoid this trip.<sup>43</sup> Section 6 of the Ohio marriage act specified that the parties did not need a marriage license if the event was properly announced in advance and if the ceremony was held in public. Cahoon's autobiography states that these requirements were met.<sup>44</sup>

The propriety of Joseph Smith's open performance of the Knight-Bailey and several later marriages is further seen in the fact that he was never prosecuted for these actions.<sup>45</sup> The certificates for the marriages he performed were recorded by the county clerk without objection (see figure 1). With charges against Rigdon having been dropped only on a legal technicality just weeks prior to the Knight-Bailey marriage, Joseph could have expected to be prosecuted himself, if indeed he had acted in violation of the law. This assumption is buttressed when one considers that some citizens in the region advocated using the law as a way of challenging the influence of the Latter-day Saints. This polemic use of the law is seen in the autobiography of Eber D. Howe, an anti-Mormon newspaper editor who lived only a few miles from Kirtland:

All their vain babblings [those of the Mormons] and pretensions were pretty strongly set forth and noticed in the columns of the TELEGRAPH. In view of all their gaseous pretensions the surrounding country was becoming somewhat sensitive, and many of our citizens thought it advisable to take all the legal means within their reach to counteract the progress of so dangerous an enemy in their midst, and many law suits ensued.<sup>46</sup>

Howe and the citizens he referred to were not the first to suggest that the law be used against the Church. Joseph Smith had only recently arrived in Ohio when a person identified only as "L. F." sent a letter to the editor of a leading Ohio religious newspaper, the *Observer and Telegraph* (Huron, Ohio), suggesting that the law be used against the new faith.<sup>47</sup> This letter, published in February 1831,<sup>48</sup> approvingly quoted a passage of the Book of Mormon which states that "false Christs" and "false prophets" were "punished according to *their* crimes" and that their "mouths had been shut."<sup>49</sup>

### Religious Privilege under Broader Ohio Law

As surprising as the foregoing conclusions may be to some historians, the fact is that Joseph actually did have legal authority to perform marriages in Ohio. He seems to have known this by January 1836, when his



journal records that he performed marriages according to the “rules and regulations of the Church.” However, he may not have known of these rights at the time of the Knight wedding in November 1835.<sup>50</sup> If not, then the question arises: what was his rationale for asserting his authority to perform this marriage? When Joseph insisted during his Sunday sermon that marrying the Knights was his right, or “religious privilege,” was he correct, or was he just using a hyperbole to create a legal fig leaf to cover his actions? As with the case of his statutory rights under Ohio marriage law, a study of this question also provides clear vindication for Joseph. Though the issue of which ministers could solemnize marriages had been a contentious one in a number of states, by 1835 this controversy was a thing of the past. Previous legal restrictions had been lifted, and all Christian ministers enjoyed this right, even in former “establishment states,” where constitutional and statutory provisions had existed favoring particular denominations. (For a discussion of the history of the disestablishment of religion in America, see appendix 3.)

In Ohio, religious freedom had always been granted under state law. Ohio’s first constitution protected “rights of conscience” in matters of religion.<sup>51</sup> This constitution also expressly rejected New England–style establishment of religion by prohibiting religious taxation,<sup>52</sup> compulsory church attendance, and tax-support of clergy.

The official report of Ohio’s first constitutional convention, held in 1802, shows the broad support for measures providing for freedom of religion and related rights. For example, the state’s founding fathers expressed a determination to allow all citizens to hold public office, irrespective of their religious beliefs or lack thereof. A proposal to strike language prohibiting religious tests as “qualifications to any office of trust or profit”<sup>53</sup> was soundly defeated, twenty-eight to six. A similar proposal that required belief in a supreme being was also defeated in an even more lopsided vote of thirty to three.<sup>54</sup>

In this respect, Ohio chose a course different from her New England sister states, which had constitutions and laws that maintained an “establishment” of religion. In reality, Ohio founders probably had little choice but disestablishment. With settlers of different faiths streaming in from the various middle states and from New England, it would have been unthinkable for them to have done otherwise. The diversity of religious faith among Ohio’s citizenry virtually compelled her founders to provide broad constitutional guaranties of religious freedom.

Ohio’s marriage law always reflected these notions of religious freedom. Beginning with the state’s first marriage law in 1803 up until the passage of the 1824 marriage act (in force during the Church’s Ohio years), the provisions of Ohio marriage law allowed not just “ordained ministers” to



perform marriages but also religious groups according to their own rules.<sup>55</sup> While the 1803 statute granted this latter right only to Mennonites and Quakers, later changes extended this right to all “religious societies.” This new wording effectively provided authority for all Christian faiths to solemnize their own matrimonial contracts without the necessity of obtaining licenses from the county courts. Accordingly, Joseph was well within his rights, as a citizen of the state of Ohio, to claim his “religious privilege” under these basic rubrics of Ohio jurisprudence. Indeed, no evidence has been found that his performance of marriages in Ohio was ever a subject of public concern during his lifetime.<sup>56</sup>

### **Sidney Rigdon and Marriages**

In view of the abundant statutory and historical evidence supporting Joseph Smith’s performance of marriages, one wonders why Sidney Rigdon experienced difficulties in this regard. This issue is of more than passing interest. Previous scholarship has assumed that the Kirtland Saints generally received fair treatment at the hands of the county court. While in general this conclusion still seems valid, a number of facts related to the marriage issue invite us to take a deeper look at this assumed impartiality.<sup>57</sup> Considerable evidence points towards discrimination against Rigdon.

A starting point in this discussion is found in the fact that LDS elders successfully obtained licenses outside Geauga County. Elder Seymour Brunson already held such a license at the time that Elder Rigdon’s motion for a license was denied. Brunson obtained his license in Jackson County, in southern Ohio (not to be confused with the Missouri county by the same name), a place where, according to Lydia Knight, “prejudice did not run so high.”<sup>58</sup> Geauga marriage records show that between May 1834 and April 1836, Brunson actively used this license in Kirtland, joining eight couples in matrimony.<sup>59</sup>

Brunson was not the only LDS elder to receive a license to solemnize marriages in Ohio. A clue to this fact is found in Joseph’s journal under the date of March 21, 1836: “[P]repared, a number of Elders licences, to send by Elder [Ambrose] Palmer to the court [in] Medina County in order to obtain licenses to marry, as the court in this county will not grant us this privilege.”<sup>60</sup> Even though Joseph had already been performing marriages under, as we suppose, the “rules and regulations” clause for several months, some LDS elders probably wanted the additional assurance of holding actual licenses to solemnize marriages. Court records from Medina County confirm that two elders received licenses, though not until the June 1836 term of court. These elders were Salmon Warner Jr. and Phineas Bronson Jr. (no relation to Brunson).<sup>61</sup>



**Judge Birchard's Interests.** In light of counties outside Geauga granting licenses to Mormon elders, Geauga's refusal of Rigdon's motion seems problematic. If two other Ohio judges saw fit to grant licenses to LDS elders, why did Judge Birchard of Geauga County refuse? Birchard's refusal cannot have been for any lack of assertiveness on Rigdon's part. Court records show that Rigdon took the unusual step of using the services of an attorney in making his motion.<sup>62</sup> Evidently, Elder Rigdon did not want to risk a refusal. Neither is it likely that Birchard relied on old New England judicial notions that prescribed which ministers could perform marriages. Although Birchard lived the first eight years of his life in Massachusetts, he was educated and received his legal training in Ohio.<sup>63</sup> As judge he freely granted licenses to Methodists and Baptists, denominations whose ministers had at times been unable to legally perform marriages under the old system of religious laws in New England.<sup>64</sup>

The most plausible explanation for Judge Birchard's apparent discrimination can be found in political and religious differences that set the Saints apart from other Geauga County residents. Politically the Kirtland Saints typically voted for Democratic candidates, whereas the other residents of the county generally voted for Whig candidates.<sup>65</sup> Birchard himself was a Democrat and was not a church-going man.<sup>66</sup> One would not expect a judge to be prejudiced against any group; however, this judge may have reflected the political or religious biases of powerful local constituencies whom he would not have wanted to alienate.<sup>67</sup> Presbyterian Whigs virtually dominated Geauga County politics at this time and were prominent in state politics.<sup>68</sup> Birchard's chances for reappointment by the Ohio General Assembly at the end of his seven-year term, or for appointment to the state supreme court bench, could have hinged to a considerable degree on the opinion local constituencies held of him.<sup>69</sup>

**Prosecutor Hitchcock's Interests.** Among the most prominent Whigs of Geauga were the county prosecutor, Reuben Hitchcock, and his father, Peter Hitchcock, an Ohio judge. Reuben Hitchcock was the prosecutor who brought charges against Rigdon in June 1835 for illegally solemnizing marriages.<sup>70</sup> He also later served as a judge and distinguished himself in business endeavors.<sup>71</sup> Peter Hitchcock served for twenty-eight years as a supreme court judge in Ohio (1819–33, 1835–42, and 1845–52), and twice served as the Speaker of the Ohio Senate (1815–16 and 1834–35). He also served two terms in the U.S. House of Representatives (1810–12 and 1816–18)<sup>72</sup> and had once been a candidate for the judicial post to which Judge Birchard was appointed in 1833 (namely Presiding Judge of the third Judicial District, including Geauga and other nearby counties). At the time that Judge Birchard refused Rigdon's motion for a license, Peter Hitchcock had just returned to the Ohio Supreme Court bench.<sup>73</sup>



Peter and Reuben Hitchcock were both deeply religious men who cared about local church affairs. Like many in Geauga County, the Hitchcocks were Congregationalists who had voluntarily affiliated with the Presbyterian Church under a plan permitting the members and ministers of both churches to worship and function interchangeably.<sup>74</sup> Peter Hitchcock's devotion to his faith can be shown through the records of his church in Burton, which consistently listed him as the leading financial contributor.<sup>75</sup> Reuben served as the delegate from Painesville to the regional presbytery and, along with several other local attorneys, was one of the pillars of faith in his congregation.<sup>76</sup>

The profiles of other Presbyterian Whigs were also impressive. Seabury Ford was elected as a representative from Geauga County to the Ohio General Assembly in 1835 and later as governor of Ohio. Ford was a cousin and close friend of Reuben Hitchcock and worshipped in the same congregation as Peter Hitchcock. He too was a generous donor to the church.<sup>77</sup> Another prominent Presbyterian was William L. Perkins who also served as county prosecutor in Geauga during portions of the 1830s.<sup>78</sup> Perkins and Reuben Hitchcock worshipped in the same Painesville congregation, and Perkins, too, served as a delegate to the regional presbytery.<sup>79</sup>

**Antipathy toward Mormonism.** It is not known whether Judge Birchard denied Sidney Rigdon's application for a license in an attempt to court the favor of influential Presbyterian Whigs. Other than perhaps Perkins, who edited a local newspaper, it is not specifically known whether any of these individuals held strong views against Mormonism.<sup>80</sup> However, one might infer that these Presbyterians in Geauga County held views similar to other Presbyterians in the region. The tone of articles printed in the local Presbyterian press may be an indicator. Typical of many papers, the *Hudson Observer and Telegraph*, located in Summit County about 30 miles south of Kirtland, ran articles expressing skepticism or even ridiculing the spiritual claims at the root of the LDS Church. For example, in 1834, this paper commented that some of the "good people" of the area had converted to Mormonism. The paper then suggested that a few good nights of sleep should be enough to straighten their thinking out.<sup>81</sup> The editor also eagerly anticipated the publication of Eber Howe's *Mormonism Unveiled* and ran a series of unfavorable articles on the Church.<sup>82</sup>

Similarly, at least some of the local Presbyterian clergy also seem to have taken a dim view of Mormonism. One minister in Painesville commented in a letter to his sponsoring organization that the Book of Mormon was a "mixture of fallacy & profaneness." He passed on second-hand reports of "alleged licentiousness" among Mormons and of their "annulling the marriage covenant."<sup>83</sup> These attitudes likely formed the basis for later comments that Joseph Smith or his close associates made.



