

INTRODUCTION

Latter-day Saint history of plural marriage is a long one by whatever measure. My own measure begins as early as 1829 with the production of the Book of Mormon. It ends between 1904 and 1911 when Joseph F. Smith first proclaims the legitimacy of Wilford Woodruff's 1890 "Manifesto" and seven years later begins to excommunicate those who will not cease creating new plural marriages.

Seldom is this history considered in its totality. I'd like to try today by dividing this 80 year whole into three parts and present two vignettes in each. I have chosen them for their ability to introduce legal issues that might

1829-1852 Origins: BOM Translation to its public announcement in 1852
1852/62 Poland Act – 1890 Socialization and Criminalization
From 1852 to 1886 State Constitutional Compromise
1890 – 1911 Cessation: From the Manifesto to the Reed Smoot Hearings (and their immediate aftermath)

Today, I would like to raise the issues associated with these periods with the hope that it will facilitate a conversation. In sum, I invite your questions to lead us more deeply into the issues raised by my remarks.

Part A Establishment of Religious Law: Origins of the Idea and Its Practice – the law of God and the Church

BOM Jacob 2:30 For if I will, saith the Lord of Hosts, raise up seed unto me, I will command my people; otherwise they shall hearken unto these things.

Practice of Sealing Rite – the law of the Priesthood

Smith attempted to organize Nauvoo as a polygamous society.
He was not alone in innovating on marriage
Was it a secret?¹

¹ "Turkey or India" Sermon -- Joseph Lee Robinson: "he said suppose we send one of our elders to Turkey or India or to a people where it was lawful to have several wives. . . and he shall pass along, preaching and baptizing and a man shall receive the Holy Ghost, and that shall teach him of a land of Zion and of the gathering, and . . . Then, said he, to the elder, I have five wives and I love one equally as well as I do the other and now what are the laws in that land? Can I bring my five wives there and enjoy them there as well as I can here? [A very loaded rhetorical question]"

PART B CRIMINAL LAW & POLICE POWERS OF THE STATE. 1852/62 POLAND ACT – 1890

- The Saints arrive in '47
- '52 everyone from Nauvoo is behind the wall
- 1857 Five years later the Army arrives/invades
- 1862 Poland Act

The Statutes and Raids and the Underground

During the 1880s, increased numbers of federal agents conducted "cohab hunts" or raids on Latter-day Saint settlements to arrest polygamists. Julina Lambson remembered it as a time when "our families were scattered and, to obey the laws of the land, changes were made in our family customs, which grieved us all."³⁴ Her husband, Joseph F. Smith, called it "the reign of Judicial Terror."³⁵ Eventually more than thirteen hundred L.D.S. men and women were fined and assigned to prisons in Arizona, Michigan, South Dakota, Idaho, and Utah.³⁶ The extent of the practice of polygamy in the Latter-day Saint community was virtually impossible to calculate under the circumstances. Modern scholars have arrived at various estimates. A reliable summary is provided by Thomas Alexander: "At present, perhaps the best estimates of the number of polygamous families among late-nineteenth-century

"Said the prophet [JS], yes the laws in Zion are such that you can bring your wives and enjoy them here as well as there, the elder shall say to that brother.

"The prophet went on preaching the gospel of the kingdom as if he had not said anything strange or awful, but this to me was the first intimation that I ever received that polygamy would ever be practiced or lawful with this people. The prophet went to his dinner and as it might be expected, several of the first women of the Church collected at the prophet's house with his wife and said thus to the prophet Joseph. Oh Mr. Smith, you have done it now, it will never do for it is all but blasphemy. You must take back what you have said today. It is outrageous. It would ruin us as a people.

