

# Barbarians within the Gate Congressional Debates on Polygamy, 1850–1879

Stephen Eliot Smith

In 1879, the Supreme Court of the United States delivered its judgment in *Reynolds vs. United States* on the constitutionality of a federal anti-polygamy statute.<sup>1</sup>

The case had been the Court's first in which a litigant had in his defense invoked the free exercise of religion clause of the First Amendment to the Constitution.<sup>2</sup> In its judgment, the Court unanimously held that a Mormon<sup>3</sup> could not be exempted from criminal sanctions for bigamy due to a sincere religious belief in the practice of polygamy.<sup>4</sup> More generally, the Court granted its imprimatur to Thomas Jefferson's famous interpretation of the Free Exercise

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1. *Reynolds vs. United States*, 98 U.S. 145 (1878).

2. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. Const. amend. I.

3. Members of the Church of Jesus Christ of Latter-day Saints have historically been referred to as *Mormons* because of their belief in the Book of Mormon as a new book of Christian scripture. Adherents of the religion have typically preferred the designation *Latter-day Saints*, and the church formally rejects the name *Mormon Church*. In this article, *Mormon Church* and *Mormon* are used not because they are considered to be ideal or precise descriptive terms today, but rather because they were the designations that were most commonly used to refer to the church and its adherents during the period of time under discussion.

4. For a discussion of *Reynolds*, see Sarah Barringer Gordon, "Law and Patriarchy at the Supreme Court," in Sarah Barringer Gordon, *The Mormon Question: Polygamy and Constitutional Conflict in Nineteenth-century America* (Chapel Hill: University of North Carolina Press, 2001), 119–145.

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Clause: that “the legislative powers of the government reach actions only, and not opinions.”<sup>5</sup> “Laws are made for the government of actions,” the Court held, “and while they cannot interfere with mere religious belief and opinions, they may with practices.”<sup>6</sup> Although later decisions by the Court acknowledged that it was possible for legislation to unconstitutionally limit religious practices,<sup>7</sup> the belief–practice distinction that was adopted in *Reynolds* has remained a consistent, if controversial, touchstone in Free Exercise Clause jurisprudence.<sup>8</sup> In many ways, the *Reynolds* decision was both an end and a beginning: even today, the case stands out as a significant hinge on which the history of church-state relations in the United States has swung.

*Reynolds* was an end because it largely brought to a halt the nearly three-decade debate over the propriety of Congress taking legislative action to stamp out polygamy in the territories of the United States. However, the case was also a beginning: it signaled the start of a ten-year flurry of new federal enactments, prosecutions, and lawsuits that would finally result in the Mormon

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5. *Reynolds vs. United States*, 164 (quoting Jefferson to Nehemiah Dodge, Ephraim Robbins, and Stephen S. Nelson, a Committee of the Danbury Baptist Association in the State of Connecticut, January 1, 1802, reprinted in Daniel L. Dreisbach, *Thomas Jefferson and the Wall of Separation between Church and State* [New York: New York University Press, 2002], 48.) The Court repeated the error (committed in most published collections of Jefferson’s works) of misquoting Jefferson’s letter. Jefferson actually wrote of “the *legitimate* powers of the government.” For a note on the origin and persistence of the misquote, see Dreisbach, *Thomas Jefferson and the Wall of Separation*, 181, n. 71.

6. *Reynolds vs. United States*, 166.

7. *Sherbert vs. Verner*, 374 U.S. 398 (1963) (holding that it was unconstitutional to withhold unemployment benefits from a Seventh-day Adventist who quit her employment because it required her to work on Saturdays); *Wisconsin vs. Yoder*, 406 U.S. 205 (1972) (holding that a law that required school attendance after the eighth grade violated the First Amendment rights of Amish parents); *Church of the Lukumi Babalu Aye, Inc. vs. City of Hialeah*, 508 U.S. 250 (1993) (holding that a city ordinance that prohibited the slaughter of animals violated the constitutional right of Santerians in the city to practice animal sacrifice).

8. *Employment Division vs. Smith*, 494 U.S. 872 (1990) (holding that the Free Exercise Clause will only succeed in invalidating a law that prohibits conduct if another constitutional provision is also infringed by the law). The judgment in *Smith* was widely criticized by academics and in the media, and Congress overruled *Smith* by enacting the Religious Freedom Restoration Act of 1993, Public Law 103-141, *United States Statutes at Large* 107 (1993): 1488, codified at *U.S. Code* 42 (2006) §§ 2000bb–2000bb-4. Although the Supreme Court has held that the 1993 act is unconstitutional in its purported application to actions of the states, it still applies to actions of the federal government. *City of Boerne vs. Flores*, 521 U.S. 507 (1997); *Gonzales vs. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418 (2006).

