A History of Federal Legislation Against Mormon Polygamy and Certain United States Supreme Court Decisions Supporting Such Legislation

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A HISTORY OF FEDERAL LEGISLATION AGAINST MORMON POLYGAMY
AND CERTAIN UNITED STATES SUPREME COURT DECISIONS
SUPPORTING SUCH LEGISLATION

A Thesis
Presented to
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Master of Science in History

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by
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PREFACE

As indicated by the title, this study presents a history of Federal Legislation against Mormon polygamy prior to 1890 and of certain United States Supreme Court decisions supporting such legislation. Of necessity, the subject had to be limited, emphasis being placed upon three legislative acts and upon a few leading court decisions.

Although much has been written concerning the practice of polygamy among the Latterday Saints, nearly all of it has been colored with bias and prejudice, and is therefore unreliable. The subject is one that is hard to write about without betraying partiality. It was a burning issue to fervent Mormons; and it was, and is, emphatically against the morals of other Christian groups. And after its abandonment by the Mormon Church, there has prevailed, even among scholars, a feeling that we should not talk about such things; this attitude has retarded professional study and research. The result is that, in the field of reliable accounts, little has been written, except in a fragmentary way in connection with other subjects and histories. Perhaps, at some future date, a thorough and complete study of the entire polygamy question will be made. The findings of such research would necessarily comprise volumes.

This study is a humble beginning. Material has been found in
various places and collected into this brief volume. The main body of facts, tending to confirm the idea that both Congress and the Supreme Court were influenced in this matter by popular clamor and public opinion, was taken from source and contemporary material, and impresses one with the feeling that if other methods had failed to suppress polygamy, a constitutional amendment would have been forthcoming.
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CHAPTER I

BACKGROUND—CHURCH HISTORY

Polygamy among the Mormons prior to the Woodruff Manifesto, in 1890, was established, according to their belief, by direct revelation from God. To a majority of the limited number who practiced it, the doctrine was part of their religious faith; and they lived it with the greatest purity and the loftiest of ideals. God had commanded it and had promised untold blessings in the eternal world for its righteous observance. 1

In order to have a proper concept of the underlying religious experiences and convictions supporting this plural-wife system, which became almost synonymous with the term Mormon and brought fiery persecution upon its adherents, it seems imperative that a brief consideration of the early history and theology of Mormonism be made.

Joseph Smith, the founder of Mormonism, was born December 23, 1805, at Sharon, Vermont, where the Smith family was struggling to make a living on the frontier. 2

According to Professor Turner, during the latter part of the

1 James E. Talmage, Articles of Faith, (Salt Lake City: Church of Jesus Christ of Latter-day Saints, 1924), p. 424; see also Joseph Fielding Smith, Essentials in Church History (Salt Lake City: Deseret News Press, 1922), p. 341.

2 Joseph Smith, History of the Church, (Salt Lake City: Deseret News Press, 1902), i: 2; also Joseph Smith, Pearl of Great Price (Salt Lake City: Church of Jesus Christ of Latter-day Saints, 1921), p. 46.
eighteenth and the first part of the nineteenth century many land-hungry citizens pushed westward into the regions beyond the Allegheny mountains where land was cheap and where they might have a better chance of improving their economic status. One of these waves of migration brought the Smith family into western New York state, to the village of Manchester, Ontario County, where the father bargained for land and attempted a fresh start in life.

During the winter of 1819–20 a series of religious revivals were conducted in that vicinity by Methodists, Presbyterians, and Baptists. There was intense interest and excitement, each denomination claiming to be the right one and urging all people to be saved. Young Joseph was bewildered and perplexed as to which of these churches was right and which he should join. One day, while reading the Bible, he was impressed by the fifth verse of the first chapter of James, which reads: "If any of you lack wisdom, let him ask of God, that giveth to all men liberally, and upbraideth not; and it shall be given him." The message of this passage of scripture influenced him greatly, for if anyone needed wisdom and knowledge, he did. So, one beautiful morning in the spring of 1820, he went alone to a grove and, kneeling, offered a prayer. As a result, according to his claims, he beheld in vision the Father and the Son, who instructed him to join none of the existing

sects, for they were all wrong, their creeds were an abomination, and their professors were corrupt, teaching for "doctrines the commandments of men, having a form of godliness, but they deny the power thereof". He was further informed that they drew near to the Lord with their lips, but their hearts were far from Him.⁴

It is easy to understand that with such a platform Mormonism found itself in conflict with all other denominations. At the very beginning, it had declared all others to be wrong, and intense opposition and persecution followed. The tenacity with which Joseph Smith affirmed his vision brought ridicule and hatred against him; and in the heat of it, stories were told that he was shiftless, of low character, and a dreamer, guilty of heresy. According to the late Andrew L. Neff, contemporary opinions that have come down to history students of our day do not reflect the original conception of Joseph Smith as he was known in his community, but rather the prejudiced and tilted opinions of later years, formed after he had announced his first vision. Affidavits collected in these years, betray a bias and passion which make them untrustworthy.⁵

In accord with Mormon writers, other visions, heavenly messengers, and revelations from heaven followed, during which time the Book of

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⁴ Joseph Smith, History of the Church, I: 3-6.

⁵ Andrew Love Neff, History of Utah, 1847-1869, (Salt Lake City: Deseret News Press, 1940), p. 3.
Mormon was translated by the gift and help of God from plates having the appearance of gold and taken, with angelic approval, from Hill Cumorah, later called Mormon Hill by people not of the Latter-day Saint faith. The Gospel as it was taught by Christ and His apostles in ancient times was restored, and the Priesthood, or the power to act in the name of God, was also brought back to earth; also the Church was organized April 6, 1830, at Fayette, New York state.

Modern revelation constitutes the very foundation of Mormonism. The scriptures are never complete. God may reveal himself to mankind in modern times as He has in ancient days. The ninth Article of Faith of the Church, written by Joseph Smith, declares: "We believe all that God has revealed, all that He does now reveal, and we believe that He will yet reveal many great and important things pertaining to the Kingdom of God." And many are the revelations found in the Doctrine and Covenants given to members of the Church through the Prophet Joseph, who was the first president, seer and revelator for the Mormons.

In October, 1830, Oliver Cowdery, Peter Whitmer, Jr., Parley P. Pratt, and Ziba Peterson were sent on missions to the American Indians,

6 Hill Cumorah, situated near Manchester, New York, bears a Book of Mormon name.

7 Joseph Smith, op. cit., I: 9-70.

8 Joseph Smith, Pearl of Great Price, p. 58.

9 See Joseph Smith, Doctrine and Covenants (Salt Lake City: Church of Jesus Christ of Latter-day Saints, 1921) for these revelations.
called Lamanites by the Book of Mormon; and journeying westward, they converted Sidney Rigdon and a large number of people to the new faith in the vicinity of Kirtland, Ohio, where the headquarters of the new sect were established the following year. Continuing westward, the missionaries first saw the country in and around Independence, Jackson County, which the Prophet Joseph told them would be the headquarters of the Church and the center stake of Zion.

Subsequently the Latter-day Saints, as the Mormons called themselves, gathered at two centers: the vicinities of Kirtland, Ohio, and of Independence, Missouri. Troubles at the former location forced the headquarters to be removed to the latter named place, where conflict with the Missourians resulted in the exodus of the Mormons from the state upon the exterminating order of Governor Bogg, who said: "The Mormons must be treated as enemies and must be exterminated or driven from the state." Much has been written by biased chroniclers concerning the causes for the expulsion of the Saints from Missouri. It is apparent that both sides were to blame; and according to Mormon scripture, members of the Church were permitted by the Lord to be driven from Zion (Jackson County) because of their transgressions. Neff summarizes the causes

10 Ibid., Sections 30, 32, and 57-59.
11 Joseph Smith, History of the Church, I: 118-25, 189-206.
12 Ibid., III; 1-175, and Introduction xix-lxxiv.
13 Joseph Smith, Doctrine and Covenants, 101: 2 and 6.
for expulsion:

That the Saints were driven from Missouri primarily because the Gentile inhabitants saw, or pretended to see, a menace in Mormonism, is well authenticated. But while the religious motive predominated, it was by no means the only factor contributing toward expulsion. Prominent among minor causes was political fear and jealousy due to rapid increase of the Mormon vote; offensive allusions to their superiority in the eyes of Jehovah, plus their indiscreet utterances concerning the land of their inheritance; suspicion that the Saints, who maintained friendly relations with the Indians, would use the Redskins as allies against the Gentiles; the fact that the Mormons were opposed to slavery whereas the old settlers were slave-holders or slave sympathizers; the presence on the frontier of more than its share of lawless characters. These points of difference, even singly, were sufficient to provoke irritation; collectively, they were sufficient to create a rupture. Dissent, jealousies, and iniquities among themselves aggravated the situation still more.

But while the minor causes explain and account for much of the bitterness evinced towards the Mormons, the fact must not be overlooked that these causes are, for the most part, related to or the outgrowth of the fundamental cause of detestation; namely, the principles and practices of Mormonism as they were known and understood by the Gentiles in Missouri. The Mormons had offended beyond hope of forgiveness by persistently asserting that the Christian religions of the country were an abomination in the sight of God, and that their own was the only true Church upon earth. The volume of hatred was sufficient in the end to accomplish the banishment of the sect. Expulsion was the price the Saints paid for their eccentricities in life and religion. In a way it was a Holy War against alleged heretics, a crusade to expel a dangerous heterodoxy from their midst. Analogous conditions had frequently disturbed the peace of the world in ages past—it was assuredly a novelty in the United States in the middle of the nineteenth century. . . . The motives that actuated the Missourians would likely operate in any other settled portion of the country to which the refugees might go. . . .”

From Missouri the stricken Saints fled across the Mississippi into Illinois to find refuge in and around Commerce, which town was later called Nauvoo. Joseph Smith and other leading brethren were in prison

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14 Neff, op. cit., pp. 18-19.
at the time; but the Church found a stalwart leader and shepherd in the person of Brigham Young, whose help and assistance in getting the Saints safely out of Missouri and established in the neighbor state cannot be over estimated. The people of Commerce offered timely help and kind treatment.  

In a few months after this exodus, the numbers of Mormons in Illinois was approximately fifteen thousand men, women and children. And in the short period of three years, this industrious people had made their city of Nauvoo a flourishing and pretentious one, the largest and best in the entire state, if not in all the West. Part of the city's success may be attributed to its liberal charter granted by Illinois.

Thomas C. Romney, in his manuscript thesis, "The State of Deseret", quotes three travellers who visited the city and wrote concerning its beauty and industry:

In 1844, a traveler expressed his astonishment, upon beholding Nauvoo, as follows: 'When I was told that this place was five years ago a wilderness... I could scarce believe my senses. On every side I saw extended around me the beautiful cottages, the smiling flowers and the well cultivated gardens of the enterprising inhabitants... Over the whole of the vast city of four miles square I saw the beautiful mansions, mostly of brick, of its twenty thousand inhabitants'. He referred enthusiastically to the well cultivated prairie which resemble the 'Garden of Eden'. But that which especially attracted his admiration was the 'neatness, cleanliness and comfort of their abodes and the intelligence, industry, and good order of the inhabitants'. Continuing, he said, 'I did not see a single intemperate man in the place'.

The following excerpt is from the letter written by an English-

15 Joseph Smith, History of the Church, III: 245-374.

16 Hubert Howe Bancroft, History of Utah (San Francisco: The History Company, 1890), pp. 143-49.

who saw Nauvoo in her glory: 'The city is of great dimensions laid out in beautiful order; the streets are wide and cross each other at right angles. . . The city rises on a gentle incline from the rolling Mississippi, and as you stand near the temple you may gaze on the picturesque scenery arround. At your side is the temple. . . round about and beneath you may behold handsome stores, large mansions and fine cottages. I do not believe that there is another people in existence who could have made such improvements in the same length of time under the same circumstances'.

Samuel Prior, a Methodist minister, gives the following description of the city as it met his gaze in 1843: 'At length the city burst upon my sight. Instead of seeing a few miserable log cabins and mud hovels which I had expected to find, I was surprised to see one of the most romantic places that I have visited in the West. The buildings though many of them were small and of wood, yet bore the marks of neatness which I have not seen equalled in this country. The far-spread plain at the bottom of the hill was dotted over with the habitations of men with such majestic profusion that I was almost willing to believe myself mistaken and instead of being in Nauvoo of Illinois, among the Mormons, that I was in Italy at the city of Leghorn, which the location of Nauvoo resemble very much. I gazed for some time with admiration upon the plain below, Here and there arose a tall, majestic brick house speaking loudly of the genuine ability of the inhabitants who have snatched the place from the clutches of obscurity and wrested it from the bonds of disease, and in two or three short years rescued it from the dreary waste to transform it into one of the first cities of the West. The hill upon which I stood was covered over with the dwellings of men and amid them was seen to rise the hewn stone and already accomplished work of the temple now raised fifteen or twenty feet above the ground. . . The place was alive with business, much more than any place I have visited since the hard times commenced. I sought in vain for anything that bore the marks of immorality, but was both astonished and pleased at my ill success. I could see no loungers about the streets nor any drunkards about the taverns. I did not meet with those distorted features of ruffians, or with the ill-bred and impudent, I heard not an oath in the place; I saw not a gloomy countenance; all were cheerful, polite and industrious'.

Despite the success and prosperity of the Saints, trouble and hardships soon overtook them at Nauvoo. There were traitors from within and enemies from without. Much has been written by various authors concerning the underlying causes of these difficulties. One non-Mormon writer divides the reasons for the fall of Nauvoo into two groups: political and social. Discussing the political phase, he states that the Mormons held the balance of power at the polls for the entire state and that in attempting to please both the major parties, they incurred the ill-will of their neighbors; usually voting as an unit, the Latter-day Saints were blamed by the losing party; and they were too often held in mistrust by the winning party. Both parties were losers at times; and all this didn't help the popularity of the Mormons, who had always been a hated minority group for various other reasons. Explaining the social phase, the same writer says that there was a great amount of stealing going on in the vicinity of Nauvoo and that it was almost impossible for a non-Mormon, or Gentile as the Mormons would say it, to recover stolen property there. Then he adds that not all of this stealing was done by the Saints, for their expulsion from Illinois did not make "those counties a paradise". 19

Because of the charges of theft against the Saints, the mayor and city council of Nauvoo passed the following resolution denying them:

That the greater part of the thefts which have been complained of are not in our opinion, true in fact, but have been trumped up by imical persons in order to cover their aggressive doings with plausibility, and entice the unwary citizens to unite with them in uncompromising hostility against the people.

That we defy the world to substantiate a single instance where we have concealed criminals, or screened them from justice. . .

That it is our opinion that very many scoundrels, such as thieves, robbers, bogus makers, counterfeiters, and murderers, have been induced from reports published in the *Warren Signal* to flock into this country in order to carry on their evil practices, knowing that it would be immediately charged upon the Mormons.  

The Mormons had good reason to believe that lawless individuals such as frequented the growing conditions on the frontier, took advantage of the fact that the Mormons were unpopular and, therefore, they could steal and commit knave acts and it would be blamed upon the unfortunate Saints. The Nauvoo authorities stated further: "Bee hives have been robbed, the hives left at Mormon doors to palm the stunt upon us when the honey has been found in the houses of our enemies."  

However, a small band of thieves who proved to be Mormons were discovered and promptly excommunicated from the Church; and President Joseph Smith said that such unlawful and criminal practices would not be tolerated among members of the religious society over which he had the honor to preside.  

Governor Ford, of Illinois, claimed that charges of promiscuous stealing were greatly exaggerated and that there were no more thieves in Nauvoo in proportion than there were in any other western city of similar size. 


20 *Times and Seasons* (Nauvoo), 6:774 (1844)

21 Ibid., p. 775.


While at Nauvoo, the Mormon leader decided to run for President of the United States, although it appears certain that he never entertained the slightest hope of being elected.\(^{24}\) George Q. Cannon, who was a distinguished Mormon leader and statesman, declared that the purpose of the Prophet's candidacy was "less to secure political fame or elevation, as it was to bring the patriotic and statesmanship ideals of the leader before the world, and to also force the sufferings of the Saints upon the attention of thinking men throughout the land."\(^{25}\)

The candidacy of the Mormon leader came about in this way: The Saints, having grievances against mobs in the neighboring state of Missouri and failing to obtain redress for the wrongs that had been committed against them, carried their cause to the national capital in the summer of 1839. President Van Buren and several members of Congress were visited, but in vain. Government leaders treated their representatives, of which the Prophet Joseph was one, coldly and did not promise the requested adjustment of grievances and difficulties. Washington plainly refused to do anything about the matter.\(^{26}\) Later, Mormon


\(^{25}\) George Q. Cannon, *Life of Joseph Smith the Prophet* (Salt Lake City: Juvenile Instructor Office, 1888), p. 438

leaders addressed letters of inquiry to five prospective candidates for the presidency of the United States, as to what the policy of each would be toward the Latter-day Saints in case of election. This was in November, 1843. The outcome of such inquiry was far from satisfactory because none of the political aspirants wished to go on record as having favored a hated minority, especially in connection with the Mormon claims for injury and injustice against the sovereign state of Missouri. Therefore, it was decided that members of the sect should be given the opportunity of voting for men whom they could conscientiously support; and, finally, the new ticket contained the names of Joseph Smith and Sidney Rigdon for President and Vice President respectively.

In February, 1844, the Mormon Prophet published to the world his views on government, in which he defended the God-given Constitution and advocated certain reforms. Campaign plans were developed and missionary-politicians were sent to the various states.

Meanwhile, the doctrine of plural marriage, or polygamy, which will be discussed in greater detail in subsequent chapters, was quietly and cautiously promulgated and practiced by a few of the leading brethren. It was given in a revelation on Celestial Marriage in July, 1843.

27 Ibid., VI: 64-65.
30 Joseph Smith, Doctrine and Covenants, Section 132.
Soon vile rumors were circulated by enemies outside and inside the Church to the effect that the Prophet had more than one wife; and ex-church members, the traitor John C. Bennett and others, supplied the public with evidence in the first and only issue of a newspaper called the *Nauvoo Expositor*. This paper demanded the repeal of the liberal Nauvoo Charter and made vicious attacks upon the Church leaders, denouncing Smith and his helpers as "Heaven daring, Hell deserving, God-forsaken villains".\textsuperscript{31} The city council, meeting in June, 1844, immediately declared the new publication a public nuisance and ordered Mayor Joseph Smith to destroy the printing plant, which was done under the direction of the city marshal, John P. Greene. The mayor promptly forwarded an account of what had been done to the governor of the state. The publishers, fleeing to the nearby town of Carthage, reported that their lives were in danger and that they had been forced from their homes. Public sentiment against the Mormons blazed high. It was echoed far and wide that the Saints were opposed to the freedom of the press. Mobs began to gather under arms; enemies at Warsaw and Carthage passed a series of resolutions asking the cooperation of citizens of Illinois, Missouri, and Iowa in exterminating the abominable Mormon leaders.\textsuperscript{32} For protection, the Nauvoo Legion was held in readiness, and the Saints appealed to Governor Thomas Ford to hasten to Hancock County to investigate and to take necessary steps to prevent any insurrection. Instead of

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\textsuperscript{31} Neff, *op. cit.*, pp. 29-30

\textsuperscript{32} Roberts, *Comprehensive History of the Church*, II: 220-239.
going to Nauvoo, the governor went to visit with the bitter Mormon
enemies at Carthage, where he decided that Joseph Smith and members of the
accused city council should go to the city of Carthage for trial. Rumors
were prevalent that the Mormon prophet would be murdered if he left
Nauvoo. Therefore, he agreed to leave only upon the personal assurance of
the governor that he would be protected. However, the chief executive
of the state failed to take the necessary precautions; and, on June 27,
1844, a mob stormed the Carthage jail, killing Joseph Smith and his
brother Hyrum and wounding John Taylor, a Mormon apostle.33

The teachings of the Prophet had from the beginning, at the time of
his first vision, caused opposition and conflict; and among these
teachings, there can be little doubt that polygamy, though not openly
practiced, had a good deal to do in bringing about the death of Joseph
Smith.34

After the martyrdom at Carthage jail, there was a momentary lull in
opposition against the Latter-day Saints. The tragedy had stunned the
anti-Mormons. Two men had been murdered in cold blood despite the fact
that the governor of the state had promised to protect the prisoners under
the law. Opposition subsided, probably through fear of the consequences
or probably through curiosity as to whether Mormonism would survive now
that its founder was gone.35

But when the enemies of the Church saw that it was surviving and
growing under the wise leadership of Brigham Young and the other members

34 Roberts, Comprehensive History of the Church, II: 234-37.
of the Twelve Apostles, they rose again in fury. One of their first acts was to secure the repeal of the Nauvoo Charter, thereby legally disposing of the city officials. In the summer and autumn of 1845, gentiles (non-Mormons) complained that the Saints were stealing much of their property; and, as a result, bitter newspaper articles were published; and houses belonging to members of the Mormon Church were burned by mobs. The Saints were given to understand that they were not wanted in the state; and a mass meeting against the Mormons was held in the fall of 1845 at Quincy, at which it was advocated that they leave Illinois. It had been rumored prior to the Prophet’s death that his people planned removal to the far west. Therefore, this meeting appointed a committee to inform the Mormon authorities that nothing short of removal would be satisfactory. The Quincy Whig, an anti-Mormon newspaper, made this statement following the meeting:

It is a settled thing that the public sentiment of the State is against the Mormons and it will be in vain for them to contend against it; and to prevent bloodshed and the sacrifice of many lives on both sides, it is their duty to obey the public will and leave the State as speedily as possible. That they will do this we have a confident hope and that too, before the next extreme is resorted to—that of force.

Under such conditions, President Brigham Young saw the necessity of going where there could be none to molest his people in their worship of

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36 Hubert Howe Bancroft, History of Utah, p. 208.
38 Roberts, Comprehensive History of the Church, II: 504.
God. It must be somewhere in the Rocky Mountains, or beyond. All available letters, diaries and charts of western explorers were carefully studied with the view of finding a new home. As noted by their history, finding a new home was not a strange practice to the Mormons. As a result of their circumstances, at a general conference held in September, 1845, it was resolved that a company of fifteen men be selected to go to Salt Lake Valley, and another committee of five members was appointed to secure information relative to the subject. There were frequent meetings and consultations of the authorities relative to emigration to California.\(^{39}\)

Joseph Smith had prophesied, 40 years before his death, that the Saints would continue to suffer much affliction and persecution and would be driven to the Rocky Mountains, where they would become a mighty people\(^{40}\). Therefore, President Young had reason to believe that somewhere in the Rockies they would find the place where they could live in peace and safety.

The Saints told the mobs they would leave, but pleaded for time to get ready and for help in disposing of their property. The following words, taken from a declaration issued by the authorities of the Church, illustrate the problems of the Saints in this respect:

\(^{39}\) Bancroft, _op. cit._, p. 210; for earlier consideration of moving westward, see Joseph Smith, _History of the Church_, VI: 197-209.

\(^{40}\) Joseph Smith, _Ibid._, V: 85-86; also Nephi L. Morris, _Prophecies of Joseph Smith and their Fulfillment_, (Salt Lake City: Deseret Book Company, 1926), pp. 124-190.
Therefore, we would say to the committee above mentioned and to
the Governor, and all authorities, and people of Illinois, and the
surrounding states and territories, that we propose to leave this
country next spring, for some point so remote that there will not
need to be any difficulty with the people and ourselves, provided
certain propositions necessary for the accomplishment of our re-
moval shall be observed, as follows, to wit:

That the citizens of this and surrounding counties, and all men,
will use their influence and exertion to help us to sell or rent
our properties, so as to get means enough that we can help the widow,
the fatherless, and the destitute to remove with us.

That all men will let us alone with their vexatious law-suits so
that we may have time, for we have broken no law; and help us to
cash, dry goods, groceries, good oxen, beef-cattle, sheep, wagons,
mules, horses, harness, etc., in exchange for our property, at a
fair price, and deeds given at payment, that we may have means to
accomplish a removal without the suffering of the destitute to an
extent beyond the endurance of human nature.

That all exchanges of property shall be conducted by a committee,
or by committees of both parties; so that all the business may be
transacted honorably and speedily.

That we will use all lawful means, in connection with others, to
preserve the public peace while we tarry; and shall expect, decidedly,
that we be no more molested with house-burning, or any other
depredations, to waste our property and time, and hinder our bus-

That it is a mistaken idea, that we have proposed to remove in
six months, for that would be so early in the spring that grass
might not grow nor water run: both of which are necessary for our
removal. But we propose to use our influence to have no more seed
time and harvest among our people in this country after gathering our
present crops; and that all communications to us be made in writing.