"The prophet knew it would not avail anything to contend with the sisters. Said he, I will have to take that saying back and leave it as though there had been nothing said. For he was aware it was a very large pill for them or the people to swallow. But, as the Lord had revealed the principle of plural marriage to him and had informed him that the time had fully come that that doctrine should be taught and practiced by his people, the Latter-day Saints, as it was a very important item pertaining to the fullness of the gospel. He deemed it wisdom to throw out something for the people to reflect upon that they might begin to digest that very important doctrine which belongs to the dispensation of the fullness of times."

Latter-day Saints range between 20 and 30 percent. Nevertheless, studies of individual communities show a wide variation in the incidence of plurality.”

One of the more interesting questions was how to define and evidence the crime

Bigamy vs Polygamy and “Unlawful Cohabitation”

Morill Act 1862 forbade polygamy

Edmunds 1882 forbade unlawful cohabitation

The ultimate goal of the antipolygamy laws was not merely to proscribe sexual activity among multiple partners, but to enforce the regnant concept of American marriage. Certainly, polygamy’s sexual dimension was its most scandalous and titillating aspect. But antipolygamy sentiment was equally aroused by the assumed negative social and psychological effects of plural marriage on women, the moral well-spring of the home and, thereby, of the nation. Consequently, antipolygamy law was intended to de-legitimize plural marriage in all its dimensions as a domestic partnership. This was the purpose of the new crime of unlawful cohabitation and its application to a variety of behaviors that permitted the inference of a marriage. As one exasperated Utah judge’s instructed an otherwise law-abiding Mormon lay bishop, *“you shall not cohabit and live with your plural wives as your wife, must not hold her out to the public, and your associations must not be such as the people who are unacquainted with your relations would naturally infer that you were husband and wife.”* The judge insisted, however, that defendant’s duty as a father was unchanged: *“You are under a moral obligation to support, educate, and provide and care for your children. The limitations on your conduct that the law imposes are not such that you shall not visit there to look after your children in times of distress and sickness, but you are expected to give them your care and attention.”* In sum, a father must maintain his relationship with his children, but not with his children’s mother. “

Pursuing information on domestic arraignments in Mormon communities was a thankless task for some and a satisfying crusade for others in Latter-day Saint communities. “Mind your business” became part of the Latter-day Saint creed during a time when bribes were offered to anyone who would testify against another; the credibility of accusers went untested; and the presumption of innocence was reversed.⁴⁰ Because bounties were offered for information leading to arrest of church leaders, the majority lived in hiding or out of the country for years at a time. Wives, too, “went on the underground” to avoid federal marshals who would force them to testify against their husbands. The effects of the law were, as intended, thoroughly disruptive of Latter-day Saint society and morale. A polygamist wife later described the period in her autobiography:

It is difficult to picture the unsettled conditions in Utah and Idaho during the raid against polygamists. Homes were broken up and families scattered among relatives or friends. . . . Some had secret hiding places in their own homes; others trained the children to watch for the Deputy Marshal, and to

evade or deceive when asked questions by strangers or deputies about family relations. If people were at any public gatherings and the federal marshal entered the town, there was a scattering of local Church authorities. . . Mothers ran with their babies to the neighbors; old men took to the fields. . . It was almost impossible for a stranger, who may have had only innocent motives, to get any reliable information about resident members of a town, because of the suspicious attitude of the citizens and their aversion to answering questions.⁴¹

One mother instructed her children that, if asked, “they didn't know what their name was; they didn't know where they lived; they didn't know who their dad or mother was.”⁴² Church officials, too, engaged in “double speak” about the doctrine of plural marriage, especially after the 1890 Manifesto. Increasingly, they avoided reference to it where non-Mormons were likely to be present and denied its practice when asked.