The *History of the Church* records that while living in Illinois, Joseph stated that he had been in a “Presbyterian smut machine” in Ohio.<sup>84</sup>

As to the Hitchcocks, it seems possible that Reuben Hitchcock may have shared this antipathy for Latter-day Saints. He took early note of the presence of Mormons in Ohio, mentioning their activities in an 1831 letter to a friend in Connecticut. In this letter, Hitchcock commented on the “flourishing condition of Mormonism or Rigdonism.”<sup>85</sup> Given the extremely negative image that both Sydney and the Church had in the Presbyterian press generally,<sup>86</sup> Reuben’s conflation of Mormonism with Rigdonism can hardly be interpreted to carry a favorable connotation toward the Saints.

Reuben Hitchcock’s early feelings against Mormons may also be inferred from his later involvement in litigation brought against Joseph Smith. Hitchcock’s client was among the individuals that Eber Howe referred to when he stated that local citizens instituted many lawsuits against the Mormons, viewing the Church as a “dangerous enemy in their midst.”<sup>87</sup> Reuben willingly served as plaintiff’s counsel in the most important of these suits—the 1837 case against Joseph and other Church leaders for allegedly breaking state banking laws. Although the plaintiff in this case was nominally one Samuel D. Rounds, evidence shows that the real party behind the suit may have been Grandison Newel, a notorious anti-Mormon.<sup>88</sup>

Of course, additional explanations may also be identified for Reuben Hitchcock’s involvement in this case. He may have been attracted by the fees involved in such a high-profile case. Or he may have participated in the suit as a way to shut down the Kirtland Safety Society. Hitchcock and his father were involved in banking, and any financial instability in the county could have created a climate in which their own banking interests might have suffered.<sup>89</sup>

**Rigdon’s Legal Rights.** Regardless of Judge Birchard’s motives for rejecting Sidney Rigdon’s motion for a marriage license, the judge’s decision is not justifiable from a legal point of view. The practice in Ohio courts was to freely grant requests for marriage licenses, provided the requester presented appropriate credentials. Examples can even be found where licenses were granted to representatives of groups whose members traditionally had solemnized marriages under their own rules without licenses. Such a case occurred in Wayne County, where a Mennonite minister was granted a license to perform marriages.<sup>90</sup> This denomination had historically been categorized with Quakers and given special authority to solemnize marriages “agreeable” to its own rules.<sup>91</sup>

In contrast to the improper refusal of Rigdon’s motion for a license, available evidence suggests at least two scenarios that might have served as a basis in law for the charges that were brought against Sidney Rigdon in June 1835. Unfortunately, no court records show which, if either, of these



legal theories the prosecutor rested his charges on. In the first of these scenarios, Rigdon may have assumed the 1826 license he acquired in Geauga County, as a Campbellite minister, was still valid even after he converted to Mormonism in 1830, and that assumption would be understandable. The entry in the court's minutes does not note any limitation on Sidney Rigdon's license, and the written license itself probably contained no such express limitations.<sup>92</sup> Still, such reliance would not have been based on a sound assumption from a legal point of view. The Ohio marriage act provided that licenses were valid only so long as the holder remained a minister with the same religious society.<sup>93</sup> As it was common knowledge that Rigdon had become a leader among the Latter-day Saints, the prosecutor, Reuben Hitchcock, may have thought he had an iron-clad case for conviction. Nevertheless, if this scenario is correct, Hitchcock evidently failed to consider the difficulty of actually proving that Rigdon had lost his status in his former church.

A second scenario is suggested in the records of marriages performed by Sidney Rigdon. County records show that Rigdon continued to perform marriages in Ohio after he converted to Mormonism in 1830. While the records for marriages he performed prior to his conversion almost invariably contain a reference to his 1826 license, records for marriages he performed after his conversion do not mention his previous license.<sup>94</sup> This distinction would be consistent with Rigdon performing his marriages under the "rules and regulations" clause that Joseph evidently used. If so, Hitchcock may have indicted Rigdon on an assertion that the Church had no rules on marriage.

If indeed this latter scenario was prosecutor Reuben Hitchcock's position, his ability to successfully make his case would have hinged on legal semantics. What is a church "rule" under the law? Must such rules be adopted by a vote of the church and published in order to be valid? Might oral instructions approved by church authorities be sufficient to constitute a rule? No published precedents on this issue appear to have existed, so Hitchcock would have been free to argue for whichever view suited his own thinking, provided the judge agreed with his interpretation of the law. Under the more restrictive of these two views, Hitchcock probably could have obtained a conviction. The LDS rules on marriage in the 1835 Doctrine and Covenants were not adopted and published until after the marriage for which Rigdon was indicted. On the other hand, under a more lenient interpretation, Rigdon might possibly have been exonerated, particularly if he could have shown that in performing earlier ceremonies he was acting under Joseph's direction or with the concurrence of the membership.<sup>95</sup>

Regardless of which legal theory Reuben Hitchcock used to argue his 1835 case, one must still question the wisdom of prosecuting on such



charges. This type of prosecution appears to have been rare in the 1830s, perhaps even unheard of. Not only were other prosecutions for illegally solemnizing marriages not found in the records surveyed for this article, but national legal indexes for published cases of this era (generally containing state supreme court decisions) do not contain any listings for similar cases from other states. The only cases of illegally solemnized marriages listed up until 1835 are those charged under the older religious “establishment” marriage statutes of New England, the last of which was liberalized in 1834. Thus, the Sidney Rigdon case may have been unique. It appears to have been a deviation from the climate of toleration that prevailed in its day.

**Persistence of Older New England Attitudes.** The similarity of Sidney Rigdon’s case to older New England cases raises the interesting question of whether any parallels can be drawn between the two. Kirtland was located in a region of Ohio known historically as the “Western Reserve of Connecticut.” This region was settled largely by New Englanders who brought with them much of their native culture.<sup>96</sup> Many of the most influential citizens of the Reserve still had strong ties to New England. Such citizens included the Hitchcock family. Reuben Hitchcock, for example, was educated in Connecticut at Yale only a few years after that state disestablished its churches. He was also an orthodox Congregationalist and had seriously considered studying theology and entering the ministry.<sup>97</sup>

Not surprisingly, Reuben Hitchcock’s attitudes seem to have been consistent in some ways with old-style establishment views. A letter he wrote to a friend in Massachusetts in 1827 shows that he favored older judicial interpretations, allowing orthodox Congregationalists to retain control of church property and permitting them to appoint like-minded ministers, even when the majority of parishioners were Unitarians (liberal Congregationalists).<sup>98</sup> This letter also shows that Hitchcock believed active measures should be taken to counteract the spread of what he deemed to be religious error. This is evident from a statement expressing favor for the use of “all justifiable measures” to prevent the extension of Unitarian theology. Although Hitchcock thought some orthodox Congregationalists exhibited an “unchristian spirit” towards the Unitarians, he still referred to these latter believers as “infatuated or self-deceived beings.”<sup>99</sup>

In this light, it is hard not to wonder whether Reuben Hitchcock’s prosecution of Sidney Rigdon and Hitchcock’s later involvement in suits against Latter-day Saints were not rooted, at least in part, in his New England background. For several generations, the law had been employed in that region as the tool of choice in limiting the influence and spread of disfavored denominations. While New Englanders were among the most ardent supporters of democracy and of constitutional principles, their states were among the last to treat all Christian denominations equally before the law.



It would not be surprising if indeed Reuben Hitchcock's actions partially traced to his Puritan roots. Other members of the New England clergy seem to have held similar tendencies well into the 1830s and beyond. For example, Congregational missionaries in Hawaii acquired great influence with Hawaiian authorities and used this power to further a moral and political agenda with which Catholics and some foreigners disagreed at times. The New England missionaries supported, or at least concurred in, the expulsion of Catholic priests from Hawaii in 1831.<sup>100</sup> The next year the missionaries' official Boston periodical ran a piece defending the expulsion. It stated that "removal of the Jesuits [Catholics] in the manner in which it was performed, was the violation of none of their natural or acquired rights, and therefore cannot properly be regarded as a persecution."<sup>101</sup>

Latter-day Saint missionaries in Hawaii during the 1850s also had grounds to complain of the influence of Congregational missionaries. These ministers occasionally succeeded in using their considerable influence with the government to harass LDS missionaries and members. Numerous examples of such harassment can be found in the journals of these Mormon elders and in other sources.<sup>102</sup> One such instance occurred when the Hawaiian government barred LDS elders from performing marriages, stating as rationale the fact that Mormons in Utah were practicing plural marriage. This incident took place at a time when former New England missionary Richard Armstrong was serving in a key Hawaiian government post and may be suspected of having had a hand in formulating the policy. The LDS missionaries repeatedly protested that they would marry couples only in accordance with Hawaiian law (in the 1850s, plural marriage was not against federal law in the United States), which then prohibited polygamy, but their protestations were of no avail.<sup>103</sup>

### **Comparative Tolerance in Medina County**

Given my tentative suggestion of a connection between the New England background of prominent Geauga County citizens, such as Reuben Hitchcock, and the problems that Sidney Rigdon encountered over the performance of marriages, some readers may be surprised to learn that LDS elders were able to obtain licenses to solemnize marriages in Medina County. Like Geauga, Medina was a part of the Western Reserve. Also settled largely by New Englanders, Medina holds many cultural similarities to Geauga. Nevertheless, a study of the social and religious climate of Medina County in the 1830s suggests that the two counties actually were different in significant ways. A few illustrations will serve to underscore this point.