By order of the Council,

W. Richards, 
Clerk.

BRIGHAM YOUNG, 
President, 41

The men of Quincy gave assent to the statement that the Mormons
would remove as soon as possible, but they declined to make any promise

41 Quoted by Roberts, Comprehensive History of the Church, II:
509-510.
to assist the Saints in a proper sale of property, knowing full well that all goods left behind by the fleeing exiles would of necessity fall into their own hands.\(^{42}\)

Enemies of the Church were over-anxious that the sect be removed from the state, and they drew up resolutions accusing the Mormons of stealing and of divers assaults upon their neighbors, declaring that the Saints were suffering from their own dishonesty and that they must be driven from Illinois immediately. General John H. Hardin and Judge Stephen A. Douglas journeyed to Nauvoo, where they obtained a signed statement from the Church authorities stating that the exodus westward would be the next spring (1846). And at the regular semi-annual conference of the Mormons, in October, 1845, it was unanimously resolved that the Church move to the west. Preparations were in full swing during the following winter for such a move. Every available building in Nauvoo was converted into a work-shop for the repair of harness, wagons, and all necessary articles. Waht meager amounts of iron could be acquired were brought to the city and used by blacksmiths, wheelwrights, and other workers, who were busy day and night manufacturing the needed articles for the westward migration.\(^{43}\)

Even before spring arrived, Mormons were moving westward across the Mississippi. The first temporary camp was at Sugar Creek, Iowa, nine

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\(^{42}\) Bancroft, *op. cit.*, pp. 210-11.

\(^{43}\) *Ibid.*, pp. 212-14; see also *Times and Seasons* (Nauvoo), Nov. 1, 1845, p. 1012, for part of the October semi-annual conference proceedings.
miles beyond the river. All could not leave at once; those who went ahead would prepare for those still left at Nauvoo. All would come as soon as possible. There was a great shortage of provisions and some members of the church would have to rely upon others to assist them. Those who had, shared with those who were destitute.44

During the first night at Sugar Creek, nine infants were born. The weather was cold and inclement.45 Eliza R. Snow writes the following:

... I heard of one birth which occurred under the rude shelter of a hut, the sides of which were formed of blankets fastened to poles stuck in the ground, with a bark roof through which the rain was dripping. Kind sisters stood holding dishes to catch the water as it fell, thus protecting the newcomer and its mother from a shower-bath as the little innocent first entered on the stage of human life; and through faith in the Great Ruler of events, no harm resulted to either.

Let it be remembered that the mothers of these wilderness-born babies were not savages, accustomed to roam the forest and brace the storm and tempest—those who had never known the comforts and delicacies of civilization and refinement. They were not those who, in the wilds of nature, nursed their offspring amid reeds and rushes, or in the recesses of rocky caverns; most of them were born and educated in the Eastern States, had there embraced the Gospel as taught by Jesus and His Apostles, and for the sake of their religion, had gathered with the Saints, and under trying circumstances had assisted, by their faith, patience and energies, in making Nauvoo what its name indicates, "The Beautiful." They had lovely homes, decorated with flowers and enriched with choice fruit trees, just beginning to yield plentifully.

To these homes, without lease or sale, they had just bade a final adieu, and with what little of their substance as could be packed into one, two, and in some instances three wagons, had started out, desertward, for—where? To this question, the only response at the time was, God knows.46


45 DeVoto, Ibid., p. 76.

A petition sent to the Governor of Iowa asking protection while passing through that territory, or residing temporarily within its borders to raise crops for the assistance of others to migrate west, was not given an answer.47

In March camp was broken and the exodus moved westward. During the early days of the trek, snow lay on the earth to the depth of six to eight inches and the camping grounds became a slush of snow and mud, with no place to sit or lie except in water and snow. And when the snow was gone, the ground was full of water. Wagons broke down and became stuck in the mud. At first, not following the Oregon Trail because some of their old-time enemies from Missouri were traveling that way, the pioneers had to make their own road. Often, to save the strength of their oxen, men, women and children walked.48

During the first days of the trip, obtaining food for the people and their animals was a problem. It had previously been decided that every family should have provisions enough to take care of them until they could arrive at some place where they could sow crops and reap a harvest. But many, eager to come with the main body and not wanting to remain to face the fury of mobs, had come ill prepared. Game was killed wherever possible.49

47 Roberts, op. cit., III: 44.


If the weather had been good and the trip made during the summer months, and each family had had sufficient supplies, the journey could have been made without great hardship. But such conditions did not exist. At the first, the weather was bad and provisions were inadequate. Neff declares that the experiences and sufferings of the Mormons during 1846 were far more severe than those of 1847, despite the fact that the last segment of the journey has a glory and a glamour that hasn't been given to the Iowa part of the trip. 50 It required more real pioneering to make the first part of the journey, due to the fact that Iowa was off the beaten line of travel to the West, the main trails beginning at, or near, Independence, Missouri. During the latter part of the exodus well marked trails and roads were used by the emigrants. Along the way, too, the Saints had improved their condition by raising crops and they could depart at their convenience, not being driven out of Winter Quarters (near the present site of Omaha, Nebraska) by mobs as they had been at Nauvoo.

In this great undertaking of moving, perhaps, fifteen thousand people, three thousand wagons, thirty thousand head of cattle, and other property such as sheep, mules, and horses, Brigham Young and the apostles planned and took charge of things in a skillful way. The camps of Israel were organized into quasi-military divisions with captains over tens, fifties, and hundreds. Although, other overland companies had

50. Neff, History of Utah, pp. 53-54.
systems of traveling, the Mormon system was more efficient and was on a larger scale.\textsuperscript{51}

During the summer of 1846, the inadequate provisions of the impoverished exiles and the enlistment of five hundred of their strongest men to serve the United States in her war with Mexico, slowed the forward march considerably.\textsuperscript{52} By the close of that year, the advance settlement was at Winter Quarters (on the Nebraska side of the Missouri River). And due to the fact that many were unable to go that far the first season, two mid-way camps were established in Iowa, between the Missouri and the Mississippi. These were called Garden Grove and Mount Pisgah.

The five hundred men who enlisted in the army to aid in the Mexican War became known as the Mormon Battalion.\textsuperscript{53}

In April, 1847, the company which entered Salt Lake Calley departed from Winter Quarters, and on July 24th, reached their destination near Great Salt Lake.\textsuperscript{54}

Generally speaking, the Indians were friendly. Nevertheless, a constant alertness had to be maintained; and some of the Redskins, particularly members of the Pawnee tribes, made several night attempts to creep into camp to steal and plunder.\textsuperscript{55}

\textsuperscript{51} Ibid., p. 55; also see Brigham Young, \textit{Doctrine and Covenants}, Section 136.

\textsuperscript{52} Daniel P. Tyler, \textit{A Concise History of the Mormon Battalion in the Mexican War, 1846-1847}, (Salt Lake City: D.P. Tyler, 1881), pp. 110-131.

\textsuperscript{53} For a good story of the political background for the enlistment of the Mormon Battalion see Preston Nibley, \textit{Exodus to Greatness}, Church Section of The Deseret News, for dates June 15, 22, and 29, 1946.

\textsuperscript{54} Lawrence Clayton (editor), \textit{op. cit.}, pp. 74-78.

\textsuperscript{55} Ibid., pp. 85-88; 109-110.
Trappers and traders from the Rockies, encountered by the Mormons, gave discouraging reports about the region of Salt Lake Valley. Among them were Major Moses Harris and Thomas L. Smith. And James Bridger is reported to have stated that he would give a thousand dollars if he knew that corn could ripen in the valley. However, this has been ably disputed by William J. Snow.56

It was on the plains of Iowa that Brigham Young requested William Clayton to write a song that the Saints could sing at night around the camp-fires to encourage and cheer them. Elder Clayton sat in his wagon one morning while the inspiration of a new song came to him. He wrote a hymn entitled, "Come, Come, Ye Saints", a portion of which follows:

Come, Come, ye Saints, no toil nor labor fear,
But with joy wend your way;
Though hard to you this journey may appear,
   Grace shall be as your day.
'Tis better far for us to strive,
Our useless cares from us to drive.
Do this and joy your hearts will swell—
All is well! All is well!
   *     *     *
And should we die before our journey's through,
   Happy day! All is well!
We then are free from toil and sorrow too;
   With the just we shall dwell.
But if our lives are spared again
To see the Saints, their rest obtain,
0 how we'll make this chorus swell—
All is well! All is well! 57

56 Ibid., pp. 270-276; see also William James Snow, Jim Bridger and the Ear of Corn (Provo: Manuscript in Brigham Young University Library, 1925) 8 pp.

57 Deseret Sunday School Songs, (Salt Lake City: Deseret Sunday School Union, 1909) No. 16.
This hymn became the grand marching song for all the Mormon pioneers who crossed the plains during the next twenty years; and the song still stirs the hearts of the Latter-day Saints.  

Although a vanguard, under the leadership of Orson Pratt, entered Salt Lake Calley on the wlst. of July, the main body of the pioneers, under the direction of Brigham Young, entered the new promised land on July 24, 1847. President Young, being ill, was resting in the wagon or carriage of Wilford Woodruff as they emerged from the canyon where they could look upon the valley. The Mormon leader asked Elder Woodruff to turn his carriage so he could have a better view. After gazing in silence for a few moments, the Mormon Prophet said, "This is the place".  

Founding Salt Lake City and other settlements in what is now Utah, the Saints also established pioneer villages in other territories such as Nevada, Idaho, Arizona and California. However, it is not the purpose of this account to give a detailed study of the great colonization of the Mormons.  

By way of summary, Mormonism was opposed from its very inception. The Mormon Church claimed to be the only one having authority from God and denounced other denominations as lacking this authority. Many of the teachings of the Prophet Joseph Smith were at startling conflict with

58 Preston Nibley, "Exodus to Greatness", Church Section, The Deserett News, for date of April 20, 1946, pp. 11-12.  

59 Wilford Woodruff's diary quoted by Edward W. Tullidge, Life of Brigham Young, or Utah and Her Founders,(New York: Tullidge and Crandall, 1876), pp. 167-169.  

60 Milton R. Hunter, Brigham Young as Colonizer,(Salt Lake City: Deseret News Press, 1940) is an excellent book on Mormon colonization.
the orthodoxy of other Christian denominations. In certain ways, the Saints were taught to be different; for example, their *Word of Wisdom*.

If Mormonism spread rapidly at times, ministers often became afraid that it would threaten their own positions, for the Mormons haven't a paid ministry. Political circumstances also brought them trouble; for example at Nauvoo. An unpopular minority group, the Latter-day Saints were blamed for crimes they did not commit; for example the stealing in Hancock County, Illinois. Founded in New York, the Church was forced by persecutions to move westward. Its headquarters were finally established in Utah.

61 See Joseph Smith, *Doctrine and Covenants*, Section 89.
CHAPTER II

BACKGROUND—CHURCH TENETS

It is the purpose of this chapter to briefly present certain tenets of Mormonism which supported the practice of plural marriage or polygamy.

Let it be remembered in passing that the Latter-day Saints believe in obeying the laws of the land and in being good citizens.¹ From one of their modern books of scripture, the following is quoted: "Let no man break the laws of the land, for he that keepeth the laws of God hath no need to break the laws of the land."² And, according to Mormon belief, the Lord speaking to the Prophet Joseph Smith declared: "I have established the Constitution of this land by the hands of wise men whom I raised up unto this very purpose, and redeemed the land by the shedding of blood."³ The Saints have ever since looked upon the United States Constitution as an inspired document which should always be preserved and defended.

If members of the Church believed in obeying and supporting the laws of the land, how then, could they practice polygamy and still have clear consciences? The answer comes quickly: at the time they started the practice of plural marriage, there were no laws against it in any

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¹ Joseph Smith, "Articles of Faith", No. 12, Pearl of Great Price (Salt Lake City: Church of Jesus Christ of Latter-day Saints, 1921), p. 58.

² Joseph Smith (revelator), Doctrine and Covenants, 58:21.

³ Ibid., 101:80 and 109:54.
territory where it was practiced. Later, when federal laws were enacted declaring such practice a crime, there was the question as to the constitutionality of such laws, in view of the fact that plural marriage was part of the religious faith of the Saints. In a number of decisions, laws against polygamy were held to be constitutional by the United States Supreme Court. Polygamists could not believe that this court was interpreting the laws and the Constitution correctly and fairly. When it was certain that there would be no other interpretation given by the courts, the Mormon Church, through its President, discontinued the practice of plural marriage and solemnly announced its intention to support the government laws. 4

Let it be noted at the outset, that Mormonism does not claim to be a new religion, but an old one. In fact, it claims to be the Gospel of Christ as taught by the Savior and His Apostles in ancient times, restored to earth in modern times by the Lord through the Prophet Joseph Smith. Modern revelation from God lies at the very foundation of the religion. The scriptures are in some respects subordinate to the word of the living prophet and head of the Church. The ninth Article of Faith states: "We believe all that God has revealed, all that He does now reveal, and we believe that He will yet reveal many great and important things pertaining to the Kingdom of God." 5

In one of the many revelations given to Joseph Smith, the doctrine

4 James E. Talmage, Articles of Faith, pp. 424-25.
5 Joseph Smith, Pearl of Great Price, p. 50.60
of plurality of wives was made known; and reference was made to righteous and chosen men of God in Old Testament times who practiced polygamy. To the devout Mormon, the plural-wife system was established as a result of direct revelation from God. However, followers of the Prophet Joseph who are members of the Reorganized Church of Jesus Christ of Latter-day Saints (Josephites) reject the authenticity of the above mentioned revelation on the ground that it is contradictory to the Book of Mormon. The Mormon view is that the Lord commanded the Nephites not to have more than one wife, and that was his law to them. But in modern times, he commanded that the practice of polygamy be put into effect. There is an abundance of evidence that Joseph Smith gave the above mentioned revelation and that he introduced plural marriage and had plural wives of his own.

Now, certain points of Mormon doctrine supporting polygamy will be listed:

1. **Destiny of Man.** God, our Heavenly Father, is an exalted man; a personage with body, parts, and passions. The destiny of man, if he lives worthily, is to become as God is. Joseph Smith, Brigham Young, and others taught this doctrine. Lorenzo Snow, fifth president of the Church, expressed it thus: "As man now is, God once was; as God now is, man may

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6 Joseph Smith (revelator), *Doctrines and Covenants*, Section 132.


The doctrine is taught that in heaven there are three degrees of glory, and that in order to become as God and to dwell with Him, one must attain the highest one, called the Celestial. In this glory there are also, at least, three degrees, the highest of which is necessary to become a God. Marriage to at least one wife is essential for the attainment of this exalted salvation. All who become as God, must enter the order of the Priesthood known as the Everlasting Covenant of Marriage, that is, must be married by proper authority in the Church for time and eternity; then, the marriage relationships will continue in the hereafter.

The children born after the resurrection to such marriages will be spiritual children. Every worthy man who becomes a God will rule over and care for his spiritual sons and daughters, just as our Heavenly Father, to whom we were born as spiritual children prior to our advent on earth, cares and watches over us. Concerning this, the Prophet Joseph taught:

Except a man and his wife enter into an everlasting covenant and be married for eternity, while in this probation, by the power and authority of the Holy Priesthood, they will cease to increase when they die; that is, they will not have any children after the resurrection. But those who are married by the power and authority of priesthood in this life, and continue without committing the sin against the Holy Ghost, will continue to increase and have children in the Celestial Glory. The unpardonable sin is to shed innocent blood, or be accessory thereto. All other sins will be visited with judgment in the flesh, and the spirit being delivered to the buffetings of Satan until the day of the Lord Jesus...

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10 Joseph Smith (revelator), Doctrine and Covenants, Sections 76 and 131.
Celestial Glory there are three heavens or degrees; and in order to obtain the highest, a man must enter into this order of priesthood (meaning the new and everlasting covenant of marriage) and if he does not, he cannot obtain it. He may enter into the others, but that is the end of his kingdom; he cannot have an increase." 11

2. The Doctrine of Celestial Marriage. Perhaps, a few more words should be said concerning this teaching. Incompliance therewith, the Mormons teach that marriage is performed in the temple for not only time, but for eternity. Such temple marriages will be in force in the Celestial Kingdom of God and the children born to such unions will be spiritual sons and daughters and the continuance of such increase in posterity will be eternal. Marriages performed out side the Mormon Church will be null and void after death.12 A man and wife so sealed for time and eternity, and who have proved themselves worthy, shall be resurrected together in the resurrection of the just. Concerning this, Mormon scripture says:

   Again, verily, I say unto you, if a man marry a wife by my word, which is my law, and by the new and everlasting covenant, and it is sealed unto them by the Holy Spirit of Promise, by him who is anointed, unto whom I have appointed this power, and the keys of this priesthood, and it shall be said unto them, ye shall come forth in the first resurrection; and if it be after the first resurrection, in the next resurrection; and shall inherit thrones, kingdoms, principalities and powers, dominions, all heights and depths—then shall it be written in the Lamb's Book of Life, that he shall commit no murder whereby to shed innocent blood, and if ye abide in my covenant, and commit no murder whereby to shed innocent blood, it shall be done unto them in all things whatsoever my servant hath put upon them, in time, and through all eternity, and shall be of full force when they are out of the world, and they shall pass by the angels, and the Gods, which are set there, to their exaltation and glory in all things, as hath been sealed upon their heads, which glory shall be a fulness and continuation of the seeds for—

11 Joseph Smith (revelator) Doctrine and Covenants, Section 131.
12 Ibid., 132: 15-17.
ever and ever. Then shall they be gods, because they have no end; therefore shall they be from everlasting to everlasting, because they continue; then shall they be above all, because all things are subject unto them. Then shall they be gods, because they have all power and the angels are subject unto them. 13

Although it is necessary to have but one wife to live the law of Celestial Marriage, or marriage for eternity, the same section of scripture from which the above quotation was taken, refers to the doctrine of plural wives and makes plain that if a man married more than one wife, by proper authority, he would have all the wives he so married with him in heaven, provided he lived worthy of Celestial Glory. 14

From what has been said concerning the birth of spiritual children to exalted resurrected beings, who have become gods, it is easy to understand the Mormon view that the person who has two wives would have a larger and faster increase in spiritual offspring than the man who had but one wife. Continuing the same line of reasoning, the man who had many wives would have greater glory in his spiritual children.

3. The Gift of Eternal Life. According to Latter-day Saints' teachings there is a difference between immortality and eternal life. 15 Immortality means not subject to death as mortal people are. As mortal beings, we die. Inside of each mortal body is a spirit, which is immortal. At death this spirit goes to a place where it awaits the

resurrection, wherein it will again take upon itself the physical body, never again to be separated therefrom nor to see corruption.\textsuperscript{16} This resurrection from the dead was brought about by Jesus Christ as the gift of God to all mankind, by which they are blessed with immortality, the wicked as well as the righteous—but the righteous first.\textsuperscript{17} But eternal life is a special blessing given to relatively few people, upon obedience to the principles of the Gospel of Jesus Christ. From Mormon scripture, the following is quoted: "If you keep my commandments and endure to the end, you shall have eternal life, which is the greatest of all the gifts of God."\textsuperscript{18} And elsewhere, we are told that the person who has eternal life is rich.\textsuperscript{19} Then, according to Mormon teaching, \textit{immortality} is salvation from the continued effects of physical death; \textit{eternal life} is salvation in the highest degree of glory in heaven, and is the kind of life possessed by our Heavenly Father and His Only Begotten Son; therefore, those who obtain it will dwell in the presence of divine beings. In fact, the Saints teach that the purpose of keeping the commandments of God is to attain the more abundant and eternal life. Since, eternal life is exaltation in the highest part of the Celestial Kingdom in heaven, those who receive it become as God.\textsuperscript{20} Quoting Latter-day Saint scripture: "This is eternal lives—to know the only wise and true God

\begin{itemize}
  \item\textsuperscript{16} Joseph Smith (translator), \textit{The Book of Mormon}, II Nephi 9:4-9; Alma 40:22-25.
  \item\textsuperscript{17} Joseph Fielding Smith, \textit{op. cit.}, p. 329.
  \item\textsuperscript{18} Joseph Smith, \textit{Doctrine and Covenants}, 14:7
  \item\textsuperscript{19} \textit{Ibid.}, 11:7
  \item\textsuperscript{20} Milton R. Hunter, \textit{The Gospel Through The Ages} (Salt Lake City: Stevens and Wallis, Inc., 1945) pp. 8-11.
\end{itemize}
and Jesus Christ whom He has sent. I am He. Receive ye therefore my law." 21 This scripture finds a parallel in the Bible, "This is life eternal to know Thee the only true God and Jesus Christ whom Thou hast sent." 22 To have the gift of eternal life, as taught by the founder of Mormonism, is to live the kind of life our Father in Heaven lives and to have eternal increase in spiritual children.

In view of the points of doctrine briefly presented, it is not difficult to form a concept of Mormon Celestial Marriage and of how polygamy fitted therein. To the devout Mormon, polygamy meant a greater reward in the hereafter. Also, it must not be forgotten that, according to the belief of the Latter-day Saints, God had ordered the practice of plural marriage.


22 John 17:3

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CHAPTER III

HISTORICAL SURVEY

In the preceding chapters, the rise of Mormonism and certain tenets supporting polygamy were briefly considered. It is now our purpose to take an historical glance at plural marriage among the Mormons prior to 1890.

As was stated in chapter one, the doctrine of plurality of wives was taught quietly by the Prophet Joseph at Nauvoo. And Mormon writers say he understood the principle years earlier. Knowing well the dangerous character of such teaching, realizing that it was in conflict with the marriage customs of modern Christendom, and understanding that the converts to Mormonism had come from monogamous society, he found it a great trial when commanded of the Lord to establish polygamy. The Prophet obeyed, taking several plural wives, as also did other leading brethren.¹ One noted biographer of Joseph Smith declares that there can be little doubt that the practice of polygamy was to no small degree responsible for the death of the founder of Mormonism.²

From Nauvoo plural wives were brought to Utah; and after the Territory had been organized in 1850, plural marriage began to be openly


talked about among the settlers. Captain John W. Gunnison, who lived at Salt Lake City during the winter of 1849-1850, had this to say:

That many have a large number of wives in Deseret, is perfectly manifest to any one residing long among them, and, indeed, the subject begins to be more openly discussed than formerly, and it is announced that a treatise is in preparation, to prove by the scriptures the right of plurality by all Christians, if not to declare their own practice of the same. ³

About five years after the first pioneers had arrived in Salt Lake Valley, in August, 1852, the first public announcement of polygamy was made from the pulpit in the old tabernacle, which stood where the Assembly Hall on Temple Block now stands. After the revelation now comprising Section 132 of the Doctrine and Covenants was read, the doctrine was further explained and defended by Apostle Orson Pratt. And following this meeting, plural marriage was proclaimed everywhere by missionaries as the teaching and practice of the Church. ⁴ At this time, it will be recalled, there were not any laws in Utah Territory against taking more than one wife. ⁵

Brigham Young considered this form of marriage as a sacred and holy part of the Gospel. A person, in order to obtain the privilege of taking more than one wife, must have high personal qualifications. Here is what


⁴ Orson F. Whitney, History of Utah (Salt Lake City: George Q. Cannon and Sons, 1892), I: 490-94; also Orson Pratt, "Celestial Marriage", The Seer, 1:7-16, January, 1853 (Washington, D.C.)

President Young said in a sermon at Provo, July 14, 1855:

God never introduced the Patriarchial order of marriage with a view to please man in his carnal desires, nor to punish females for anything which they had done; but He introduced it for the express purpose of raising up to His name a royal Priesthood, a peculiar people. Do we not see the benefit of it? Yes, we have lived long enough to realize its advantages.

Suppose that I had had the privilege of having only one wife, I should have had only three sons, for those are all that my first wife bore, whereas, I now have buried five sons, and have thirteen living.

It is obvious that I could not have been blessed with such a family, if I had been restricted to one wife, but, by the introduction of this law, I can be the instrument in preparing tabernacles for these spirits which have to come in this dispensation. Under this law, I and my brethren are preparing tabernacles for those spirits which have been preserved to enter bodies of honor, and be taught the pure principles of life and salvation, and those tabernacles will grow up and become mighty in the Kingdom of God.

