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MORMONS: Through repeated appearances before the Court, The Church of Jesus Christ of Latter-day Saints, known colloquially as the Mormons, was a driving force behind the interpretation of the first amendment's religion clauses.

Pointing to examples from the Old Testament and Mormon scripture, the church officially endorsed plural marriage in 1852. Four years later, the Republican Party announced its opposition to the "twin relics of barbarism," slavery and polygamy, and in 1862, congress passed the Morrill Anti-Bigamy Act criminalizing polygamy in the territories. Mormons, however, regarded the law as a violation of their constitutional rights, and federal officials in Utah Territory thought convictions under the law were impossible because of Mormon influence on the territorial judiciary.

In 1874, congress responded by sharply limiting local control of the Utah courts. Prosecutors and church leaders then cooperated to create a test case on the constitutionality of the Morrill Act. George Reynolds was found guilty of bigamy, and ultimately appealed to the Court. Prior to *Reynolds v. United States*, 98 U.S. 145 (1879), the Court had never construed the meaning of the free-exercise clause. Reaching its substance for the first time, the Court held that it protected beliefs but not actions, affirming Reynolds's conviction.

Reynolds launched a decade-long legal crusade against polygamy that came to be known as "The Raid." This effort resulted in numerous cases before the Court. In an early example of dialogue with the legislative branch, *Miles v. United States*, 103 U.S. 304 (1880), suggested that anti-bigamy laws be amended to ease prosecutions. Congress responded, and in 1885 three cases under the new law reached the Court. In *Murphy v. Ramsey*, 114 U.S. 15 (1885), the Court upheld the disenfranchisement of polygamists, and in *Clawson v. United States*, 114 U.S. 477 (1885), the Court affirmed the exclusion of Mormons from juries.

The third case, *Cannon v. United States*, 116 U.S. 55 (1885), involved the definition of a new crime – unlawful cohabitation – designed to facilitate convictions. Bigamy required proof of separate marriage ceremonies. Mormon marriages, however, were performed secretly, and gathering evidence frequently proved impossible. Criminalizing "cohabitation with more than one woman" avoided this problem. Defendants, however, insisted that "cohabitation" required proof of sexual intercourse. The Court rejected this position, holding that cohabitation simply involved "holding out to the world two women as . . . wives." 116 U.S. at 74.

Prosecutors then began "segregating" the offense, indicting defendants on multiple counts for each year during which they had unlawfully cohabitated. This approach allowed much harsher punishments. In *Ex Parte Snow*, 120 U.S. 274 (1887), however, the justices rejected the theory of segregation, insisting that cohabitation was an "inherently a continuous offense." 120 U.S. at 281.

In 1887, Congress produced a fourth round of legislation known as the Edmunds-Tucker Act. The Act dissolved the church as a corporation and confiscated all of its property. In *Late Corporation of the Church of Jesus Christ of Latter-day Saints v. United States*, 136 U.S. 1 (1890), the Court rejected the argument that the Act infringed on religious liberty in the strongest possible terms, comparing polygamy to human sacrifice, religious assassinations, and “other open offenses against the enlightened sentiment of mankind.” 136 U.S. at 50.

The same year, the Court upheld an Idaho law disenfranchising all Mormons in *Davis v. Beason*, 133 U.S. 33 (1890). In contrast to the law in *Murphy*, Idaho excluded any person – monogamist or polygamist – who subscribed to Mormon doctrine. In response the so-called Cullom Bill, which would have disenfranchised all Mormons, was introduced in Congress.

Church president Wilford Woodruff faced the bleak prospect of continued mass incarceration of Mormons, their permanent political subjugation, and the institutional annihilation of his church. In response, Woodruff recorded in his diary “praying to the Lord and feeling inspired by his spirit” to issue the so-called Manifesto, in which he called on Mormons to obey the laws banning polygamy.

Despite the Manifesto, some Mormons continued to perform clandestine plural marriages, until the issue again burst on the national scene in three years (1904-1907) of grueling congressional hearings over the election of Reed Smoot, a high-ranking Mormon leader, to the U.S. Senate. Haunted by the return of “The Raid,” the church began excommunicating those who continued polygamy, which has been its policy ever since.

Excommunicated Mormons founded polygamous sects that continue to thrive in the American west. In 1946, Utah convicted one of these so-called “Mormon fundamentalists” for “conspiracy to commit acts injurious to . . . public morals” by publishing a pamphlet advocating polygamy. In *Musser v. Utah*, 333 U.S. 95 (1948), the Court avoided reaching the merits of his constitutional challenge, but, in a marked shift from nineteenth-century cases, a sharp dissent insisted that Musser’s conviction violated the free-speech clause.

More recently, in *Corporation of the Presiding Bishop v. Amos*, 483 U.S. 327 (1987), the Court rejected an establishment clause attack on the church’s exemption from anti-discrimination laws. Mormons were again before the Court in *Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000), where one of the Jane Doe plaintiffs who successfully challenged the highly Protestant prayers offered at public school football games in Texas was a Mormon.

Critics have claimed that the belief-action distinction provides no protection for religious practice, but the Court strongly affirmed *Reynolds* in *Employment Division v. Smith*, 494 U.S. 872 (1990). On the other hand, in *Romer v. Evans*, 517 U.S. 620 (1996), the Court explicitly rejected the more extreme position it had staked out in *Davis v. Beason*. “*Davis* . . .” wrote Justice Kennedy, “. . . is no longer good law.” 517 U.S. at 633.

The Mormon cases illustrate deeper issues of law's power. The Court forced the issue the Manifesto, but it ultimately did not end Mormon polygamy, which came in the political settlement of the Smoot hearings rather than the legal settlement of *Late Corporation*. The persistence of schismatic polygamous groups is further evidence of law's limited ability to eradicate religious practices. Conversely, the Court's work triggered a reformation of Mormon theology, which points toward the abiding influence of the Court on the most sacred aspects of American life.

Bibliography

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