One of the most striking differences between the two counties is that prosecutions for liquor and gaming violations in Medina County were virtually unheard of in the mid-1830s. For example, a review of Medina court



records for June 1835 through October 1837 shows that not a single indictment was brought for retailing liquor without a license or for related offenses. In contrast, such prosecutions were commonplace in Geauga County, where Reuben Hitchcock zealously enforced state liquor and gaming laws.

The lack of such prosecutions in Medina County may indicate that the Congregationalist-Presbyterians had less influence there than in Geauga County. At this time, these denominations were fervent advocates of temperance, probably more so than any other churches on the Western Reserve.<sup>104</sup> This is suggested by a perusal of the Huron, Ohio, *Observer and Telegraph*. This newspaper frequently carried testimonials of the ill effects of drinking and notices of temperance meetings. The minutes of presbytery meetings also attest to the emphasis being placed upon abstinence from alcohol.<sup>105</sup> An additional confirmation of this fact is found in a letter from a minister serving in Medina. He complained that in his county the cause of temperance was "violently opposed, not only by the intemperate & the grossly immoral," but also by Episcopalians and Methodists.<sup>106</sup>

A related difference between the two counties may be seen by the presence of large numbers of so-called "infidels" in Medina. Reports from Congregationalist-Presbyterian missionaries in Medina contain several references to unbelievers with immoral habits. The tone of these comments is almost one of alarm and stands out markedly when compared to the reports coming out of other counties. One minister commented on the number of apostates from eastern churches in his vicinity, observing that the influence of even one of these "infidels" could do more damage to the cause "than a dozen scoffers who have never given any pretension to religion." This minister also asserted that these unbelievers were given to "immoral habits" and were exerting a "deadly influence."<sup>107</sup> This same minister later wrote that "many who had left eastern churches on purpose to throw off all religious restraint, had made this a rallying point." He further explained that he could name at least twenty locals who had once held letters of good standing from eastern churches but who were now among the ranks of the apostates.<sup>108</sup> Another clergyman complained of the great wealth and influence in the hands of "Universalists & infidels"; he hoped to convert some so that their riches would be "on the side of truth & right."<sup>109</sup> Still another minister lamented that he had never seen "more open, decided, shameless infidelity" than in the Medina township where he was serving.<sup>110</sup>

Mention of "infidels" is also found in a county history on Medina published in 1881. This history reports that during the early 1830s a group of unbelievers were quite prominent in Medina. These individuals reportedly "heralded their freedom from the thralldom of religious opinion" and even celebrated Thomas Paine's birthday with a parade, complete with a cannon.<sup>111</sup> A letter written to Peter Hitchcock during this era may refer to one



such citizen. In this letter, the writer complained that a candidate for a judgeship who had been supported by a petition—a certain Colonel Welton—was “decidedly opposed to religion and benevolent institutions” and was also a “Royal Arch Mason, adhering decidedly to that institution.”<sup>112</sup>

What the Congregationalist-Presbyterians may have seen as infidelity, Latter-day Saints and others saw as tolerance. This point is seen in an article printed in the *Latter Day Saints Messenger and Advocate*, which reprinted a report that appeared in a Medina newspaper. This article reported that Mormon missionaries received a polite reception in Medina County and that county residents were cool to Eber D. Howe’s book *Mormonism Unveiled*.<sup>113</sup> Other reports indicate that these missionaries, over time, enjoyed modest success in at least some parts of the county.<sup>114</sup>

The tolerance shown Mormon elders seems consistent with other descriptions of early religious activity in Medina County. County histories from the nineteenth century describe a high degree of interdenominational cooperation among the early settlers.<sup>115</sup> Geauga histories say less about early religious activity, so it is hard to conclude that this early tolerance was truly a distinguishing factor. Nevertheless, the descriptions given in Medina County accounts are striking enough that one wonders if they were the norm for all counties in the region. Possibly Medina County’s religious tolerance was occasioned by isolation and a frontier spirit of cooperation; reportedly county settlements were carved out of a dense forest and did not even have their own post office for quite some time, the nearest being Cleveland, some thirty miles away.<sup>116</sup>

While the foregoing provides only a thumbnail sketch of conditions in Medina County during the 1830s, it strongly suggests that despite sharing a common New England cultural heritage, Medina and Geauga counties were very different places. In Geauga County, the dominance of the Presbyterians in local politics put the county under what their political opponents termed a “Church Government” that united church and state.<sup>117</sup> Moral laws were strictly enforced, and while Latter-day Saints did not find themselves jailed on flimsy charges (as they later would in Missouri), they did find that the county judicial system seemed to be slanted against them on occasion. Thus, not surprisingly, LDS elders were able to obtain licenses to solemnize marriages in Medina but not in Geauga County.

## Conclusion

Focus on the attitudes of Reuben Hitchcock and his coreligionists should not lead to undue criticism. Though Joseph Smith and other Saints experienced frustrations at times that may have been attributable to older New England attitudes, they also may have reaped a collateral benefit. Whatever the prejudices these transplanted New Englanders may have had,



many of these citizens were moral, orderly, level-headed, and committed to democratic ideals. Unlike some agitators that the Saints encountered in Missouri and Illinois, county officials in Ohio seem, on the whole, to have confined their controversies with Joseph Smith and other Saints to the courtrooms. While one does read of occasional mob activity against Saints in Ohio, nowhere in LDS history does one read of an Ohio “extermination order” or of a citizens’ wolf hunt directed at the Saints.

As frustrating as Joseph Smith may have found the court’s treatment of Sidney Rigdon over the marriage license issue, the Prophet ultimately suffered little inconvenience as a result. Consistent with his prediction, Joseph was never arrested or prosecuted for performing the Knight-Bailey marriage or any of the subsequent marriages he solemnized in Ohio. Ironically, the most serious outcome of his decision has been the unnecessary damage to his reputation done by historians who have assumed that he acted in violation of the law. In making this assumption, these writers not only have made a mistake, but they have also missed some of the deeper meaning in the event. Joseph’s performance of the Knight-Bailey marriage was not the illegal act of an unethical man. Rather, this act was a bold assertion of the rights that he believed his followers were entitled to as American citizens.

Joseph Smith’s action invokes the memory of earlier “dissenting” ministers who also struggled against prejudices and whose efforts helped bring about greater religious freedom in the United States. Just as he later would personally seek redress for the Saints’ wrongs in Missouri, even pleading their cause in Washington, Joseph insisted in Ohio that Latter-day Saints be accorded their privileges and protections under state marriage law. Consistent with his strong protection of individual religious liberties,<sup>118</sup> Joseph acted squarely in harmony with the prevailing legal attitudes and regulations of the day in solemnizing marriages.

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1. County records sampled for this article include Champaign County [Ohio] Court of Common Pleas, Minutes, October 1835–October 1836, Ohio State Historical Society, Columbus, Ohio (hereafter cited as OSHS); Tuscarawas County [Ohio] Court of Common Pleas, Journal, November 1835, OSHS; Cuyahoga County [Ohio] Court of Common Pleas, Journal Books F and G, April 1832–October 1835, microfilm, Family History Library, The Church of Jesus Christ of Latter-day Saints, Salt Lake City, Utah



(hereafter cited as FHL); Geauga County [Ohio] Court of Common Pleas, Final Record Book T, and Journal Book M, March 1833–October 1837, microfilm, FHL; Jackson County [Ohio] Court of Common Pleas, Journal Book D, 1834, microfilm, FHL; Wayne County [Ohio] Court of Common Pleas, Journal Book 6, March 1833–October 1835, microfilm, FHL; Portage County [Ohio] Court of Common Pleas, Journal, September 1830–May 1837, County Microfilming and Records Center, Ravenna, Ohio; Medina County [Ohio] Court of Common Pleas, Journal Books B and C, 1831–1837, and Book E, June 1835–October 1837, Medina County Courthouse, Medina, Ohio.

2. An Act Regulating Marriages, January 6, 1824, in *Acts of a General Nature . . . of the State of Ohio* (Columbus: Olmsted and Baishache, 1831), 429, §3; see also appendix 1 below.

3. Geauga County Court of Common Pleas, Journal Book M, 380–81.

4. Geauga County Court of Common Pleas, Final Record Book T, 3–4; Geauga County Court of Common Pleas, Journal Book M, 486; *Chardon Spectator and Geauga Gazette*, October 30, 1835, 3, cited in *Contemporary Accounts of the Latter-day Saints and Their Leaders Appearing in Early Ohio Newspapers*, comp. Milton V. Backman, 3 vols. (Provo, Utah: Brigham Young University, 1976), 2:n.p. Many of the references to Ohio news accounts quoted herein were found in Backman's book.

5. Geauga County Marriage Records, Book C, microfilm of holograph, 141–42, 144, 165, 188–89, 233–34, FHL.

6. Homespun [Susa Young Gates], *Lydia Knight's History* (Salt Lake City: Juvenile Instructor Office, 1883), 30.

7. Newel Knight, Autobiography and Journal, folder one, [45–46], Church Archives, The Church of Jesus Christ of Latter-day Saints, Salt Lake City (hereafter cited as LDS Church Archives). This collection contains three versions of Newel's journals, two of which contain accounts of his marriage (folder one, item 4; and folder three). The version in folder one shows evidence that several lines of the account may have been cut out. Another version of Newel Knight's journal found in folder two may have originally contained an account of his wedding that appears to have been cut out. The manuscript is cut near the chronological spot where one would expect to read of his courtship and marriage to Lydia.

8. *Lydia Knight's History*, 31.

9. As quoted in Newel Knight, Autobiography and Journal, folder three, page 6.

10. D. Michael Quinn, *The Mormon Hierarchy: Origins of Power* (Salt Lake City: Signature Books, 1994), 88.

11. John L. Brooke, *The Refiner's Fire: The Making of Mormon Cosmology, 1644–1844* (Cambridge: Cambridge University Press, 1994), 212.

12. Richard S. Van Wagoner, *Mormon Polygamy: A History*, 2nd ed. (Salt Lake City: Signature Books, 1989), 7.

13. The story of the Newell Knight–Lydia Bailey wedding is retold and reinterpreted by William G. Hartley in this issue of BYU Studies. Other sources discussing the Knight marriage include: Danel W. Bachman, "New Light on an Old Hypothesis: The Ohio Origins of the Revelation on Eternal Marriage," *Journal of Mormon History* 5 (1978): 29–31; B. Carmon Hardy, *Solemn Covenant: The Mormon Polygamous Passage* (Urbana: University of Illinois Press, 1992), 6; Lawrence Foster, *Religion and Sexuality: The Shakers, the Mormons, and the Oneida Community* (Urbana: University of Illinois Press, 1984), 135–36; M. Guy Bishop, "Eternal Marriage in Early Mormon Marital Beliefs," *Historian* 53 (autumn 1990): 77–88; and William G. Hartley, "They Are My Friends": A History of the Joseph Knight Family, 1825–1850 (Provo, Utah: Grandin Book, 1986), 107–16.