This law was never given of the Lord for any but the faithful children; it is not for the ungodly at all; no man has a right to a wife, or wives, unless he honors his Priesthood and magnifies his calling before God.

This revelation, which God gave to Joseph, was for the express purpose of providing a channel for the organization of tabernacles for those spirits to occupy who have been reserved to come forth in the Kingdom of God, and that they might not be obliged to take tabernacles out of the Kingdom of God.

It is important that we get a victory over our earthly passions, and learn to live by the law of God.

Plurality of wives is not designed to afflict you nor me, but is proposed for our exaltation in the Kingdom of God. If any man had asked me what was my choice when Joseph revealed that doctrine, provided that it would not diminish my glory, I would have said, 'Let me have but one wife', not because it is not a great comfort to me to have children, but if I have not children, I know them not."

Regardless of the policy of the Church, it is not unreasonable to believe that the principle of plural marriage was sometimes abused. And President Young in conversation with Schuyler Colfax, at that time

6 Ibid., pp. 561-62.
Speaker of the House of Representatives in the National Congress, defended the plural-wife system, but admitted that it had been abused by some who had entered into the practice. Brigham Young maintained, however, that such marriage was not only Biblical, but, if rightly lived, had within reasonable limits a sound philosophical reason and moral propriety. Mr. Colfax replied that Utah Territory could never be admitted into the Union as a State until polygamy was abolished. And plural marriage, through the years, proved to be the main reason why Utah could not receive admittance into the Union as a state.

Neff attempts an examination of the extensiveness of polygamy among the Saints. He writes that the census figures show that males outnumbered the females, so that, of necessity, not many of the Mormons could indulge in it. Then, he quotes statistics published by the New York Weekly Herald in 1858, adding that these may not be accurate:

<table>
<thead>
<tr>
<th>Number of male polygamists in Utah</th>
<th>- 3,617</th>
</tr>
</thead>
<tbody>
<tr>
<td>Husbands with seven wives and upwards</td>
<td>- 387</td>
</tr>
<tr>
<td>Husbands with five wives and upwards</td>
<td>- 730</td>
</tr>
<tr>
<td>Husband with four wives</td>
<td>- 1,100</td>
</tr>
<tr>
<td>Husbands with more than one wife and less than four</td>
<td>- 1,400</td>
</tr>
</tbody>
</table>

The practice of polygamy was not general in the Church, and at no time were more than three per cent of the families polygamous.

Federal legislation against the practice was slow. And although the

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7 Orson F. Whitney, op. cit., II: 133.
9 Andrew L. Neff, op. cit., p. 563.
10 Stephen L. Richards, About Mormonism (Salt Lake City: Church of Jesus Christ of Latter-day Saints, 1944), p. 3.
Republican platform of 1856 pledged the party to abolish those "twin relics" of barbarism, polygamy and slavery, it was not until six years later that Congress passed the first law making it a crime for a man to have more than one wife. It was known as the Anti-Bigamy Act (occasionally called the Morrill Act) and was signed by President Abraham Lincoln in July, 1862. Thus during a dark hour in the Civil War, Congress had chosen to strike at polygamy at the same time the government struck at slavery. However, the President's policy was to let the Mormons alone, and for years the law was a dead letter.

Prior to the enactment of this act, the opinion was held by some lawyers in America that such legislation could not be constitutional; and the question was seriously considered by many. It was legislation against the free exercise of religion. Now that constitutional scruples had been pushed aside, Congress became bracer and more legislation to suppress polygamy followed. As the Mormons viewed it, a bad precedent had been set. Public opinion had dictated this policy of Congress.

The Anti-Bigamy act was designed to punish and prevent the practice of polygamy. It also provided that no religious corporation or association should own real estate in any of the territories in excess of the value of $50,000.


13 Andrew L. Neff, op. cit., p. 866.

14 Ibid., 867.

But polygamy still persisted, and other laws were proposed. There were the Wade, the Cragin, and the Cullom bills, all three of which failed to pass Congress. Much of the agitation for more stringent enactments originated with anti-Mormons living in Utah.  

Would this law against bigamy be upheld by the United States Supreme Court? A test case arose in the autumn of 1874; it was known as the Reynolds Case and was the first of the Mormon polygamy cases to be carried to superior courts. On the 6th. of January, 1879, the nation's highest court delivered its opinion in this case. The Court declared the Anti-Bigamy act to be constitutional, stating that crimes against the government could not be protected under the cloak of religion.

In March, 1882, a more stringent anti-polygamy measure became law. It amended the act of 1862, and declared that both polygamy and unlawful cohabitation (living with plural wives) were crimes and it stated the penalties therefor. Under this law, any man who had married two wives prior to any laws in the Territory against such marriage and who continued to be faithful to the marriage vow taken, would be guilty of unlawful cohabitation and entitled to punishment therefor. The President of the United States was empowered to grant amnesty to those entering polygamous relations prior to the passage of the Edmunds Act; and


under certain conditions, children born of such marriages prior to January 1, 1883, were to be deemed legitimate. All registration and election offices in Utah Territory were declared vacant and such election duties were under the control of a commission of five members appointed by the President of the United States with the advice and consent of the Senate. No person guilty of polygamy or of unlawful cohabitation could vote or serve on juries or hold any public office; in fact, the mere belief in plural marriage as a divine institution was sufficient to bar a man from jury service in polygamy cases. The measures provided in this act were for the purpose of suppressing the practice of plural marriage among the Mormons.

Rules and circulars were sent to registrars requiring them to disfranchise all persons who had lived in polygamous relations at any time since the year 1862; and the statement became prevalent, "Once a polygamist, always a polygamist". Under such regulations, persons innocent of breaking any law were prevented from voting. A good example of this is the case of Mayor William Jennings of Salt Lake. In this way, the law was made retroactive. Although upholding the constitutionality of the Edmunds Act, the United States Supreme Court decided that the rules

18 For the complete Edmunds Law see Supplement to the U. S. Revised Statutes (1891), I: pp. 30-32. Chap. 47.

and prescribed conditions of registration formulated by the Commission were null and void. This decision shattered the idea, "Once a polygamist, always a polygamist", and permitted those who had not committed any offense against the law, the right to vote.20

Among the cases arising under the Edmunds Act which were carried to the United States Supreme Court, were those of Rudger Clawson, Angus M. Cannon, and Lorenzo Snow. In the first of these, the verdict of the lower courts was affirmed; and Mr. Clawson was punished for both polygamy and unlawful cohabitation.21 In the Angus M. Cannon case, the opinion defined unlawful cohabitation, declaring that sexual intercourse was not a necessary part of it. If a man held two women before the world as his wives and supported them, he was guilty of cohabiting unlawfully.22 In the case of Lorenzo Snow, the Court, after first dismissing the case on the ground of lack of jurisdiction, reconsidered it and handed down a decision declaring that if the act of unlawful cohabitation has been continuous, it is really one offense and, therefore, a person cannot be given three or more sentences for one continuous offense. The Utah courts had been doing this under what was called the "Segregation Ruling". The United States Supreme Court opinion in the Snow case shattered the doctrine of segregation.23

20 Murphy v. Ramsey, 114 U. S. 15-47 (1885)
21 Clawson v. United States, 113 U. S. 7 and 114 U. S. 477-488 (1885)
22 Cannon v. United States, 116 U. S. 55-80 (1885)
23 re-Snow, 120 U. S. 274 (1887)
The right of Congress to legislate against polygamy in the territories was now a foregone conclusion supported by the Supreme Court of the nation. In fact, public opinion against this religious practice of the Mormons was so strong throughout the country that it is not hard to believe that a constitutional amendment would have been forthcoming had the nation's highest court declared the Anti-Bigamy Act and the Edmunds Act to be contrary to the spirit of the Constitution of the United States. In fact, such an amendment was proposed prior to the enactment of the Edmunds Law.24

The fight against polygamy was quickened. Paid spies, gathered evidence. The crusade spread wherever the Mormons were located. And under the segregation ruling, which was previously mentioned, a man guilty of unlawful cohabitation might be imprisoned for life.25 The severity of punishment drove leading Church authorities, who would not forsake their wives and families, into exile.26 These days of hiding became known in Church history as the days of the "Underground", taking the name from national history before the Civil War.27

24 Congressional Record, 47th Cong., 1st sess., (1881), pp. 293, and 724.


Concerning these days, Orson F. Whitney, the historian, has written:

As a result of the harsh enforcement of the law, the whole community was terrorized. Special government funds having been provided for the purpose, a large force of deputy marshals was employed, and a system of espionage inaugurated. "Hunting Cohabs" became a lucrative employment. Paid informers, men and women, were set to work to ferret out offenses punishable under the recently enacted legislation. Some of these assumed the role of peddlers, or of tramps, imposing upon the good feelings of those whom they sought to betray. Others passed themselves off as tourists intent upon gathering information respecting the country and its resources. Children going to or returning from school were stopped by strangers upon the street and interrogated concerning the relations and acts of their parents. At night dark forms prowled around people's premises, peering into windows, or watching for the opening of doors, to catch glimpses of persons supposed to be inside. More than one of the hirelings thrust themselves into sick rooms and women's bed chambers, rousing the sleepers by pulling the bed clothes from off them. If admittance was refused, houses would be broken into. Delicate and refined women, about to become mothers or with infants in arms, were awakened at unseemly hours and conveyed long distances through the night, to be arraigned before United States Commissioners. Male fugitives, if they did not immediately surrender when commanded, were fired upon... The regular officers, as a rule, performed their duties in a considerate manner, but included among or associated with them were a number of swaggering ruffians, blustering, threatening, brandishing revolvers, frightening women and children—in short, making themselves as objectionable as possible to the victims of their relentless pursuit. Such misconduct was not confined to Utah. It was especially manifest in Idaho, where the crusade was carried on with vindictive rigor.

Connected with the courts was a regularly employed official accuser, but the duties of this functionary were mostly formal, the complaints signed by him being almost invariably second hand. Aside from the knowledge thus obtained, he knew no more in most cases about the persons he complained of than about the inhabitants of Jupiter or Mars. The U. S. Marshal and his deputies were wont to say that their success in discovering cases liable to prosecution was owing less to official sagacity than to the voluntary action of men's neighbors or former friends, who, for various reasons, were induced to lodge information against them. Zeal for the law played its part, but frequently it was some private grudge or other unworthy motive that inspired the delator. All this, however, was to be expected under such conditions.28

As previously stated, there was only a small percentage of the Mormons practicing plural marriage; but this limited number consisted usually of men of distinction in the Church as well as in the communities where they lived. M. D. Beal, who has spent years studying Idaho Mormon history, writes:

... As a rule they (polygamists) were good providers and competent generally. The high positions in the church were held by them as were other posts of prestige and emolument. Since they were outstanding personalities to begin with, their experience gave them special talent for leadership. Many people who had contact with polygamous families were impressed by the order, dignity, reciprocity, and mutual esteem that prevailed among them. In fact, one finds little complaint among the wives of these men, which implies a consistency in motive and behavior that must not be overlooked. Still one can agree with the observer who wrote, "To say that every man who took more wives than one was performing this act in the fear of God, and was entirely conscientious in his course, would be going out of the reach of reason." 29

In Idaho, the Territorial Legislature passed the Test Oath Law, which disfranchised all members of the Mormon Church, regardless of whether they were all violators of any law. The mere fact that a man belonged to an organization or association which taught or practiced polygamy was sufficient to prevent him from voting, holding public office or enjoying many other political rights. Decisions against the Latter-day Saints who were brought into court for polygamy were quick; and chances for acquittal were so small that many Mormons didn't even bother to secure legal counsel. In fact, anti-Mormon hatred was so strong, that in many cases lawyers who would defend them could not be readily found. 30 For example, in the


30 Ibid., p. 310.
case of United States v. Rasmussen the evidence was very flimsy. An attorney by the name of H. W. "Kentucky" Smith was persuaded to take the case for the defendant. On the morning of the day on which the trial was to be heard, Attorney Smith was in the Marshal's office talking about the approaching trial, and he remarked that it seemed certain that an acquittal could be secured. Whereupon, the Marshal, whose name was Fred T. Dubois, not knowing that Smith was Rasmussen's attorney, said, "Kentucky, you could not secure the acquittal of anyone of these polygamists because we have a jury that would convict Jesus Christ!" 31 In pleading the case, Attorney Smith told the court what Mr. Dubois had said and was able to win over one of the jurymen, who was evidently a newcomer and did not understand the conditions, thereby making the verdict eleven to one in favor of conviction. Thereupon, a new trial was ordered, after which a verdict of guilty was given in five minutes time with apologies for even that long a delay due to the fact that a juror had requested time enough to smoke a cigarette. At the trial, Dubois informed the judge that he did not mean any disrespect in his reference to the Savior, but that he only meant that the jurors were so honorable and so ready to perform their duties that they would convict any man who might be wrong regardless of who he was. After this, "Kentucky" Smith didn't defend any more Mormons. 32

31 See Joseph Fielding Smith, Essentials in Church History, p. 605.
Since the Idaho Test Oath Law made membership in the Mormon Church punishable by loss of franchise, it was believed by the Saints that such act was unconstitutional. 33 Finally, a test case was presented under the name, Davis v. Beason. The United States Supreme Court decision, delivered February 3, 1890, upheld the Idaho law as constitutional. 34 This encouraged anti-Mormons to have a similar law to the Idaho legislation introduced into the national Congress. It was known as the Cullom-Strubble Bill and failed to pass due to several reasons, the principal one being the abandonment of polygamy by the Mormons. 35

Pushed by popular agitation, Congress passed a more stringent anti-polygamy measure in 1887. This act, known as the Edmunds-Tucker Act, became law without the President's rejection or approval. President Cleveland neither signed nor vetoed it; he simply allowed the ten days period for his decision to pass without signing or disapproving it. Consequently, the bill became a law on March 3, 1887. 36 This measure dis-incorporated the Mormon Church and provided for the confiscation of its property. It was a determined attempt to quicken the abolition of the plural-wife system.

Proceedings were instigated to take control of church property; and in this the government was upheld by the Supreme Court. 37

33 For exact wording of this law, see Section 501 of Revised Statutes of Idaho (1888).


37 Mormon Church v. United States, 136 U. S. 1-69 (1890)
In September, 1890, President Wilford Woodruff, head of the Mormon Church, issued a manifesto, whereby he declared his intention to submit to the laws of the land and to counsel the members of the Church, over which he presided, to do likewise. This manifesto was presented to members of the Church in conference assembled, October 6, 1890, by Lorenzo Snow and was approved as the present word and will of the Lord to the Saints. Since then, the Church of Jesus Christ of Latter-day Saints has prohibited plural marriage and has excommunicated anyone taking more than one wife. Of course, this official church declaration was not retroactive. Polygamy was merely prohibited from that date forward. The older members of the Church who had plural wives prior to 1890 and who were remaining true to their marriage vows, died as the years followed, until the Mormon society became monogamous.

**Summary.** Mormon polygamy originated with Joseph Smith, was publicly announced in Utah and practiced by a limited number of the Saints, usually Church leaders in the various units. Not more than three per cent of the families of the Church at any one time were polygamous. There weren't any laws prohibiting plural marriage in any place where the Saints engaged in it, at the time they started practicing polygamy. Laws were passed to suppress it, and the constitutionality of these laws was upheld by decisions of the United States Supreme Court. The Mormon Church officially

abandoned plural marriage in 1890, thereby submitting to the laws of the
land in this respect.
CHAPTER IV

EARLY LEGISLATION AND CASES

This chapter deals with the first law passed by the United States Congress against polygamy and with two cases arising under it which were argued before the Supreme Court of the nation. The law was the Ant-Bigamy Act (sometimes called Morrill Act) of 1862 and the cases were those of Reynolds and Miles.

Before the enactment of this bigamy legislation there were attempts to make polygamy a crime. The new Republican Party, in its platform adopted at Philadelphia, June 17, 1856, advanced the following resolution:

Resolved: That the Constitution confers on Congress sovereign powers over the Territories of the United States for their government, and that in the exercise of this power it is both the right and imperative duty of Congress to prohibit in the Territories those two twin relics of barbarism—polygamy and slavery.\(^1\)

The Republicans were attempting to place the blame for polygamy and slavery at the door of the Democrats. And Milton R. Hunter holds the opinion that the Democratic President, James Buchanan, dispatched a federal army to Utah, among other reasons, to show that the party to which he belonged was also opposed to polygamy and Mormonism.\(^2\)

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In 1855, a bill for the suppression of plural marriage was introduced into the House of Representatives; and in the debates which followed, Mr. Justin S. Morrill, of Vermont, took an active part. This proposed legislation was never passed. On April 5, 1860, another bill was introduced to prevent the practice of polygamy in the territories of the United States and disapproving and annulling certain acts of the Legislative Assembly of the Territory of Utah. This bill was passed by the House of Representatives and forwarded to the Senate, where it was referred to the Committee on Judiciary, from which it was never reported.

Agitation against the Mormon system of marriage was insufficiently strong throughout the country, and especially in Congress, that there was considerable discussion of dividing Utah Territory and putting it under the political control of adjacent territories, some of which were to be created, in such a way, if it were possible, to prevent Mormons from controlling any one of them. And it was argued in the House of Representatives that such action would deal a death blow to plural marriage without passing a law directly against it, as the latter method might be declared unconstitutional due to the fact that it would be

3 Congressional Globe, 34th Cong., 1st sess., (1855), pp. 1491, and 1501.

legislation directly against an established exercise of religion. However, the feasibility of such a procedure was disputed on the ground that there were not large enough gentile populations to off-set the Mormon vote in the Far West. California had the largest population, but it was already a state. Therefore, such propositions were not put into effect.

On April 8, 1862, Representative Justin S. Morrill, of Vermont, introduced a similar bill to the one previously referred to, which bill was destined to become law. This proposed legislation (H.R.391) was reported back from the Committee on Territories with the recommendation that it be passed by the House, which was done after some debate. In the Senate, the Committee on Judiciary proposed an amendment as a substitute for part of the bill. Section three proposed that any religious corporation or association could not acquire or hold real estate in any territory of greater value than $100,000. At the suggestion of Senator Bayard, of Delaware, this amount was lowered to $50,000. Senator Hale, of New Hampshire, said that although he would probably vote for the bill, he would first like to know from the Chairman of the Judiciary Committee if its provisions were not inconsistent with the Constitution. Here are his words:

I was only going to say that I had been looking at a decision of the Supreme Court in which the rights of Congress over the territories are examined with some care, and it occurred to me

that possibly the provisions of this bill might be inconsistent with some of the doctrines and dogmas of that decision. I refer to a case decided in the Supreme Court at the December term of 1856, entitled, "Dred Scott v. Sandford," and the doctrine was pretty thoroughly gone over in that decision as to how far the poers of Congress extended over the Territories. It strikes me that by analogy this bill infringes upon that decision, for I remember that one of the exponents of the true faith on this floor used to illustrate this dogma at least as often as once a month by saying that the same law prevailed as to regulation of the relations of husband and wife, parent and child, and master and servant. I think at least once a month for years that was proclaimed to be the law. If the national legislature has no more power over the relations of husband and wife—and that seems to be the one touched here—than over master and slave, it seems to me that if we mean to maintain that repsect which is due to so august a tribunal as the Supreme Court of the United States, we ought to read the Dred Scott decision over again, and see if we are not in danger of running counter to it. It strikes me decidedly that we are; and at this time when there is so much necessity for invoking all the reverence there is in the country for the tribunals of the country, it seems to me we ought to tread delicately when we trench upon things that have been so solemnly decided by the Supreme Court as this has. But, as the gentleman who reports the bill is a member of the Judiciary Committee, if it is clearly his opinion that we can pass this bill without trenching upon the doctrine of the Dred Scott decision, I shall interpose no objection.

Senator McDougall, of California, objected to the bill on the ground that it was indiscreet to pass such a law at a time when the country was torn by Civil War. The Senator said:

It may not be considered a very judicious thing to object to this measure here, but I feel called upon to do it. There is no Senator, I think, who objects more strongly than I do to the vicious practice that obtains in the Territory of Utah; but I think we have just at this time trouble enough on our hands without invoking further trouble. We have had our communication with California cut off by the Indians on the line of communication. We have already had a Utah war that cost the government a large amount of money. We are to

have a controversy with them as to their admission as a State. They are clamoring for that now. In my judgment, no particular good is to be accomplished by the passage of this bill at present. When the time does come that our communication across the continent is complete, then we can take jurisdiction where we have power, and can employ power for the purpose of correcting these abuses. I suggest to you gentlemen, in the first place, that you will cut off, most likely, the communication across the continent to our possessions on the Pacific by a measure of legislation of this kind, which will be well calculated to invite, certainly will invite, great hostility and interfere with the general interests of the country. It will cost the government a large amount of money, if communication is interfered with, and do no substantial good. I do not think the measure at this time is well advised. It is understood its provisions will be a dead letter upon our statute book. Its provisions will be either ignored or avoided. If Senators will look the question fairly in the face, and consider how important it is that we should have no difficulties now on our western frontier between us and the Pacific, how poorly we can afford to go into the expenditure of a large amount of money to overcome difficulties that will be threatened on the passage of this bill, and then consider the little amount of substantial good which will result from it, I think they will hesitate before they pass it. The impolicy of its present passage will cause my colleague and self, after consultation, to vote against the bill.\footnote{Congressional Globe, 37th Cong., 2nd sess., (1862), p. 1848.}

The bill passed the Senate with changes, 37 yeas and 2 nays. Senators Latham and McDougall voting against it. Thereupon, it was returned to the House of Representatives for their concurrence, where it was considered on June 17, 1862. After the amendment was read, Congressman Phelps, of Missouri, desired to have the bill held up until he was assured that Section 3, making it unlawful for a religious or charitable corporation or association to hold real estate in excess of the value of $50,000, would not affect the Roman Catholic Church at Santa Fe. To
quote the Congressional Globe:

Mr. Phelps, of Missouri: I think, Mr. Speaker, that this is rather hasty legislation. I should not be at all surprised if it were ascertained that the Catholic Church in the city of Santa Fe owns real estate to the amount of more than fifty thousand dollars under grants made by the Mexican Government. I was about to submit a motion that the bill be referred to the Committee on the Judiciary. I recollect very well that, in the hurry and haste of legislation, a bill was passed by the House to prohibit polygamy in the Territories, which indirectly sanctioned it within the District of Columbia, or inflicted no punishment for it here. I desire that this matter shall be critically examined, and therefore, I think it should be referred to the Judiciary Committee.

Mr. Morrill, of Vermont: I am perfectly willing that the bill shall be passed over informally until the gentleman from Missouri can inform himself on the subject.

And a week later the gentleman from Missouri was assured that such a bill would not affect the Roman Catholic Church and that, therefore, his objection was not valid. To quote:

Mr. Morrill, of Vermont: I desire to say, in reference to the objection made by the gentleman from Missouri (Mr. Phelps) last week, to one of the provisions of the bill, that I understand the Roman Catholic Church at Santa Fe has property exceeding $50,000 in amount, but that is protected under treaty stipulations. His objection, therefore, is not valid. I move the previous question on concurring with the Senate amendments.

The amended bill passed the House of Representatives and was signed by President Abraham Lincoln in July, 1862. We read from the Congressional Globe that a message was received by the House, on July 2, that the President had approved and signed an act (H.R. 391) to punish and prevent the practice of polygamy in the Territories of the United States.

8 Ibid., p. 2769.
9 Ibid., cit.
and other places and disapproving and annulling certain acts of the
Legislative Assembly of the Territory of Utah. The new law read as
follows:

Be it enacted by the Senate and the House of Representatives of
the United States of America in Congress assembled, That every
person having a husband or wife living who shall marry any other
person, whether married or single, in a Territory of the United
States, or other place over which the United States have jurisdic-
tion, shall, except in cases specified in the proviso to this
section, be adjudged guilty of bigamy, and, upon conviction thereof,
shall be punished by a fine not exceeding five hundred dollars, and
by imprisonment for a term not exceeding five years: Provided,
nevertheless, That this section shall not extend to any person by
reason of any former marriage whose husband or wife by such
marriage shall have been absent for five successive years without
being known to such person with that time to be living; nor to
any person of any former marriage which shall have been dissolved by
the decree of a competent court; nor to any person by reason of any
former marriage which shall have been annulled or pronounced void
by the sentence or decree of a competent court on the ground of the
nullity of the marriage contract.