PART C 1890 MANIFESTO – 1904

Supreme Court Cases

- 1890 was a terrible year for the church in court. In February, the Supreme Court upheld an Idaho statute disfranchising and barring from public office those who believed in polygamy, whether they practiced it or not. (*Davis v. Beason*) This effectively removed rights of citizenship for all Idaho Mormons and later served as the model for a proposed anti-polygamy amendment to the constitution.
- In another case, ominously entitled *Late Church of Jesus Christ of Latter-day Saints vs. U.S.*, the Supreme Court upheld statutory seizure of the church's property, including places of worship. The Court reasoned: “The organization of a community for the spread and practice of polygamy is, in a measure, a return to barbarism. It is contrary to the spirit of Christianity and of the civilization which Christianity had produced in the Western world.”
- With defeat of the church's last possibility for appeal, the federal marshal notified its president Wilford Woodruff that he was about to seize the **Mormon temples**. The limits of L.D.S. resistance had been reached. It appears the Mormons could give up their property, their liberty, and even their rights of citizenship, but they could not part with their temples.
- On September 24, 1890, Wilford Woodruff issued a statement that would become known simply as “**the manifesto.**” It read: “*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 intentions 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.*”

Most historical discussions of the L.D.S. Church end here, with the issuance of the manifesto against polygamy. The manifesto was, however, just the beginning of the

end of the Mormon Problem. The language of the manifesto was ambiguous and, hence, encouraged an ambivalent response both inside and outside the church. Although the Saints agreed by their law of common consent to accept Woodruff's advice as the "will of the Lord" and binding on them, it had been a "weak vote." Some Mormons thought the manifesto was a political expediency designed to save the church. All of the anti-polygamists knew it was and continued to use every available forum to state their case. The election of Apostle Reed Smoot to the US Senate in 1901 provided them with their most effective forum.

Reed Smoot Hearing – In 1902 Reed Smoot was elected to the US Senate. His election was immediately contested a broad coalition of American Protestant churches, acting directly through their ministers and indirectly through various reform agencies, on the grounds that his ecclesiastical position made him a conspirator in the Mormons' continuing violation of the nation's antipolygamy.

The four-year senate proceeding created a 3,500-page record of testimony by one hundred witnesses on every peculiarity of Mormonism, especially its polygamous family structure, ritual worship practices, "secret oaths," open canon, economic communalism, and theocratic politics.¹⁰ The public participated actively in the proceedings. In the capitol building, spectators lined the halls, waiting for limited seats in the committee room, and filled the galleries to hear floor debates. For those who could not see for themselves, journalists and cartoonists depicted each day's admission and outrage. At the height of the hearing some senators were receiving a thousand letters a day from angry constituents. What remains of these public petitions fills eleven feet of shelf space, the largest such collection in the National Archives. Notwithstanding the news coverage dedicated to the trial, there was nothing new to report. Or, more accurately, the only news was that the Mormons had not changed. After following the hearing for a year and a half, Illinois Senator Shelby Cullom concluded, "Mormonism is the same menace to this country as it was from the beginning."¹¹

Long story short: Smoot held onto his seat. Only in hindsight is the real news of the Smoot hearing appreciable: politics had succeeded law had failed. The senate solved the nation's Mormon Problem and in doing so settled for a century the conflict of laws – religious and secular – implicit in the religion clauses of the first amendment.¹³

The reasons for settlement were complex but can be boiled down to what all litigators know: when people get what they want the most, they will sacrifice what they want the least.

- **The Nation wanted** the Mormons to recognize the power of the state, even at the expense of their religious law. These were articulated by Senator Albert Beveridge of Indiana:
"Obedience to law, tolerance of opinion, loyalty to country – these are the

principles which make the flag a sacred thing and this Republic immortal.” –
Senator Albert J. Beveridge, *Proceedings* (1907)

What did the Mormons want?

