The Legislative Antipolygamy Campaign

The Legislative Antipolygamy Campaign

Richard D. Poll

"Presumptions," Orma Linford has pointed out, "are the balancing blocks in striking a balance between majority rule and minority rights, between liberty and order, between established social rules and religious freedom." Two interrelated presumptions underlay the nineteenth-century campaign against Mormon plural marriage that is reviewed in this essay. The first was that an institution so repugnant to conventional Christian values as polygamy could not qualify as an "exercise of religion" presumptively entitled to protection under the First Amendment. The second was that Mormon plural marriage, whatever its practitioners might believe or say about it, was "an overt act against peace and good order" (Jefferson's phrase) and therefore ineligible for constitutional protection. These presumptions, Linford notes, eventually paved the way "for any kind of action Congress desired to take." She might have included acts by several territorial and state legislatures and added that the same presumptions led the federal courts to sustain almost all such measures.[1]

The legislative campaign against Mormon plural marriage began in Congress a few weeks before the new Republican party took official cognizance of the "twin relics of barbarism" in its 1856 platform. It continued for almost forty years, with Idaho, Nevada, and Arizona joining the campaign toward the last. A mixture of political and moralistic considerations motivated each phase of the undertaking, from the linking of polygamy with slavery in the early efforts to assert congressional authority over the "domestic institutions" of the territories to the coupling of plural marriage and "theocratic despotism" in the later efforts to establish non-Mormon control of the government of Utah Territory. The latter pairing was often labeled "the Mormon Question."[2]

The distinction of introducing the first antipolygamy measure belongs to Edwin Ball, an Ohio Republican, who on 14 April 1856, asked the unanimous consent of the House of Representatives to offer this resolution:

> *Resolved,* That the Committee on the Judiciary be instructed to inquire into the propriety of the enactment by Congress of a law prohibiting, under appropriate penalties, any person who may have been married, and who at the time may have a husband or wife living, from intermarrying or cohabiting with another, within any of the territory of the United States; anything in any law, regulation, or usage in such territory to the contrary notwithstanding. And if the said committee shall deem such regulation expedient that they shall prepareand report to this House a bill to that effect with as little delay as may be convenient.[3]

Objection being made, Ball moved to suspend the rules so that the proposition could be received. But the solid Republican contingent, augmented by only a handful of Americans (Know-Nothings) and Democrats, failed to give the motion the necessary two-thirds majority, and it died.

The first antipolygamy bill was introduced in the House in the same preelection session. Republican Justin S. Morrill, Representative and afterwards Senator from Vermont and a man remembered by Mormons as a leader in the campaign for a monogamous America, reported the measure from the Committee on the Territories on 26 June 1856. His remarks on that occasion struck the keynote of most later arguments for congressional action against the marital practices of the Latter-day Saints:

> So great is the necessity for some decisive legislation, if there are any who hesitate, I would say to them, as did Jefferson, at the time Louisiana was acquired, that they should "throw themselves on their country" "casting behind them metaphysical subtilties, and risking themselves like faithful servants."
>
> There is no purpose to interfere with the most absolute freedom of religion, nor to intermeddle with the rights of conscience; but the sole design is to punish gross offenses, whether in secular or ecclesiastical garb; to prevent practices which outrage the moral sense of the civilized world, and to reach even those "who steal the livery of the court of Heaven to serve the Devil in."[4]

The bill provided that any person, or persons, in the territory of the United States, who, being married, should "intermarry with . . . or cohabit with, or live with, any person or persons as partners, acknowledging the conjugal relation, the former husband or wife being still living," was to be punished by a fine of five hundred dollars and two to five years in prison.[5] Noteworthy is the distinction between open polygamy and surreptitious bigamy and cohabitation, a distinction made in almost all subsequent legislation designed for Utah. The Morrill bill never came up for debate in a Congress more interested in the turmoil in Kansas and the forthcoming presidential contest. It did receive attention in Utah, however, where Brigham Young suggested, with oratorical embellishments, the course that Latter-day Saints intended to follow if such laws were passed:

> Polygamy they are unconstitutionally striving to prevent; when they will accomplish their object is not for me to say. . . . How will they get rid of this awful evil in Utah? They will have to expend about three hundred millions of dollars for building a prison, for we must all go into prison. And after they have expended that amount for a prison, and roofed it over from the summit of the Rocky Mountains to the summit of the Sierra Nevada, we will dig out and go preaching through the world.[6]

The Utah Expedition kept the Mormon Question before the Thirty-fifth Congress, but again the demand for antipolygamy legislation was insufficient to produce results. Representative Morrill reintroduced his bill in January