Church's formal abandonment of the practice of polygamy in 1890 and the admission of Utah as a state of the Union in 1896.<sup>9</sup> Within another decade, polygamy was all but non-existent among mainstream Mormons.<sup>10</sup> Prior to *Reynolds*, the solution to what became known as the "Mormon Question" had yet to be definitively settled upon. However, among the members of Congress, there was no shortage of opinions about the Mormons, their polygamy, and what was to be done. This article examines the development of the debates on Mormon polygamy that were held in the U.S. Congress from the creation of the Territory of Utah until *Reynolds* was decided.

## Utah Territory and the Congressional Compromise of 1850

The congressional establishment of the Territory of Utah in 1850<sup>11</sup> presented the United States with an unexpected watershed in its religious history. The Mormons—having been driven out of Missouri in 1839 and having seen the lynching of their prophet Joseph Smith in Illinois in 1844—began a systematic emigration to the Great Basin of the Rocky Mountains in 1846 under the leadership of Brigham Young.<sup>12</sup> By the end of 1850, over eleven thousand Mormons were living within Utah Territory, and for the first time in the history of the country, the majority population of an organized state or territory of the Union was non-Protestant.<sup>13</sup>

9. The church officially stopped teaching and sanctioning what it called "plural marriage" on September 25, 1890. Wilford Woodruff, "Official Declaration," *Deseret Weekly* (Salt Lake City), September 25, 1890, 476, reprinted as "Official Declaration—1," *The Doctrine and Covenants of the Church of Jesus Christ of Latter-day Saints* (Salt Lake City: Church of Jesus Christ of Latter-day Saints, 1981), 291–92.

10. Some men continued to cohabit with plural wives they had married prior to 1890, and church leaders quietly continued to authorize a limited number of polygamous marriages at least until 1904. B. Carmon Hardy, *Solemn Covenant: The Mormon Polygamous Passage* (Urbana: University of Illinois Press, 1992), 167–243.

11. U.S. Congress, *An act to establish a Territorial Government for Utah, Statutes at Large of the United States of America, 1789–1873*, 9 (1850): 453.

12. For a history of the Mormons in the United States, see Terryl L. Givens, *The Latter-day Saint Experience in America* (Westport: Greenwood Press, 2004). For a history of the early stages of the Mormon exodus, see Richard E. Bennett, *We'll Find the Place: The Mormon Exodus, 1846–1848* (Norman: University of Oklahoma Press, 2009).

13. The 1850 census of the United States (which was performed in Utah in early 1851) reported that there were 11,380 residents in Utah Territory, which included 11,330 whites, 25 "free coloreds," and 26 slaves. J. D. B. DeBow, *The Seventh Census of the United States: 1850* (Washington, DC: Robert Armstrong,

The new territory was unambiguously dominated by adherents of Mormonism.<sup>14</sup>

Congress had begun considering the creation of the Utah Territory early in 1850. The Mormons had sent a representative to Washington requesting that they be admitted to the Union as the State of Deseret,<sup>15</sup> and the Senate referred the application to its Committee on Territories,<sup>16</sup> which in May returned the recommendation that a smaller Territory of Utah be created.<sup>17</sup> The recommendation on the creation of Utah was a relatively minor component of the Compromise of 1850, which was ultimately enacted in September 1850 after months of acrimonious debate in the House of Representatives and the Senate.<sup>18</sup>

The axis around which the debate rotated was that of the future of slavery in the United States<sup>19</sup>; the Compromise of 1850 was a

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1853), 993. American Indians resident in the territory were not counted. Although the census did not report the religion of residents and precise figures are not otherwise available, it is likely that the vast majority of the enumerated residents of Utah were members of the Mormon Church. Thousands of non-Mormons traveled the Mormon Trail in the late 1840s and early 1850s, but most were gold-seekers just passing through Salt Lake City on their way to California. Leonard J. Arrington, *Great Basin Kingdom: An Economic History of the Latter-day Saints, 1830-1900*, rev. ed. (Urbana: University of Illinois Press, 2005), 68.

14. Mormons still constitute a majority of the population of Utah. The number of non-Mormons in the state is not expected to overtake the number of Mormons until 2030. Matt Canham, "Mormon portion of Utah population steadily shrinking," *Salt Lake Tribune*, July 24, 2005, [http://www.sltrib.com/ci\\_2886596](http://www.sltrib.com/ci_2886596).

15. The proposed state encompassed 265,000 square miles and included nearly all of present-day Utah and Nevada, large portions of California and Arizona, and parts of Idaho, Wyoming, Colorado, New Mexico, and Oregon.

16. *Congressional Globe*, 31st Cong., 1st sess., 1850, 212-13.

17. *Ibid.*, 944-48.

18. The debate was highlighted in the Senate by Missourian Thomas Hart Benton's threatening advance toward Henry S. Foote of Mississippi as Foote criticized the Missouri senator before the chamber; upon seeing Benton's advance, Foote drew a pistol, which resulted in considerable "confusion and excitement" on the floor as the two senators were separated and the firearm was seized and locked in a desk by Daniel S. Dickinson of New York. *Ibid.*, 762-63.