SECTION 2. And be it further enacted, That the following ordinance
of the provisional government of the State of Deseret, so called,
namely: "An ordinance incorporating the Church of Jesus Christ of
Latter-day Saints", passed February eight, in the year eighteen
hundred and fifty-one, and adopted, reenacted, and made valid by
the Governor and Legislative Assembly of the Territory of Utah by
an act passed January nineteen, in the year eighteen hundred and
fifty-five, entitled: "An Act in relation to the compilation and
revision of the laws and resolutions in force in Utah Territory,
for publication, and distribution", and all other acts and parts
of acts heretofore passed by the said Legislative Assembly of the
Territory of Utah, which establish and support, maintain, shield,
or countenance polygamy be, and the same hereby are, disapproved
and annulled: Provided, That this act shall be so limited and
construed as not to affect or interfere with the right of property
legally acquired under the ordinance heretofore mentioned, nor with
the right "to worship God according to the dictates of conscience",
but only to annul all acts and laws which establish, maintain, pro-

tect or countenance the practice of polygamy, evasively called spiritual marriage, however disguised by legal or ecclesiastical solemnities, sacraments, ceremonies, consecrations, or other contrivances.

SECTION 3. And be it further enacted, That it shall not be lawful for any corporation or association for religious or charitable purposes to acquire or hold real estate in any Territory of the United States during the existence of the Territorial government of a greater value than fifty thousand dollars; and all real estate acquired or held by any such corporation or association contrary to the provisions of this act shall be forfeited and escheat to the United States: Provided, That existing vested rights in real estate shall not be impaired by the provisions of this section.11

President Lincoln's policy being to let the Mormons alone, the law remained a dead letter for years.12

On June 23, 1874, President U. S. Grant signed an act passed by Congress known as the Poland Law. This legislation took from the probate courts in Utah all civil, chancery, and criminal jurisdiction; made the common law in force; provided that the United States attorney should prosecute all criminal cases arising in the United States courts in the Territory; that all processes and writs of the supreme and district courts should be served and executed by the United States Marshal, and that the clerk of the district court in each district and the judge of probate of the county should prepare the jury lists, each containing two hundred names, from which the United States Marshal

11 Ibid., Law Appendix, Chapter CXXVI, p. 385; see also U. S. Revised Statutes (1878), Section 5352, p. 1039.

should draw the grand and petit juries for the term of court. This law further provided that, when a woman filed a bill to declare void a marriage because of a previous marriage, the court could grant alimony; and that, in any prosecution for adultery, bigamy, or polygamy, a juror could be challenged for belief in, or practice of, polygamy. Although, the poland Act was not directly against plural marriage, it was legislation against the Mormon people in general. In short, jurisdiction over criminal and civil cases was assigned to federal courts.13

Returning now to the first federal legislation against polygamy, passed in 1862, it was passed by a Republican administration during the Civil War. As we recall, the Republican platform of 1856 had denounced polygamy and slavery as twin "relics of barbarism". However, the comparison of the two indicates that slavery was based on force, while polygamy was based on persuasion. Both were looked upon as horrible evils; and in this time of gloom, during the Civil War, some devout men may have believed that God was measuring out punishment upon a country that permitted both polygamy and slavery. In this time of distress, the government struck at both. One month after the Anti-Bigamy Act was signed, President Lincoln (August, 1862) read a proclamation of emancipation to his cabinet, but it was agreed to wait

13 Supplement to U. S. Revised Statutes (1891), Chapter 469, pp. 105-09; see also Congressional Record, 43rd Cong., 1st sess. (1874), pp. 4466-67.
until the Union armies had won a signal victory before publishing it. It was later issued, becoming effective January 1, 1863, and is often referred to as the proclamation freeing the slaves. It must be remembered that this was purely a war measure issued by Lincoln as commander-in-chief of the army. Fortunately for the Mormons, the President didn't enforce the bigamy act.14

Finally, a test case arose to determine the constitutionality of legislation against the religious practice of plural marriage. It was called Reynolds v. United States. A young man named George Reynolds, who was private secretary for Brigham Young, was the husband of two wives, Mary Ann Tuddenham and Amelia Jane Schofield. He was indicted and convicted of polygamy in the Third Judicial District of the Territory of Utah. At the trial, his wife, Amelia Jane, gave evidence, with her husband's consent, which helped to convict him. The case was carried to the Territorial Supreme Court, which reversed the decision of the lower court on the ground that the Grand Jury which found the indictment was illegal. Thereupon, a new trial was conducted after another indictment had been made. At this second trial, Amelia Jane Reynolds refused to appear as a witness and was not found when the officers were sent for her. However, the court permitted the prosecution to call to the witness stand lawyers and others who were in attendance.

at the previous trial and they testified what the absent witness had stated. Found guilty the second time, the defendant was fined five hundred dollars and sentenced to imprisonment at hard labor for two years. This time, the Utah Supreme Court affirmed the decision of the lower court and the case was taken to Washington, D. C.\textsuperscript{15}

In considering the whole proceedings, it seems that there was good reason for people to doubt the sincerity of the plaintiff in error, whose first indictment, as the Utah Supreme Court had declared, was illegal because it was found by a grand jury of more than fifteen persons, which was contrary to Territorial law. Now, in this appeal, counsel for Mr. Reynolds argued that the grand jury at the time of the second indictment was illegal on the ground that it was composed of only fifteen persons, which was at variance with federal law—Section 808 of the Revised Statutes of the United States. However, it was thought wise that this case should settle such apparent conflict between Utah Territorial and United States statutes.

The assignments of error, when grouped, presented the following questions to be answered by the nation's highest court:

1. Was the indictment bad because found by a grand jury of less than sixteen persons?
2. Were the challenges of certain petit jurors by the accused improperly overruled?
3. Were the challenges of certain other jurors by the government improperly sustained?

\textsuperscript{15} United States v. Reynolds, 1 Utah 226-32 and 319-23 (1875)
4. Was the testimony of Amelia Jane Schofield, given at the former trial for the same offense, but under another indictment, improperly admitted in the evidence?

5. Should the accused have been acquitted if he married the second time because he believed it to be his religious duty?

6. Did the court err in that part of the charge which directed the attention of the jury to the consequences of polygamy? 16

These questions were answered in the Court's opinion in such a way as to affirm and uphold the decision of the lower courts. 17 A syllabus of the opinion follows:

1. Sect. 808 of the Revised Statutes, providing for impanelling grand juries and prescribing the number of which they shall consist, applies only to the circuit and district courts of the United States. An indictment for bigamy under Sect. 5352 may, therefore, be found in a district court of Utah, by a grand jury of fifteen persons, impanelled pursuant to the laws of that Territory.

2. A petit juror in a criminal case testified on his voir dire that he believed that he had formed an opinion, although not upon evidence produced in court, as to the guilt or innocence of the prisoner; but that he had not expressed it, and did not think that it would influence his verdict. He was, thereupon, challenged by the prisoner for cause. The court overruled the challenge. Held, that its action was not erroneous.

3. Where it is apparent from the record that the challenge of a petit juror if it had been made by the United States for favor, should have been sustained, the judgment against the prisoner will not be reversed, simply because the challenge was in form for cause.

4. Although the Constitution declares that in all criminal prosecutions the accused shall enjoy the right to be confronted with the witnesses against him, yet if they are absent by his procurement or when enough has been proved to cast upon him the burden of showing, and he having full opportunity therefore, fails to show, that he has not been instrumental in concealing them or in keeping them away, he is in no condition to assert that his

16 Reynolds v. United States, 98 U. S. 168 (1879)  
17 Ibid., pp. 168-69.
constitutional right has been violated by allowing competent evidence of the testimony which they gave on a previous trial between the United States and him upon the same issue. Such evidence is ad-
missible.

5. Said Sect. 5352 is in all respects constitutional and valid.

6. The scope and meaning of the first article of the amendments of the Constitution discussed.

7. A party's religious belief cannot be accepted as a justifi-
cation for his committing an overt act, made criminal by the law of the land. Where, therefore, the prisoner, knowing that his wife was living, married again in Utah, and when indicted and tried therefor, set up that the Church where he belonged enjoined upon its male members to practice polygamy, and that he, with the sanction of the recognized authorities of the Church, and by ceremony performed pursuant to its doctrines did marry again—Held, that the court properly refused to charge the jury that he was entitled to an acquittal, although they should find that he had contracted such second marriage, pursuant to, and in conformity with, what he believed at the time to be a religious duty.

8. The court told the jury to consider what are to be the consequences to the victims of this delusion (the doctrine of polygamy). As this contest goes on they multiply, and there are pure-minded women and there are innocent children—innocent in a sense even beyond the degree of the innocence of childhood itself. These are to be the sufferers, and as jurors fail to do their duty, and as these cases come up in the Territory of Utah, just so do these victims multiply and spread themselves over the land. Held, that the charge was not improper.18

It will be noted that the Anti-Bigamy Act of 1862 was declared con-
stitutional and that a party's religious belief cannot be accepted as an excuse for the commission of acts made criminal by the laws of the land. Plural marriage was at variance with the mores of the modern Christian nations and with the enlightened sentiment of the most pro-
gressive societies. Of course, as the court opinion stated, Congress can make no law respecting the establishment of religion, or prohibiting the free exercise thereof. However, how should religion be defined?

18 Ibid., p. 145.
In citing certain opinions held as to what is the meaning of the term as understood by the Constitutional Fathers and by the founders of our country, it was held that religion referred to a person's belief or convictions between himself and his God. It was therefore held that a person cannot commit crime under the law and in view of the enlightened sentiment of mankind under the guise of religion. The Supreme Court decision was unanimous, except for the dissention of Mr. Justice Stephen J. Field at one minor point: he did not think that a sufficient foundation was laid for introduction of the testimony of Amelia Jane Schofield Reynolds. Chief Justice Morrison R. Waite delivered the opinion of the Court on the sixth day of January, 1879.19

The Latter-day Saints had previously been confident that the Supreme Court of the United States could not in justice give confirmation to this law against polygamy as practiced by them; therefore, the decision was somewhat of a shock to them. Shortly thereafter, President John Taylor, acting head of the Mormon Church, in an interview with Colonel O. J. Hollister, United States Internal Revenue Collector for Utah, stated that he disagreed with Judge Waite's statement of the scope and effect of the Constitutional guarantee of religious freedom given in the opinion. There were several leading Church authorities who were present at this interview and who took part in it. Part of it is quoted as follows:

PRESIDENT TAYLOR: A religious faith amount to nothing unless we are permitted to carry it into effect. . . They will allow us to think—what an unspeakable privilege that is!—but they will not allow us to have the free exercise of that faith, which the Constitution guarantees. . .

COLONEL HOLLISTER: Is it not true that marriage is the basic foundation of society; that out of it spring the social relations, obligations, and duties with which governments must necessarily concern themselves? And is it not therefore within the legitimate scope of every civil government to determine whether marriage shall be polygamous or monogamous under its dominion?

PRESIDENT TAYLOR: When the Constitution of the United States was framed and adopted, those high contracting parties did positively agree that they would not interfere with religious affairs. Now, if our marital relations are not religious, what is? This ordinance of marriage was a direct revelation to us through Joseph Smith the Prophet. You may not know it, but I know that this is a revelation from God and a command to His people, and therefore, it is my religion. I do not believe that the Supreme Court of the United States has any right to interfere with my religious views, and in doing it they are violating their most sacred obligations.

COLONEL HOLLISTER: If marriage can be legitimately called religion, what human relation or pursuit may not be so called? And if everything is religion, and the State is prohibited from interfering with it, what place is their left for the State?

ELDER CHARLES W. FARR ROSE: That is easily answered. When one's religion presumes to interfere with the rights and liberties of others.

COLONEL HOLLISTER: I think it (polygamy) interferes with the rights of men and women because when a man marries a second woman, some other man must do without any. The sexes are born in about equal numbers.

PRESIDENT TAYLOR: It is well known that there are scores of thousands of women in these United States who cannot obtain husbands, and the same also in England and other Christian countries. And, furthermore, we regard the plural order of marriage as being voluntary, both on the part of the man and the woman. If there should be any disparity such as you refer to—if there should not be two wives for one man, why then he could not get them.

COLONEL HOLLISTER: Do you regard polygamy as worthy of perpetuation at the cost of perpetual antagonism between your people and their countrymen?

PRESIDENT TAYLOR: We are not the parties who produce this antagonism. Our revelation, given in August, 1831, specifically states that if we keep the laws of God we need not break the laws of the land. Congress since, by its act, placed us in antagonism to what we term an unconstitutional law. Congress, indeed, can pass laws, and the
Supreme Court can sanction those laws; but while they have the power, being in the majority, the justice of the laws is another matter.

COLONEL HOLLISTER: Do you regard polygamy as superior to monogamy, as the form or law of marriage, and if so wherein?

PRESIDENT TAYLOR: I regard it as altogether superior to the law of monogamy in a great many particulars. There is in all monogamic countries, the United States not excepted, a terrible state of things arising from the practice of monogamy. We acknowledge our children; we acknowledge our wives; we have no mistresses. We had no prostitution until it was introduced by mongamy. Polygamy is not a crime per se (in itself); it was the action of Congress that made polygamy a crime. The British Government allows one hundred and eighty millions of their people to practice it, and by the law protects them in it. It is very unfortunate that our republican government cannot be as generous to its provinces as a monarchial government can be to its colonies.

COLONEL HOLLISTER: You hold, then, that the condemnation of polygamy by all Christian nations is without reason and wisdom, and contrary to the spirit of revelation?

PRESIDENT TAYLOR: We most assuredly do.

COLONEL HOLLISTER: Is not, in fact, what you call revelation the expression of the crystallized public sentiment of your people; and if a majority of them should desire to abandon polygamy, would what is called revelation deter them from so doing?

ELDER JOSEPH F. SMITH: It is very unfair in you, Mr. Hollister, to even think that a people who have suffered as we have for our faith, having been driven five times from our homes and suffered even to martyrdom, should be insincere in our belief. Questions you have asked here repeatedly imply that we could get up revelations to suit ourselves.

COLONEL HOLLISTER: What effect on the whole do you apprehend Chief Justice Wate's decision will have on the question?

PRESIDENT TAYLOR: I don't know that it will have any effect, except to unite us and confirm and strengthen us in our faith.20

The sentence that had been imposed upon George Reynolds was found to be in excess of the law, in that he was sentenced to imprisonment with hard labor. Therefore, efforts were made to have the case reopened and the proceedings quashed. This the Supreme Court refused to do. But instead

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20 Orson F. Whitney, *History of Utah* (Salt Lake City: George Q. Cannon and Sons, 1900), III; 51-55.
the case was remanded to the Territorial Supreme Court of Utah with instructions to amend the sentence so as to omit the words "hard labor." 21

More than thirty thousand citizens of Mormon communities forwarded a petition to President Rutherford B. Hayes asking that Reynolds be pardoned. The request was not granted; and, on June 14, 1879, the convicted man was re-sentenced and sent to Lincoln, Nebraska, where he in the state prison for twenty-five days, after which he was brought back to Utah and placed in the penitentiary, where he remained the rest of his term, excepting one hundred and forty-four days remitted on account of good behavior. His fine was also remitted. 22

There was one more polygamy case arising under the bigamy law of 1862 which was argued before the United States Supreme Court. This case deserves special mention because it caused great agitation for more severe measures against the practice of plural marriage. Reference is made to the case of John H. Miles, which ran a course of about three years in the courts.

The defendant, a resident of St. George, Utah, was arrested at Salt Lake City and given a hearing before United States Commissioner E. T. Sprague prior to the grand jury indictment. It was shown that the defendant had married Caroline Owens, a native of England, in the Endowment House, President Daniel H. Wells, of the First Presidency of

21 Reynolds v. United States, 98 U. S. 169 (1879)
the Church at that time, performing the ceremony. Caroline Owen Miles testified that on the same day she was married, and just prior to her own ceremony, her husband was wedded to Emily Spencer. Caroline (or Carrie, as she is sometimes called) was not present when the previous marriage occurred, but she stated that during a reception that evening, Emily Spencer was referred to as Mrs. Miles. In the Third District Court, in April 1879, the purpose of the prosecution was to prove that John Miles and Emily Spencer were married, for only on that basis could the defendant be convicted of polygamy. Miles conceded his marriage to Caroline, but the former marriage was not proven nor confessed. The defendant objected to the testimony of his wife being used against him, as it was contrary to the laws of the Territory of Utah, which provided that a wife could not testify against her husband without his consent. The point at issue was: if the defendant had married Emily Spencer first, she would be under the law his legal wife and, therefore, Caroline would be a polygamous, instead of a legal, wife. Therefore, she could testify against Miles. But, as has been stated, the former marriage was not proved. Nevertheless, Miles was convicted in district court on the testimony of Miss Owens, who was permitted to testify, and he was sentenced to pay a fine of one hundred dollars and to be imprisoned for a term of five years. The case was appealed, and the Territorial Supreme Court upheld the decision. Thereupon, appeal was made to the Supreme Court of the United States.23

23 Miles v. United States, 103 U. S. 307-308 (1881); also 2 Utah 19-30 (1880)
In April, 1881, the nation's highest court set aside the decision of the lower courts and remanded the case for a new trial on the ground that an error had been made in permitting a man's wife to testify against him. It was held that the first marriage must be proven before the testimony of Caroline Owen could be admitted. This was not done.

The United States Supreme Court opinion states:

The result of the authorities is that, as long as the fact of the first marriage is contested, the second wife cannot be admitted to prove it. When the first marriage is duly established by other evidence, to the satisfaction of the court, she may be admitted to prove the second marriage, but not the first, and the jury should have been so instructed.

In this case the injunction of the law of Utah, that the wife should not be a witness for or against her husband, was practically ignored by the court. After some evidence tending to show the marriage of the plaintiff in error with Emily Spencer, but that fact being still in controversy, Caroline Owens, the second wife, was put upon the stand and allowed to testify to the first marriage, and the jury were, in effect, told by the court that if, from her evidence and that of other witnesses in the case, they were satisfied of the fact of the first marriage, then they might consider the evidence of Caroline Owens to prove the first marriage.

In other words, the evidence of a witness, 
emph{prima facie incompetent}, and whose competency could only be shown by proof of a fact which was the one contested issue in the case, was allowed to go to the jury to prove that issue and at the same time to establish the competency of the witness.

In this we think the court erred.

It is made clear by the record that polygamous marriages are so celebrated in Utah as to make the proof of polygamy very difficult. They are conducted in secret, and the persons by whom they are solemnized are under such obligations of secrecy that it is almost impossible to extract the facts from them when placed upon the witness stand, If both wives are excluded from testifying to the first marriage, as we think they should be under the existing rules of evidence, testimony sufficient to convict in a prosecution for polygamy in the Territory of Utah is hardly attainable. But this is not a consideration by which we can be influenced. We must administer the law as we find it. The remedy is with Congress, by enacting such a change in the law of evidence in the Territory of Utah as to make both wives witnesses on indictments for bigamy.
For the error indicated the judgment of the Supreme Court of the Territory of Utah must be reversed and the case remanded to that court, to be by it remanded to the District Court, with directions to set aside the verdict and judgment. . . .

The case was dropped for it was felt by the United States Attorney that there could be no conviction. As has already been stated, this case and the decision given by the Supreme Court helped to excite the country to the point where pressure was brought increasingly upon Congress for legislation which would make it easier to convict polygamists. The Court had referred to the fact that the secrecy attending the celebration of marriages in Utah Territory makes it difficult to prove polygamy. It was also evident from this opinion that the Supreme Court would likely uphold any legislation in that direction.

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24 Miles v. United States, 103 U. S. 315-316 (1881)

CHAPTER V

THE EDMUNDS ACT

In this chapter, the Edmunds Act, passed in 1882, and United States Supreme Court decisions or opinions delivered in four cases arising under this act, will be considered.

Presidents Grant and Hayes in annual messages to Congress and President Garfield in his inaugural address recommended further measures to abolish polygamy. And public pressure was exerted upon Congress to enact more severe legislation in this matter. To realize the extent of this agitation, one has only to review volume thirteen of the Congressional Record, as an example, for many references to polygamy and for numerous petitions for its suppression submitted by citizens from various states. Many of these petitions, upon checking the records, were instigated by ministers of religion. A partial list, as shown by the index, follows:

Polygamy:
President's Annual Message, p. 23
Bill to provide for recording marriages in Territories (S.309)
Bills to make wife competent witness in trials for bigamy (S.310 and H.R. 2959)
Bill to amend laws relative to polygamy (S.353)
Bill to disqualify polygamists from voting and office holding (H.R. 756)
Bill to provide for challenges and oath to jurors in trials for bigamy (H.R. 757)
Bill to remove statute of limitations on prosecutions for polygamy (H. R. 758)

1 James D. Richardson (compiler), Messages and Papers of the Presidents (Washington: Bureau of National Literature, 1911), VI: 4105, 4157, 4309-10, 4511-12, 4557-58, and 4601.
Bill to facilitate convictions for polygamy (H.R. 1466)
Bill to define and punish bigamy (H.R. 2869)
Bill to amend laws relative to bigamy (H.R. 2960)
Bill to suppress polygamy (H.R. 3128)
Bill to supplement act amending laws relative to polygamy (H.R. 6036)
Joint Resolutions proposing Amendment to the Constitution to prohibit polygamy (H.J.R. 67, and 116)
Resolution declaratory of opinion of House that no person should be admitted as Delegate who is guilty of polygamy, offered by Mr. Haskell, pp. 359-362
Message of President relative to compensation of Commissioners to be appointed under act to amend laws relative to polygamy (H.R. Ex. Doc. 152) pp. 2528, 2546
Memorial of General Assembly of Presbyterian Church relative to polygamy (S Misc. Doc. 30) p. 343...

Petitions for suppression of polygamy, from----
Alabama: citizens of, 1239
American Baptist Home Mission Society pp. 1259, 1281, 1324, 1411
California: citizens of, pp. 1368, 1629, 1660
Connecticut, citizens of, pp. 1325, 1504
Delaware: Wilmington Conference M. E. Church, p. 1926
General Assembly Presbyterian Church, p. 367
Illinois: citizens of, pp. 909, 936, 1076, 1281, 1572, 1733
Indiana: citizens of, pp. 468, 1464, 1503, 1879
Iowa: citizens of, pp. 221, 1144, 1258, 1504, 1539, 1572, 2096
Kansas: citizens of, p. 2045
   —Conference of Methodist Episcopal Church, pp. 435, 438, 936
Kentucky: citizens of, p. 5123
Maine: citizens of, pp. 707, 1660, 4144
Maryland: citizens of, p. 1607
Massachusetts: citizens of, pp. 1505, 1775, 1973, 2026, 2445
Methodist Episcopal Church, p. 1504
Michigan: citizens of, pp. 817, 1239, 1258, 1411, 1463, 1636, 1840, 1878, 1989, 2026, 2190
Michigan Legislature, pp. 1823, 1824
Minnesota: citizens of, pp. 607, 1324, 1411, 2026
Missouri: citizens of, p. 1107
   —Woman's suffrage association, p. 780
Nebraska: citizens of, pp. 342, 818
   —Omaha Ministerial Association, p. 1109
New Hampshire: citizens of, pp. 1471, 1505, 1628, 1660, 1944, 2189
New Jersey: citizens of, pp. 1238, 3395, 4556
   —Synod of New Jersey, pp. 45, 231, 368, 399
New York: citizens of, pp. 1040, 1324, 1628, 1823, 1843, 1988, 2026
   —Methodist Episcopal Church p. 516
   —Ministers Union of Buffalo, p. 1411
   —Preachers Association of New York, p. 547
Ohio: citizens of, pp. 435, 1107, 1325, 1258, 1446, 1503, 1572, 1775, 1823, 1879
Pennsylvania: citizens of, pp. 436, 547, 574, 742, 892, 1003, 1040
Reformed Episcopal Church, p. 516
Sprague, Frederick W., p. 2026
Tennessee: citizens of, p. 2724
Texas: citizens of, p. 1503
---Austin Conference of Methodists, p. 222
United States: citizens of, p. 1572
Utah: citizens of, p. 1732 (non-Mormons)
Utah: Democratic Committee, p. 1324
Vermont: citizens of, p. 1607
West Virginia: citizens of, p. 1326
Wisconsin: citizens of, pp. 1446, 1503, 1661, 1734, 1878, 1879, 2190, 2274, 2547. 2

As you have already noticed in this list, chosen at random from one volume of the Congressional Record, there were two resolutions proposing amendment to the Constitution to prohibit polygamy. For a complete list of all bills and resolutions on polygamy introduced into Congress during the years 1852-1890, see Appendix B of this thesis. It will be noted that there were, over the years, a good number of proposals to amend the Constitution so as to prohibit polygamy.