1858, but it died in committee.[7] When Indiana Representative Schuyler Colfax sought to amend an appropriation bill to repeal all laws of Utah "authorizing or tolerating polygamy, or the collection of tithes for the benefit or maintenance of any religious organization," he was ruled out of order.[8]

With the termination of the Utah War, the demand for action relative to the customs of the Mormons declined momentarily. But journalistic and official reports about the passive sabotage of judicial proceedings in the territory were ammunition for Republican reformers, and Morrill was back with his legislation early in 1860. It was insured of some attention by the adoption of Pennsylvanian Thaddeus Stevens's resolution instructing the Committee on the Judiciary "to inquire into the expediency of prohibiting polygamy in the Territories, and so to modify the laws of Utah as to make the future commission of that offense penal."[9]

The bill recommended by the committee contained a preamble that denounced plural marriage as an "abomination in a Christian country" and rejected the Mormon claim that it was a religious rite. Section 1 offered substantially the same definition and punishment of polygamy as were found in the earlier Morrill bills. Section 2 disapproved and annulled all acts of the legislatures of the State of Deseret and Utah Territory that incorporated The Church of Jesus Christ of Latter-day Saints, and all other acts which "establish, support, maintain, shield, or countenance polygamy."[10] The committee report reasserted the barbaric nature of polygamy, declared that the First Amendment was intended to protect only Christian belief and practices, and placed this expansive interpretation upon the authority of the national government over the territories of the United States: "It is competent for Congress to declare any act criminal which is not sanctioned or authorized by the provisions of the Constitution."[11]

No one in the House of Representatives except William H. Hooper, Utah's delegate, was willing to disagree with the censure of polygamy, but there was no such unanimity on the question of congressional powers in relation to the practice. The bill was warmly debated, the discussion colored throughout by the slavery question and strong sectionalism. The outcome, however, demonstrated that anti-Mormon sentiment was sufficiently strong to override proslavery objections and the argument that the measure would be futile. Fifty-seven Democrats, three Know-Nothings, and only one Republican opposed final passage.[12]

Delegate Hooper was heard briefly before the voting. His statement was strikingly prophetic of the results that the antipolygamy proposal did bring when finally enacted two years later:

> I . . . beg all to hear me say, then, upon my honor as a gentleman, that the passage of this bill will not be unacceptable to the extreme advocates of polygamy in the Territory of Utah. It will entitle them to accuse of luke-warmness

> and disaffection to the common cause all those who hesitate to defend it as an institution. Sir, it will unite us all in opposition to the unjust pretensions of the national Government to put it down by force.[13]

The House bill was favorably reported from the Senate Committee on the Judiciary, but it was still untouched on the calendar when the second session of the Thirty-sixth Congress came to an end the day before Abraham Lincoln was inaugurated and a month before Fort Sumter fell.

As might be expected, the months that witnessed the beginning of the Civil War saw the Mormon Question pushed into the background. But the Republicans controlled the new Congress, and their obligation to the other "twin relic" could not be indefinitely forgotten. Morrill's bill was reintroduced on 8 April 1862, reported favorably by the Committee on the Territories, and passed without debate or roll call twenty days later.[14] It came out of the Senate Committee on the Judiciary on 8 May with amendments and a recommendation that it pass.

The change proposed in Section 1 would delete reference to punishing "cohabitation without marriage" because, as Delaware Senator James A. Bayard later explained for the committee, "It would be of no utility to carry the act beyond the evil intended to be remedied."[15] Section 2 was left unchanged, disapproving and annulling the charter of the LDS church and all other acts of the Utah Legislative assembly that abetted polygamy. A third section was added, the purpose of which was declared by Bayard to be "to operate in the nature of a mortmain law, to prevent the entire property of that Territory being accumulated in perpetuity in the hands of a species of theological institutions." It provided that no corporation or association for religious or charitable purposes in a territory could hold real property in excess of one hundred thousand dollars, all property above this amount to escheat to the United States.[16]

The Senate debate was perfunctory. James A. McDougall of California questioned the prudence of arousing the Mormons at a time when secure overland communications were vital to the Union cause, but only he and his colleague, Milton S. Latham, cast negative votes when thirty-seven Senators voted to accept the committee recommendations after lowering the limitation on real property holdings to fifty thousand dollars. The House concurred in the Senate amendments without debate.[17]

A Mormon legend to the contrary notwithstanding, President Lincoln signed the Morrill Act on 1 July 1862. It is memorable as an initial step—a foundation for later congressional action—for its provisions doomed it to failure. Section 1 defined the crime of bigamy as the act of marrying one or more persons while already having a living husband or wife, and prescribed a fine of not more than five hundred dollars and imprisonment for not more than five years as the penalty. The Mormons soon demonstrated that

as long as enforcement was left to them, the act would be ignored as an unconstitutional infringement upon their religion.[18] Not until the enactment of the Edmunds Act in 1882 were more than a handful of polygamy cases successfully prosecuted.