19. The main provisions of the enacted compromise were: (1) California was admitted to the Union as a free state; (2) the extensive slave trade in the District of Columbia was abolished, but slavery was still permitted therein; (3) a new *Fugitive Slave Act* was enacted, which required residents of both slave and free states to assist in the return of runaway slaves to their owners; (4) the territories of New Mexico and Utah were created and were not designated as either "slave" or "free," with the decision on the slavery status of the territories being deferred until a grant of statehood; and (5) Texas surrendered a substantial

compromise between the free and slave states of North and South, and there is no indication from the congressional records that any members of Congress were particularly concerned with the prospect of creating a territory that would be dominated by Mormons. Although President Zachary Taylor had reportedly told a number of congressmen that he would “veto any bill passed, state or territorial” for the Mormon “pack of outlaws,”<sup>20</sup> Taylor’s death in July 1850 rendered his opposition moot.<sup>21</sup> Millard Fillmore, who succeeded Taylor, was relatively indifferent toward the Mormons and was certainly more amenable to the proposed Compromise than Taylor had been. A petition signed by residents of Illinois that opposed the admission into the Union of the “Salt Lake Mormons” on the grounds that they “are robbers and murderers, and that these men are all in favor of polygamy” was presented to the House by Representative John Wentworth,<sup>22</sup> but the petition did not generate any substantive debate and these or similar allegations against the Mormons were never raised again in the debates over the Compromise.<sup>23</sup>

After President Fillmore appointed Brigham Young as the first governor of Utah Territory in 1851, the Mormon Church began to be more open about its involvement with polygamy, which had secretly been initiated within the leadership of the church under Joseph Smith.<sup>24</sup> At a conference of the elders of the

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portion of its territory to the federal government in exchange for Washington’s assumption of \$10 million of the carry-over debts of the Republic of Texas. *Stats at Large of USA*, vol. 9 (1850), chaps. 48–51, 60, 63. For a complete discussion, see Holman Hamilton, *Prologue to Conflict: The Crisis and Compromise of 1850*, rev. ed. (Lexington: University Press of Kentucky, 2005).

20. Almon W. Babbitt to Brigham Young, July 7, 1850, quoted in Dale L. Morgan, *The State of Deseret* (Logan: Utah State University Press, 1987), 82.

21. It was later reported that Young commented on Taylor’s death, “Zachary Taylor is dead, and in hell, and I am glad of it.” *Report of Messrs. Branderbury, Brocchus, and Harris, to the President of the United States*, 32d Cong., 1st sess., 1852, House Exec. Doc. 25, 10, printed in *Congressional Globe*, 32d Cong., 1st sess., 1852, app. 87.

22. *Congressional Globe*, 31st Cong., 1st sess., 1850, 413.

23. In late 1849, disaffected Mormons in Kentucky had lodged a complaint with the Senate, alleging that before departing Illinois, fifteen hundred Mormons had taken an oath to “avenge the blood of Joseph Smith upon this nation” by initiating and carrying out hostilities against the United States. These complainants, however, specifically called on Congress to establish a system of government over the Mormons “by which perpetration of those crimes and offences may be prevented.” The complaint and request were referred to the Committee on Territories and was quickly forgotten, though it is possible that it contributed to the committee’s decision to recommend the creation of Utah Territory. *Ibid.*, 92.

24. For a history of Mormon polygamy, see Richard S. Van Wagoner, *Mormon Polygamy: A History*, 2nd ed. (Salt Lake City: Signature Books, 1989).

church in 1852, church leaders publicly acknowledged, for the first time, the doctrine of plural marriage, with Young and other church leaders delivering sermons on the theological bases<sup>25</sup> and virtues of the practice.<sup>26</sup> Prior to this announcement, polygamy in Utah had scarcely been mentioned in Congress. Its most significant mention by a member of Congress had been in January 1852, when a representative commented in the House that rumors of Mormon polygamy were being “whispered, and more than whispered,” and rhetorically questioned whether the House delegate from Utah, John M. Bernhisel, was a practicing polygamist.<sup>27</sup>

Even after the Mormon Church’s 1852 announcement, the subject of polygamy in Utah was not immediately broached in Congress. At the time, there were no federal laws that prohibited the practice of polygamy in the territories. However, bigamy was punishable in