14. *Lydia Knight's History*, 27–28.



15. Ohio, "An Act for the Punishment of Crimes," 1831, §7, *Acts of a General Nature, Enacted, Revised and Ordered to Be Reprinted, at the First Session of the Twenty-Ninth General Assembly of the State of Ohio* (1831), 136 (hereafter cited as 1831 Acts).

16. *An Act concerning Divorce and Alimony*, January 6, 1824, §1, in 1831 Acts, 431–32; *An Act to Amend the Act, Entitled An Act concerning Divorce and Alimony*, December 31, 1827, §1, 1831 Acts, 433.

17. Available evidence is contradictory as to when Calvin Bailey abandoned Lydia. Her history suggest that it was "about three years" after her marriage in 1828, thus suggesting an 1831 date. *Lydia Knight's History*, 11. However, Newel's account contains facts which would lead to a different conclusion. His journal states that Calvin left Lydia shortly after the birth of her second child, a son. Genealogical sources show that this child was born on February 12, 1832, making an early 1832 date the most likely one. In either case, at the time of Newel's proposal to her, Lydia would have met the three-year requirement for remarriage but not the newer, five-year requirement. The birth date of Lydia's second child is found under "Lydia Goldthwait," b. 1812, AncestralFile 4.19, AFN:2SPB-TR. Newel's account is found in Knight, *Autobiography and Journal*.

18. Ohio, *An Act Providing for the Punishment of Crimes* (1835), §§7 and 42, *Statutes of the State of Ohio of a General Nature in Force 7 December 1840; Also, the Statutes of a General Nature, Passed by the General Assembly at Their Thirty-Ninth Session, Commencing December 7, 1840* (Columbus, Ohio: Samuel Medary, 1841), 230, 239 (hereafter cited as 1841 Statutes).

19. *Lydia Knight's History*, 28.

20. *Lydia Knight's History*, 28.

21. The death date of Calvin Bailey is unknown. Several researchers have searched extensively for it, as yet unsuccessfully.

22. Under §9 of the 1824 Act (see appendix 1), a fine could be imposed on anyone solemnizing a marriage "contrary to the true intent and meaning" of the act. How this provision might theoretically have applied to Joseph's actions is not clear. Determining the "intent" of a statute is an imprecise process, especially with older statutes for which few judicial precedents or legislative history materials are available. Moreover, although he and the parties ran some risk, they relied in good faith on their source of knowledge, and, in fact, the risk turned out fine.

23. Knight, *Autobiography and Journal*, folder one, [45].

24. This license, dated November 25, 1835, is located in Geauga County Marriage Licenses, 1833–1841, microfilm of holograph, FHL. As Newel reports having obtained it on the day of his marriage, the date is perplexing. Joseph's journal and county records place the date of the actual marriage on November 24.

25. Scott H. Faulring, ed., *An American Prophet's Record: The Diaries and Journals of Joseph Smith* (Salt Lake City: Signature Books, 1987), 116 (January 19, 1836).

26. Hereafter referred to as 1824 Act. This act is found in 1831 Acts, 429–31; and 1841 Statutes, 582–84. See also appendix 1.

27. The provisions of the 1824 Act stood virtually unchanged for decades. Even an examination of codifications from this century reveals that the spirit and wording of this earlier statute are still present to a considerable degree. See Clement Bates, ed., *The Annotated Revised Statutes of the State of Ohio, Including All Laws of a General Nature in Force January 1, 1904*, 4th ed., 3 vols. (Cincinnati: W. H. Anderson, 1903), vol. 2, ch. 5, §§6384–94; *Throckmorton's 1930 Annotated Code of Ohio*, ch. 7, §§11181–83; and *Page's Ohio Revised Code Annotated*, 1995 Supplement, Title 31, §3101.08. The 1824 Act, in turn, shows influences from earlier statutes. Ohio, *An Act Regulating Marriages* (1803), §2, in Redgraves Resources, *Session Laws of American States and Territories*, Ohio, fiche 1, 31–34 (hereafter cited as 1803 Act).



28. 1824 Act, §2, italics added. See also appendix 1 below.
29. See 1824 Act, §2, in appendix 1 below.
30. Faulring, *American Prophet's Record*, 116 (January 19, 1836).
31. See Dean C. Jessee, ed., *The Papers of Joseph Smith*, 2 vols. (Salt Lake City: Deseret Book, 1989–92), 2:153–54 (January 20, 1836).
32. See 1824 Act, §2, in appendix 1 below.
33. For an example of a Quaker marriage certificate, see H. E. Smith, “The Quakers, Their Migration to the Upper Ohio: Their Customs and Discipline,” *Ohio Archaeological and Historical Society Publications* 28 (1928): 35–85.
34. *Doctrine and Covenants of the Church of the Latter Day Saints* (1835; reprint, Independence, Mo.: Herald House, 1871), section 101 (hereafter cited as *Doctrine and Covenants* [1835]).
35. See Robert J. Woodford, “The Historical Development of the Doctrine and Covenants,” 3 vols. (Ph.D. diss., Brigham Young University, 1974), 3:1784–85.
36. Faulring, *American Prophet's Record*, 116 (January 19, 1836).
37. *Doctrine and Covenants* [1835], section 101. Joseph's accounts are found in Jessee, *Papers of Joseph Smith*, 1:145–46 (November 24, 1835); and 2:88–89 (November 24, 1835); “Manuscript History of The Church of Jesus Christ of Latter-day Saints,” November 24, 1835, LDS Church Archives; and Joseph Smith Jr., *History of The Church of Jesus Christ of Latter-day Saints*, ed. B. H. Roberts, 2d ed., rev., 7 vols. (Salt Lake City: Deseret Book, 1971), 2:320 (hereafter cited as *History of the Church*).
38. See appendix 1, §2.
39. See marriage license of James D. Davis and Roxana Davis, dated January 13, 1831, Davis Family Papers, LDS Church Archives; and marriage license of Robert B. Thompson and Mercy R. Fielding, dated June 4, 1837, Mercy F. Thompson Papers, 1837–45, Daughters of Utah Pioneers Collection, LDS Church Archives. This latter marriage license is for the last of the weddings that Joseph Smith performed in Kirtland.
40. S.v. “Forms,” index, *1831 Acts*.
41. The marriage license for Robert and Mercy Thompson bears a small notation in the lower left corner, partially obscured, which indicates that the form was printed in Cleveland.
42. See Jessee, *Papers of Joseph Smith*, 2:178 (February 22, 1836); *History of the Church*, 2:398; Geauga County Marriage Records, Book C, 141–42, 144, 165, 188–89, 233–34.
43. William F. Cahoon, *Autobiography*, 44, LDS Church Archives.
44. See appendix 1, §6.
45. Any indictment of Joseph for illegally solemnizing marriages would be found in the records of the Geauga County Court of Common Pleas. This is because the potential fine for this offense exceeded the jurisdictional amount of justices of the peace yet was not high enough to bring the case within the original jurisdiction of the supreme court. 1824 Act, §9; *An Act to Organize the Judicial Courts*, February 7, 1831, §4, 1841 Statutes, 222–23; *An Act Defining the Powers and Duties of Justices of the Peace, and Constables, in Civil Cases*, March 14, 1831, §1, 1841 Statutes, 505–6. Likewise, as bigamy was a noncapital offense, any indictment of Lydia for this crime would also be found in these same records.
46. Eber D. Howe, *Autobiography and Recollections of a Pioneer Printer* (Painesville, Ohio: Telegraph Steam Printing House, 1878), 44–45.
47. This was one of the most respected religious papers in the country. Presbyterian in orientation, this paper reportedly had a subscription list of fifteen hundred names. Walter A. Norton, “Comparative Images: Mormonism and Contemporary Religions



As Seen by Village Newspapermen in Western New York and Northeastern Ohio, 1820–1833” (Ph.D. diss., Brigham Young University, 1991), 63–64; see Gaylord P. Albaugh, *History and Annotated Bibliography of American Religious Periodicals and Newspapers Established from 1730 through 1830*, 2 vols. (Worcester, Mass.: American Antiquarian Society, 1994), 1:712–14.

48. “New Bible—a Hoax,” *Observer and Telegraph* [Huron, Ohio], February 10, 1831, 3.

49. The emphasis of the words “their” and “prophets” has been retained. These verses are now found in Words of Mormon 1:15–16; they were found on page 153 of the original edition of the Book of Mormon.

50. Faulring, *American Prophet's Record*, 116 (January 19, 1836).

51. See “Third Article in the Declaration of Rights,” *Spirit of the Pilgrims* 4 (December 1831): 648. This article states that Ohio and several other states had constitutional guaranties of freedom of religion that were patterned after Pennsylvania’s.

52. Note that in certain portions of Ohio, the state constitution and related legislation allowed the leasing of section twenty-nine of each township for the support of religion. The revenues from this lease were to be divided proportionally among the various denominations of each township. These provisions applied only to lands in southwest Ohio that were within the Ohio Company’s and John Cleves Symmes’s purchases. *Ohio Constitution* (1802), art. 8, §26.

53. *Ohio Constitution* (1802), art. 8, §3.

54. See “First Constitutional Convention, C[on]voked November 1, 1802: Journal of the Convention,” *Ohio Archaeological and Historical Publications* 5 (1898): 111–12, 126.

55. 1803 Act, §2.

56. Milton V. Backman Jr., *The Heavens Resound* (Salt Lake City: Deseret Book, 1983), 337, states generally that critics continued to raise such questions after the Rigdon litigation, but he cites only secondary sources, and they in turn reference only an affirmation of equal priesthood privilege in *Messenger and Advocate* 3, no. 7 (April, 1837), 496, and a “vexatious writ” sworn out but not further prosecuted against Joseph Smith Sr. in 1838 as reported in “History of Luke Johnson, by Himself,” *Millennial Star* 27, no. 1 (January 7, 1865), 6. Joseph Smith Jr. performed a number of marriages in Ohio, the last on June 4, 1837.

57. For a general description of Joseph’s Ohio litigation, see Edwin Brown Firmage and Richard Collin Mangrum, *Zion in the Courts: A Legal History of The Church of Jesus Christ of Latter-day Saints, 1830–1900* (Urbana: University of Illinois Press, 1988), 51–58.