Section 2 professed to revoke the charter of the Mormon church and repeal other territorial laws, but it was rendered innocuous by the proviso that "this act shall be so limited and construed as not to affect or interfere with the tights of property legally acquired under the ordinance . . . nor with the right 'to worship God according to the dictates of conscience.'"

Section 3 set a fifty thousand dollar limit on the real property of any religious association in the territories, but the exemption of "vested rights in real estate," necessary to avoid the Constitutional ban on ex post facto legislation, weakened the force of this provision. It was ignored in Utah until the passage of the Edmunds-Tucker Act of 1887.

Sporadic efforts by territorial judges to enforce the antibigamy law came to nothing during the Civil War years, President Lincoln being disinclined to risk trouble in Utah. Only when the issues of Southern reconstruction brought a new tone and new leaders to national politics did the Mormons again receive congressional attention. The construction of the transcontinental railroad, the expansion of western gold and silver mining, and the development of organized anti-Mormon politics in Utah with the Godbeite movement and the Liberal party all influenced the postwar approaches to the remaining "twin relic."

As early as 1866, the House Committee on the Territories held hearings on Utah affairs but was able to propose no "practical solution of the abuses and evils" believed to exist. Neither establishment of a military government nor division of the territory among its neighbors seemed to answer the Mormon Question.[19] Senator Benjamin E Wade's plan for placing all executive, judicial, and militia activities under the direct control of the governor and stripping the Mormon church of its temporal authority got nowhere, but it pointed the way for future laws.[20]

A novel proposal was made in 1869 by Indiana Republican George W. Julian "to discourage polygamy in Utah by granting the right of suffrage to the women of that territory."[21] It died in a committee of the House. That it was conceived in a false notion about Utah women became plain later in 1869 when the territorial legislature passed a women's suffrage law, the effect of which was to increase the voting strength of the Church-dominated People's party.

A commoner type of proposal during the years 1869–74 followed the earlier Wade bill and used some of the lessons being learned about political reconstruction in the South. The Cullom bill, named for another long-time foe of the "twin relic," Illinois Republican Shelby M. Cullom, came from

the House Committee on the Territories in February 1870. A hodgepodge of thirty-four sections, it called for the appointment of all probate judges, justices of the peace, judges of elections, notaries public, and sheriffs by the territorial governor; reduced the probate courts' jurisdiction; placed the selection of jury panels in the hands of federal appointees; prescribed penalties for cohabitation and adultery as well as bigamy and polygamy; barred believers in plural marriage from jury service in polygamy and cohabitation trials; exempted polygamy and related offenses from the statute of limitations; permitted wives to testify against their husbands as to the fact of polygamous marriage; excluded polygamists from naturalization, voting, or holding public office; permitted confiscation of polygamists' property to care for their dependents; and authorized the President, "when in his judgment it shall be necessary to enforce the laws . . . or the convictions and sentences of the courts thereof, to send such a portion of the Army of the United States to said Territory as shall be required therefor."[22]

New York Republican Hamilton Ward's defense of the bill echoed the spirit of the times:

> I am sorry to see in this country the signs of a sickly sentimentality which proposes to punish nobody, which proposes to hang nobody, which proposes to let all the unchained passions of the human heart become free to prey upon mankind. Had you hung one hundred traitors you would not have had rebellion in North Carolina and Tennessee today. Had you enforced the laws of the country against Utah years ago you would not have had this terrible power confronting you at this moment.[23]

The opposition mustered some of the same arguments that were used without too great effect against the Reconstruction Acts and the Force Acts. Several of the more drastic provisions were eliminated, including the arbitrary use of the army, before the bill passed the House. A motion to recommit, which would have killed the bill without placing on the killers the onus of pro-Mormonism was narrowly defeated, Republicans comprising almost the entire voting majority that saved the bill. A fourth of the Representatives abstained on this key vote, and only nine members from the states of the former Confederacy, all Radical Republicans, voted to pass the Cullom bill.[24] This pattern was to be repeated in subsequent voting on antipolygamy measures, not because Democrats and Southerners were more favorable to Mormonism than their political opposites, but because the alignment on post–Civil War reconstruction inevitably influenced the consideration of similar measures for Utah.

The Cullom bill died in the Senate, partly because of reports that a liberal movement among the Saints would undermine the theocracy if external pressure were withheld. The Godbeite movement disappointed these hopes, but the excessive zeal of Utah Chief Justice James B. McKean

generated sufficient embarrassment for the Grant administration to briefly reduce the pressure for new Utah legislation.