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25. The religious purposes and justifications of Mormon polygamy were not widely known or understood during the nineteenth century and remain unclear to many both outside of and within Mormonism. The key reason that Mormons practiced polygamy was that they believed that it was a commandment of God given through his chosen prophet, Joseph Smith, who in 1843 recorded a revelation that authorized men taking additional wives. Hardy, *Solemn Covenant*, 14; *Doctrine and Covenants*, § 132. The majority of Mormon converts were former Protestants from the United States and Victorian Great Britain, and the introduction of the practice of polygamy was resisted or dreaded by many early inductees, including Brigham Young, who famously recalled that when he first learned about plural marriage from Joseph Smith, “it was the first time in my life that I had desired the grave, and I could hardly get over it for a long time.” Brigham Young, “Plurality of Wives—The Free Agency of Man,” *Journal of Discourses* 3 (1856): 266. In time, entrance into plural marriage became viewed as a prerequisite for a man to obtain “exaltation,” a post-resurrection deification that is granted to the most righteous followers of Christ. See, e.g., Brigham Young, “Delegate Hooper—Beneficial Effects of Polygamy—Final Redemption of Cain,” *Journal of Discourses* 11 (1867): 269; Joseph F. Smith, “Plural Marriage—For the Righteous Only—Obedience Imperative—Blessings Resulting,” *Journal of Discourses* 20 (1884): 28–31. Polygamy was also generally viewed as an effective means to the end of fulfilling God’s original commandment to Adam and Eve to “multiply, and replenish the earth” (Gen. 1:28) and as a way of increasing church membership and thereby “building up the kingdom of God.” Hardy, *Solemn Covenant*, 15, 35 n.102.

26. “A Special Conference of the Elders of the Church of Jesus Christ of Latter-Day-Saints, assembled in the Tabernacle, Great Salt Lake City, August 28th, 1852, 10 o’clock. A.M. pursuant to public notice,” *Deseret News* (Salt Lake City), September 14, 1852, extra edition, available online at: <http://contentdm.lib.byu.edu/u/?NCMP1820-1846,17347>.

27. *Congressional Globe*, 32d Cong., 1st sess., 1852, 354 (Representative David K. Carter of Ohio). Bernhisel was indeed a polygamist, having married seven wives, but by 1852 all his wives but one had deserted him. Allen Kent Powell, ed., *Utah History Encyclopedia* (Salt Lake City: University of Utah Press, 1994), s.v. “Bernhisel, John Milton.”

every state, and such laws were a reconfirmation of the situation that had existed under English and American law for two and a half centuries.<sup>28</sup> Although there was no statute that criminalized Mormon polygamy in Utah, it is indisputable that opposition to the practice among non-Mormons in the United States was close to universal. Polygamy was contrary to common Christian understandings of Scripture and was assumed by many people to be motivated primarily by male sexual licentiousness and the desire to subjugate women. Polygamy first became an issue in Congress after 1852 primarily through the efforts of dedicated anti-polygamy activists. Motivated largely by traditional Protestant Christian concepts of sexual restraint and the importance of the family, the activists successfully used popular literature in books, magazines, and newspapers to warn fellow Americans of the dangerous sexual indulgences of the Mormons.<sup>29</sup>

The popular anti-polygamy movement must have had an effect upon elected officials, and polygamy began to be discussed in Congress when matters relating to Utah Territory were raised. As described in the remainder of this article, nineteenth-century politicians spoke out against Mormon polygamy using vigorous language that contemporary readers often judge to be harsh and perhaps needlessly inflammatory. The members of Congress need not be singled out in this regard: the content of most nineteenth-century condemnations of polygamy and Mormonism is bathed in an aggressive rhetoric that is peculiar, almost quaint. When we read an author's warning of the "evils and horrors and abominations of the Mormon system,"<sup>30</sup> or a politician's characterization of polygamy as a "scarlet whore" that leads to a "sapping [of] the physical constitutions of the people practicing it" and a "dwarfing [of]

28. Bigamy was first made an offense punishable by civil courts in England in 1604. An Act to restrain All Persons from Marriage, until their former Wives and former Husbands be dead, 1 Jac. 1 c. 11. Prior to this, bigamists could be sanctioned for bigamy by ecclesiastical courts. F. G. Emmison, *Elizabethan Life: Morals and the Church Courts* (Chelmsford: Essex County Council, 1973), 168–70. Despite the mandatory death penalty prescribed by the 1604 law, bigamy remained relatively common in England until Parliament revised the marriage laws in 1753. Lawrence Stone, *The Family, Sex and Marriage in England, 1500–1800* (London: Weidenfeld and Nicolson, 1977), 35–36.

29. Terry L. Givens, *The Viper on the Hearth: Mormons, Myths, and the Construction of Heresy* (New York: Oxford University Press, 1997), 97–152; Sarah Barringer Gordon, "A War of Words: Revelation and Storytelling in the Campaign against Mormon Polygamy," *Chicago-Kent Law Review* 78 (2003): 739–72; Sarah Barringer Gordon, "'Our National Hearthstone': Anti-Polygamy Fiction and the Sentimental Campaign Against Moral Diversity in Antebellum America," *Yale Journal of Law & the Humanities* 8 (1996): 295–350.