58. *Lydia Knight's History*, 30; see also Jackson County Ohio Court of Common Pleas, Journal Book D, 49; and Ferron Allred Olson, *Seymour Brunson: Defender of the Faith* (Salt Lake City: By the author, 1998), 62.

59. Geauga County Marriage Records, Book C, 98, 104, 107–8, 119–20, 138, 152.

60. Jessee, *Papers of Joseph Smith*, 2:190 (March 21, 1836).

61. Medina County Court of Common Pleas, Journal Book C, 66. Both elders were from Medina and were sons of fathers by the same names who were respected local citizens. Bronson’s father served in the Revolutionary War. See Medina County Court of Common Pleas, Journal Book B, 115–16. Warner’s father served as a justice of the peace and was a noted preacher of the gospel. See Edward Brown, *Wadsworth Memorial* (Wadsworth, Ohio: Steam Printing House, 1875), 75–80.

62. Geauga County Court of Common Pleas, Journal Book M, 380–81.

63. *The Biographical Cyclopaedia and Portrait Gallery: With an Historical Sketch of the State of Ohio*, 6 vols (Cincinnati: Western Biographical Publishing, 1884), 3:626–27.



64. For examples of Birchard's granting of licenses to ministers of these denominations, see Portage County Ohio Court of Common Pleas, Journal Book 6, 204; Journal Book 7, 169; Journal Book 8, 161. These records span 1834–36.

65. Max H. Parkin, "Mormon Political Involvement in Ohio," *BYU Studies* 9, no. 4 (1969): 489.

66. *Biographical Cyclopaedia and Portrait Gallery*, 3:626–27. The county history states that at Peter Hitchcock's funeral, Judge Birchard spoke, even though the two were of "opposite politics." Since the Hitchcocks were Whigs, this would imply that Judge Birchard was a Democrat—the other major party of this era. *Pioneer and General History of Geauga County with Sketches of Some of the Pioneers and Prominent Men*, 2 vols. (n.p.: Historical Society of Geauga County, 1880), 2:514.

67. A newspaper from a nearby county reported that Birchard had won favor with local citizens despite initial misgivings over his appointment that had been expressed in the press. "Judge Birchard," *Elyria Ohio Atlas*, April 25, 1833, n.p.

68. See "Church and State," *Painesville Republican*, September 28, 1837, 2; "Church and State," *Painesville Republican*, October 19, 1837, 2; "Equal Rights," *Painesville Republican*, October 19, 1837, 2.

69. According to the Ohio constitution, judges were appointed for seven-year terms by a joint ballot of both houses of the General Assembly. *Ohio Constitution* (1802), art. 3, §8.

70. Geauga County Court of Common Pleas, Final Record Book T, 3–4.

71. *General History of Geauga County*, 2:516–19.

72. Carrington T. Marshall, ed., *A History of the Courts and Lawyers of Ohio*, 4 vols. (New York: American Historical Society, 1934), 1:238–39.

73. See the letters from Reuben Hitchcock to Peter Hitchcock dated November 29, 1832; January 7, 1833; February 2, 1833, located in the Peter Hitchcock Family Papers, MSS 3325, box 1, fd. 4, Western Reserve Historical Society, Cleveland, Ohio.

74. William S. Kennedy, *The Plan of Union; or, A History of the Presbyterian and Congregational Churches of the Western Reserve; with Biographical Sketches of the Early Missionaries* (Hudson, Ohio: Pentagon Steam Press, 1856), 147–51, 155–59.

75. See "Congregational Church, Burton," Peter Hitchcock Family Papers, box 19, fd 5.

76. Grand River Presbytery Records, microfilm of holograph, 255, 258, 262, FHL; Reuben Hitchcock to Peter Hitchcock, December 19, 1832, Peter Hitchcock Family Papers, box 1, fd. 4; *General History of Geauga County*; 2:516–19; Ferris Fitch to Absalom Peters, February 18, 1835, American Home Missionary Society Archives, Amistad Research Center, Tulane University (hereafter cited as AHMSA). All letters are grouped by state and year and filed under the sender's last name. This particular letter appears to have been misfiled under the 1834 letters.

77. Seabury Ford and Reuben Hitchcock attended Yale together. Several of Hitchcock's letters refer to him as "cousin." For an example, see Reuben Hitchcock to Peter Hitchcock, February 2, 1838, Peter Hitchcock Family Papers, box 1, fd. 5. Ford's donations are shown in "Congregational Church, Burton," Peter Hitchcock Family Papers. See also *Ohio Biographical Dictionary* (Wilmington, Ohio: American Historical Publications, 1986), 126.

78. *General History of Geauga County*; 1:70. Some of the dates for Perkins's service shown therein may be inaccurate. For example, he is shown as county prosecutor for 1835–37, yet court records show that Reuben Hitchcock was the prosecutor who brought charges against Sidney Rigdon in 1835.

79. Grand River Presbytery Records, 240.



80. Perkins edited a local paper that published pieces critical of the Church at times. See Norton, "Comparative Images," 314–15, 323–25, and 342.

81. "Mormonism," *Hudson Observer and Telegraph*, April 3, 1834.

82. Eber D. Howe, *Mormonism Unveiled: or, A Faithful Account of That Singular Imposition and Delusion, from Its Rise to the Present Time* (Painesville, Ohio: By the author, 1834); "From the Junior Editor," *Hudson Observer and Telegraph*, May 22, 1834, 3; and the three-part series "From the Junior Editor . . . Mormonism," *Hudson Observer and Telegraph*, May 29, June 5, and June 12, 1834, 3.

83. William M. Adams to Absalom Peters, May 14, 1831, AHMSA.

84. *History of the Church*, 5:287.

85. S. B. Canfield to Reuben Hitchcock, March 7, 1831, Peter Hitchcock Family Papers.

86. Newspapers in the region referred to Rigdon as an "arch apostate" and a "notorious hypocrite and knave." "The Mormons," *Elyria Ohio Atlas and Lorain County Gazette*, December 6, 1832, 2; "Mormon Money," *Cleveland Weekly Gazette*, January 18, 1837, 3; and "Mormons," *Newark Advocate*, April 13, 1833, 2.

87. Howe, *Recollections of a Pioneer Printer*, 44–45.

88. Marvin S. Hill, C. Keith Rooker, and Larry T. Wimmer, *The Kirtland Economy Revisited: A Market Critique of Sectarian Economics* (Provo, Utah: Brigham Young University Press, 1977), 47–51; Dale Adams, "Chartering the Kirtland Bank," *BYU Studies*, 23, no. 4 (1983): 470 n. 16; Geauga County Court of Common Pleas, Execution Docket G, 105. Grandison Newell accused Joseph Smith that same year of conspiring to murder him, but the common pleas judge, Van R. Humphrey, dismissed the complaint, noting that Newell "had no cause to fear as set forth in his said complaint." Geauga County Court of Common Pleas, Final Record Book T, 53; Parkin, "Mormon Political Involvement," 498–501.

89. Reuben Hitchcock to Peter Hitchcock, May 1, 1837, Peter Hitchcock Family Papers, box 1, folder 5. This letter shows that Peter, and possibly Reuben, was a significant shareholder in the Bank of Geauga. Joseph Smith and others had dealings in this bank. *Bank of Geauga v. Joseph Smith, Newel K. Whitney, and Sidney Rigdon*, Geauga County Court of Common Pleas, Final Record Book U, 67–69; Geauga County Court of Common Pleas, Execution Docket G, 62.

90. Wayne County Court of Common Pleas, Journal Book 6, 16.

91. *1803 Act*, §2.

92. Geauga County Court of Common Pleas, Journal Book I, 25.

93. *1824 Act*, §3.

94. See Geauga County Marriage Records, Books B and C.

95. The Mennonite practice, in particular, seems to have been quite informal from a legal perspective. See below, appendix 3, note 8.

96. The literature on the Western Reserve is extensive. Robert A. Wheeler, "The Literature of the Western Reserve," *Ohio History* 100 (summer–autumn 1991): 101–28.

97. *General History of Geauga County*, 517; Peter Hitchcock to Reuben Hitchcock, May 28, 1826, Peter Hitchcock Family Papers.

98. See *Baker v. Fales*, 488, discussed in McLoughlin, *New England Dissent*, 2:1189–95.

99. Reuben Hitchcock to Elizur Wright, April 24, 1827, Peter Hitchcock Family Papers, box 10, fd. 5.

100. Ralph S. Kuykendall, *The Hawaiian Kingdom, 1778–1854: Foundation and Transformation* (Honolulu: University of Hawaii Press, 1957), 141–42.

101. "Removal of Jesuits from the Islands," *Boston Missionary Herald* 11 (November 1832): 352.



102. For example, George Q. Cannon, Diary, January 2 and 30, 1854, microfilm of holograph, LDS Church Archives; and Francis Asbury Hammond, Journal, August 26, 1853, LDS Church Archives.

103. See "Collected Papers concerning Mormonism in Hawaii," folders one, ten, eleven, twelve, and twenty, LDS Church Archives.

104. Grand River Presbytery Records, 293; Francis P. Weisenburger, *The Passing of the Frontier, 1825–1850*; Carl Wittke, ed., *The History of the State of Ohio*, vol. 3 (Columbus: Ohio State Archeological and Historical Society, 1941), 163; Douglas J. Williamson, "The Rise of the New England Methodist Temperance Movement, 1823–1836," *Methodist History* 2 (October 1982): 3–28; Winfred B. Langhorst, "The Puritanic Influence in the Northwest Territory, 1788–1803," *Ohio Archeological and Historical Society Publications* 42 (1967): 409–43; John Allen Krout, *The Origins of Prohibition* (New York: Russell and Russell, 1967), 113; James Russell Rohrer, "Battling the Master Vice: The Evangelical War against Intemperance in Ohio, 1800–1832" (master's thesis, Kent State University, 1985).

105. Grand River Presbytery Records, 290.

106. John H. Russ to Absalom Peters, April 1, 1836, AHMSA.

107. Varnum Noyes to Absalom Peters, October 23, 1835, AHMSA.

108. Noyes to Absalom Peters, April 3, 1837, AHMSA.

109. Gilbert Fay to Absalom Peters, July 29, 1833, AHMSA.

110. A[zor?] Smith to Absalom Peters, April 15, 1836, AHMSA.

111. *History of Medina County and Ohio* (Chicago: Baskin and Battey, Historical Publishers, 1881), 277–78.

112. Timothy Hudson to Hon. Peter Hitchcock, January 15, 1835, Peter Hitchcock Family Papers, box 3, fd. 6.

113. "Latter Day Saints," *Messenger and Advocate* 2 (May 1836): 314–16.