Despite later efforts to secure comprehensive reconstruction measures, as in the Freylinghuysen bill of 1873,[25] the only statutory product of the Grant era was the Poland Act of 1874, which sharply curtailed the jurisdiction of the Mormon-held probate courts and changed the method of impaneling juries to facilitate convictions under the Morrill Act.[26] A significant feature of this clearly Republican measure was language expediting appeal of convictions for polygamy to the U.S. Supreme Court. Under this provision Brigham Young's secretary, George Reynolds, was prosecuted in a test case, and in January 1879 the Court moved the antipolygamy campaign into a new phase by sustaining the constitutionality of the 1862 law.[27] The gist of the Court's unanimous decision follows:

> [By the first amendment] Congress was deprived of all legislative power over mere opinion, but was left free to reach actions which were in violation of social duties or subversive of good order.
>
> Polygamy has always been odious among the northern and western nations of Europe. . . . and there never has been a time in any State of the Union when polygamy has not been an offence against society, cognizable by the civil courts. . . . In the face of all this evidence, it is impossible to believe that the constitutional guaranty of religious freedom was intended to prohibit legislation in respect to this most important feature of social life.
>
> This being so, the only question which remains is, whether those who make polygamy a part of their religion are excepted from the operation of the statute. If they are, then those who do not make polygamy a part of their religious belief may be found guilty and punished, while those who do, must be acquitted and go free. This would be introducing a new element into criminal law.[28]

These findings in the first Supreme Court decision arising from the religion clauses of the First Amendment have been eroded since in cases involving Jehovah's Witnesses and other conscientious objectors, but in 1879 they settled the issue of constitutionality insofar as the opponents of polygamy were concerned. As for the stubborn defenders of that practice, their decade of civil disobedience, remembered in Mormon lore under the captions "crusade" and "underground," brought them and their church the pains and penalties that legislators would shortly devise and courts would almost uniformly sustain.[29]

The Reynolds decision touched off considerable nationwide agitation. While the Liberal party and its feminine auxiliary, the Ladies' Anti-Polygamy Society, were responsible for much of the excitement, aroused moral sensibilities prompted calls for action from all parts of the country. When the Mormon reaction to the decision became known—sustain plural marriage and take the consequences—President Hayes addressed the issue in his 1 December 1879 state of the union message:

> If necessary to secure obedience to the law, the enjoyment and exercise of the rights and privileges of citizenship in the Territories of the United States may be withheld or withdrawn from those who violate or oppose the enforcement of the law.[30]

When Presidents Garfield and Arthur continued to press for action, it is not surprising that the first session of the Forty-seventh Congress, which met from December 1881 to August 1882, saw no less than twenty-three bills and constitutional amendments on polygamy introduced, along with other proposals and stacks of petitions on the Mormon Question.[31] The Edmunds Act, the single law that emerged from this plethora, bears the stamp of the Reconstruction era in terms and sponsorship. As finally signed on 22 March 1882, it contained nine sections, most of them designed to expedite polygamy prosecutions by defining a new offense, "cohabiting with more than one woman," and barring believers in plural marriage from jury service in such cases. Section 8 prohibited polygamists and their spouses from voting or holding selective or appointive office in any territory, without requiring conviction of law violation. Section 9 abolished the election machinery in Utah Territory and placed the registration of voters and the conduct of elections under a commission of five persons to be appointed by the president with the advice and consent of the Senate.[32]

The doctrine of absolute congressional authority over the territories was relied on by Vermont Senator George E. Edmunds and other advocates of the bill. Chief opposition came from Southern senators who argued that this Republican view had brought war and ruin to the South and promised to do the same for Utah. In both houses of Congress, opposition came exclusively from Democrats, many of whom charged that sections 8 and 9 were intended to "transfer the political power of this Territory to the Republican party—a party which has 1,500 votes out of 15,000."[33] The bill passed the Senate without a record vote. After the Democratic motion to recommit failed in the House of Representatives, the measure was approved decisively; all but five of the "nay" votes came from below the Mason-Dixon line.[34]

It is clear that national political considerations influenced the enactment and enforcement of the Edmunds Act, both in Utah and in Washington. Eventually Utah would become a state whose allegiance was worth courting. Developments in the 1880s suggest that the Republican strategy was to bring such pressure against the Mormon church as an institution that power would pass into the hands of pragmatic Mormons who would yield on polygamy to relieve the pressure and achieve statehood, while the Democrats tried to hold the support of Utah's Mormon majority by a milder policy of law enforcement.[35]

The Utah Commission, originally three Republicans and two Democrats, arrived in Salt Lake City in 1882 and went vigorously to work. Its set of new election regulations included the registration requirement of an oath of nonpolygamous status. Three years later the Supreme Court held that the oath exceeded the commission's authority,[36] but meanwhile it had been used in barring an estimated twelve thousand polygamists, alleged polygamists, and their wives from the polls. This reduced People's party majorities in Utah but produced no Liberal party victories outside the small gentile mining and railroad towns.[37]

Hardly had the "judicial crusade" been launched, which would convict thirteen hundred Mormons of polygamy or unlawful cohabitation and send hundreds of others into hiding, before more antipolygamy proposals appeared. President Arthur called for Congress to assume "entire political control" of Utah, and the 1884 Republican platform called for the use of military force if necessary to suppress polygamy and Mormon theocratic power. The election, however, was a Democratic victory, and the pressure for legislation was temporarily relieved.