30. [Maria Ward], *Female Life among the Mormons: A Narrative of Many Years' Personal Experience* (New York: Burdick Brothers, 1857), iii–iv.

their physical proportions,”<sup>31</sup> we may be tempted to dismiss it all as amusing high camp.<sup>32</sup> However, such rhetorical tones were undoubtedly mainstream throughout the nineteenth century: even Sir Arthur Conan Doyle’s first-published Sherlock Holmes story vividly describes the women in the “harems” of the Utah Mormons: “women who pined and wept, and bore upon their faces the traces of an unextinguishable horror.”<sup>33</sup>

While this article will cite many examples of Mormons being the target of denunciation by members of Congress, it is also worth remembering that Mormon leaders frequently used equally strong rhetoric in censuring the federal government and other critics of Mormonism. “And who goes to Congress?,” asked Brigham Young in 1869: “You may hunt clear through the Senate and House, and if you can find any men that are not liars, thieves, whoremongers, gamblers, and drunkards[,] I tell you that they are mighty few, for no other kind of men can get in there.”<sup>34</sup> And just as outside observers vilified polygamy as the central depravity of Mormonism, so too did Mormon leaders denounce monogamy as the insidious germ that was speeding the Christian world to destruction:

Since the founding of the Roman empire monogamy has prevailed more extensively than in times previous to that. The founders of that ancient empire were robbers and women stealers, and made laws favoring monogamy in consequence of the scarcity of women among them, and hence this monogamic system which now prevails throughout all Christendom, and which has been so fruitful a source of prostitution and whoredom throughout all the Christian monogamic cities of the Old and New

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31. *Congressional Globe*, 36th Cong., 1st sess., 1860, 1514 (Representative John A. McClernand of Illinois).

32. In my opinion, a 344-page exposé by a disaffected Mormon leader claims the prize as the most entertaining and comprehensive nineteenth-century condemnation of Mormonism. In it, the Mormon hierarchy is accused of “infidelity, deism, atheism; lying, deception, blasphemy; debauchery, lasciviousness, bestiality; madness, fraud, plunder; larceny, burglary, robbery, perjury; fornication, adultery, rape, incest; arson, treason, and murder; and they have out-heroded Herod, and out-deviled the devil, slandered God Almighty, Jesus Christ, and the holy angels, and even the devil himself. . . . Their liquid Tartarean lava and barbed arrows, dipped in the quintessence of Mormon ribaldry, shall be turned, by the helmet of truth, against themselves—the uncircumcised Philistines, foul fiends of iniquity, and devoted worshippers of Mammon.” John C. Bennett, *The History of the Saints; or, An Expose of Joe Smith and Mormonism* (Boston: Leland and Whiting, 1842), 257–58.

33. A. Conan Doyle, “A Study in Scarlet,” *Beeton’s Christmas Annual* 28 (1887): 64–65, reprinted as Arthur Conan Doyle, *A Study in Scarlet*, ed. Owen Dudley Edwards (New York: Oxford University Press, 2009), 87.

34. *Salt Lake Daily Herald*, April 10, 1869, quoted in Stanley P. Hirshson, *The Lion of the Lord: A Biography of Brigham Young* (New York: Knopf, 1969), 278–79.

World, until rottenness and decay are at the root of their institutions both national and religious.<sup>35</sup>

In the war of words that developed between Congress and the Mormons, there were no innocent victims: both sides delivered as many blows as they absorbed, and the rhetoric on either side was rarely restrained. That the dispute can appear to us to have been expressed in a style that is ridiculously excessive should not suggest to us that members of Congress or the Mormons were being unreasonable; rather, such perceptions are merely the product of our contemporary society's recently developed preference for measured rhetoric that avoids direct confrontation, encourages tolerance, and embraces diversity.

### The Polygamy Debate of 1854

The first significant congressional debate on Mormon polygamy began in the House of Representatives on May 4, 1854. A bill was before the House that would have given each white male resident of Utah a portion of federally owned land in the territory. As originally drafted, the bill excluded individuals who were "the husband of more than one wife."<sup>36</sup> When the House delegate from Utah proposed that the exclusionary caveat be deleted from the bill, an extended debate over polygamy in the territory ensued, which occupied the better part of two days of House business.<sup>37</sup> One of the first comments made in the debate was by Thomas Davis of Rhode Island, who analogized Utah polygamy to slavery in the South:

I do not see that this discrimination is any worse than that of inserting the word "white" in these territorial bills. . . . I would as lief have Utah come into this Union with their defective institutions as to have a slave State come into it. I do not think that there is more evil in the one than there is in the other; but I am opposed to the admission of either without conformity to the general and well-settled principles of the moral laws, as they are known and understood by every reasonable man.<sup>38</sup>

These comments set off a firestorm debate between Southern and Northern representatives over the role of Congress in regulating the

35. Brigham Young, "Personality of God—His Attributes—Eternal Life, etc.," *Journal of Discourses* 11 (1867): 128; see also Orson Pratt, "Celestial Marriage," *Journal of Discourses* 13 (1871): 194–95; George Q. Cannon, "Celestial Marriage," *Journal of Discourses* 13 (1871): 201.