114. See also "Mormons," *Ravenna Western Courier*, October 10, 1833, 3. This article reports that LDS missionaries had made about sixty converts in Norton, in the southeast corner of Medina County; similar figures were reported for Norton a few months later in the "Progress of the Church of the Latter Day Saint," *Evening and Morning Star*, May 1834, 156.

115. *History of Medina County*, 276–77; N. B. Northrop, *Pioneer History of Medina County* (Medina, Ohio: George Redway, 1861), 43–44; Edward Brown, *Wadsworth Memorial* (Wadsworth, Ohio: Steam Printing House, 1875), 73, 78. The tolerance described in the early county histories is also noted in Wheeler, "Literature of the Western Reserve," 109–10.

116. Northrop, *Medina County*, 8.

117. "Church and State," 2.

118. See also J. Keith Melville, "Joseph Smith, the Constitution, and Individual Liberties," *BYU Studies* 28, no. 2 (1988): 65–74.



# Appendix 1

## The 1824 Ohio Statute on Marriage

### Summary

The Ohio statutory scheme provided the following:

- §1 – minimum age and consent requirements for marriage;
- §2 – three classifications in which people could perform legal marriages, namely as a licensed minister, as a justice of the peace, or under the rules of a religious society;
- §3 – qualifications of ministers under the first classification;
- §4 and §5 – and requirements for entering names of licensed ministers in county records in order to have good evidence of their authorization.
- §6 – Prior to the marriage, notice needed to be given or a marriage license needed to be obtained by the couple,
- §7 – and procedures were specified for obtaining such a license.
- §8 and §9 – After the marriage, a certificate was to be filed with the county clerk, and penalties for failure to file or otherwise to comply with this law were stated.
- §10 – Also, before proceeding, the minister or justice of the peace had the duty of seeing that the notices and consents required under sections 1 and 6 were in good order.

### Full Text

The full text of the Ohio statute follows:

#### AN ACT regulating Marriages.

Sec. 1. *Be it enacted by the General Assembly of the State of Ohio*, That male persons of the age of eighteen years, female persons of the age of fourteen years, not nearer of kin than first cousins, and not having a husband or wife living, may be joined in marriage: *Provided, always*, That male persons under the age of twenty-one years, female persons under the age of eighteen years, shall first obtain the consent of their fathers, respectively; or in the case of the death or incapacity of their fathers, then of their mothers or guardians.

Sec. 2. That it shall be lawful for any ordained minister of any religious society or congregation, within this State, who has, or may hereafter, obtain a license for that purpose, as hereinafter provided, or for any justice of the peace in his county, or for the several religious societies, agreeably to the rules and regulations of their respective churches, to join together as husband and wife, all persons not prohibited by this act.



Sec. 3. That any minister of the gospel, upon producing to the court of common pleas of any county within this State, in which he officiates, credentials of his being a regular ordained minister of any religious society or congregation, shall be entitled to receive, from said court, a license, authorizing him to solemnize marriages within this State, so long as he shall continue a regular minister in such society or congregation.

Sec. 4. That it shall be the duty of every minister, who is now, or hereafter shall be, licensed to solemnize marriages, as aforesaid, to produce to the clerk of the court of common pleas in every county in which he shall solemnize any marriage, his license so obtained; and the said clerk shall thereupon enter the name of such minister upon record, as a minister of the gospel duly authorized to solemnize marriages within this State, and shall note the county from which said license issued; for which service no charge shall be made by such clerk.

Sec. 5. That when the name of any such minister is so entered upon the record, by the clerk aforesaid, such record, or the certificate thereof, by the said clerk, under the seal of his office, shall be good evidence that the said minister was duly authorized to solemnize marriages.

Sec. 6. That previous to persons being joined in marriage, notice thereof shall be published, (in the presence of the congregation,) on two different days of public worship, the first publication to be at least ten days previous to such marriage, within the county where the female resides; or a license shall be obtained for that purpose, from the clerk of the court of common pleas in the county where such female may reside.

Sec. 7. That the clerk of the court of common pleas, as aforesaid, may inquire of the party, applying for marriage license, as aforesaid, upon oath or affirmation, relative to the legality of such contemplated marriage; and if the clerk shall be satisfied that there is no legal impediment thereto, then he shall grant such marriage license: and if any of the persons intending to marry, shall be under age, and shall not have had a former wife or husband, the consent of the parents or guardians shall be personally given before the clerk, or certified under the hand of such parent or guardian, attested by two witnesses, one of which shall appear before said clerk, and make oath or affirmation that he saw the parent or guardian, whose name is annexed to such certificate, subscribe, or heard him or her acknowledge the same; and the clerk is hereby authorized to administer such oath or affirmation, and thereupon issue and sign such license, and affix thereto the seal of the county: the clerk shall be entitled to receive as his fee for administering the oath and granting license, with the seal affixed thereto, recording the certificate of marriage, and filing the necessary papers, the sum of seventy-five cents: and if any clerk shall in any other manner issue or sign any marriage license, he shall forfeit and pay a sum not exceeding one thousand dollars, to and for the use of the party aggrieved.

Sec. 8. That a certificate of every marriage hereafter solemnized, signed by the justice or minister solemnizing the same, shall be transmitted to the clerk of the county wherein the marriage was solemnized, within three months thereafter, and recorded by such clerk: every justice or minister, (as the case may be,) failing to transmit such certificate to the clerk of the county, in due time, shall forfeit and pay fifty dollars; and if the clerk shall neglect to make such record, he shall forfeit and pay fifty dollars, to and for the use of the county.



Sec. 9. That if any justice or minister, by this act authorized to join persons in marriage, shall solemnize the same contrary to the true intent and meaning of this act, the person so offending shall, upon conviction thereof, forfeit and pay any sum not exceeding one thousand dollars, to and for the use of the county, wherein such offence was committed: and if any person not legally authorized, shall attempt to solemnize the marriage contract, such person shall, upon conviction thereof, forfeit and pay five hundred dollars, to and for the use of the county wherein such offence was committed.

Sec. 10. That it shall be the duty of every minister or justice of the peace, before he shall solemnize any marriage between the parties, either of whom is required by the first section of this act, to obtain the consent of his or her parent or guardian, (except in cases where license shall have been obtained from the clerk of the court of common pleas,) to be satisfied that the intention of marriage between such parties has been duly published, and also that the consent of such parents or guardian has been obtained, either by acknowledgment in presence of such minister or justice of the peace, or by a certificate under the signature of such parent or guardian, and attested by one or more credible witnesses, who shall be present for the purpose of satisfying such minister or justice of the peace, that such certificate was actually signed by the parent or guardian for the purpose aforesaid.

Sec. 11. That any fine or forfeiture arising to the county in consequence of the breach of this act, shall be recovered by an action of debt, or by indictment, with costs of suit, in any court of record having cognizance of the same.

Sec. 12. That the law regulating marriages, passed February sixteenth, one thousand eight hundred and ten; and the act amending the said act, passed January eleventh, one thousand eight hundred and twenty-two; be, and the same are hereby repealed.

This act shall take effect and be in force from and after the first day of June next.

JOSEPH RICHARDSON,  
*Speaker of the House of Representatives.*

ALLEN TRIMBLE,  
*Speaker of the Senate.*

January 6th, 1824.



## Appendix 2

### Marriage, 1835 Doctrine & Covenants

At a General Assembly of the Church, held in Kirtland, Ohio, on August 17, 1835, pursuant to previous notice, the work of an appointed committee was approved. Its members had been assigned to “arrange the items of doctrine of Jesus Christ, for the government of his church.” The assembly approved the collected materials to be published as the 1835 edition of the Doctrine and Covenants, which included the following provisions relevant to the performance of marriages, printed in section 101, page 251:

1. According to the custom of all civilized nations, marriage is regulated by laws and ceremonies: therefore we believe, that all marriages in this church of Christ of Latter Day Saints, should be solemnized in a public meeting, or feast, prepared for that purpose: and that the solemnization should be performed by a presiding high priest, high priest, bishop, elder, or priest, not even prohibiting those persons who are desirous to get married, of being married by other authority. . . .
2. Marriage should be celebrated with prayer and thanksgiving; and at the solemnization, the persons to be married, standing together, the man on the right, and the woman on the left, shall be addressed, by the person officiating, as he shall be directed by the holy Spirit; and if there be no legal objections, he shall say, calling each by their names: “You both mutually agree to be each other’s companion, husband and wife, observing the legal rights belonging to this condition; that is, keeping yourselves wholly for each other, and from all others, during your lives.” And when they have answered “Yes,” he shall pronounce them “husband and wife” in the name of the Lord Jesus Christ, and by virtue of the laws of the country and authority vested in him: “may God add his blessings and keep you to fulfill your covenants from henceforth and forever. Amen.”
3. The clerk of every church should keep a record of all marriages, solemnized in his branch.



## Appendix 3

### Disestablishment and the Right to Perform Marriages

#### Virginia

A discussion of established state churches in America begins well with Virginia, where perhaps the most famous struggle for religious freedom in any American state took place.<sup>1</sup> Up until the War of Independence, the Anglican Church was the officially established religion in this state. Colonial Virginia was a place where restrictions on the activities of other faiths were “more strictly enforced” than elsewhere.<sup>2</sup> After independence this situation engendered a spirited and prolonged public debate on the issue of religious liberty, a dispute that involved many well-known patriots, including Patrick Henry, James Madison, George Mason, and Thomas Jefferson.<sup>3</sup> In the end, the Anglican Church was disestablished, and complete religious freedom was established by law in Virginia. An important part of this process was the passage in 1786 of the Bill for Establishing Religious Freedom, a bill that had been introduced by Thomas Jefferson in 1779. Jefferson reportedly suggested that the final version of this bill was meant to protect not just every denomination of Christian but also “the Jew and Gentile, the Christian and Mahometan, the Hindoo, and infidel.”<sup>4</sup>

For several years prior to the Revolution, dissenting religious groups, including the Baptists and Presbyterians, had protested against the favored status that the Anglican Church enjoyed in Virginia. These groups opposed restrictions limiting where their ministers could preach, demanded the right to preach to troops, and also sought the right to solemnize marriages—a right that had long been enjoyed only by Anglican ministers.<sup>5</sup> Dissenting ministers eventually won this latter right, though not until 1780, when a law was passed allowing ministers “of any society or congregation of christians,” including Quakers and Mennonites, to perform marriages. Language in the statute explicitly states that the law was intended to remove doubt “concerning the validity of marriages celebrated by ministers, other than the church of England.”<sup>6</sup>