JFS:

Opposed to Smoot’s initial candidacy in 1900, JF S later became Smoots chief advocate, adamantly rejecting arguments from other apostles that Smoot should resign to protect the church from the hearings backlash. Between the date of his objection and 1902, when smooch was elected, Smith became president of the church. In his inaugural sermon, Smith addressed concerns that may explain why he later insisted God wanted apostles in the Senate. Smith introduced his main point by stating the obvious. We have been looked upon as interlopers, as fanatics, as believers in a false religion; we have been driven from our homes, maligned and spoken people of everywhere.” Indeed the churches reputation was so bad that” the people of the world come to believe that we are the off-scorings of the earth and scarcely fit to live.” Smith’s purpose was not to commiserate with his own people or to berate their critics. Rather, he was concerned, about the” thousands and thousands of innocent people in the world his mind to become so darkened by the slanderous reports . . . That they would feel they were doing God’s service to deprive a member of this church of life, or of liberty, or the pursuit of happiness, if they can do it.” For Smith, the problem with the church’s reputation was not the threat of injury to its members. Rather, it was that no one was listening to its message.

- In the preceding two decades, and violence against the Latter Day Saints was common in the United States, Resulting in extreme cases in the burning of meeting houses, the whipping and tarring of missionaries, in the murdering of several missionaries And church members and unrelated incidents. As late as 1902, one missionary can’t organizing a Sunday school in Arkansas West tied to a tree and given 30 lashes with the promise of worse if he returned.
- Physical attacks were reported in the churches international missions as well. In addition both domestic and foreign governments have imposed legal restraints on the church, denying or terminating missionary visas, refusing to relicense the organization of congregations, in proscribing convert immigration.
- Threat of the return to criminalization and loss of civil rights for beliefs

The 1890 manifesto had not change the world’s opinion of Mormonism, and as a result, the churches missions were in trouble. This meant the church itself was in trouble to unique degree. If you could not make itself heard, the church had no reason for being. That’s, when Smith took office, it was obvious that defensive capitulation wasn’t insufficient response to the churches reputational and legal problems. This may explain why Smith concluded his inaugural address with a

promise that constituted a command. "The Lord," The new profit and president decreed to his church," designs to change this condition of things and to make is known to the world in our True light—as true worshipers of God."

While Smith had built the family pedigree and ecclesiastical power to effect change within the church, changing the "condition of things in" required more influence and Smith possessed. Frustrated by national and international governments sanctions, Smith needed an apostle in the Senate.

At the very time the United States was extending its sovereignty and exercising diplomatic influence in the internal politics of foreign nations, the L.D.S. Church placed an apostle in the senate who could and did leverage his office to enable his church also to internationalize.

But that is the story of the 20th century and must be told on another day.

Appendix

Affect of the Smoot Hearings on the Church:

Those members who could not accept the change and who contracted plural marriages after Smith's 1904 injunction, including Taylor and Cowley, were subjected to church disciplinary courts beginning in 1911.

For those who were willing to change, the effect of the abandonment of the practice was cushioned doctrinally by three strategies.

1. First, and most obviously, **the church did not repeal Joseph Smith's revelation** as contained in church scripture as Section 132 of the Book of Doctrine and Covenants. Instead, the 1890 Manifesto was subordinated to it by placement at the back of the Book. Moreover, by entitling the Manifesto a *declaration*, not a revelation, church authorities implied the Manifesto was not of equal weight to material contained within the main text. As stated by its own terms, the Manifesto's addition to the Doctrine and Covenants was understood to memorialize only a suspension of church law and to do so merely out of respect for "laws enacted by Congress . . . pronounced constitutional by the court of last resort." True to the *Reynolds* decision, the Latter-day Saints would believe, but would not act according to their belief.⁶⁸
2. Second, then, change in practice was palliated by **continuing intellectual commitment to doctrine**. Moreover, the church continued the practice of plural marriage to the extent that males whose previous wives were deceased were permitted to have subsequent marriages sanctioned by temple ordinance, which is believed to ensure marital status after death.
3. Finally, through sermon and other doctrinal exposition, **the doctrine of celestial marriage was applied in such a manner as to equate it exclusively**

with eternal marriage, rather than plural marriage. Though this had been a defensive strategy in legal arguments since 1880, it was now universally applied within the church as well.⁶⁹