36. A bill to establish the office of surveyor general of Utah, to grant donations to actual settlers therein, and for other purposes, HR 317, 33d Cong., 1st sess. (May 4, 1854), *Congressional Globe*, 33d Cong., 1st sess., 1854, 1091–92.

37. *Congressional Globe*, 33d Cong., 1st sess., 1854, 1091–1102, 1109–14.

38. *Ibid.*, 1092.

internal affairs of the states and territories of the Union. It was a proxy debate over slavery of the type that would steadily increase in frequency in the gathering build-up to the Civil War. Northern representatives railed against polygamy as a “heinous crime,”<sup>39</sup> “a great moral, social, and political evil,”<sup>40</sup> and an institution that violated not only “the law of every State in the Union,” but also “the law of God.”<sup>41</sup> During the debate, it was argued that polygamy led to a breakdown of the family,<sup>42</sup> infanticide,<sup>43</sup> a retardation of civilization,<sup>44</sup> and ultimately slavery itself.<sup>45</sup> The Northerners repeatedly made the connection between polygamy and slavery: both were “institutions at war with all true liberty and the moral sentiment of Christendom,”<sup>46</sup> and both should be excluded from Utah and all other territories.<sup>47</sup>

Analogizing polygamy to slavery was one theme of the debate—the other was the invocation of Christianity. Many representatives agreed that Americans had a “duty as a moral and Christian people”<sup>48</sup> to extirpate polygamy. In the performance which caused the most excitement on the floor of the House, Caleb Lyon of New York implored:

One man is just enough for one woman, the very state the Lord originally intended when he created Adam and Eve. . . . Let us, as Christians, follow and legislate in the doctrines of Christ, not of Joe Smith; let us take the holy Gospel, not the Book of Mormon. . . . Let us nip this evil in the bud, for the sake of morality, religion, and Christianity. . . . By the blessed memory of those virtuous spirits who battled for liberty not licentiousness it should be blotted out, as a stigma, a dishonor, a disgrace, from existence on the soil of North America.<sup>49</sup>

As was common in nineteenth-century America, Christianity was often equated with civilization and progress: “Point me to a nation where polygamy is practiced, and I will point you to heathen and barbarians.”<sup>50</sup>

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39. *Ibid.*, 1101 (Representative Samuel W. Parker of Indiana).

40. *Ibid.*, 1098 (Representative John Z. Goodrich of Massachusetts).

41. *Ibid.*, 1097 (Representative Samuel P. Benson of Maine).

42. *Ibid.*, 1095 (Representative George A. Simmons of New York).

43. *Ibid.*, 1100–1101 (Representative Caleb Lyon of New York).

44. *Ibid.*

45. *Ibid.*, 1095 (Rep. Simmons).

46. *Ibid.*

47. *Ibid.*, 1092–93 (Representative Joshua R. Giddings of Ohio).

48. *Ibid.*, 1096 (Rep. Parker).

49. *Ibid.*, 1100–1101. The transcript of the House proceedings records that the response of the House to Lyon’s speech was one of “Sensation, and cries of ‘Good!’ ‘Good!’ ‘Well done!’”

50. *Ibid.*, 1101.

Representatives from the South did not defend the practice of polygamy; on the contrary, Southerners acknowledged that it was “licentiousness,”<sup>51</sup> “a burning shame upon any community,”<sup>52</sup> and an “excrescence on the body-politic.”<sup>53</sup> “No one can be more opposed to polygamy than I am,” stated William W. Boyce of South Carolina, but “what right has this Government to interfere with the religious relations of the people in this Territory?”<sup>54</sup> Other Southerners made similar constitutional arguments: “If we discriminate to-day against Mormons, to-morrow, perhaps, we shall discriminate against Baptists, Methodists, Presbyterians, or Catholics. The evils of such discrimination . . . have been wisely provided against in the Constitution.”<sup>55</sup> However, Southerners were far from unanimous in their defense of the Mormon religion; for example, a Virginia congressman bluntly stated: “[It is said] that this is a matter of religion. Why, sir, it is exactly the reverse. If these people had a decent religion, they would not have polygamy there. It is not a matter of religion. It is a matter of vice.”<sup>56</sup> Representatives from the North were quick to point out the inconsistent positions that had been adopted by many Southerners in this debate and the ongoing debate over whether slavery would be permitted in the proposed Territory of Nebraska:

Now, sir, for weeks and months, I have sat here and heard gentlemen denounce all attempts to interfere with the domestic institutions of our Territories. From the commencement of the discussion upon the Nebraska question to this day, scarcely a southern man has spoken who has not sneered at, condemned, and repudiated all attempts “*to interfere with the domestic institutions of our Territories.*” They are now in favor of interfering with the domestic institution of marriage in Utah, among the Mormons. . . . How long are we to sit here and see gentlemen assume one position to-day and another to-morrow?<sup>57</sup>

Little was resolved in the 1854 House debate, but it did clearly foreshadow the positions on Mormon polygamy that would widely be adopted by both Democratic and Republican politicians prior to the Civil War. In general, the Northern-based Republicans were adamantly opposed to polygamy and supported congressional efforts to suppress it. On the other hand, Southern Democrats and their Northern “doughface” sympathizers were ambivalent.