President Chester A. Arthur, in his first annual message to Congress, dated December 6, 1881, advised further legislation to aid in suppression of plural marriages in Utah Territory. Here are his words:

The fact that adherents of the Mormon Church, which rests upon polygamy as its corner stone, have recently been peopling in large numbers in Idaho, Arizona, and other of our western territories is well calculated to excite the liveliest of interest and apprehension. It imposes upon Congress and the Executive the duty of arraying against this barbarous system all the power which, under the Constitution and the law, they can wield for its destruction.

Reference has been already made to the obstacles which the United States' officers have encountered in their efforts to punish violators of the law. Prominent among these obstacles is the

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2 Congressional Record, 47th Cong., 1st sess. (1882), Index, p. 328.
difficulty of procuring legal evidence sufficient to warrant a conviction even in the case of the most notorious offenders.

Your attention is called to a recent opinion of the Supreme Court of the United States, explaining its judgment of reversal in the case of Miles, who had been convicted of bigamy in Utah. The Court refers to the fact that secrecy attending the celebration of marriages in that territory makes the proof of polygamy very difficult; and the propriety is suggested of modifying the law of evidence which now makes a wife incompetent to testify against her husband.

This suggestion is approved, I recommend also the passage of an act providing that in the territories of the United States, the fact that a woman has been married to a person charged with bigamy shall not disqualify her as a witness upon his trial for that offense. I further recommend legislation by which any person solemnizing a marriage in any of the territories shall be required, under stringent penalties for neglect or refusal, to file a certificate of such marriage in the supreme court of the territory.

Doubtless Congress may devise other practicable measures for obviating the difficulties which have hitherto attended the efforts to suppress this iniquity. I assure you of my determined purpose to cooperate with you in any lawful and discreet measures which may be proposed to that end. 3

And Congress acted upon the President's suggestion and recommendation.

The Edmunds Act, first known as Senate Bill 353, was introduced by Senator George F. Edmunds, of Vermont; and it was reported from the Judiciary Committee on January 24, 1882, and passed the Senate on February 16. Some Southern Senators, who recalled the evils of the carpet-bag rule in the South following the Civil War, opposed the bill on the ground that it would inflict untold hardships on Utah, as faulty legislation had upon the South following the war. The action of these Senators may have been prompted by political reasons. Republicans were advancing the legislation and they were Democrats. Perhaps, they would favor the Mormons rather than to side in with their old Yankee enemies. Of course, this

3 James D. Richardson (compiler), op. cit., VI: 4644-45.
is pure supposition. Among the Senators who opposed the bill were: John T. Morgan of Alabama, Wilkinson Call of Florida, Joseph E. Brown of Georgia, Lucius C. C. Lamar of Mississippi, George G. Vest of Missouri, and George H. Pendleton of Ohio. Senator Lamar, being ill at the time of the debate, rose from his sick bed and went to the Senate Chamber to protest vigorously in these words:

Mr. President, I am not only opposed to the provisions which have already been discussed so ably by the gentlemen, but to the policy of the legislation which the committee propose. In my opinion, sir, it is a cruel measure, and will inflict unspeakable sufferings upon large masses, many of whom are the innocent victims of a system. I do not think that the bill has been sufficiently considered in view of the importance of its provisions. With this simple declaration I shall not detain the Senate longer.4

Senator Call, of Florida, opposed the bill, particularly section nine, which gave the political powers of election in the Territory of Utah to five persons nominated by the President and confirmed by the Senate.

Mr. Call said:

Now, if the Senator from Vermont (Mr. Edmunds) or the Committee on the Judiciary will report a bill by which it shall be declared "that five persons appointed by the President of the United States shall have absolute authority to interpret the election laws of the Territory of Utah and the laws of the United States, to declare what votes are valid and what are not, to declare who is eligible, exclusive of any judicial construction upon the subject, to hold office in that Territory, to issue certificates which shall alone be evidence of eligibility to office", we shall have the proposition in its naked and proper form. For myself, sir, I can never vote for a provision which contains a power of this discretion in defiance of the popular will, based entirely upon five persons selected by the

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4 Congressional Record, 47th Cong., 1st sess. (1882), pp. 1152-1163, 1195-1217 for complete debates.
executive power of the country. I think I can find better means of stamping out polygamy than one which stamps out the institutions of the country, the rights contained in the Constitution, the distinction between judicial, legislative, and executive powers, and which by plain enactment here gives to five persons, nominated by the President and confirmed by the Senate, all of whom except one may be of one political party, absolute power not only of deciding who should vote, but also of deciding what votes are cast and who shall be eligible to office. I am opposed, for one, to section nine of the proposed bill (Section 9 as it then read).

Mr. Edmunds replied:

... the territories of the United States are well understood to be under the legislative power of the United States, not even limited by the Constitution as applied to the States.

Mr. Call answered back with this question:

Does my honorable friend (Mr. Edmunds) mean to say that the powers of this board of five persons will be legislative authority of the United States?

Senator Vest, of Missouri, contended that Congress, in view of the Dred Scott Decision that the Constitution of the United States extended over the Territories, their persons and their property, as it did over the citizens of the States, had no right to pass this proposed legislation. The portion of the Dred Scott opinion referred to, reads as follows:

But the power of Congress over the person or property of a citizen can never be a mere discretionary power under our Constitution and for our government. The powers of the government and the rights and privileges of the citizen are regulated and plainly defined by the Constitution itself. And when the Territory becomes a part of the United States, the Federal Government enters into possession in the character impressed upon it by those who created it. It enters upon it with the powers over citizen strictly defined and limited

5 Ibid., p. 1158.
6 Loc. cit.,
by the Constitution, from which it derives its own existence, and by virtue of which alone it continues to exist and act as a government and sovereignty. It has no power of any kind beyond it, and it cannot when it enters a Territory of the United States put off its character and assume discretionary or despotic powers which the Constitution has denied to it. It cannot create for itself a new character separated from the citizens of the United States and the duties it owes them under the provisions of the Constitution with their respective rights defined and marked out, and the Federal Government can exercise no power over his person or property beyond what that instrument confers, nor lawfully deny any right which it has reserved. 7

Opposition to the bill availed nothing. Senator Garland said that polygamy in Utah was a desperate case which required desperate remedies. 8 Debated on the 15th. and 16th. of February, the bill passed the Senate on the latter date; whereupon, it was sent to the House of Representatives, where it was read on the 8th. of March. The bill was quickly passed by the House after a brief debate; the voting showed, 199 yea and 42 nays, 51 not voting. 9 During the short debate, Congressman Mills, of Texas, opposed passage of the measure, saying: "Because this bill violates the fundamental principle of free government, I can under no sort of circumstances give it my consent". 10 This legislation was signed by President Chester A. Arthur on March 22, 1882, thereby becoming a law. The new act read as follows:

An Act to amend Section 5352 of the Revised Statutes of the United States in reference to bigamy, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section

7 Dred Scott v. Sandford, 19 Howard 449 (1857)
8 Congressional Record, 47th Cong., 1st sess. (1882), p. 1159.
9 Ibid., pp. 1732, 1845-77.
10 Ibid., p. 1862.
5352 of the Revised Statutes of the United States be, and the same is hereby, amended so as to read as follows, namely:

"Every person who has a husband or wife living who, in a Territory or other place over which the United States have exclusive jurisdiction, who hereafter marries another, whether married or single, and any man who hereafter simultaneously, or on the same day, marries more than one woman, in a Territory or other place over which the United States has exclusive jurisdiction, is guilty of polygamy, and shall be punished by a fine of not more than $500 and by imprisonment for a term of not more than five years; but this section shall not extend to any person by reason of any former marriage whose husband or wife by such marriage shall have been absent for five successive years, and is not known to such person to be living, and is believed by such person to be dead, nor to any person by reason of any former marriage which shall have been dissolved by a valid decree of a competent court, nor to any person by reason of any former marriage which shall have been pronounced void by a valid decree of a competent court, on the ground of nullity of the marriage contract".

SECTION 2. That the foregoing provisions shall not affect the prosecution or punishment of any offense already committed against the section amended by the first section of this act.

SECTION 3. That if any male person, in a Territory or other place over which the United States have exclusive jurisdiction, hereafter cohabits with more than one woman, he shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than $300, or by imprisonment for not more than six months, or by both said punishments, in the discretion of the court.

SECTION 4. That counts for any or all of the offenses named in sections 1 and 3 of this act may be joined in the same information or indictment.

SECTION 5. That in any prosecution for bigamy, polygamy, or unlawful cohabitation under any statute of the United States, it shall be sufficient cause of challenge to any person drawn or summoned as a jurymen or talemen, first, that he is or has been living in the practice of bigamy, polygamy or unlawful cohabitation with more than one woman, or that he is or has been guilty of an offense punishable by either of the foregoing sections or by section 5352 of the Revised Statutes of the United States, or the act of July 1, 1862, entitled "An act to punish and prevent the practice of polygamy in the Territories of the United States and other places, and disapproving and annulling certain acts of the Legislative Assembly of the Territory of Utah"; or, second, that he believes it right for
a man to have more than one living and undivorced wife at the same time, or to live in the practice of cohabiting with more than one woman; and any person appearing or offered as a juror or talesman, and challenged on either of the foregoing grounds, may be questioned on his oath as to the existence of any such cause of challenge, and other evidence may be introduced bearing upon the question raised by such challenge; and this question shall be tried by the court. But as to the first ground of challenge before mentioned, the person challenged shall, not be bound to answer if he shall say upon his oath that he declines on the ground that his answer may tend to criminate himself; and if he shall answer as to said first ground, his answer shall not be given in evidence in any criminal prosecution against him for any offense named in sections 1 or 3 of this act; but if he declines to answer on any ground he shall be rejected as incompetent.

SECTION 6. That the President is hereby authorized to grant amnesty to such classes of offenders guilty of bigamy, polygamy, or unlawful cohabitation, before the passage of this act on such conditions and under such limitations as he shall think proper; but no such amnesty shall have effect unless the conditions thereof shall be complied with.

SECTION 7. That the issue of bigamous or polygamous marriages, known as Mormon Marriages, in cases in which such marriages have been solemnized according to the ceremonies of the Mormon sect, in any Territory of the United States, and such issue shall have been born before the 1st. day of January A. D., 1883, are hereby legitimated.

SECTION 8. That no polygamist, bigamist, or any person cohabiting with more than one woman, and no woman cohabiting with any of the persons described as aforesaid in this section, in any Territory or other place over which the United States have exclusive jurisdiction, shall be entitled to vote at any election held in any such Territory or other place, or be eligible for election or appointment to or be entitled to hold any office or place of public trust, honor, or emolument in, under, or for any such Territory or place, or under the United States.

SECTION 9. That all the registration and election offices of every description in the Territory of Utah are hereby declared vacant, and each and every duty relating to the registration of voters, the conduct of elections, and the receiving or rejection of votes, and the canvassing and returning of the same, and the issuing of certificates or other evidence of election in said Territory, shall, until other provisions be made by the Legislative Assembly of said Territory as is hereinafter by this section provided, be performed under the existing laws of the United States and of said Territory by proper persons, who shall be appointed to
execute such offices and perform such duties by a board of five persons, to be appointed by the President, by and with the advice and consent of the Senate, not more than three of whom shall be members of one political party, and a majority of whom shall be a quorum. The members of said board so appointed by the President shall continue in office until the Legislative Assembly of said Territory shall make provision for filling said offices as herein authorized. The secretary of the Territory shall be the secretary of said board and keep a journal of its proceedings, and attest the action of said board under this section. The canvass and return of all the votes at elections in said Territory for members of the Legislative Assembly thereof shall also be returned to said board, which shall canvass all such returns and issue certificates of election to those persons who, being eligible for such election, shall appear to have been lawfully elected, which certificate shall be the only evidence of the right of such persons to sit in such Assembly:
Provided, That said board of five persons shall not exclude any person otherwise eligible to vote from the polls on account of any opinion such person may entertain on the subject of bigamy or polygamy; nor shall they refuse to count any such vote on account of the opinion of the person casting it on the subject of bigamy, or polygamy; but each house of such Assembly, after its organization, shall have power to decide upon the elections and qualifications of its members, and at or after the first meeting of said Legislative Assembly whose members shall have been elected and returned according to the provisions of this act, said Legislative Assembly may make such laws, conformable to the organic act of said Territory and not inconsistent with other laws of the United States, as it shall deem proper concerning the filling of the offices in said Territory declared vacant by this act.

Approved March 22, 1882.\[11\]

By way of summary, the main points of this law may be listed as follows:

1. It defined polygamy as a crime, leaving the penalty the same as it had been (previously called bigamy) in the law of 1862.

2. It defined living with a plural wife as unlawful cohabitation and made such crime punishable by a fine of not more than $300 or by

\[11\] Supplement to U. S. Revised Statutes (1891), Chap. 47, pp. 30-32.
imprisonment not to exceed six months, or by both fine and imprisonment at the discretion of the court. The offenses of polygamy and unlawful cohabitation may be joined in the same information or indictment, as stated in section four.

3. All persons guilty of polygamy, bigamy, or unlawful cohabitation were excluded from voting or holding any public office and from serving on juries in polygamous cases: anyone who believed that it was right for any man to have more than one wife at the same time, or believed it right to live in the practice of unlawful cohabitation, may be challenged and therefore excluded in any polygamous prosecution, as explained in section five.

4. Section nine of the law declared that all registration and election offices were vacant and, until other provisions should be made by the Legislative Assembly, the work of these registration and election offices was to be performed by a board of five commissioners appointed by the President of the United States with the consent and advice of the Senate, not more than three of whom were to be of the same political party.

5. All the children born of polygamous marriages before the 1st. day of January, 1883, were legitimated.

6. The President of the United States was empowered to grant amnesty to such persons guilty of polygamy prior to the enactment of this act, under such limitations and upon whatever conditions he should think proper.
B. H. Roberts, a Mormon historian, says that the Edmunds Law violated the principle of local self-government and the right of trial by jury as commonly understood in America. He refers to Judge Jeremiah S. Black's speech on "Federal Jurisdiction in the Territories", in which the Edmunds Act is criticized. Here is what the Judge said:

Trial by jury means by a jury of the country, the peers of the party, selected impartially from the general population, so as to represent a fair average of the public understanding and moral sense. That is the kind of jury that every man is entitled to have who pleads not guilty, and puts himself on God and the country for trial. That is the meaning of the word "Jury" as used in the decrees of Alfred, the statutes of Edward the Confessor, the Magna Charta, the Petition of Rights, the Bill of Rights, and the American Constitution. In that sense it is used by all English-speaking peoples, and with that sense attached to it the institution has been adopted by other nations. The right of trial by jury is withheld by the Edmunds Law, or given in mutilated form, which makes it hardly better than a military commission "organized to convict".

... A juror may be questioned on his oath whether he believes it right for a man to have more than one living and undivorced wife at the same time or to live in the practice of cohabiting with more than one woman. If he refuses to answer, or answers in the affirmative, he is conclusively presumed to be one of the people, and must be rejected; but if he replies "No", he has spoken the watchword of the inimical faction, and he is admitted, because his ascertained hostility to the party accused and all his class may be relied upon as an element of his verdict.12

The Commission, as provided for in Section nine, encountered difficulties in carrying out its duties. This group of five members formulated election rules and regulations and appointed registrars. Since no person guilty of polygamy or of unlawful cohabitation could vote or hold public office, a test oath was required prior to registration for

12 Brigham H. Roberts, A Comprehensive History of the Church (Salt Lake City: Deseret News Press, 1930), VI: 44-45; also see Church Collection of Pamphlets, (Mormon Church Historian's Office, Salt Lake City), Vol. 64, Pamphlet 1883, pp. 21-22.
voting. Of course, this would prevent many from voting who had always been voters prior to the enforcement and passage of the new law. In taking this oath, a person affirmed that he was not a polygamist or a violator of the United States laws respecting this crime, and that he did not "live or cohabit with more than one woman in the marriage relation". The oath did not require a man to declare if he lived with more than one woman outside the marriage relation. Men guilty of such immorality could take the oath without committing perjury and could vote; but polygamous Mormons, married according to their sacred ceremony, were disfranchised. Here is the Utah Test Oath:

County of . . . . .) ss.
Territory of Utah . .)

I, ________________, being first duly sworn (or affirmed), depose and say that I am over twenty-one years of age, and have resided in the Territroy of Utah for six months, and in the precinct of ____________ one month immediately preceeding the date hereof; and (if a male) am a native born or naturalized (as the case may be) citizen of the United States and a taxpayer; in this Territory, or (if a female), I am a native born, or naturalized, or the wife, widow or daughter (as the case may be) of a native born or naturalized citizen of the United States; and I do further solemnly swear (or affirm) that I am not a bigamist or a polygamist; that I am not a violator of the laws of the United States prohibiting bigamy or polygamy; that I do not live or cohabit with more than one woman in the marriage relation, nor does any relation exist between me and any woman which has been entered into or continued in violation of the said laws of the United States prohibiting bigamy or polygamy; and (if a woman) that I am not the wife of a polygamist, nor have I entered into any relation with any man in violation of the laws of the United States concerning polygamy or bigamy.

Subscribed and sworn before me this _______day of ________, 1882.

Registration Officer_______Precinct 13

The Commission issued instructions directing the registrars to disfranchise all persons who had been guilty of the above mentioned polygamous crimes at any time since the year 1862, when the first law against plural marriage was enacted. This regulation made the law retroactive. The statement became common, "Once a polygamist, always a polygamist". Men were denied the franchise who were not now guilty of polygamy, but who had been, at some time since 1862. William Jennings, the Mayor of Salt Lake City, was denied the franchise, although he had not been guilty of violating any law. He married two wives prior to the enactment of the law in 1862 making bigamy a crime; and his first wife died in 1871, years before the enactment of the statute making unlawful cohabitation a crime. Since 1871, he had cohabited with his one wife. However, he was not allowed to vote because at a time in his life since 1862, he had been living in polygamous relations and was therefore considered a polygamist.14

A test case arose in the autumn of 1882 to determine if the rulings of the Commission were in accordance with the Edmunds Law, and if the law itself was constitutional. This case was argued before the United States Supreme Court on January 28, 1885, and the court decision was delivered on the following March 23rd. Murphy v. Ramsey was its abbreviated title, although there were several plaintiffs and the

14 Loc. cit. ; also see Orson F. Whitney, History of Utah, III: 227-33.
defendants included the five members of the Utah Commission and also registrars and other elective officers. The plaintiffs had all been denied registration for voting. Since they had been previously using this political privilege, and since they had broken no law other than that defined by the act which should prevent them from voting, they believed a test case should be presented. They argued that the franchise was taken from them, as a punishment, without conviction of crime. In the decision, the United States Supreme Court upheld the Edmunds law as constitutional, but it declared that the test oath formulated by the Utah Commission was null and void. It stated that the commission board had no lawful power to prescribe conditions of registration or of voting and that any rules of that character promulgated by them to govern the registrative and elective officers were null and void. Therefore, the doctrine, "Once a polygamist, always a polygamist", which was previously discussed in this chapter, was shattered.15

The constitutionality of the Edmunds Law was now assured. But the courts were soon troubled with the problem of defining what the law meant by unlawful cohabitation.

Under the law of 1882, the first polygamous case to be carried to the nation's highest court was that of Clawson v. United States. Rudger Clawson, a young man, was indicted for both polygamy and unlawful cohabitation. His first trial resulted in a disagreement of

15 Murphy v. Ramsey, 114 U. S. 15-47 (1885)
the jury; but the second trial resulted in his conviction for both crimes. For being guilty of polygamy he was fined $200 and sentenced to imprisonment for a period of three and one-half years; and for being guilty of unlawful cohabitation he was fined $300 and sentenced to six months in prison. The second term of imprisonment was to commence at the completion of the first. While the case was pending appeal to the Territorial Supreme Court, bail was denied the defendant and he was taken to the penitentiary. The Utah Supreme Court affirmed and upheld the verdict, and the case was taken to Washington. As we have seen, the Edmunds Law declared that those guilty of polygamy or polygamous cohabitation cannot serve on juries in cases of polygamous prosecutions. The question arose as to whether this applied only to petit juries or to grand juries as well. The Court decided that this ruling also applied to grand juries. The case brief is here presented:

Under section 5 of the act of Congress of March 22, 1882, 22 Stat. 30, which provides, "that in any prosecution for bigamy, polygamy, or unlawful cohabitation, under any statute of the United States, it shall be sufficient cause of challenge, to any person drawn or summoned as a jurymen or talesman... that he believes it right for a man to have more than one living and undivorced wife at the same time; the proceedings to empanel the grand jury which finds an indictment for one of the offenses named, under a statute of the United States, against a person not before held to answer, are a part of the prosecution, and the indictment is good, although persons drawn and summoned as grand jurors were excluded by the court from serving on the grand jury, on being challenged by the United States, for the cause mentioned, the challenges being found true,

The statute applies to grand jurors.

Where, under Section 4 of the act of Congress of June 23, 1874, 18 Stat. 254, "in relation to courts and judicial officers in the Territory of Utah", in the trial of an indictment, the names in the jury-box of 200 jurors, provided for by that section, are
exhausted, when the jury is only partly empanelled, the District Court may issue a venire to the United States marshal for the Territory, to summon jurors from the body of the judicial district, and the jury may be completed from persons thus summoned.\textsuperscript{16}

This decision declared that the grand jury was legal, and that the rejected grand jurors were properly excluded. The last paragraph quoted above declares that the District Court had the right, when the jury list was exhausted, to go outside the Poland law and summon jurors on open venire.

In this case, another assignment of error presented by the plaintiff in error involved the question as to whether he was wrongfully denied bail while his case was pending appeal to the Utah Supreme Court. This bail question had been decided about three months prior to the decision concerning the jury. The United States Supreme Court opinion stated that the granting of bail to the defendant pending appeal was to be discretionary with the court that tried him. This part of the decision was not unanimous: Justices Miller and Field dissented. The judgments of the lower courts were affirmed and supported.\textsuperscript{17}

As previously indicated, the question of what the law meant by the term unlawful cohabitation became a perplexing one. Did it imply as a necessary factor sexual intercourse with a plural wife, or did it mean that a man was guilty of unlawful cohabitation if he merely supported another woman and held her before the world as his plural wife? In the

\textsuperscript{16} Clawson \textit{v.} United States, 114 U. S. 477 (1885)

\textsuperscript{17} For complete case see Clawson \textit{v.} United States, 113 U. S. 143-49 and 114 U. S. 477-88.
case of *Cannon v. United States*, this loose and elastic phrase was defined. Angus M. Cannon, president of the Salt Lake Stake, was indicted and convicted of unlawful cohabitation; he had three wives, but had provided them with separate apartments and did not have sexual intercourse with any of them after the enactment of the Edmunds Law. It was true he supported them after the law of 1882 had been passed, and he looked upon them as his wives and their children as his children, and he took meals with them, but he believed that he was not cohabiting with them due to the fact that he did not sleep with them nor have intercourse sexually with them. Found guilty by the district court, his case was appealed to the Territorial Supreme Court, which affirmed the verdict of the lower court. The case was taken before the United States Supreme Court; that court delivered a decision on December 14, 1885. It approved the action of the Utah courts and declared that sexual intimacy was an unnecessary part of unlawful cohabitation. Any person who displays before the world or the public women whom he claims to be his plural wives, and who are supported by him as such, is guilty of unlawful cohabitation, without sexual intercourse. It was a majority opinion of the Supreme Court; Justices Miller and Field dissented. Such a ruling made it a fearful thing to support financially and to occasionally visit plural wives and their children. For a polygamist to be safe, he must forsake his plural wives, terminating the marriage contracts with divorce. But to faithful

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18 United States v. Cannon, 4 Utah 122-52 (1885)
Mormons who had married their wives in good faith for time and eternity, such a course was unthinkable.\(^{19}\)

Reference has been made in chapter three of this thesis to the "segregation ruling" of the Utah courts. This ruling refers to segregating a crime in such a way that each separate violation of the law was liable for punishment. Indictments and punishments for unlawful cohabitation were broken so as to provide several trials and several convictions for the same continuous offense. The segregation ruling meant that violation of the Edmunds Law may be punished by life imprisonment.\(^{20}\)

Concerning this, B. H. Roberts writes:

New and novel ways of interpreting the possibilities of the law, so as to increase its penalties, were resorted to. The statute provided that the misdemeanor of unlawful cohabitation should be punished by a maximum term of imprisonment of six months, or a maximum fine of $300 or both the fine and imprisonment, at the discretion of the court. The Utah Commission in its report of the 28th of October, 1885, recommended that the term of imprisonment be extended to two years for the first offense and three for the second offense. But the district courts had surpassed the commission's method of increasing the punishment of a misdemeanor, by a process of segregation of the time of the continuance of the offense so that imprisonment might practically be for life, and a fortune, however, princely, would not suffice for the payment of fines that might be assessed—to such an extent had anti-Mormon madness carried away the federal judiciary of the territory. This method of procedure was sanctioned by Judge Zane of the Third Judicial District (Salt Lake City), on the occasion of the grand jury coming into court and asking for instructions upon a question of finding an indictment under certain conditions, that had been suggested by the United States district attorney. This on the 16th of September, 1885. The judge instructed the jury that an indictment might be found for any portion of the time, within the three years past—that being the period the Edmunds Law had been

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19 For Cannon case, see Cannon v. United States, 116 U. S. 55–80 (1885)

in effect—in which the offense was proven to have been committed, whether it be a year, a month, or a week. As it was held by the courts that it was not necessary to prove sexual association in order to establish the misdemeanor of unlawful cohabitation, but that the offense was complete "when a man to all outward appearances is living or associating with more than one woman as his wife", it was possible to prove any number of "cases" even out of ordinary acts of association and courtesy; and especially out of actions that had for their purpose the maintenance of the homes and looking after the material comforts of plural wives and their children. Nothing but absolute abandonment could meet the requirements of the law as interpreted by the federal courts. . .