While President Cleveland did not ignore the Mormon Question, his view of the subject was more restrained than that of his predecessors. He recalled Governor Eli H. Murray in March 1886 for "impeding the government of Utah," and he refused to sign the Edmunds-Tucker Act a year later. Beginning in 1887 the Utah Commission was divided in its recommendations, those members who denied the need for new legislation being all Democrats. The new district attorney and district judge appointed in the latter part of Cleveland's first administration took such a conciliatory view that many polygamists voluntarily surrendered, declared their guilt, pledged future compliance with the law, and were given very light sentences. Although President Harrison restored the zealous Judge Charles S. Zane in 1889, the "judicial crusade" never regained its former momentum.[38]

Meanwhile, Congress worked intermittently under Senator Edmunds's leadership to produce the last major piece of legislation on polygamy and related Utah issues. The Vermont Senator's first proposal to amend the 1882 antipolygamy statute was introduced before that year ended, but it died on the calendar.[39] An expanded measure made its way to Senate passage in 1884, the opposition Southern Democrats receiving some help from Senators like Massachusetts Senator George E Hoar who objected to the provision that would eliminate female suffrage in Utah. More than a third of the Senate did not participate in the final vote for passage, and the House went off to the elections without considering the measure.[40]

The Forty-ninth Congress (1885–86) witnessed the initial committee sponsorship of a proposal to amend the Constitution to ban polygamy. Speaking for the House Committee on the Judiciary, Virginian John Randolph Tucker urged passage on the ground that "the evils of the Mormon system

are deeper than can be cured by ordinary legislation." Apparently congressmen were of the opinion, however, that there was still latitude under the existing Constitution, for the resolution expired on the calendar.[41] Instead, Tucker cooperated with Senator Edmunds to produce the last major statute dealing with the Mormon Question.

The Edmunds-Tucker Act, an extraordinary composite of moral, social, and political reform legislation, became law on 3 March 1887. Most of its twenty-seven sections sought to facilitate conviction of polygamists by permitting exceptions to standard judicial and law enforcement procedures. Spouses were permitted to testify against their mates, witnesses could be attached without previous subpoena, illegitimate children "born more than twelve months after the passage of this act" were not entitled to inherit property from their fathers, all marriages must be publicly recorded, and prosecutions for adultery, incest, and fornication could be initiated by law enforcement officials. The "right of dower," abolished by Utah statute to protect plural wives, was reinstated; like the provision concerning children's inheritances, it was intended to place polygamous relationships outside the pale of the law.

Several major sections looked beyond Mormon marital practices to the temporal interests and institutional solidarity of the LDS church:

1. The Church, the Perpetual Emigrating Fund Company, and the Nauvoo Legion (Utah militia) were all abolished as corporate entities, and all property held by them in excess of the $50,000 limit set by the 1862 Morrill Act was declared escheated to the United States, to be administered by the territorial supreme court for the schools of Utah. Under these provisions, which exempted houses of worship, parsonages, and cemeteries, over $800,000 worth of real and personal property was soon under federal management.
2. Female voting was abolished over the objections of a few congressional friends of the national women's suffrage movement, and a comprehensive test oath was prescribed to eliminate polygamists from voting, office holding, or jury service.
3. All judicial, law enforcement, and militia powers in Utah were vested in federal appointees—the now-permanent Utah Commission, governor, territorial district and supreme courts, U.S. marshal, and local officials answerable to them. Even the probate judges, whose duties were now reduced to handling estates and presiding over county commissions, were made appointive by the president with the endorsement of the Senate.
4. Direct responsibility for the schools was placed on the territorial supreme court in an effort to promote a public educational system free from Mormon influences.[42]

It will be observed that most of the proposals of the Cullom bill of 1870 had thus finally become law. Evidence of the state of national opinion was the recognition by opponents of this comprehensive measure that theirs was a lost cause. Softness toward Mormonism was as politically inexpedient as is softness toward communism in the present generation, and partisan division in Congress is reflected only in the fact that such opposition as there was to the Edmunds-Tucker Act came from the Democratic side.[43]