51. *Ibid.*, 1096 (Representative John S. Millson of Virginia), 1099 (Representative Laurence M. Keitt of South Carolina).

52. *Ibid.*, 1099 (Rep. Keitt).

53. *Ibid.*, (Representative Charles Ready of Tennessee).

54. *Ibid.*, 1110.

55. *Ibid.*, 1094 (Representative Alexander H. Stephens of Georgia).

56. *Ibid.*, 1112 (Representative John Letcher).

57. *Ibid.*, 1092 (Rep. Giddings) (*italics in original*).

While Democrats agreed in principle with Republican opposition to polygamy as a foreign practice that was at odds with American Christianity, they also realized that if Congress could enact laws to eliminate it, the same federal power to regulate a domestic institution could also be marshaled against slavery. The power of the analogy was not lost on Republicans: in 1856, the Republican Party famously participated in its first national election on a platform that called for congressional prohibition of “those twin relics of barbarism, polygamy and slavery.”<sup>58</sup>

## The Utah War

On June 26, 1856, Republican Representative Justin S. Morrill of Vermont introduced a bill in the House that proposed the criminalization of polygamy in the territories.<sup>59</sup> Morrill stated that the sole purpose of the bill was “to prevent practices which outrage the sense of the civilized world,” that all members of the House Committee on Territories supported the object of the bill, and that the only question was whether Congress had the constitutional authority to prohibit the practice.<sup>60</sup> Although the bill went nowhere, Morrill’s advocacy for it marked the beginning of his six-year effort to enact anti-polygamy legislation, which would culminate in the passage of the Morrill Anti-bigamy Act in 1862.<sup>61</sup> In advocating for his bill in 1857, Morrill stated:

Officially courteous, [Mormons] are everywhere else malignant backbiters and traducers. . . . Under the guise of religion, this people has established, and seek to maintain and perpetuate, a Mohammedan barbarism revolting to the civilized world. It is polygamy in its most disgusting form, including in its slimy folds sisters, mothers, and daughters. . . . As well might religion be invoked to protect cannibalism or infanticide. And yet we are told, because our Constitution declares that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof,” that we must tamely submit to any burlesque, outrage, or indecency which artful men may seek to hide under the name of religion! But it is impossible to twist the Constitution into the service of polygamy by any fair construction. . . . Could a man, charged with burglary or rape, find privilege and excuse before any of our courts on a plea that it was an

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58. Thomas Hudson McKee, ed., *The National Conventions and Platforms of All Political Parties, 1789 to 1904*, 5th rev. ed. (Baltimore: Friedenwald, 1904), 98.

59. *A bill to punish and prevent the practice of polygamy in the Territories of the United States, and other places*, 34th Cong., 1st sess. (June 26, 1856), *Congressional Globe*, 34th Cong., 1st sess., 1856, 1491.

60. *Congressional Globe*, 34th Cong., 1st sess., 1856, 1491.

61. *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 [Morrill Act]*, *Stats at Large of USA*, vol. 12 (1862): 501.

act done in accordance with the prophet Mercury, or the prophet Priapus, and that our Constitution permits the *free exercise* of religion? And, if individuals could not thus shelter their villainy, where is there a chance for Territories to creep in for similar grace?<sup>62</sup>

But in 1857, Congress and the nation were not focused on polygamy and Utah, but rather upon slavery and the South. In the 1856 election, Democrats had retained majorities in the House and Senate, and James Buchanan, their nominee for president, had been elected with 45 percent of the popular vote.<sup>63</sup> These results represented a reduction of 6 percent in support for the Democratic Party from 1852,<sup>64</sup> and as support for the Republicans was on the rise, Democratic leaders struggled to prevent the fracturing of their coalition along regional lines. Unable to alienate his Southern base by opposing slavery, President Buchanan began to see the political potential of the anti-polygamy movement. In April 1857, a Southern Democratic strategist suggested that Buchanan attempt to replace national concern over slavery with national concern over Mormon polygamy:

I believe that we can supercede the Negro-Mania with the almost universal excitements of an Anti-Mormon crusade. . . . Should you, with your accustomed grip, seize this question with a strong, fearless, and resolute hand, the country I am sure will rally to you with an earnest enthusiasm and the pipings of Abolitionism will hardly be heard amidst the thunders of the storm we shall raise.<sup>65</sup>

Perhaps acting on this advice, in May 1857 Buchanan decided to dismiss Brigham Young as governor of Utah and replace him with a non-Mormon. In order to enforce the decision, Buchanan ordered 2,500 federal troops—one-sixth of the American army—to occupy the territory and to act as a *posse comitatus*.<sup>66</sup> In December, Buchanan informed Congress in his annual message that military action was required because Young's power was "absolute over both Church and State" and that "there no longer remains any government

62. *Congressional Globe*, 34th Cong., 3d sess., 1857, app. 285, 288–89 (italics in original).