Even after the adoption of the 1780 Virginia law, some groups still felt that legal refinements were needed to show more clearly that all denominations were on an equal footing with respect to the right to perform marriages.<sup>7</sup> Another statute was adopted in 1784, further expanding this right. Among the changes in the new statute was wording allowing Christian societies—such as Quakers and Mennonites, who had sufficient regulations or traditions on the rules of marriages—to perform their own marriages “agreeable to the regulations that have heretofore been practiced in



the respective societies.”<sup>8</sup> This latter wording is similar to that found in Ohio’s 1824 statute, under which Joseph Smith was able to validly perform marriages.<sup>9</sup>

### **North Carolina**

North Carolina was another state where the Anglican Church was officially established; however, the process of disestablishment in this state was not as protracted as in Virginia. The new state constitution of 1776 proclaimed that “there shall be no establishment of any one religious church or denomination in this State, in preference to any other.”<sup>10</sup> Whereas prior to 1776, only Anglican ministers had been able to perform marriages in North Carolina, under this new constitution and a new state statute, non-Anglicans also received this right. The statute provided that “all regular Ministers of the Gospel of every Denomination having the Care of Souls” could perform marriages, “according to the Rites and Ceremonies of their respective Churches.”<sup>11</sup> Developments in North Carolina’s religious freedom continued in the nineteenth century, with eligibility to hold political office being extended to all Christians in 1835 and obstacles to office-holding by Jews being removed in 1868.<sup>12</sup>

### **Establishment in New England**

New England states also historically had an established church; however, rather than follow the lead of sister states like Virginia, these states retained aspects of their “establishments” after independence. Massachusetts, for example, adopted a new constitution in 1780, requiring that “suitable provision” be made, even at public expense, “for the support and maintenance of public Protestant teachers of piety, religion, and morality, in all cases where such provision shall not be made voluntarily.”<sup>13</sup>

While the language of this mandate may appear neutral on its face, at least with regard to the various Protestant denominations of the day, this provision of the Massachusetts constitution actually served to establish the dominant denomination, the Congregationalists, and to confer upon them “peculiar legal facilities and privileges.”<sup>14</sup> For example, in the years following independence in Massachusetts, only “orthodox ministers” who were “learned” could become parish priests. These requirements may have had the effect of excluding dissenting denominations such as Baptists, whose clergy generally did not have formal theological training. Ministers not having official status as a parish priest were at times denied other important legal benefits, including tax exemptions and the right to perform marriages.<sup>15</sup>

The legal benefits available to established churches in New England included the right to tax their parishioners and to compel church attendance.



Congregational ministers of this period of differing theological orientations are said to have “regarded a tax-supported church as essential to the preservation of morality and the regulation of society.”<sup>16</sup> The favored status of the Congregational Church helped perpetuate the social and political dominance of their ministers for years following independence.<sup>17</sup> In contrast to the established churches, dissenting groups such as Baptists and Methodists were at times subject to annoyance that “amounted to persecution.”<sup>18</sup>

## Vermont

The first New England state to disestablish its churches was Vermont. In 1807 a law was passed that abolished “the system of compulsory religious taxation which generally favored the predominant denomination.”<sup>19</sup> This system of taxation is said to have empowered parishes, most of which were Congregational, “to levy a general tax for building meeting-houses and supporting their ministers.”<sup>20</sup> In 1814, Jesse Smith (the eldest brother of Joseph Smith Sr.) exercised his right to opt out of such a tax by lodging the required certificate of protest in the Tunbridge town records.<sup>21</sup>

## Connecticut

Connecticut was the next state to disestablish its Congregational churches. Long dominant in this state, these churches, and particularly their ministers, wielded tremendous influence. The Congregational ministry, or “Standing Order,” was a leading force in state government for decades following independence. These ministers reportedly were “men of character, ability, and public spirit, but opposed to yielding the inherited prerogatives of an Established Church.”<sup>22</sup>

The narrow election of Oliver Wolcott in 1817 as governor heralded the end of establishment in Connecticut. Wolcott, a Congregationalist, and his Episcopalian running mate ran on a platform of religious toleration.<sup>23</sup> Their victory was followed by other legal and constitutional changes in Connecticut, resulting in the end of establishment in Connecticut and in the promotion of greater religious freedom.<sup>24</sup> Among the changes that followed was an emphatically liberalized marriage law. Previously, non-Congregational ministers did not have the right to perform marriages; the new law removed all discrimination in this regard.<sup>25</sup> This statute stipulated that “ordained ministers” could perform marriages and emphatically added the following: “*Provided nevertheless*, That all marriages which shall be performed and solemnized, according to the forms and usages of any religious denomination, in this state, shall be good and valid.” This statute also contained a provision validating prior marriages whose legality might previously have been called into question because they had been performed by ministers not authorized under state law.<sup>26</sup>



A review of Connecticut cases shows that prior to disestablishment under Governor Wolcott, non-Congregational ministers were prosecuted on occasion for performing marriages. An example is found in *George Roberts v. The State Treasurer*, a case reported from the Connecticut Supreme Court of Errors in 1797.<sup>27</sup> This case was an appeal to reverse a judgment against Roberts for solemnizing a marriage in 1793. The court upheld Roberts's conviction for violating the state's marriage laws, even though Roberts was a "duly appointed and ordained" Methodist deacon, authorized by the rules of his denomination to "perform divine service, administer the sacraments, and to celebrate marriages," and had been appointed to minister to specific congregations. In sustaining the decision of the lower court, this court stated that it was clear that Rogers was not "an ordained minister, settled in the work of the ministry . . . as the statute contemplates."<sup>28</sup>

### Massachusetts

During the years when Connecticut was liberalizing its legal and constitutional structures with respect to religion, similar changes were being contemplated in Massachusetts. A constitutional convention held in 1820 offered voters the chance to extend "support benefits to non-Protestant religious teachers" and to terminate "compulsory attendance and public worship." Viewed as an unsatisfactory proposal by parties on both sides of the establishment debate in Massachusetts, the voters soundly defeated this proposal, reportedly by a vote of 20,000 to 11,000, a significant margin.<sup>29</sup> Soon after this vote, the state's highest court handed down a decision making it harder for Orthodox Congregationalists to hold on to church property.<sup>30</sup> This legal development set the stage for a decisive turn in public opinion, especially among the Orthodox Congregationalists.<sup>31</sup> Thirteen years later, a popular vote swept away the legal provisions providing for the tax support of churches. By an overwhelming majority, voters approved a measure in November 1833 making religious groups "both self-governing and self-supporting."<sup>32</sup>

Typical of New England states with established churches, Massachusetts state law set limitations on which ministers could perform marriages. Following independence, the state allowed ministers to perform marriages only if they were ordained and "settled" over a particular congregation, with later modifications in the law allowing "stated ordained" ministers to do so.<sup>33</sup> As with many other religious laws in New England, these standards were neutral on their face but in practical reality sometimes excluded non-Congregational ministers. Thus, not surprisingly, in Massachusetts, as elsewhere in New England, the issue of the performance of marriages by dissenting ministers was controversial and on occasion resulted in the arrest and prosecution of offending ministers. For example, Universalist



minister John Murray formed the Independent Church of Christ in 1779, and a body of members signed a statement agreeing to “receive him as [their] Minister.” Evidently this group received Murray without ordaining him. Subsequently, the county sheriff arrested Murray for solemnizing marriages. After years of litigation, the courts finally resolved this issue against Murray, noting that “the forms of his ordination were not sufficiently notorious.”<sup>34</sup> Later, Murray “underwent a more ‘notorious’ ordination ceremony and thenceforth had no more troubles with the sheriff.”<sup>35</sup> Another example of such prosecution took place in 1800 when a Catholic priest was prosecuted for illegally performing marriages; however, this case was resolved in favor of the priest on the grounds that he was an ordained minister. This case and others set up a curious dichotomy in Massachusetts law: some groups were not permitted to collect religious taxes from adherents, yet they were permitted to perform marriages.<sup>36</sup>

As in other states, the issue of who could validly solemnize marriage in Massachusetts was at times litigated in contexts other than as the result of prosecutions for violating marriage legislation. The Supreme Judicial Court decided a case in 1822 involving a woman who had been prosecuted for adultery because she was married by a minister thought not to have proper authority to perform marriages. The Court resolved the matter in the woman’s favor, holding that the minister’s particular situation was similar to a prior case involving a Methodist minister whose marriages were held valid. Interestingly, the published case cited authority in the footnotes, emphasizing that under different circumstances ministers might still be found to violate marriage legislation.<sup>37</sup> This notation seemed to reaffirm that restrictions still existed as to which ministers could perform marriages and which could not.

New marriage legislation in Massachusetts promptly followed the 1833 vote. In fact, the need for such a change was on the agenda early in the next session of the legislature in Massachusetts, even before a comprehensive overhaul of religious laws was ordered.<sup>38</sup> The new statute adopted by the legislature provided that “every minister of the gospel within the Commonwealth, who has been ordained according to the usage of his denomination,” was authorized to solemnize marriages.<sup>39</sup>

## **New Hampshire**

As did her sister states in New England, New Hampshire also underwent a process of liberalization during the early nineteenth century. For example, the Toleration Act in 1819 gave all Protestant groups the same rights as Congregationalists to incorporate.<sup>40</sup> In 1827 an act was passed which provided that “no person shall be compelled to join, or support, or be classed with, or associated to, any congregation, church, or religious



society, without his express consent first had or obtained.” Despite these early changes, New Hampshire’s constitution retained elements that were typical of establishment states. Until 1852, only Protestants were eligible to serve in the state legislature. Even well into the twentieth century, the New Hampshire constitution contained provisions which originated in this earlier era of establishment, though these were not enforced.<sup>41</sup>

Despite New Hampshire’s retention of some aspects of its establishment, the development of the state’s laws and judicial interpretations regarding the right to perform marriages was not out of harmony with the changing spirit of the times. A statute adopted in 1791 granted the right to solemnize marriages to “every ordained minister of the gospel in the county where he is settled, or hath his permanent residence.” The mention of “permanent residence” appears to have been intended to include denominations whose ministers were not necessarily “settled” over a congregation. This interpretation was taken by the state’s highest court in 1820 in the case of *Town of Londonderry v. Town of Chester*.<sup>42</sup> In this case, the court refused to read into the 1791 law a requirement that a minister be “settled.” Probably having in mind such groups as Methodists whose ministers often itinerated, the court stated that “the discipline of some sects had become inconsistent with permanent settlements [of ministers].” The court noted that “population had become so sparse, that settled ministers could not be maintained in every new town.”<sup>43</sup>

New Hampshire continued this liberalization of its marriage law in 1832, when the state adopted a new statute. In contrast to the 1791 law, this new statute gave ministers statewide authority. It also eliminated the term “settled” and clearly extended the right to perform marriages to ministers of all denominations.<sup>44</sup>

## Other States

While the forgoing sketches focus on states that had established churches, readers should bear in mind that some of the original states never had such an establishment. States such as New York, Pennsylvania, and, particularly, Rhode Island did not have established churches.<sup>45</sup> This last state, in fact, was founded as a haven of religious freedom where church and state always were separated.