The federal antipolygamy statutes applied to all of the territories, and efforts to prosecute violators were pressed sporadically in Idaho and Arizona, where substantial Mormon communities existed in the 1870s and 1880s. Most of the local sponsorship for such efforts came from Republicans like Idaho's Fred T. DuBois, whose primary target was the political solidarity and Democratic leanings of the Saints. Evidence of this concern was the adoption by both territorial legislatures of test oaths banning all members of the Mormon church from voting, office holding, and serving on juries. The Idaho statute, adopted in 1885, disfranchised every "member of any . . . organization . . . which teaches . . . its members . . . to commit the crime of bigamy or polygamy . . . as a duty arising or resulting from membership."[44]

A comparable law was passed in Arizona in 1885, but Mormons who were willing to take the oath were permitted to do so and to vote; the law was repealed two years later. Nevada's 1887 ban on voting by anyone "who is a member of the 'Church of Jesus Christ of Latter-day Saints,' commonly called the Mormon Church," was part of a political maneuver to annex part of Idaho Territory. A year later the Nevada Supreme Court found it violative of the state constitution.[45]

On the other hand, the Idaho test oath was vigorously enforced to disfranchise the Latter-day Saints in several elections. The ban on Mormon voting was then incorporated in the first Idaho state constitution (1890), the U.S. Congress finding the provision acceptable after heatedly debating the matter. Since the Woodruff Manifesto did not immediately end bloc voting by Idaho's Mormons, the state legislature then changed the language of the test oath to disqualify members of any organization which "teaches or has taught . . . patriarchal or celestial marriage." This apparently ex post facto law was upheld by the Idaho Supreme Court, but the "has taught" language was repealed shortly afterward when it became clear that Idaho Mormons, like their Utah contemporaries, were no longer bloc voting. The Idaho constitution still disfranchises believers in "patriarchal or celestial marriage," but the interpretation since an Idaho Supreme Court decision in 1908 has been that only the practice of polygamy in this world is meant by the language.[46]

If Congress and state courts had little difficulty justifying the anti-polygamy and associated anti-Mormon statutes of the 1880s, the United States Supreme Court proved equally capable of adjusting the First Amendment to the temper of the times. The prohibition of unlawful cohabitation was upheld in 1885,[47] and a Utah court ruling that no sexual intercourse need be proved to establish guilt was sustained.[48] The doctrine of "constructive cohabitation," which predicated guilt on any acknowledgment of a marital tie by word or act, was found constitutional in 1886.[49] Only the ingenious "segregation" doctrine, under which Lorenzo Snow and others were sentenced to several consecutive terms of six months for being found guilty of unlawful cohabitation at several past intervals of time, was overruled.[50] The escheatment of Mormon church property was upheld in 1890,[51] and even the Idaho test oath survived a court challenge,[52] increasing the likelihood that a similar congressional requirement for Utah voters, if enacted, would be found constitutional.[53]

By now it had become apparent to many Mormons that discretion must be the better part of valor. Not only was the property of the Church being taken into custody, but one Utah judge was refusing to naturalize any LDS immigrants on the ground that they belonged to a subversive organization. The Republican platform of 1888 called for further laws "to divorce the political from the ecclesiastical power, and thus stamp out the attendant wickedness of polygamy,"[54] and President Harrison's appointments for Utah betokened an increase in the pressure on the Saints. When, in the spring of 1890, the Cullom-Struble bill proposed to apply an Idaho-style test oath to Utah, something had to give. The measure, which bore the names of now-Senator Shelby M. Cullom of Illinois and Representative Isaac R. Struble of Iowa, did not reach debate in either house of Congress,[55] but it was one of the factors that made 1890 the decisive year in the history of Mormon polygamy and the campaign by the federal government for its abolition.

The Woodruff Manifesto of 25 September 1890, by which the President of the LDS church announced his intention to comply with the law of the land and advised the Saints to do the same, is complex and ambiguous in its causes, meaning, and consequences. It did relieve the pressure for further antipolygamy legislation, but it did not prevent Congress from requiring that Utah's state constitution contain a guarantee of separation of church and state and a proviso "that polygamous or plural marriages are forever prohibited."[56]

Neither the proviso and implementing statutes, nor sporadic efforts at enforcement, nor the dogmatic stand against polygamy that the Mormon church adopted early in the twentieth century has prevented a small segment of Latter-day Saints from responding to the same rationale that brought

perhaps 25 percent of their forebears into polygamous families during the half-century that the United States marshaled its legal resources against the practice. On the other hand, the same considerations that led most of Wilford Woodruff's Mormon contemporaries to come to terms with his 1890 revelation make most of today's Mormons so content with the option of only one wife per family that even a Supreme Court reversal of the Reynolds decision would be unlikely to generate a revival of the patriarchal order of marriage.