The segregation ruling made the execution of the law severe enough to drive many of the leading polygamists of the Church into exile.

Finally, the United States Supreme Court, in a reconsideration of the case of Snow v. United States, delivered a decision which shattered the doctrine of segregation. Lorenzo Snow, a prominent Mormon, had been convicted of unlawful cohabitation. The crime was one continuous offense, but it had been broken into three separate indictments and the punishment into three different sentences. The case reached the highest court in the nation, where the principal question pressed was that of "constructive cohabitation", involving the identity of the legal wife and the defendant's assumed intimacy with her. Although the Court had delivered an opinion on a closely related question in the Cannon case, it decided that it would be unwise to give an opinion. Therefore, it found a way out of the difficulty by dismissing the case for lack of

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22 Re-Snow, 120 U. S. 274-87 (1887).
jurisdiction. And, in order to be consistent, the Court also recalled its mandate in the Angus M. Cannon case upon the same grounds.23

After Lorenzo Snow had served the first six months' sentence of imprisonment, his case was again carried before the Supreme Court of the United States on the segregation question. Snow's attorneys contended that his offense of unlawful cohabitation was one continuous offense, for which he was given three sentences; and that there was not proof that the offense had been interrupted. They further contended that, since he had served a sentence for this offense of unlawful cohabitation, he was being unlawfully detained at the Utah penitentiary. Assuming jurisdiction in the case, the Court held that the unlawful cohabitation for which the appellant was convicted was one continuous offense, extending over the whole period covered in his three indictments. The case was heard at Washington on January 21, 1887, and the decision was delivered on February 7, of the same year.24 Lorenzo Snow and others imprisoned under the segregation process were immediately released from the penitentiary.25

The United States Supreme Court upheld the Edmunds Law as constitutional; but it favored the Mormon on two counts: the nullification of the Utah Commission's test oath regulations, and the voidance of the segregation ruling.

23 Snow v. United States, 118 U.S. 346-55 (1886)
24 Re-Snow, op. cit., pp. 274-87
CHAPTER VI

FINAL LEGISLATION AND ITS SUCCESS

The Edmunds-Tucker Bill became law on March 3, 1887; and under its provisions the Mormon Church was disincorporated and its property confiscated by the United States government. Polygamy sanctioned by the Church did not survive the effects of this legislation.

Senator George F. Edmunds, of Vermont, introduced a bill on December 8, 1885, which was labeled S.10 and referred to the Committee on Judiciary in the Senate. Part of this movement toward a new law to suppress plural marriage was the result of numerous petitions submitted by the Grand Army of the Republic posts throughout the country.\(^1\) During discussion of the proposed legislation in the upper house, Senator Hoar, of Massachusetts, objected to the part of the bill which abolished woman suffrage in Utah; and, concerning the bill in general, he further added:

This bill, and the act of which it is an amendment (the Edmunds Act) go far enough in a good many directions to suggest a pretty anxious inquiry whether it does not step over the line which fairly should bound the exercise of legislative authority over the Territories.\(^2\)

Senator Blair, of New Hampshire, considered the proposed legislation unnecessary and that it would make a very poor law.\(^3\)

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1 *Congressional Record*, 49th Cong., 1st sess. (1885), pp. 122, 709
3 *Loc. cit.*
of Colorado, opposed the bill, and especially the part (later changed) which compelled a wife to testify against her husband, as useless legislation. The bill passed the Senate on January 8, 1886, and was forwarded to the House of Representatives. It was so amended by the lower house that the Senate could not concur without first having a conference of committees from both houses to adjust differences of opinion and to formulate a bill that both could support. A joint committee framed a long piece of proposed legislation, containing twenty-seven sections.

While this was being discussed in the House of Representatives, Mr. John T. Caine, representing the Territory of Utah, made a stirring plea in behalf of the Latter-day Saints and asked Congress not to pass any more laws against his people.

After the bill from the joint conference had been reported to the Senate, it was opposed by Senator Call, of Florida, who said that the part of it declaring that polygamous children were to be disinherited was a cruel measure. (See Section 11). Senator Hoar, of Massachusetts, reiterated his earlier protest against the abolition of woman suffrage in Utah, declaring that, thereby, many women would be punished for a

4 Congressional Record, 49th Cong., 1st sess. (1886), p. 462.
5 Ibid., p. 565.
6 Ibid., pp. 611, 5437, 5516, 8032; and 49th Cong., 2nd sess. (1886), pp. 1785-87.
7 Congressional Record, 49th Cong., 2nd. sess. (1886), pp. 585-591.
8 Ibid., 1900-1903.
crime they had not committed.\footnote{Ibid., p. 1904.} Senator Vest, of Missouri, gave his reasons for opposing the proposed law in the following words:

Mr. President, as a matter of course this bill will become a law, but I cannot vote for it. I am well aware what the public sentiment of the country is, but that makes no sort of impression on me with my convictions as a legislator, nor will any amount of criticism on my action. I can not vote for this bill because in my judgment it violates the fundamental principles of the Constitution of the United States and the rights of property. Two of the provisions of this bill provide that proceedings shall be had to annul corporations existing in the Territory of Utah. One of them is the Immigration Society, so-called, and the other is the Mormon Church.

I do not propose to discuss that question. The point to which I direct attention now, and on which I base my action, is that the portion of these sections affecting these corporations provides for settling up the business of the corporations after they are declared not to exist any longer, and for paying what is left into the Treasury of the United States, to be applied to the common school fund of the Territory. As a lawyer, I cannot vote for any such enactment as that. My understanding of the rule that governs the dissolution of corporations, of these artificial personages created under statute, is that after the chancellor shall have settled up the business of the corporation, then the funds shall be paid back to the persons who contributed them for the purposes of the corporation. The assets, after paying the debts, which as a matter of course are to be paid first, are to be paid back to the persons who contributed or to their heirs or representatives. Under this bill, this amount of money, after paying the debts of these corporations, is paid into the Treasury of the United States, and then to be applied to common-school purposes in the Territory.

What right has the Government of the United States to declare these funds to be escheated and to apply them to common-school purposes any more than it would have to apply them to works of internal improvement? It is naked simple, bold confiscation, and nothing else. It is taking the money subscribed, I care not for what purpose, by individuals, and applying it in the discretion of Congress to an object which was not contemplated by the corporators. We might just as well in any of the Territories, after settling up the debts of any de facto corporation, take the money that is left
after paying the debts and say it shall go to the improvement of the roads in the Territory; or, as the Senator from South Carolina (Mr. Butler) suggests, why could not that be done in reference to any other ecclesiastical corporation in this country?

It is no answer to tell me that this is the Mormon Church and that the great vice or crime of polygamy is in existence there. This bigotry may go to the extent of saying that the Baptist Church, or the Presbyterian Church, or the Catholic Church is amenable to just such legislation. I recollect very well in this country when a storm was raised which threatened to destroy the Roman Catholic Church with all its rights of property, and it was preached even from the pulpit and proclaimed from the hustings that that church, in all its strength and breadth of doctrine and diffusion, was opposed to a republican form of government, that it should be abolished, and it was openly proclaimed that its property ought to be confiscated to the Treasury of the United States, just as is done under this proposed law with the property of the Mormon Church, . . .

But, Mr. President, there is another feature of this bill—I shall not undertake to cover it section by section—that I cannot support. It is the Test Oath put to voters in that Territory and to persons who are elected to office. I know something about test oaths. I went through an era of proscription and disfranchisement on account of them, and I do not propose to support any such legislation.

If these Mormons are the fanatics that they are proclaimed to be; if they are now in rebellion secretly, if not openly, against the Government of the United States on account of polygamy, or on account of any religious tenet or belief, there is not one of them who will not commit perjury in order to vote and in order to carry out his treasonable purpose against the Government. If they are what they are denounced to be, these test oaths will do no good; they will merely add perjury to their other crimes. . .

But the whole spirit of this test oath legislation is wrong; it is contrary to the principles and spirit of our republican institutions; and whenever the time comes in the Territories or States of this Union that test oaths are necessary to preserve republican institutions, then republicanism is at an end, and our institutions and everything will tumble to their destruction.10

This bill, known as the Edmunds-Tucker Act, passed the second session of the 49th Congress and became a law without the signature of President

10 Ibid., pp. 1897-98.
Grover Cleveland, who allowed the ten-day period given him to sign or reject a bill to expire without having either approved or vetoed the measure. This ten-day period expired March 3, 1887. 11

A summary of important provisions of the new law follows:

1. It declared that in polygamy and unlawful cohabitation trials, the legal husband or wife might testify as a witness. It was first proposed that the law should compel them to testify in such cases, but this phase of the bill met enough opposition to modify it.

2. The provision was also made that attachments might issue compelling the immediate attendance of witnesses at court, without a previous subpoena.

3. A public record was to be kept of all marriages, containing the names of the parties thereto, the nature of the ceremony, and the name of the priest, officer, or person performing each marriage.

4. Adultery and other sex offenses were made punishable and the Utah laws which provided that prosecutions for adultery could be started only upon the complaint of either husband or wife, were disapproved and enmulled.

5. The President of the United States was empowered to appoint the probate judges in the Territory of Utah.

6. Under the new law, it was the duty of the United States Attorney General to commence and prosecute proceedings to forfeit and escheat to

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the Federal Government all property held by the Mormon Church in violation of the Anti-Bigamy Act of 1862 and of Section 1890 of the Revised Statutes of the United States; all such property was to be handled by the Secretary of the Interior for the use and benefit of the common schools of Utah or of any other territory in which it might be found. Burial grounds, places of worship, parsonages and surrounding grounds were not to be forfeited; but Church property in real estate was to be held by trustees nominated by the Church and appointed by the courts having probate powers.

7. The Mormon Church, or the Church of Jesus Christ of Latter-day Saints, was disincorporated and the United States Attorney General was given power and instructed to cause necessary proceedings to be taken by the Utah Territorial Supreme Court to wind up the affairs of said Church as a corporation.

8. Another corporation, the Perpetual Emigrating Fund Company, was dissolved and its property taken by the government to be used for the benefit of common schools in Utah Territory.

9. The office of Territorial Superintendent of District Schools in Utah was abolished and the duties previously performed by that office were turned over to a commissioner of schools to be appointed by the Utah Supreme Court. Sectarian instruction of any description in the common schools of the Territory was forbidden.

10. Woman suffrage in Utah was abolished, as were also the Nauvoo Legion and the local Militia Laws. The Utah Commission, provided under
the Edmunds Act, was to be continued in office and the election districts of the Territory of Utah were to be changed and re-arranged.

11. As a prerequisite to voting, holding public office, or serving on juries in Utah, an oath was required, in addition to the usual regulations, of every male person in which he pledged obedience to the Federal Laws against polygamy and promised not to encourage, aid, or teach anything contrary to the laws of the nation.

12. All persons were disfranchised who were convicted, or found guilty, of polygamy or unlawful cohabitation. And illegitimate children, with certain exceptions, were disinherited. 12

Sometime after the enactment of the Edmunds-Tucker Act, a case arose wherein the defendant, Hans Nielson, was charged with unlawful cohabitation under the Edmunds Law and with adultery under the law of 1887. The woman in the affair was the defendant's plural wife, with whom he had lived from October 15, 1885, to September 27, 1888, at which time he was indicted for the two crimes mentioned. In reality there was one continuous offense. The grand jury indicted Nielson for unlawful cohabitation from October 15, 1885, to May 13, 1888, and then brought in another indictment for adultery committed with his plural wife, the same woman named in the previous offense. This latter indictment charged adultery under the Edmunds-Tucker Act on May 14th., one day after he had finished the crime of unlawful cohabitation with the same woman. The trial for the first offense took place in November at Provo. Convicted, the defendant was fined $100 and costs and given a three months sentence to

12 Supplement to U. S. Revised Statutes (1891), I: Chap. 397, pp. 568-74; also see Appendix A of this Thesis.
imprisonment. After serving his sentence in the penitentiary, he was brought to trial for adultery and again convicted and returned to jail for a term of four months. An application for a writ of habeas corpus was denied and an appeal was taken to the United States Supreme Court, where the case was heard in April and a decision delivered on May 13, 1889. The Court declared the judgment of the trial court void for the second offense, holding that one could not be convicted for two offenses by one transaction. Thereupon, Nielson was released. His trial being a test case, several others were given freedom who had been similarly convicted.13

Pursuant to the provisions of the Edmunds-Tucker Act proceedings were instigated by the United States Attorney General and two suits were commenced in the Utah Supreme Court for the confiscation of property belonging to the Mormon Church. The first case was entitled, "United States of America, plaintiff, v. the Late Corporation of the Church of Jesus Christ of Latter-day Saints, John Taylor, late Trustee-in-Trust, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, late assistant trustees, defendants". And the second case, or suit, was entitled, "The United States of America, plaintiff, v. the Perpetual Emigrating Fund Company, Albert Carrington, F. D. Richards, F. M. Lyman, H. S. Eldredge, 

13 Ex parte Nielson, 131 U. S. 176-83 (1889)
Joseph F. Smith, Angus M. Cannon, Moses Thatcher, John R. Winder, Henry Dinwoody, Robert T. Burton, A. O. Smoot, and H. B. Clawson, defendants.\textsuperscript{14}

The first question considered when the confiscation suit began on the 17th. of October, 1887, was that of appointing a receiver to be in charge of church property during litigation. The facts showed that the Mormon Church held three pieces of real estate by three trustees, William B. Preston, Robert T. Burton, and John R. Winder, who had been appointed by a probate court in accordance with the provisions of the Edmunds-Tucker Act. At the time, these men constituted the Presiding Bishopric of the Church. The three pieces of real estate held by these trustees for the Church were: the temple block, the tithing office and grounds, and the premises containing the Gardo House and the historian's office. The late President of the Mormon Church, John Taylor, had held personal property in the value of \$268,982.39, which belonged to the various stakes, or divisions of the Church which were corporated themselves, which had been conveyed to them some few weeks prior to the appointment of the aforesaid trustees.\textsuperscript{15}

The defense counsel attacked the constitutionality of the Edmunds-Tucker Act, saying that Congress did not have the right under the Constitution to dissolve a church corporation and to confiscate its property. It was contended that the act incorporating the church was a

\textsuperscript{14} United States v. Mormon Church, 5 Utah 394-99 and 538-52

charter and had become a vested right. Therefore, the dissolution of such
a corporation must be a judicial act over which Congress, in her legis-
 lative capacity, had no right. The temple block and the tithing office
grounds had been occupied by the Church prior to the year 1862, when the
first legislation against polygamy and the law limiting the value of real
estate owned by a religious association was enacted. The Gardo House and
historian's office and premises, acquired since 1862, constituted a
parsonage, or residence for the President of the Church, and therefore,
should be exempt from escheatment. This property was in the hands of
the aforesaid trustees, appointed in accordance with Section 26 of the
Edmunds-Tucker Act. It was contended that the personal property given
back to the stakes did not belong to the Church, but had been merely held
in trust. Therefore, the argument was advanced that if the custody of
such property could be turned over to a receiver, there was no right of
any American citizen that was not subject to violation. 16

The prosecution looked upon the court proceeding as one to take
care of the estate of a dissolved corporation and contended that, re-
gardless of whether the law was constitutional or not had nothing to do
with the present case. The prosecution further claimed that the transfer
of the personal property to the various stakes was fraudulent, and that
a receiver should be appointed as soon as possible to take care of all
property concerned. This the court decided to do; and the United States

16 United States v. Mormon Church, op. cit., pp. 394-99; 538-52; see
Marshal, Dyer, was appointed to the office of receiver and the defendants ordered to deliver all property and assets to him. The tithing office was the first piece of property given up by the Church; it was understood, however, that business could continue as usual without interruption until further notice, but for this privilege a rental was charged. The Garbo House and the historian's office were next taken. And it was decided that the Church could use them provided an annual rental was paid. The annual amount to be paid the government for use of the tithing office and historian's office was $2,400.00; and a monthly fee of $450.00 was required for the use of the Garbo House. It was also arranged that a stipulated fee be paid for use of the Temple Block.17

Likewise, the property of the Perpetual Emigrating Fund Company was given to the receiver. During these proceedings, work on the Salt Lake Temple stopped. Almost a year later, in October, 1888, litigation in the aforementioned matter was still pending in the Territorial Supreme Court. The Church trustees, who had previously held the property of their religious association, presented a petition asking that the tithing office, the Garbo House, the historian's office, and the temple block be exempt from escheatment. This petition was not granted, except in the case of the temple block. Another petition was presented by certain Mormons (George Romney, Henry Dimwoody, James Watson and John Clark)

requesting that an order be made returning the escheated property to the individual members of the Church, who had voluntarily donated it for religious and charitable purposes. Since the Territorial Supreme Court had already issued a decree for the forfeiture of the property, an appeal was made to the United States Supreme Court. 18

On May 19, 1890, the nation's highest court affirmed the constitutionality of the Edmunds-Tucker Act and also approved of the escheatment proceedings. It held that Congress had supreme authority over the Territory of Utah and had power to revoke the charter of the Mormon Church and cause its property to be confiscated, or possessed and held for final distribution or disposition. It affirmed also that the government might prohibit polygamy and could seize property used by the Mormon Church for promoting the crime of plural marriage. The majority opinion of the Court was delivered by Mr. Justice Joseph P. Bradley, Chief Justice Melville W. Fuller and Justices Stephen J. Field and Lucius Q. Lamar dissented, holding that although Congress had the power to legislate against polygamy, they did not have the right to seize and hold property owned by a corporation simply because its members might have been guilty of a crime. The case was ordered postponed until the October term, the Court wishing to further consider a modification of the decree, which was taken care of about a year later, May 25, 1891. 19 Mr. McDonald, one of the Attorneys for the Church, declared that if the Mormon Church under the Edmunds-Tucker Law could

18 Mormon Church v. United States, 136 U. S. 1-69 (1890).
19 Ibid., 42-68.
have trustees appointed and could hold real estate by them as a religious association, it was contrary to law, equity and reason to hold that the United States could confiscate property held by such church on the ground that such church uses of said funds were opposed to public policy, good morals, and were contrary to law.20 And another counsel for the Church, Broadbent, contended that, in view of the Dartmouth College v. Woodward case, this act of incorporation of the Mormon Church was a contract that could not be undone nor impaired and that it could only be destroyed if there were a provision in the charter giving the Territory that created it the right to destroy it.21

The opinion syllabus is quoted:

The Church of Jesus Christ of Latter-day Saints was incorporated February, 1851, by an act of assembly of the so-called State of Deseret, which was afterwards confirmed by act of the territorial legislature of Utah. The corporation being a religious one and its property and funds held for the religious and charitable object of the society, a prominent object being the promotion and practice of polygamy, which was prohibited by the laws of the United States, Congress, in 1887, passed an act repealing the act of incorporation and abrogating the charter, and directing legal proceedings for seizing its property and winding up its affairs: Held, That,

1. The power of Congress over the Territories is general and plenary, arising from the right to acquire them; which right arises from the power of the government to declare war and make treaties of peace, and so, in part, arising from the power to make all needful rules and regulations respecting the Territory or other property of the United States;

2. This plenary power extends to the acts of the legislatures of the Territories, and is usually expressed in the organic act of each

20 Ibid., pp. 41-42.

21 For Dartmouth College v. Woodward case, see 4 Wheaton 518 (1819).
by an express reservation of the right to disapprove and annul the acts of the legislature thereof;

3. Congress had the power to repeal the act of incorporation of the Church of Jesus Christ of Latter-day Saints, not only by virtue of its general power over the Territories, but by the virtue of an express reservation in the organix act of the Territory of Utah of the power to disapprove and annul the acts of its legislature;

4. The act of incorporation being repealed, and the corporation dissolved, its property, in the absence of any other lawful owner, devolved to the United States, subject to be disposed of according to the principles applicable to property devoted to religious and charitable uses; the real estate, however, being also subject to a certain condition of forfeiture and escheat contained in the act of 1862;

5. The general system of common law and equity, except as modified by legislation, prevails in the Territory of Utah, including therein the law of charitable uses;

6. By the law of charitable uses, when the particular use designed is unlawful and contrary to public policy, the charity property is subject to be applied and directed to lawful objects most nearly corresponding to its original destination, and will not be returned to the donors, or their heirs or representatives, especially where it is impossible to identify them;

7. The court of chancery, in the exercise of its ordinary powers over trusts and charities, may appoint new trustees on the failure or discharge of former trustees; and may compel the application of charity funds to their appointed uses, if lawful; and, by authority of the sovereign power of the State, if not by its own inherent power, may reform the uses when illegal or against public policy by directing the property to be applied to legal uses, conformable, as near as practicable, to those originally declared;

8. In this country the legislature has the power of parens patriae in reference to infants, idiots, lunatics, charities, etc., which in England is exercised by the crown; and may invest the court of chancery with all the powers necessary to the proper superintendence and direction of any gift to charitable uses;

9. Congress, as the supreme legislature of Utah, had full power and authority to direct the winding up of the affairs of the Church of Jesus Christ of Latter-day Saints as a defunct corporation, with a view to the due appropriation of its property to legitimate religious and charitable uses conformable, as near as practicable, to those to which it was originally dedicated. This power is distinct from that which may arise from the forfeiture and escheat of property under the act of 1862;
The pretense of religious belief cannot deprive Congress of the power to prohibit polygamy and all other open offence against the enlightened sentiment of mankind.\textsuperscript{22}

Another United States Supreme Court decision is briefly considered because it provoked agitation for more stringent legislation than that already enacted against Mormon polygamy. The decision referred to was delivered in the case of Davis v. Beason, and it was not to test the validity of any federal legislation, but a law passed by the Idaho Territorial Legislature. The Idaho Test Oath Law disfranchised any member of a religious association which encouraged, taught, or counseled its adherents to practice polygamy. Since the Mormon Church sanctioned and taught plural marriage, this law meant that any person, regardless of whether he had violated any law other than the aforementioned one, who claimed membership in the Mormon Church could not vote or hold any public office. In other words, membership in the Church was made a crime punishable by loss of franchise and political rights. Latter-day Saints who were not guilty of polygamy or of unlawful cohabitation believed that this denial of their privileges was contrary to the spirit of the Constitution.

Although a Mormon, Samuel D. Davis was not a polygamist; but contrary to the aforesaid Idaho law, he had taken the test oath and registered in order to vote. Brought before the Third District Court

\textsuperscript{22} Mormon Church v. United States, 136 U. S. 1-2 (1890).
on the charge of conspiracy in with-holding the fact that he was a Mormon, he was convicted and fined five hundred dollars. This he refused to pay, and was sentenced to prison for 250 days in the county jail at Malad. The case was appealed and argued before the supreme court of the nation on December 9 and 10, 1889. Davis' counsel contended that a law making church membership a crime was unconstitutional since it made a man an offender because of his religious beliefs. On the other side of the argument, it was contended that, since the Mormon Church taught and practiced polygamy which was a crime, membership in that Church was not a mere belief, but was action which was a rightful subject for legislation. A syllabus of the Supreme Court opinion follows:

The provision in Section 501, Revised Statutes of Idaho, that "no person who is a bigamist or polygamist, or who teaches, advises, counsels or encourages any person or persons to become bigamist, or polygamist, or to commit any other crime defined by law, or to enter into what is known as plural or celestial marriage, or who is a member of any order, organization or association which teaches, advises, counsels or encourages its members or devotees or any other persons to commit the crime of bigamy, or polygamy, or any other crime defined by law, either as a rite or ceremony of such order, organization or association, or otherwise, is permitted to vote at any election, or to hold any position or office of honor, trust or profit within this Territory" is an exercise of the legislative power conferred upon Territories by Revised Statutes, Sections 1851, 1859, and is not open to any constitutional or legal objection.