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1. See Arlin M. Adams and Charles J. Emmerich, *A Nation Dedicated to Religious Liberty: The Constitutional Heritage of the Religion Clauses* (Philadelphia: University of Pennsylvania Press, 1990), 11.

2. Sydney E. Ahlstrom, *A Religious History of the American People*, 2 vols. (New Haven: Yale University Press, 1972), 1:380.



3. Anson Phelps Stokes and Leo Pfeffer, *Church and State in the United States* (New York: Harper and Row, 1964), 65–71.

4. Stokes and Pfeffer, *Church and State*, 69–71. For another source discussing the struggle for religious liberty in Virginia, see Elwyn A. Smith, *Religious Liberty in the United States: The Development of Church-State Thought since the Revolutionary Era* (Philadelphia: Fortress, 1972), 29–55.

5. Robert B. Semple, *A History of the Rise and Progress of the Baptists in Virginia* (Richmond: By the author, 1810), 34; for earlier marriage legislation in Virginia, see William Waller Hening, *Statutes at Large; Being a Collection of All the Laws of Virginia from the First Session of the Legislature in the Year 1619*, 13 vols. (Richmond: George Cochran, 1822), 2:54–55, 291; 3:441–46; 6:81–85.

6. Stokes and Pfeffer, *Church and State*, 66–69; Anson Phelps Stokes, *Church and State in the United States*, 3 vols. (New York: Harper and Brothers, 1950), 1:383; Hening, *Statutes at Large*, 10:361–62.

7. Semple, *Rise and Progress of the Baptists*, 34; *Separation of Church and State in Virginia: A Study in the Development of the Revolution* (Richmond: Davis Bottom, Superintendent of Public Printing, 1910), 67–70, Department of Archives and History of the Virginia State Library.

8. Quakers had detailed, written rules governing the performance of marriages. See *The Book of Discipline, Agreed on by the Yearly Meeting of Friends for New-England* (Providence, 1785), 63–71; and H. E. Smith, “The Quakers, Their Migration to the Upper Ohio, Their Customs and Discipline,” *Ohio Archaeological and Historical Publications* 37 (1928): 59–63. Mennonites appear to have had only brief, generalized statements of “confession” regarding the sacred nature of marriage and the need to marry within the faith.

9. Hening, *Statutes at Large*, 11:503–4.

10. Stokes and Pfeffer, *Church and State*, 71–72.

11. *An Act to Establish Rules to Be Observed in Solemnizing the Rites of Matrimony, Laws of North Carolina*, ch. 7, 9–10, April 1778 Session, in Redgraves, North Carolina, 1777–1899, fiche 2.

12. Stokes and Pfeffer, *Church and State*, 72. As to the issue of rights for Jews, a well-documented example can be seen in the history of Maryland, where “one of the most protracted, bitter, exciting and instructive battles for equal civil rights for Jews took place.” This struggle resulted in legislation being passed in 1826 that put Jews and Christians on equal footing. Morris U. Schappes, ed., *A Documentary History of the Jews in the United States, 1654–1875*, 3d ed. (New York: Schocken Books, 1971), 139–41; see Hasia R. Diner, *A Time for Gathering: The Second Migration, 1820–1880* (Baltimore: Johns Hopkins University Press, 1992), 150.

13. *Massachusetts Legislature, Convention for Framing a Constitution of Government for the State of Massachusetts Bay, from the Commencement of Their First Session, September 1, 1779, to the Close of Their Last Session, June 16, 1780* (Boston: Dutton and Wentworth, Printers to the State, 1832), §3, 223–24; William G. McLoughlin, *New England Dissent, 1630–1833: The Baptists and the Separation of Church and State*, 2 vols. (Cambridge: Harvard University Press, 1971), 1:603.

14. “Third Article in the Declaration of Rights,” *Spirit of the Pilgrims* 4 (December 1831): 634. This periodical was established in 1828 as a means for Orthodox Congregationalists to “explain their own faith.” These Congregationalists saw themselves as the “proper and legitimate representatives of their pilgrim fathers.” *Spirit of the Pilgrims* 1 (January 1828): 5, 8.

15. McLoughlin, *New England Dissent*, 1:616–17.

16. Ahlstrom, *Religious History*, 1:393.



17. Smith, *Religious Liberty*, 69–70.
18. William Warren Sweet, *The Congregationalists, Religion on the American Frontier, 1783–1850*, vol. 3 (Chicago: University of Chicago Press, 1939), 10–11.
19. *An Act to Repeal a Certain Act, and Parts of an Act Therein Mentioned*, October 24, 1807 (this act repealed *An Act in Addition to, and in Alteration of an Act, Entitled, Act for the Support of the Gospel*, November 3, 1801, and §§2, 3, 4, 5, and 6 of *An Act for the Support of the Gospel*, October 26, 1797), in Redgraves, Vermont, fiche 35; McLoughlin, *New England Dissent*, 2:789.
20. McLoughlin, *New England Dissent*, 2:789.
21. John W. Welch, “Jesse Smith’s 1814 Protest,” *BYU Studies* 33, no. 1 (1993): 131–44.
22. Stokes and Pfeffer, *Church and State*, 74.
23. McLoughlin, *New England Dissent*, 2:1025–43.
24. McLoughlin, *New England Dissent*, 2:1042–62.
25. Stokes, *Church and State*, 1:418.
26. *An Act for the Due and Orderly Celebrating of Marriage*, May 25, 1820, in Redgraves, Connecticut, fiche 6; italics in original.
27. *Roberts v. State Treasurer*, 2 Root 381–82 (Conn. 1797).
28. *Roberts v. State Treasurer*, 2 Root 382. Subsequent cases also treated the issue of whether marriages performed by Methodist ministers were valid; however, these were decided after the adoption of the liberalized marriage law, quoted above. Section 6 of this statute contained wording that validated prior marriages that might otherwise have been called into question. *Kibbe v. Antram*, 4 Day 134 (Conn. 1821); *Goshen v. Stonington*, 4 Day 209 (Conn. 1822). A note in one early nineteenth-century commentary on Connecticut law suggests that misconceptions concerning who could perform a marriage were widespread. See Zephaniah Swift, *A System of the Laws of the State of Connecticut*, 6 vols. (1795; reprint, New York: Arno, 1972), 1:189 n.
29. Stokes and Pfeffer, *Church and State*, 77; see also *Journal of the Debates and Proceedings before the Massachusetts Constitutional Convention, 1820–21* (1853; reprint, New York: Da Capo, 1970).
30. See *Baker v. Fales*, 16 Mass. 488 (1820). The case is discussed in detail in McLoughlin, *New England Dissent*, 2:1189–95.
31. Even influential orthodox Congregationalist publications such as *The Spirit of the Pilgrims* eventually ran articles pointing out the flaws in the Massachusetts system of religious laws and calling for disestablishment. See “Third Article in the Declaration of Rights,” *Spirit of the Pilgrims* 4 (December 1831): 629–48. Likewise the *Boston Recorder*, also an influential Congregationalist paper, published articles critical of this system of laws and advocated these changes as a way of strengthening religion in Massachusetts. “Religious Laws,” a series reprinted from the *Essex Gazette* in the *Boston Recorder*, May 11–June 15, 1831.
32. Stokes and Pfeffer, *Church and State*, 77–78. McLoughlin states that this outcome was so widely expected that major newspapers did not even carry the news of this significant event. McLoughlin, *New England Dissent*, 2:1259.
33. McLoughlin, *New England Dissent*, 1:521; *An Act for the Orderly Solemnization of Marriages*, February 1786, 437, in Redgraves, Massachusetts, Commonwealth, Acts and Laws, 1780–1788, fiche 8.
34. McLoughlin, *New England Dissent*, 1:653–57.
35. McLoughlin, *New England Dissent*, 1:658. For additional biographical information, see [John Murray], *The Life of Rev. John Murray, Preacher of Universal Salvation, Written by Himself, with a Continuation, by Mrs. Judith Sargent Murray* (Boston: Universalist Publishing House, 1870).



36. McLoughlin, *New England Dissent*, 1:658–59. Note that the application of Massachusetts marriage laws appears to still have been generating controversy as late as 1830. The *Painesville Telegraph* and *Geauga Free Press* reprinted a story from the *New York Spectator* on March 23, 1830, reporting on a controversy that arose in this regard.

37. *Commonwealth v. Catharine Spooner*, 18 Mass. 236 (1822).

38. "Massachusetts Legislature," *Boston Recorder*, February 15, 1834. A week later, the legislature took up the issue of considering "what alterations are necessary in the laws relating to religion, in order to render them consonant to the letter and spirit of the Constitution, as now amended." "Massachusetts Legislature," *Boston Recorder*, February 22, 1834.

39. *An Act for the Orderly Solemnization of Marriages*, April 1, 1834, in Redgraves, Massachusetts, fiche 97, 251–57. For earlier marriage legislation see *An Act in Further Addition to the Act for the Orderly Solemnization of Marriages*, February 12, 1821, in Redgraves, Massachusetts, fiche 57, 507; and *An Act for the Orderly Solemnization of Marriages*, June 22, 1786, in *The First Laws of the Commonwealth of Massachusetts* (Wilmington: Michael Glazier, 1981), 253–56.

40. *An Act in Amendment of an Act Entitled an Act for Regulating Towns and the Choice of Town Officers, Passed February 8, 1791, July 1, 1819*, in Redgraves, New Hampshire, fiche 20.

41. Adams and Emmerich, *A Nation Dedicated to Religious Liberty*, 67, 120; Stokes and Pfeffer, *Church and State*, 78; New Hampshire Constitution, Bill of Rights, Art. 6, in *The Revised Laws of the State of New Hampshire* (Concord: Rumford, 1942), 5–6; *New Hampshire Revised Statutes Annotated 1955, 1988 Replacement Edition* (Oxford, N.H.: Equity Publishing, 1988).

42. *Town of Londonderry v. Town of Chester*, 2 N.H. 268 (1820).

43. *Town of Londonderry v. Town of Chester*, 276.

44. *An Act in Addition to an Act Regulating Marriages, and for the Registering of Marriages, Births and Burials Passed February 15, 1791, December 12, 1832, Laws of the State of New-Hampshire; Passed November Session, 1832* (Concord: Moses G. Atwood, 1833), 88, in Redgraves, New Hampshire, 1783–1899, fiche 31.

45. Colonial authorities in New York rebuffed at least one attempt by Anglican ministers to gain a monopoly over the performance of marriages. See Gustavus Meyers, *History of Bigotry in the United States* (New York: Random House, 1943), 59.