Richard D. Poll is a professor emeritus of history at Western Illinois University. This essay draws heavily on those earlier studies by the author: "The Twin Relic: A Study of Mormon Polygamy and the Campaign by the Government of the United States for Its Abolition, 1852–1890" (M. A. thesis, Texas Christian University, 1939); "The Mormon Question, 1850–1865: A Study in Politics and Public Opinion" (Ph.D. diss., University of California, Berkeley, 1948); "The Political Reconstruction of Utah Territory, 1866–1890," *Pacific Historical Review*27 (May 1958): 111–26.

1. Orma Linford, "The Mormons and the Law: The Polygamy Cases," *Utah Law Review* 9, pts. 1, 2 (Summer, Winter 1964): pt. 1, 329–30. This two-part series, based on Linford's Ph.D. dissertation with the same title (University of Wisconsin, 1964), is an informative overview of the federal laws and a detailed review of the court cases stemming from them.

2. My article "The Twin Relic" is still the most complete review of congressional measures; appendix J itemizes and gives document citations on bills and resolutions introduced between 1856 and 1890. Useful on Utah background and political events mentioned in this essay are Gustive O. Larson, *The "Americanization" of Utah for Statehood (San* Marino, Calif: Huntington Library, 1971); Robert J. Dwyer, *The Gentile Comes to Utah* (Washington, D.C.: Catholic University of America, 1941); B. H. Roberts, *A Comprehensive History of the Church of Jesus Christ of Latter-day Saints,* 6 vols. (1957; reprint, Provo: Brigham Young University Press, 1965); and Edward Leo Lyman, *Political Deliverance: The Mormon Quest for Utah Statehood* (Urbana: University of Illinois Press, 1986).

3. *Congressional Globe,* 34th Cong., 1st sess., 895. The first oblique congressional attempt to discourage polygamy was in an 1854 proposal, not adopted, to extend the federal land laws to Utah. It provided that "the benefits of this act shall not extend to any person who shall now, or at any time hereafter, be the husband of more than one wife" (ibid., 33d Cong., 1st sess., 1092).

4. Ibid., 1491.

5. Ibid.

6. *Journal of Discourses*4:39.

7. *Congressional Globe,* 35th Cong., 1st sess., 184–85, 2114.

8. Ibid., 1985.

9. Ibid., 36th Cong., 1st sess., 793, 796.

10. Ibid., 1410, 1559.

11. *House Reports,* 39th Cong., 1st sess., no.83 (1860).

12. *Congressional Globe,* 36th Cong., 1st sess., 1409–13, 1491–1501, 1512–23, 1540–46, 1557–59, and appendix, 187–202.

13. Ibid., 1558–59.

14. Ibid., 37th Cong., 2d sess., 1581, 1847–48.

15. Ibid., 2506.

16. Ibid., 2507. According to Linford, "The Mormons and the Law," pt. 1, 315, this was "the first nortmain law ever enacted by Congress."

17. *Congressional Globe,* 37th Cong., 2d sess., 2507, 2587, 2766, 2769, 2906. The text of the act is in chap. 126 of *Statutes at Large* 12 (1865), 501–2.

18. Brigham Young told a Salt Lake City congregation: "How are we transgressing that law? In no other way than by obeying a law which God has given unto us. . . . By and by men will appear in the departments of the Government who will inquire into the validity of some laws and question their constitutionality" *Journal of Discourses* 11:270). Asked five years later what the Mormons were going to do about the law, he replied, "Nothing at all; we mind our own business and I hope everybody else will" (ibid., 14:120).

19. *House* Reports, 39th Cong., 1st sess., no. 96 (1866).

20. *Congressional* Globe, 39th Cong., 1st. sess., 3750.

21. Ibid., 41st Cong., 2d sess., 72.

22. Ibid., 1367–69. For debate on the bill, see ibid., 1009, 1339, 1367–73, 1517–20, 1607, 2142–53, 178–81, 2189, 2603, 3136, 3571–82, 4305, and 41st Cong., 3d sess., 92.

23. Ibid., 41st Cong., 2d sess., 2114.

24. Ibid., 2179, 2181.

25. A milder version of the Wade and Cullom proposals, this bill sponsored by Senator Frederick T. Freylinghuysen, New Jersey Republican, passed the Senate but died in the House (ibid., 42d Cong., 3d sess., 133, 1375, 1779–1815, 1833, 2128).

26. Ibid., 43d Cong., 1st sess., 3395, 4466–75, 5417–18. The Poland Act is found in chap. 469 *of Statutes* at Large 18 (1875), 253–56.