Bigamy and polygamy are crimes by the laws of the United States, by the laws of Idaho, and by the laws of all civilized and Christian countries; and to call their advocacy a tenet of religion is to offend the common sense of mankind.

A crime is none the less os, nor less odious, because sanctioned by what any particular sect may designate as religion.

It was never intended that the first Article of Amendment to the

Constitution, that "Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof", should be a protection against legislation for the punishment of acts inimical to the peace, good order and morals of society.

The act of Congress of March 22, 1882, 22 Statutes 31, c. 47, "to amend section fifty-three hundred and fifty-two of the Revised Statutes of the United States, in reference to bigamy, and for other purposes", does not restrict the legislation of the Territories over kindred offenses or over the means for their ascertainment and prevention.

The cases in which the legislation of Congress will supersede the legislation of a State or Territory, without specific provisions to that effect, are those in which the same matter is the subject of legislation by both. 24

It is seen that the points under consideration were decided in such a manner as to affirm the judgment of the lower court, thereby upholding the constitutionality of the Idaho law which prevented members of the Mormon Church from voting or holding public office. The opinion of the Court was delivered by Mr. Justice Stephen J. Field. 25

Anti-Mormons rejoiced over this decision; and since there was little hope of getting such a law as the Idaho Test Oath Law passed by the Utah Legislature, certain politicians succeeded in having introduced into Congress a bill which became known as the Gullom-Strubble Bill. This proposed legislation was similar to the Idaho law; and, if passed and approved, would have prevented any member of the Mormon Church from voting in any of the territories of the United States. This bill never became a law, principally due to the fact that the Mormons abandoned polygamy. 26

24 Ibid., p. 333.


CHAPTER VII

WOODRUFF MANIFESTO

This chapter deals with the Mormon abandonment of polygamy.

By 1890, the Church of Jesus Christ of Latter-day Saints was in a sad plight. Hundreds of her leading men were, or had been, in prison; and additional hundreds had suffered exile. Church real and personal property, to the value of about one million dollars, had been confiscated by the government. The constitutionality of all legislation against polygamy had been affirmed by the Supreme Court of the United States. Utah had repeatedly failed to attain statehood. Polygamists or those guilty of unlawful cohabitation could not vote or hold public office. And in Idaho, all Mormons were excluded from voting or serving in civil offices because of their church membership. The Cullom-Strubble Bill, pending in Congress, proposed the disfranchisement of all Latter-day Saints on the grounds of their church membership; and it appeared certain that this bill would become law. In November, 1889, regulation had been made to the effect that Mormon aliens, (people who had joined the Church in foreign lands and emigrated to Utah) although qualified in other respects, could not become citizens of the United States because of their membership in the Church of Jesus Christ of Latter-day Saints. Political control of Salt Lake City had been lost by the People's (or Latter-day Saint) Party. The Church itself was disincorporated.¹

¹ For a summary of these difficulties, see Brigham H. Roberts, A Comprehensive History of the Church (Salt Lake City: Deseret News Press, 1930), VI: 215-17.
The outlook for the weary Saints was gloomy. A special day of fasting and prayer had been observed by them on the 23rd of December, 1889, to petition God for help. The humbled members of the Church prayed that their enemies would not prevail and that the United States Government would be softened to the extent that it would deal justly and with mercy toward them under the Constitution. Concerning this, Joseph F. Smith, of the First Presidency of the Church at that time, wrote in his journal:

This day, the 84th anniversary of the birth of Joseph Smith the Prophet, was set apart by proclamation of the Presidency as a day of fasting and prayer for all the Church. Meetings were held in all the stakes and wards of Zion. . . The Presidency and the members of the Twelve met in the Gerdo House at 10 A.M. and each prayed in turn. . . Two hymns were sung, "God Moves in a Mysterious Way" and "A Poor Wayfaring Man of Grief." We then adjourned for the brethren to attend the general meeting. Among the subjects prayed for were the following:

1. That the plots and schemes which are being framed for the purpose of robbing us of our civil and political rights and obtaining control of our cities, counties and Territory, might be confounded and their authors thwarted in their evil designs.

2. That all who conspire in any manner to injure or destroy the work of God or take from the people their rights and liberties might be defeated.

3. That the unfavorable actions of courts and of officials might be over-ruled in such a manner that no injury will be done to Zion.

4. That the Executive of the nation, the Cabinet, the Senate, the House of Representatives, the judiciary and the people of the nation might be so influenced and controlled that their hearts may be softened towards the people of God, and not inclined to listen to the slanderous reports and falsehoods circulated concerning us, and which may be brought before them; and that all officers of our nation may be inspired with such wisdom justice and mercy that they may gain the love and esteem of the people and the approbation of the Lord.

5. That the Supreme Court should be so moved upon and strengthened and filled with courage as to render a righteous decision in our cases before them.
6. That the eyes of the nation might be opened to see us in our true light, and be inclined to treat us with that kindness and consideration due to fellow citizens who are loyal and true to the Constitution of our country.

7. For the Lord to come to our help and deliver us from the many snares spread around us for our overthrow and destruction, to make our path plain before us, and to lead us to escape the pits dug for our feet.

8. That the Lord will pour out in great power His Holy Spirit and the gifts thereof upon his servants that they may be filled with the qualifications and power necessary to enable them to magnify their offices acceptably to Him and to fill the hearts of the Saints with comfort and peace, and witness unto them that He has not forgotten and does not neglect Zion. And to pray for such other things as the Saints saw and felt that we needed.²

There were no apparent results from this day of prayer and fasting; unless, as B. H. Roberts declares, it may have prepared the members of the Church in mind and heart with the Spirit of the Lord that they would immediately accept the Manifesto, which was soon forthcoming.³

While the Cullom-Struble Bill was pending in Congress, there were a number of conservative Utah non-Mormons who opposed it. These people were tired of the constant strife and turmoil between the Saints and their enemies, and believed that such conditions were harmful to all citizens of Utah Territory. One of these was Fred Simon, Vice President of the Salt Lake Chamber of Commerce, who forwarded a petition signed by himself and many other non-Mormons to Congress asking that the bill then being discussed be not passed. George Q. Cannon, one of the First Presidency of the Church, and other Mormons went to Washington to oppose the bill. President Cannon secured the helpful services of


his friend, James G. Blaine, then Secretary of State, and also a national leader in the Republican Party, to oppose the pending legislation on condition that the Mormons in Utah would do something to remedy the situation. Secretary Blaine exerted a quiet, powerful influence on Republican Congressional leaders. The proposed legislation was never enacted. What the Latter-day Saints did to remedy the situation and what really prevented the ultimate enactment of the Cullom-Struble Bill was the official declaration of the President of the Mormon Church that polygamy had been abandoned. Perhaps, Secretary Blaine's real reason for quiet intervention was to win Utah to the Republican side.

On the 24th of September, 1890, President Wilford Woodruff, head of the Mormon Church, issued what has been termed the "Woodruff Manifesto", or commonly called the "Manifesto", whereby he officially declared his intention to obey the laws of the land in relation to plural marriage and to use his influence with the Latter-day Saints, over whom he presided, to refrain from contracting any marriages forbidden by law. With great solemnity, he declared that the Mormon Church was not teaching polygamy or permitting any person to perform plural marriage ceremonies. The complete Manifesto, now contained in one of the four standard and approved doctrinal works of the Church, is quoted:

4 Orson F. Whitney, History of Utah (Salt Lake City: George Q. Cannon and Sons, 1900), III: 736-43.

To whom it may concern:

Press dispatches having been sent for political purposes, from Salt Lake City, which have been widely published, to the effect that the Utah Commission, in their recent report to the Secretary of the Interior, allege that plural marriages are still being contracted in Utah since last June or during the past year, also that in public discourses the leaders of the Church have taught, encouraged and urged the continuance of the practice of polygamy;

I, therefore, as President of the Church of Jesus Christ of Latter-day Saints, do hereby, in the most solemn manner, declare that these charges are false. We are not teaching polygamy or plural marriage, nor permitting any person to enter into its practice, and I deny that either forty or any other number of plural marriages have during that period been solemnized in our Temples or in any other place in the Territory.

One case has been reported, in which the parties allege that the marriage was performed in the Endowment House, in Salt Lake City, in the Spring of 1889, but I have not been able to learn who performed the ceremony; whatever was done in this matter was without my knowledge. In consequence of this alleged occurrence the Endowment House was, by my instructions, taken down without delay.

Inasmuch as laws have been enacted by Congress forbidding plural marriages, which laws have been pronounced constitutional by the court of last resort, I hereby declare my intention to submit to those laws and to use my influence with the members of the Church over which I preside to have them do likewise.

There is nothing in my teachings to the Church or in those of my associates, during the time specified, which can be reasonably construed to inculcate or encourage polygamy; and when any Elder of the Church has used language which appeared to convey any such teaching, he has been promptly reproved. And I now publicly declare that my advice to the Latter-day Saints is to refrain from contracting any marriage forbidden by the law of the land.

Wilford Woodruff
President of the Church of Jesus Christ of Latter-day Saints

This Manifesto was approved by the members of the Church in their General Conference, October 6, 1890. At the conference, the twelfth Article of Faith of the Church, which declares the Mormon belief in

6 Doctrines and Covenants (Salt Lake City: Church of Jesus Christ of Latter-day Saints, 1921), pp. 256-57.
obeying, honoring and sustaining the law, was read. President Lorenzo Snow, of the Council of Twelve Apostles, presented the following motion:

I move that, recognizing Wilford Woodruff as the President of the Church of Jesus Christ of Latter-day Saints, and the only man on the earth at the present time who holds the keys of the sealing ordinances, we consider him fully authorized by virtue of his position to issue the Manifesto which has been read in our hearing, and which is dated September 24th, 1890, and that as a Church in General Conference assembled, we accept his declaration concerning plural marriages as authoritative and binding.7

The foregoing motion was sustained by a unanimous vote and thereby became binding on the Church.8 Addressing the conference, President Woodruff declared the following:

I want to say to all Israel that the step I have taken in issuing this manifesto has not been done without earnest prayer before the Lord. I am about to go into the spirit world, like other men of my age. I expect to meet the face of my Heavenly Father—the Father of my spirit; I expect to meet the face of Joseph Smith, of Brigham Young, of John Taylor, and of the apostles, and for me to have taken a stand in anything which is not pleasing in the sight of God, or before the heavens, I would rather have gone out and been shot... I am not ignorant of the feelings that have been engendered through the course I have pursued. But I have done my duty, and the nation of which we form a part must be responsible for that which has been done in relation to this principle.

The Lord has required at our hands many things that we have not done, many things that we were prevented from doing. The Lord required us to build a temple in Jackson County. We were prevented by violence from doing it. He required us to build a temple in Far West, which we have not been able to do... It is not wisdom for us to go forth and carry out this principle against the laws of the nation...

The Lord has given us commandments concerning many things, and we have carried them out as far as we could; but when we cannot do it, we are justified. The Lord does not require at our hands things that we cannot do... I say to Israel, the Lord will never permit me or any other man who stands as president of this Church to lead

7 Ibid., p. 257.
8 Loc. cit.
you astray. It is not in the program. It is not in the mind of God. If I were to attempt that the Lord would remove me out of my place.

Almost three years later, at the fourth session of the dedicatory services of the Salt Lake Temple, President Woodruff stated that the Lord had shown him by vision and revelation what would happen to the Church if it continued to sanction polygamy. And then referring to the Manifesto, he said that Almighty God commanded him to do what he did.

Many Mormons took the point of view that since the Lord had commanded the establishment of polygamy, He alone had the right to stop it. And as God commanded Joseph Smith to establish plural marriage, so He commanded Wilford Woodruff to discontinue it. The devout Saints generally believed that since they had been prevented from living this divinely established order of marriage, the Lord had accepted their attempts and sufferings in this matter as a sufficient offering of faith.

If any member of the Mormon Church has entered polygamy after 1890, it has been without the knowledge or sanction of the Church.

After this abandonment of polygamy by the Mormons, President Benjamin Harrison was concerned that Utah should not become a state until it was certain that the citizens of such sovereign state would

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9 G. Homer Durham (editor), Discourses of Wilford Woodruff (Salt Lake City: Bookcraft, 1946), pp. 216-17.


12 Church of Jesus Christ of Latter-day Saints, Annual Conference Report, 78th Annual Conference, (Salt Lake City: April, 1907), "An Address of the First Presidency to the World".
forever be monogamous. It was his opinion that any agreement in the enabling act could not be binding upon the people after statehood was attained. Here are the President’s words on the subject, quoted from his third annual message to Congress, December 9, 1891:

The question is not whether these people now obey the laws of Congress against polygamy, but rather would they make, enforce and maintain such laws themselves if absolutely free to regulate the subject. We cannot afford to experiment with this subject, for when a state is once constituted the act is final and any mistake irretrievable. No compact in the enabling act could, in my opinion, be binding or effective.13

That the people of a State are not bound by provisions of the enabling act has later been attested in the cases of Arizona and Oklahoma.14 In connection with the latter named state, the United States Supreme Court affirmed the principle that Congress in admitting a new state cannot impose conditions which would deprive it of equality with other states.15 Since the control of marriage has been left to the states, and in view of what has just been written, it is not unreasonable to believe that the State of Utah could, if its citizens desired, change her constitution so as to permit polygamy as a lawful marriage, regardless of what was arranged and stated in her enabling act.

In December, 1891, leaders of the Mormon Church sent a petition, endorsed by the Territorial Governor and the Chief Justice of the

13 James D. Richardson (compiler), Messages and Papers of the Presidents (Washington: Bureau of National Literature, 1911), VIII: 5641.


15 Coyle v. Smith, 221 U. S. 559 *(1911).*
Territorial Supreme Court, pleading for amnesty. The request was addressed to the President of the United States. And on January 4, 1893, President Harrison issued a proclamation of amnesty and pardon to all who had obeyed the federal laws since November 1, 1890, upon condition that they would continue to observe the laws of the United States. This proclamation affected those who had been guilty of polygamy or unlawful cohabitation prior to the date specified. Later, September 25, 1894, President Grover Cleveland issued another proclamation of amnesty and pardon to polygamous offenders. Part of the proclamation reads as follows:

Whereas, upon the evidence now furnished me I am satisfied that the members and adherents of said Church generally abstain from plural marriages and polygamous cohabitation and are now living in obedience of the laws, and that the time has now arrived when the interests of public justice and morality will be promoted by the granting of amnesty and pardon to all such offenders as have been convicted under the provisions of said act,

Now, Therefore, I, Grover Cleveland, President of the United States, by virtue of the powers in me vested, do hereby declare and grant a full amnesty and pardon to all persons who have in violation of said acts committed either of the offences of polygamy, bigamy, adultery or unlawful cohabitation under the color of polygamous or plural marriage, or who, having been convicted of violation of said acts, are now suffering deprivation of civil rights in consequence of the same, excepting all persons who have not complied with the conditions contained in said executive proclamation of January the fourth, 1893.

The escheated personal property and money of the Church was re-


17 James D. Richardson, Ibid., VIII: 5942-43.
turned by order of a joint resolution of Congress approved by President
Cleveland, October 25, 1893. Later, all real estate was returned by
another joint resolution, which reads as follows:

Resolved by the Senate and House of Representatives of the
United States of America in Congress Assembled, That all of the
real estate now in the hands of the receiver of the late corpora-
tion of the Church of Jesus Christ of Latter-day Saints, and all
the rent, issues, and profits arising therefrom, which includes
all the money held by him, be, and the same are hereby, granted
and conveyed to the Church of Jesus Christ of Latter-day Saints,
the expenses of the receivership to be allowed by the supreme
court of the State of Utah, being first paid, and said receiver,
after the payment of said expenses, is hereby required to
deliver the said property and money to the person or persons
constituting the first presidency of said Church of Jesus Christ
of Latter-day Saints, or to such person or persons as he or they
may designate.

Approved March 28, 1896.

For many years polygamy was the main reason why Utah was refused
statehood. Therefore, after the Mormons had abandoned plural marriage,
Utah became a state, January 4, 1896.

When Brigham H. Roberts, Congressman-elect from Utah in 1898,
went to Washington, he was refused a seat in the House of Represent-
atives because he was a polygamist. Later, in 1903, Utah's junior

20 Leland H. Greer, *Utah and the Nation* (Seattle: University of
21 Case of Brigham H. Roberts, of Utah, 56th Cong., 1st sess.,
House Reports, 85, parts 1-2 (1899-1900) (Washington: Government
Printing Office, 1900). This gives the complete Roberts case.
Senator was Reed Smoot, one of the apostles of the Mormon Church. Proceedings were conducted to determine if Mr. Smoot should retain his seat in the upper house. The Committee on Privileges and Elections in the Senate conducted a thorough investigation of Senator Smoot's character and also of the church to which he belonged. A number of people were called to Washington to testify before the committee. Mormonism was advertised widely during this investigation. Smoot was permitted to retain his seat in the Senate.22

The United States government had crushed polygamy; but to orthodox Mormons, God both started and stopped it.23


CHAPTER VIII

CONVICTIONS AND PUNISHMENTS

What was the number of convictions and what were the fines or other punishments imposed as a result of federal action against Mormon polygamy? Due to the scattered evidence and to the lack of available sources, the task of answering this question is an expensive and a difficult one. It may even be impossible to secure complete information covering all polygamy convictions and punishments, for some of the records may be lost.

To secure reliable statistics on the subject, the facts must be compiled from court and prison records. First, a check was made to see if this had already been done. It was discovered that a similar question to the previously stated one had been answered in November, 1905, by A. Milton Musser, who at that time was assistant historian of the Mormon Church. The following question was submitted to Musser:

What was the number of convictions for unlawful cohabitation and polygamy in the so-called "raid" of the 80's, and what the fines imposed? Different writers give different figures, and I should like an authentic statement.¹ And in answering it, he states that the data asked for was secured from the official records of the courts and prisons.² According to this report, a total of 885 Utah cases, from October 24, 1884, to

¹ A. Milton Musser, "Convictions and Fines of the 'Raid'," The Improvement Era, 9:63, November, 1905 (Salt Lake City).

² Loc. cit.
December 27, 1891, were covered in the summary. These cases were prosecuted during the respective administrations of United States Presidents Arthur, Cleveland, and Harrison. It is seen that under President Arthur there were four prosecutions, under President Cleveland 615, and under President Harrison 266. The total fines are given and the costs of prosecution are estimated. Also, the estimated aggregate numbers of prison years are listed. To quote from the report:

President Arthur, to March 4, 1885: for polygamy, 2; for unlawful cohabitation, 1; for contempt, female, 1; total 4; fines imposed $1,050.

President Cleveland to March 4, 1889: for unlawful cohabitation, 569; for adultery, 23; for polygamy, 11; for contempt, females, 8, males 1; for bigamy, 1; for bribery, 1; held as a witness, 1; total 615; fines imposed $98,513.55; costs taxed, estimated $31,124.94, total, $129,638.49.

President Harrison to December 27, 1891: for unlawful cohabitation, 170; for adultery, 89; for polygamy, 3; for fornication, 1; for alleged incest, 1; for alleged perjury, 1; for contempt, male 1; total 266; fines imposed $13,125; costs taxed, estimated, $13,743.48; total $26,868.48.

The amount of costs assessed was not entered on the record from which the foregoing data was taken, except in twenty-four cases. In these cases the aggregate costs amounted to $1,616.68, which if divided by twenty-four would make an average sum of $67.37 to the case. Under President Cleveland, costs were taxed against 462 cases. Now if we adopt the above average as a basis, we have a total of $31,124.94. Under President Harrison, costs were taxed against 204 cases, which, if multiplied by $67.37, gives a total of $13,743.48.

Recapitulation and totals: for polygamy, 16; for bigamy, 1; for adultery, 112; for unlawful cohabitation, 740; for fornication, 1; for alleged incest, 1; for bribery, 1; for alleged perjury, 1; for contempt (9 females and 2 males) 11; held as a witness, 1; total 885. Total fines imposed $112,688.55; total costs taxed, estimated, $44,368.42; total $157,556.97.

Total years served in the Utah penitentiary:

Under President Arthur: Total sentences covered 7 years, 6 months, 1 day.

Under President Cleveland: total sentences covered 345 years, 8 months; add time served for fines, 9 years and 6 months; total
355 years, 2 months; less time on segregations, 7 years, 9 months; less time covered by pardons and commutations (14 years, 2 months, and 12 days) equals 21 years, 11 months and 12 days, which taken from 355 years, 2 months, leaves 333 years, 2 months, and 18 days. Under President Harrison: Total sentences covered 136 years, 4 days. Add time served for fines, 5 months; total 136 years, 5 months and 4 days, less time covered by pardons and commutations 8 years, 5 months, and 15 days; total 127 years, 11 months, and 19 days; grand total 468 years, 8 months and 8 days.3

According to the report, the aggregate imprisonments of the Utah convictions covered 468 years, 8 months, and 8 days; and the fines and costs amounted to $157,566.97. The article continues to explain that, generally speaking, the persons convicted were financially progressive and that if they are credited with an average income from all sources of six dollars per day, the total sum would be $1,036,480, and by adding the above-mentioned sum ($157,566.97), the total on these two counts will be $1,184,036.97. The estimate of six dollars per diem may be far from accurate. However, it is easily understood that many polygamists were financial leaders as well as church leaders, and that men with higher incomes could better support plural wives. Musser admits that the record of court fines, such as he has given us, could not picture correctly what polygamy cost the Mormons. Additional and incalculable sums would have to be included to cover the time spent during trials by those who were found "not guilty", and by witnesses, also by those driven into exile, and the consequent losses in business and property from forced neglect and absence of personal supervision, and by

3 A. Milton Musser, op. cit., pp. 64-65.
expenses incurred in traveling long distances to and from the courts and prisons; by lawyer fees and by test cases before the superior courts, and by forfeitures. To these costs must be added numerous premature deaths from exposures and severe raids made under cover of night.4

The Musser report has its limitations. First of all, it isn't complete. Polygamy conviction in territories other than Utah are not included. The report covers 885 cases over a certain period of years. And as to the identity of the court and prison records used, adequate information is lacking. The writer inquired at the Church Historian's Office, at Salt Lake City, concerning the primary sources from which Musser compiled his report and was informed that that office had no list of court records covering the report, although the report was believed to be correct. The Mormon Church hasn't any statistics concerning all polygamy convictions and fines. The Musser report is the best available.

The Utah penitentiary records are incomplete—not all the guilty polygamists were imprisoned there. And if all the facts concerning the cases were on record, it would require considerable time to search out the applicable ones from the many sentences.

After Utah became a state, a few of the territorial court records were deposited in the office of the clerk of the U. S. District Court at Salt Lake City. At that office, the writer was informed that all territorial district court records should be deposited there; but for some reason only a few of them were sent in after Utah attained state-
hood. Among those sent to that office, were 2524 indictments, and in some instances there were subpoenas. But there isn't any way of determining how many of those indicted were convicted. There were a few volumes of court cases; but the number was far from that required to secure complete statistics on even the Utah polygamy trials. By rumaging through these volumes, the difficulty of determining all the applicable ones is readily discernible. For example, a person convicted for adultery, may or may not be a polygynist case. The desired statistics could not be compiled from the records on file at the U. S. District Court at Salt Lake.

The student may go to the towns where the old district courts were held and search through the county archives. This would involve the difficult and long task of sorting through the numerous cases and of determining the proper ones. Some of the records may be missing. Nevertheless, valuable statistics may be obtained by going to the county offices in the localities of the old district courts.

The Clerk of the Supreme Court of the State of Utah hasn't any record of polygamy cases prior to statehood. He believes that the best place to find such information is at the Mormon Church Historian's Office. The writer had already tried that source.

