

A BRIEF LEGAL HISTORY OF UTAH LAW PROHIBITING BIGAMY AND POLYGAMOUS COHABITATION

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It was a situation which echoes strongly of the present one: In the summer of 1873, Ann Eliza Young apostatized, divorced Brigham Young, and went on the lecture circuit. She claimed that “the superficial harmony of Young’s households masked what was in fact a systematic torture of women, riven by jealousies, violence, and deception.” S.B. Gordon, *THE MORMON QUESTION* 112 (2002). Popular writers of the time howled in both fictional and non-fictional accounts over the “enslavement” of women. Congressmen raged that the church “has elevated lechery to the dignity of a religious dogma, and burns incense upon the altars of an unhallowed lust.” *Cong. Globe*, 42d Cong., 3d Sess. 948 (1873). Many argued that plural wives would escape if only they could, and built “safe houses” for that purpose. *Id.* at 164.

Then, as now, however, few plural wives attempted to “escape” their husbands. The safe houses stood largely empty, and those who came were more often leaving an incompatible relationship than escaping polygamy. As one of the first groups of women to be granted suffrage (in 1871), Mormon women consistently voted in favor of maintaining their local institutions. *Id.* at 97. They lied in court, they hid from authorities, they held rallies in favor of polygamy, and they even conducted public relations tours to Washington in defense of their faith. “[T]he recalcitrance of Mormon women battered theories of their involuntary sexual servitude.” *Id.* at 164. In response, antipolygamists asserted that Mormon women were controlled in every aspect of their lives, and that the whole structure of marriage in the territory must be destroyed in order to destroy the power polygamous men held over their wives.

Even Blackstone’s assumptions about polygamy in 1783 were the result of a narrow consideration of social history and the superiority of western Christian ideals:

For polygamy can never be endured under any rational civil establishment, whatever specious reasons may be urged for it by the eastern nations, the fallaciousness of which has been fully proved by many sensible writers: but in northern countries the very nature of the climate seems to reclaim against it; it never having obtained in this part of the world

4 Blackstone, *COMMENTARIES ON THE LAWS OF ENGLAND* 163-64 (1783).

Utah's bigamy statute is an archaic result of the bitter struggle for statehood, and the concomitant (and nearly successful) attempts by the federal government in the late 1800s to destroy the Mormon church. Mr. Holm subscribes to the teachings of the 19th century Mormon church as they relate to familial relations and procreation. Therefore, an examination of the history of the bigamy laws and plural marriage in this State is appropriate and necessary for a proper exposition of the issues in this case. It is a tale of legal persecution, majoritarian high-handedness, and intolerance cloaked in the disguise of morality that would be positively shocking if it were to occur today.

The principle of plural marriage was revealed to Joseph Smith in 1843. It is published in DOCTRINE & COVENANTS § 132.

The revelation proclaimed that the marriage of one man to more than one woman was "justified" by the example of Abraham. In these latter days, the heirs of Abraham were once again commanded to work "for their exaltation in the eternal worlds" (that is, the states of heaven) by siring "the souls of men." Men called upon to enter the celestial principle were thus sanctified in their union with additional "virgins," in the interest of procreation by righteous patriarchs as of old. . . . The new covenant of celestial marriage celebrated on earth would endure for eternity, governing relations in heaven as in life, and dictating the degree of exaltation achieved in the afterlife. Only marriage celebrated in accord with the revelation would endure after death, and "whatsoever things" that did not conform to God's Words "shall be shaken and destroyed."

Gordon, *supra*, at 22 (2002). The early Mormon church, and the fundamentalists today, believe that the highest of the three orders of heaven can be attained only by living the law of celestial, or plural, marriage. D&C §131; 9 JOURNALS OF DISCOURSES 322 (statement of Brigham Young, July 6, 1862). The purpose of plural marriage is procreation, not sexual gratification. 9 JOURNALS OF DISCOURSES 36 (statement of Brigham Young, April 7, 1861).

The revelation remained secret for nearly ten years, but rumors that the Mormons were engaged in polygamous marriages fueled the persecution that eventually drove the Mormons west to what was then Mexico in 1847. Two years later, Mexico ceded the area to the United States following the Mexican-American War. The religiously cohesive nature of the Mormon settlers resulted in a theocratic government until Mormon church leaders established a civil form of government in March 1849. *Society of Separationists, Inc. v. Whitehead*, 870 P.2d 916, 921-22 (1993). The citizens of the region thereafter adopted and ratified a constitution,