27. George Reynolds vs. U.S. 98 U.S. 145 (1879).

28. Ibid.

29. Larson, *The "Americanization" of Utah,* 61–222.

30. James D. Richardson, ed., *A Compilation of the Messages and Papers of the Presidents, 1789–1902,* 10 vols. (Washington, D.C.: Bureau of National Literature, 1911), 6:4512.

31. Poll, "The Twin Relic," appendix J.

32. Chap. 47 of *Statutes at Large* 22 (1883), 30–32; Linford, in "The Mormons and the Law," pt. 1, 321, n. 59, points out that in 1882 common usage defined polygamists to include people who "maintain its lawfulness." The proposed language of the Edmunds Act was therefore modified to protect the voting rights of Mormons who only believed but did not practice plural marriage. It did not prevent believers from being barred from office-holding, however.

33. Senator George H. Pendleton, Ohio, *Congressional Record,* 47th Cong., 1st sess. 1211.

34. The history of the Edmunds bill is in ibid., 68, 577, 1152–63, 1195–1217, 1732, 1845–77, 1910, 1931, 2197.

35. Larson, *The "Americanization" of Utah,* 223–304; Henry J. Wolfinger, "A Reexamination of the Woodtuff Manifesto in the Light of Utah Constitutional History," *Utah Historical Quarterly* 39 (Fall 1971): 328–49. The fullest account is Lyman, *Political Deliverance.*

36. Murphy vs. Ramsey, 114 U.S. 15 (1885).

37. See Stewart L. Grow, "A Study of the Utah Commission, 1882–1896" (M.S. thesis, University of Utah, 1954), especially 82–194.

38. Poll, "The Political Reconstruction of Utah Territory," 120–21. The more lenient Cleveland policy accounts in part for the relatively large number of convictions reported by the Utah Commission for the years 1888 (334) and 1889 (346).

39. *Congressional Record,* 47th Cong., 2d sess., 3056–59, 3170–87.

40. Ibid., 48th Cong. 1st sess. 4553–66, 5182–91, 5234–50, 5281–98.

41. *House Reports,* 49th Cong., 1st sess. no. 2568 (1886).

42. Paraphrased from chap. 396 of *Statutes at Large* 24 (1887), 635–41.

43. The history of the bill is found in *Congressional Record,* 49th Cong., 1st sess., 122, 345, 405–8, 457–62, 503, 520, 549–67, 611, 5437, 5516, 8032, and 49th Cong., 2d sess., 581–96, 609, 695, 1585, 1785–87, 1877–83, 1896–1904, 1943, 1970, 2667. See also, *House Reports,*49th Cong., 2d sess., no.2753 (1887). The only Republican vote against the act was by Senator Hoar, who opposed the women's suffrage provision.

44. "An Act to Provide for Holding Elections," Idaho, sec. 16 of *Thirteenth Session Laws* (1884–85), 110.

45. Joseph H. Groberg, "The Mormon Disfranchisements of 1882 to 1892," *Brigham Young University Studies* 16 (Spring 1976): 399–408; Eric N. Moody, "Nevada's Anti-Mormon Legislation of 1887 and Southern Idaho Annexation," *Nevada Historical Society Quarterly* 22 (Spring 1979): 21–32.

46. Groberg, "The Mormon Disfranchisements of 1882 and 1892," 401–7; see also Merle W. Wells, *Anti-Mormonism in Idaho,*1972–1892 (Provo: Brigham Young University Press, 1978).

47. Clawson vs. U.S., 113 U.S. 143 and 114 U.S. 477 (1885).

48. Cannon vs. U.S. ll6 U.S. 55 (1885) and 118 U.S. 355 (1886).

49. Snow vs. U.S., 118 U.S. 346 (1886).

50. *ln* re Snow, 120 U.S, 274 (1887).

51. Late Corporation of The Church of Jesus Christ of Latter-day Saints vs. U.S. 136 U.S. 1 (1890) and ibid., 140 U.S. 664 (1891).

52. Davis vs. Beason, 133 U.S. 333 (1890).

53. Linford, "The Mormons and the Law," pt. 1, 308–70, deals with the cases on polygamy and unlawful cohabitation; pt. 2, 543–91, details the civil rights cases and those affecting the LDS church as an entity.

54. Kirk H. Potter, ed., *National Party Platforms* (New York: Macmillan, 1924), 149–50.

55. *Congressional Record,* 51st Cong., 1st sess. 3327, 4000, and *House Reports,* 51st Cong., 1st sess., no. 1811 (1890).

56. Lyman, *Political Deliverance, is the* fullest and most recent account; see also Larson, *The "Americanization" of Utah,* 243–304; and Roberts, *A Comprehensive History of the Church* 6:179–229, 277–346, which are more readily accessible.