CONCLUSION:

1. All records of polygamy cases are not deposited at any one place, and it is not certain that full details of every case are now
in existence.

2. Records of polygamy cases appealed to any territorial supreme court or to the United States Supreme Court are easily found in the proper court reports. However, such cases are relatively few compared with the hundreds of convictions in the lower courts.

3. A valuable statistical report of polygamy convictions and fines could be compiled with proper time and effort; and the finding of such a study could well form a thesis.

4. Secondary sources on the above-mentioned subject cannot be verified from available primary material.
SUMMARY

As indicated by the facts presented in this thesis, prejudice against Mormonism flared up prior to the advent of polygamy. This was principally due to religious conflict and intolerance. Adherents of the new sect contended that they possessed the only true church and denounced all others as wrong and lacking authority. Some ministers of religion thought they saw in the growth of Mormonism their own destruction, and therefore feared it. Certain ideas and practices of the Latter-day Saints were at variance with those of other Christian denominations.

Mormon tenets supported plural marriage, teaching that it was established as a result of direct revelation from God. At first, quietly introduced and practiced in the days of Joseph Smith, it was later publicly proclaimed in Utah. However, only a limited number lived in polygamy, no more than three per cent of the families of the Church being polygamous at any one time. But this practice fanned the flames of prejudice, antipathy, and opposition until they nearly consumed the Church.

At the instigation of the plural-wife system among the Mormons, it was not contrary to any law of the land where the Saints practiced it. In fact, the Mormons believed in obeying the laws of the land and that the United States Constitution was a divinely inspired instrument. Years later, when federal legislation was enacted against polygamous marriages, the Latter-day Saints believed that such laws were unconstitutional and that the United States Supreme Court could not
fairly uphold them. And any attempt on the part of the government to interfere with polygamy was looked upon by the Mormons as a violation of Article One of the Amendments to the Constitution.

Since polygamy was emphatically against the moral teachings of other Christian denominations, it is not unreasonable to believe that the popular wave of righteous indignation against it influenced both Congress and the Supreme Court. Drastic measures, not only punishing polygamists, but making membership in the Church of Jesus Christ of Latter-day Saints a sufficient reason for loss of franchise, and disincorporating the aforementioned church and confiscating its property, were supported by decisions of the nation's highest court. The suppression of polygamy was considered a legitimate end; and certain means to that end were upheld. Constitutional amendments to prohibit polygamy were proposed. And it appears reasonable that such an amendment would have been adopted if legislation against plural marriage had been termed unconstitutional by the United States Supreme Court.

The nation's highest court stated that the term religion as used in the Constitution and as understood by the Constitutional fathers referred to personal belief and conviction before God. It was held that a crime or an offence which was repulsive to civilized Christian nations and contrary to the enlightened sentiment of mankind, would not be justified nor protected under the cloak of religion. Overt acts, condemned by the mores of the world's most progressive peoples,
against public peace and morals were proper subjects for Congressional legislation over the Territories.

The United States Government, bowing to popular approval, took a determined stand to abolish polygamy, even if such a course meant the destruction of the Mormon Church. It is a difficult thing in a democratic nation to suppress a religious principle and practice; and it was so in this case, for the Mormons were already accustomed to persecution and hardship for the sake of their beliefs.

Devout Mormons faced the problem of observing what they looked upon as a law of God, or of obeying the law of the land. Their president, Wilford Woodruff, was commanded by God, according to his own statement, to discontinue contracting any marriages opposed by secular law. Such commandment was consistent with previous revelation given by Joseph Smith, wherein the Saints were counseled to obey governmental laws. Since the issuance of the Woodruff Manifesto, in 1890, polygamy has not been sanctioned by the Mormon Church; and members who entered the practice since that time have been excommunicated.

Considering the circumstances, the wisdom of Mormon abandonment of polygamy is apparent. The United States Government had crushed the practice; but to orthodox Latter-day Saints, God both started and stopped it.

Since the control of marriage has been left to the states, and in view of certain precedents, it appears that the State of Utah, if its citizens desired, could change her constitution so as to make polygamy
lawful, regardless of what was arranged and stated in her enabling act. If Utah pursued such course of action, there is great probability that a constitutional amendment forbidding plural marriage would be adopted without much delay.

Concerning the number of convictions and the various punishments for polygamy and unlawful cohabitation, reliable statistics are incomplete and secondary sources cannot be verified from available primary material. A study should be made in this field.
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All references cited have been consulted, but some of them did not contribute directly to the information given in this thesis. However, they have furnished the writer with a background which has been most helpful.

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APPENDIX
APPENDIX A

THE EDMUNDS-TUCKER ACT

An Act to amend an act entitled "An act to amend Section 5352 of the Revised Statutes of the United States, in reference to bigamy, and for other purposes," approved March 22, 1882.

Be it enacted by the Senate and the House of Representatives of the United States in Congress assembled, That in any proceeding or examination before a grand jury, a judge, justice, or a United States commissioner, or a court, in any prosecution for bigamy, polygamy, or unlawful cohabitation, under any statute of the United States, the lawful husband or wife of the person accused shall be competent witness, and may be called, but shall not be compelled to testify in such proceeding, examination or prosecution without the consent of the husband or wife, as the case may be; and such witness shall not be permitted to testify as to any statement or communication made by either husband or wife to each other during the existence of the marriage relation, deemed confidential at common law.

SECTION 2. That in any prosecution for bigamy, polygamy, or unlawful cohabitation under any statute of the United States, whether before a United States commissioner, justice, judge, a grand jury, or any court, an attachment for any witness may be issued by the court, judge, or commissioner without a previous subpoena, compelling the immediate attendance of such witness, when it shall appear by oath or affirmation, to the commissioner, justice, judge, or court, as the case may be, that there is reasonable ground to believe that such witness will unlawfully fail to obey a subpoena issued and served in the usual course in such cases; and in such cases the usual witness-fee shall be paid to such witness so attached: Provided, That the person so attached may at any time secure his or her discharge from custody by executing a recognizance, with sufficient surety, conditioned for the appearance of such person at the proper time, as witness in the case or proceeding wherein the attachment may be issued.

SECTION 3. That whoever commits adultery shall be punished by imprisonment in the penitentiary not exceeding three years; and when the act is committed between a married woman and a man who is unmarried, both the parties to such act shall be deemed guilty of adultery; and when such act is committed between a married man and a woman who is unmarried, the man shall be deemed guilty of adultery.

SECTION 4. That if any person related to another person within and not including the fourth degree of consanguinity computed according to the rules of civil law, shall marry or cohabit with, or have sexual intercourse with such other so related person, knowing her or him to be within said degree of relationship, the person so offending shall be
deemed guilty of incest, and, on conviction thereof, shall be punished by
imprisonment in the penitentiary not less than three years and not more
than fifteen years.

SECTION 5. That if an unmarried men or women commit fornication, each
of them shall be punished by imprisonment not exceeding six months, or by
fine not exceeding $100.

SECTION 6. That all laws of the Legislative Assembly of the Terri-
tory of Utah which provide that prosecutions for adultery can only be
commenced on the complaint of the husband or wife are hereby disapproved
and annulled; and all prosecutions for adultery may hereafter be
instigated in the same way that prosecutions for other crimes are.

SECTION 7. That commissioners appointed by the supreme court and
district courts in the Territory of Utah shall possess and may exercise
all the powers and jurisdiction that are or may be possessed or exercised
by justices of the peace in said Territory under the laws thereof, and
the same powers conferred by law on commissioners appointed by circuit
courts of the United States.

SECTION 8. That the marshal of said Territroy of Utah, and his de-
puties shall possess and may exercise all the powers in executing the laws
of the United States or of said Territory possessed and exercised by
sheriffs, constables, and their deputies as peace officers; and each of
them shall cause all offenders against the law, in his view, to enter
into recognizance to keep the peace and to appear at the next term of the
court having jurisdiction of the case, and to commit to jail in case of
failure to give such recognizance. They shall quell and suppress assaults
and batteries, riots, routes, affrays, and insurrections.

SECTION 9. That every ceremony of marriage, or in the nature of a
marriage ceremony, of any kind, in any of the Territories of the United
States, whether either or both or more of the parties of such ceremony
be lawfully competent to be the subjects of such marriage or ceremony
or not, shall be certified by a certificate stating the fact and nature
of such ceremony, the full names of each of the parties concerned, and
the full name of every officer, priest, and person, by whatever style or
designation called or known, in any way taking part in the performance of
such ceremony, which certificate shall be by the officer, priest, or
other person solemnizing such marriage or ceremony, filed in the office
of the probate court, or, if there be none, in the office of the court
having probate powers in the county or district in which such ceremony
shall take place, for record, and shall be immediately recorded, and be
at all times subject to inspection, as other public records. Such
certificate, or the record thereof, or a duly certified copy of such
record, shall be prima facie evidence of the facts required by this act
to be stated therein, in any proceeding, civil or criminal, in which
the matter shall be drawn in question. Any person who shall willfully
violate any of the provisions of this section shall be deemed guilty of
a misdemeanor, and shall, on conviction thereof, be punished by a fine
of not more than $1,000 or by imprisonment not longer than two years, or
by both said punishments, in the discretion of the court.

SECTION 10. That nothing in this act shall be held to prevent the proof of marriages, whether lawful or unlawful, by any evidence now legally admissible for that purpose.

SECTION 11. That the laws enacted by the Legislative Assembly of the Territory of Utah which provide for, or recognize, the capacity of illegitimate children to inherit or to be entitled to any distributive share in the estate of the father of any such illegitimate child are hereby disapproved and annulled; and no illegitimate child shall hereafter be entitled to inherit from his or her father or to receive any distributive share in the estate of his or her father: Provided, That this section shall not apply to any illegitimate child born within twelve months after the passage of this act, nor to any child made legitimate by the seventh section of the act entitled "An act to amend section 5352 of the Revised Statutes of the United States, in reference to bigamy, and for other purposes", approved March 22, 1882.

SECTION 12. That the laws enacted by the Legislative Assembly of the Territory of Utah conferring jurisdiction upon probate courts, or the judges thereof, or any of them, in said Territory, other than in respect to the estates of deceased persons, and in respect of the guardianship of the persons and property of infants, and in respect to the persons and property of persons not of sound mind, are hereby disapproved and annulled; and no probate court or judge of probate shall exercise any jurisdiction, other than in respect of the matters aforesaid, except as a member of a county court; and every such jurisdiction so by force of this act withdrawn from the said probate courts or judges shall be had and exercised by the district courts of said Territory respectively.

SECTION 13. That it shall be the duty of the Attorney General of the United States to institute and prosecute proceedings to forfeit and escheat to the United States the property of corporations obtained and held in violation of section three of the act of Congress approved the 1st. day of July, 1862, entitled "An act to punish and prevent the practice of polygamy in the Territories of the United States and other places and disapproving and annulling certain acts of the Legislative Assembly of the Territory of Utah", or in violation of section 1890 of the Revised Statutes of the United States; and all such property so forfeited and escheated to the United States shall be disposed of by the Secretary of the Interior, and the proceeds thereof applied to the use and benefit of the common schools in the Territory in which such property may be: Provided, That no building or the grounds appurtenant thereto, which is held and occupied exclusively for purposes of the worship of God, or personage connected therewith, or burial ground shall be forfeited.

SECTION 14. That in any proceeding for the enforcement of the provisions of law against corporations or associations acquiring or holding property in any Territory of the United States in excess of the amount limited by law, the court before which such proceeding may be
instituted shall have power in a summary way to compel the production of
all books, records, papers, and documents of, or belonging to any trustee
or person holding or controlling or managing property in which such
corporation may have any right, title, or interest whatever.

SECTION 15. That all laws of the Legislative Assembly of the
Territory of Utah, or of the so-called government of the State of
Deseret, creating, organizing, amending, or continuing the corporation
or association called the Perpetual Emigration Fund Company are hereby
disapproved and annulled; and the said corporation, in so far as it may
now have, or pretend to have, any legal existence, is hereby dissolved;
and it shall not be lawful for the Legislative Assembly of the Territory
of Utah to create, organize, or in any manner recognize any such
corporation or association, or to pass any law for the purpose of, or
operating to accomplish the bringing of persons into the said Territory
for any purpose whatsoever.

SECTION 16. That it shall be the duty of the Attorney General of
the United States to cause such proceedings to be taken in the supreme
court of the Territory of Utah as shall be proper to carry into effect
the provisions of the preceding section and pay the debts and to dis-
pose of the property and assets of said corporation according to law.

SECTION 17. That the acts of the Legislative Assembly of the
Territory of Utah incorporating, continuing, or providing for the
corporation known as the Church of Jesus Christ of Latter-day Saints,
and the ordinance of the so-called general assembly of the State of
Deseret incorporating the Church of Jesus Christ of Latter-day Saints,
so far as the same now have legal force and validity, are hereby
disapproved and annulled, and the said corporation, in so far as it
may now have, or pretend to have, any legal existence, is hereby
dissolved. That it shall be the duty of the Attorney General of the
United States to cause such proceedings to be taken in the supreme
court of the Territory of Utah as shall be proper to execute the fore-
going provisions of this section and to wind up the affairs of said
corporation conformably to law; and in such proceedings the court shall
have power, and it shall be its duty, to make such decree or decrees as
shall be proper to effectuate the transfer of the title to real property
now held and used by said corporation for places of worship and par-
sonages connected therewith, and burial grounds, and of the description
mentioned in the proviso to section 13 of this act and in section 26 of
this act, to the respective trustees mentioned in section 26 of this act;
and for the purposes of this section said court shall have all the powers
of a court of equity.

SECTION 18. (a) A widow shall be endowed of the third part of all
the lands whereof her husband was seized of an estate of inheritance at
any time during the marriage, unless she shall have lawfully released her right thereto.

(b) The widow of any alien who at the time of his death shall be entitled by law to hold any real estate, if she be an inhabitant of the Territory at the time of such death, shall be entitled to a dower of such estate in the same manner as if such alien had been a native citizen.

(c) If a husband seized of an estate of inheritance in lands exchanges them for other lands, his widow shall not have dower of both, but shall make her election to be endowed of the lands given or of those taken in exchange; and if such election be not evinced by the commencement of proceedings to recover her dower of the lands given in exchanged within one year after the death of her husband, she shall be deemed to have elected to take her dower of the lands received in exchange.

(d) When a person seized of an estate of inheritance in lands shall have executed a mortgage or other conveyance in the nature of mortgage, of such estate before marriage, his widow shall nevertheless be entitled to dower out of the lands mortgagee or so conveyed, as against every person except the mortgagee or grantee in such conveyance and those claiming under him.

(e) Where a husband shall purchase lands during concerture, and shall at the same time execute a mortgage, or other conveyance in the nature of mortgage, of his estate in such lands to secure the payment of the purchase-money, his widow shall not be entitled to dower out of such lands, as against the mortgagee or grantee in such conveyance or those claiming under him, although she shall not have united in such mortgage; but she shall be entitled to her dower in such lands as against all other persons.

(f) Where in such case the mortgagee, or such grantee, or those claiming under him, shall after the death of the husband of such widow, cause the land to be mortgageed or so conveyed to be sold, either under a power of sale contained in the mortgagee or such conveyance or by virtue of the decree of a court, if any surplus shall remain after payment of the moneys due on such mortgagee or such conveyance and the costs and charges of the sale, such widow shall nevertheless be entitled to the interest or income of the one-third part of such surplus for her life as her dower.

(g) A widow shall not be endowed of lands conveyed to her husband by way of a mortgage unless he acquire an absolute estate therein during the marriage period.

(h) In case of divorce dissolving the marriage contract for the misconduct of the wife, she shall not be endowed.

SECTION 19. That hereafter the judge of probate court in each county within the Territory of Utah, provided for by the existing laws thereof, shall be appointed by the President of the United States, by and with the advice and consent of the Senate; and so much of the laws of said Territory as provide for the election of such judge by the Legislative
Assembly are hereby disapproved and annulled.

SECTION 20. That it shall not be lawful for any female to vote at any election hereafter held in the Territory of Utah for any public purpose whatever, and no such vote shall be received or counted or given effect in any manner whatever; and any and every act of the Legislative Assembly of the Territory of Utah providing for, or allowing, the registration or voting by females is hereby annulled.

SECTION 21. That all laws of the Legislative Assembly of the Territory of Utah which provide for numbering or identifying the votes of the electors at any election in said Territory are hereby disapproved and annulled; but the foregoing provision shall not preclude the lawful registration of voters or any other provisions for securing fair elections which do not involve the disclosure of the candidates for whom any particular elector shall have voted.

SECTION 22. That the existing election districts and apportionments of representation concerning the members of the Legislative Assembly of the Territory of Utah are hereby abolished; and it shall be the duty of the governor, Territorial secretary, and the board of commissioners mentioned in section nine of the act of Congress approved March 22, 1882, entitled, "An act to amend section 5352 of the Revised Statutes of the United States, in reference to bigamy, and for other purposes", in said Territory, forthwith to redistrict said Territory, and apportion representation in the same such manner as to provide as nearly as may be for an equal representation of the people (excepting Indians not taxed), being citizens of the United States, according to numbers in said Legislative Assembly, and to the number of members of the council and house of representatives respectively, as now established by law; and a record of the establishment of such new districts and the apportionment of representation thereto shall be made in the office of the secretary of said Territory, and such establishment and representation shall continue until Congress shall otherwise provide; and no persons other than citizens of the United States otherwise qualified shall be entitled to vote at any election in said Territory.

SECTION 23. That the provisions of section nine of said act approved March 22, 1882, in regard to registration and election officers, and registration of voters and the conduct of elections, and the powers and duties of the board therein mentioned shall continue and remain operative until the provisions and laws therein referred to be made and enacted by the Legislative Assembly of said Territory of Utah shall have been made and enacted by said Assembly, and shall have been approved by Congress.

SECTION 24. That every male person twenty-one years of age, resident in the Territory of Utah shall, as a condition precedent to his right to vote at any election in said Territory, take and subscribe to an oath or affirmation, before the registration officer of his voting precinct, that he is over twenty-one years of age, and has resided in the Territory of Utah for six months then last passed and in the precinct for one month immediately preceding the date thereof, and that he is a native born (or naturalized, as the case may be) citizen of the United States, and further state in such oath or affirmation his full name with his age,
place of business, his status, whether single or married, and, if married, the name of his lawful wife, and that he will support the Constitution of the United States and will faithfully obey the laws thereof; and especially will obey the act of Congress approved March 22, 1882, entitled "An act to amend Section 5352 of the Revised Statutes of the United States, in reference to bigamy, and for other purposes," and will also obey this act in respect to the crimes in said act defined and forbidden, and that he will not directly or indirectly aid or abet, counsel or advise, any other person to commit any of said crimes. Such registration officer is authorized to administer said oath or affirmation; and all such oaths or affirmations shall be by him delivered to the clerk of the probate court of the proper county, and shall be deemed public records therein. But if any election shall occur in said Territory before the next revision of the registration lists as required by law, the said oath or affirmation shall be administered by the presiding judge of the election precinct on or before the day of election. As a condition precedent to the right to hold office in or under said Territory of Utah, the officer before entering on the duties of his office shall take and subscribe an oath or affirmation declaring his full name, with his age, place of business, his status, whether married or single, and if married, the name of his lawful wife, and that he will support the Constitution of the United States, and will faithfully obey the laws thereof, and especially will obey the act of Congress, approved March 22, 1882, entitled "An act to amend Section 5352 of the Revised Statutes of the United States in reference to bigamy, and for other purposes," and will also obey this act in respect of the crimes in said act defined and forbidden, and that he will not, directly or indirectly, aid or abet, counsel or advise, any other person to commit any of said crimes; which oath or affirmation shall be recorded in the proper office and indorsed on the commission or certificate of appointment. All grand and petit jurors in said Territory shall take the same oath or affirmation, to be administered, in writing or orally, in the proper court. No person shall be entitled to vote in any election in said Territory, or be capable of jury service, or hold any office of trust or emolument in said Territory, who shall not have taken the oath or affirmation aforesaid. No person who shall have been convicted of any crime under this act, or under the act of Congress aforesaid, approved March 22, 1882, or who shall be a polygamist, or who shall associate or cohabit polygammously with persons of the other sex, shall be entitled to vote in any election in said Territory, or be capable of jury service, or to hold any office of trust or emolument in said Territory.

SECTION 25. That the office of Territorial superintendent of district schools created by the laws of Utah is hereby abolished; and it shall be the duty of the supreme court of said Territory to appoint a commissioner of schools, who shall possess and exercise all the powers and duties heretofore imposed by the laws of said Territory upon the Territorial superintendent of district schools, and who shall receive the
same salary and compensation, which shall be paid out of the treasury of said Territory; and the laws of the Territory of Utah providing for the method of election and appointment of such Territorial superintendent of district schools are hereby suspended until the further action of Congress shall be had in respect thereto. The said superintendent shall have power to prohibit the use in any district school of any book of a sectarian character or otherwise unsuitable. Said superintendent shall collect and classify statistics and other information respecting the district and other schools in said Territory, showing their progress, the whole number of children of school age, the number who attend school in each year in the respective counties, the average length of time of their attendance, the number of teachers and the compensation paid to the same, the number of teachers who are Mormons, the number who are so-called gentiles, the number of children of Mormon parents and the number of so-called gentile parents, and their respective average attendance at school, all of which statistics and information shall be annually reported to Congress through the governor of said Territory and the Department of the Interior.

SECTION 26. That all religious societies, sects, and congregations shall have the right to have and to hold through trustees appointed by any court exercising probate powers in a Territory, only on the nomination of the authorities of such society, sect, or congregation, so much real property for the erection or use of houses of worship, and for such parsonages and burial grounds as shall be necessary for the convenience and use of the several congregations of such religious society, sect, or congregation.

SECTION 27. That all laws passed by the so-called state of Deseret and by the Legislative Assembly of the Territory of Utah, for the organization of the militia thereof, or for the creation of the Nauvoo Legion, are hereby annulled and declared of no effect; and the militia of Utah shall be organized and subjected in all respects to the laws of the United States regulating the militia in the Territories:Providing, however, That all general officers of the militia shall be appointed by the governor of the Territory, by and with the advice and consent of the council thereof. The Legislative Assembly of Utah shall have power to pass laws for organizing the militia thereof, subject to the approval of Congress.

Became a law without the President's approval, March 3, 1887.

(Taken from Supplement to the Revised Statutes of the United States, Volume I, Chapter 397, pp. 568-74, Washington: Government Printing Office, 1891.)
AUTHOR'S NOTE

The following table of bills and resolutions, comprising Appendix B, was prepared by Richard Douglas Poll and is taken from the Appendix of The Twin Relic, Fort Worth, Texas: Corpus Christi College, 1939. (See bibliographical citation). Through error this information was omitted. The author acknowledges his indebtedness to Mr. Poll.
APPENDIX B

BILLS AND RESOLUTIONS ON POLYGAMY INTRODUCED IN CONGRESS

1852 TO 1890
APPENDIX B

BILL AND RESOLUTIONS ON POLYGAMY INTRODUCED IN CONGRESS, 1852 TO 1890

**Key to Abbreviations:**

- S.10 - Senate Bill 10
- S.Res.10 - Senate Floor Resolution 10
- S.J.R.10 - Senate Joint Resolution 10
- H.10 - House Bill 10
- H.Res.10 - House Floor Resolution 10
- H.J.R.10 - House Joint Resolution 10
- C on J - Committee on Judiciary
- C on T - Committee on Territories
- 41C-2 - 41st Congress, 2d session

**Types of Proposals:**

1. To suppress polygamy— all bills to punish and to prevent the practice of polygamy in the Territories.
2. To aid law enforcement— all bills to aid in the enforcement of laws against polygamy, including amendments to Section 5352 of the Revised Statutes.
3. To amend the Constitution— all bills and resolutions to add an anti-polygamy amendment to the Constitution.
4. To bar polygamists— all bills to disfranchise or deny office and jury service to polygamists.

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<td>1855-56</td>
<td>H.Res.10</td>
<td>To empower the C on J to investigate polygamy</td>
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<td>Died on House Floor</td>
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<td>H.60</td>
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<td>1859-60</td>
<td>H.7</td>
<td>&quot; &quot; &quot;</td>
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<td>C on J</td>
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<td>To bar polygamists</td>
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<td>To suppress polygamy</td>
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<td>H.1478</td>
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<td>H.J.R.143</td>
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<td>H.J.R.176</td>
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<td>CR 33, 128, 143, 165, 860</td>
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<td>CR 3227, 6654, 10211</td>
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