63. Lyn Ragsdale, *Vital Statistics on the Presidency: Washington to Clinton*, rev. ed. (Washington, DC: Congressional Quarterly, 1998), 102.

64. *Ibid.*

65. Robert Tyler to James Buchanan, April 27, 1857, quoted in William P. Mackinnon, ed., *Kingdom in the West: The Mormons and the American Frontier*, vol. 2, *At Sword's Point: A Documentary History of the Utah War to 1858* (Norman: University of Oklahoma Press, 2008), 124 (spelling and punctuation modernized).

66. The federal *Posse Comitatus Act*, *U.S. Code* 18 (2006), § 1385, which limits the power of the federal government in using military personnel for domestic law enforcement, was not enacted until 1878.

in Utah but the despotism of Brigham Young.”<sup>67</sup> Consequently, he called on Congress to aid him “in suppressing the insurrection, and in restoring and maintaining the sovereignty of the Constitution and laws over the Territory of Utah.”<sup>68</sup> Although he made no direct reference to polygamy, Buchanan referred to the Mormons as a “deluded people” whose “frenzied fanaticism” leads them to believe in religious doctrines that are “deplorable . . . and revolting to the moral and religious sentiments of all Christendom.”<sup>69</sup> Congress did authorize the use of the military, but Buchanan’s “Utah War” failed to be the political boon that he had perhaps hoped for. Although Young initially declared martial law and forbade the federal troops from entering the territory, overall the occupation was met with little resistance; in June 1858, federal troops entered Salt Lake City and Young agreed to surrender the governorship.<sup>70</sup>

## The Polygamy Debate of 1860

On January 4, 1858, Morrill introduced his proposed anti-polygamy legislation to the House for a second time.<sup>71</sup> There was some confusion over which of the various House committees had jurisdiction to consider the bill (it was ultimately sent to the Judiciary Committee),<sup>72</sup> and the bill was not returned to the full House until March 1860, when it was reintroduced.<sup>73</sup> Accompanying the bill on its return was a report from the committee on the state of polygamy in Utah. Setting the tone for the coming debate, the report stated:

The moral sense of our own people, as well as of every refined and intelligent community upon the habitable earth, has been shocked by the open and defiant license which, under the name of religion and a latitudinous interpretation of our Constitution, has been given to this crime in one of our Territories. . . . The citizens of Utah, “with a high hand and an outstretched arm,” laugh to scorn the sacredness of the Bible and the majesty

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67. *Congressional Globe*, 35th Cong., 1st Sess., 1857, app. 5.

68. *Ibid.*, app. 6.

69. *Ibid.*, app. 5.

70. James B. Allen and Glen M. Leonard, *The Story of the Latter-day Saints*, 2nd ed. (Salt Lake City: Deseret Book, 1992), 306–11, 314–15. For a complete discussion, see Paul Bailey, *Holy Smoke: A Dissertation on the Utah War* (Los Angeles: Westernlore Books, 1978).

71. *A bill to punish and prevent the practice of polygamy in the Territories of the United States*, 35th Cong., 1st sess. (January 4, 1858), *Congressional Globe*, 35th Cong., 1st sess., 1858, 184.

72. *Ibid.*, 184–85, 2114.

73. *A bill 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*, HR 7, 36th Cong., 1st sess. (March 28, 1860), *Congressional Globe*, 36th Cong., 1st sess., 1860, 1409.

of our laws. . . . It would, perhaps, require no elaborate statement to demonstrate that the framers of the Constitution, . . . when they declared "Congress shall make no law respecting the establishment of religion or the free exercise thereof," [sic] they did not mean to dignify with the name of religion a tribe of Latter Day Saints disgracing that hallowed name, and wickedly imposing upon the credulity of mankind. . . . It is more than probable that by the term religion they meant only to convey the idea of a belief founded upon the precepts of the Bible; and holding it to be a common and established standard of faith, they did not design that any discrimination should be made in favor of one denomination of Christians over another, but surely they never intended that the wild vagaries of the Hindoo or the ridiculous mummeries of the Hottentot should be ennobled by so honored and sacred a name.<sup>74</sup>

The Morrill Bill was ultimately passed by the House,<sup>75</sup> but not before a debate that resembled the 1854 debate in tactics and rhetoric. Early on, a Southern representative reminded his fellow Democrats: "I will suggest to my friends upon this side of the House, that if we can render polygamy criminal, it may be claimed that we can also render criminal that other 'twin relic of barbarism,' slavery."<sup>76</sup> While some Democrats eloquently rejected the Republican twinning of slavery and polygamy and therefore hesitated to support the proposition that Congress must protect slavery by failing to act against polygamy,<sup>77</sup> it is evident that the pervasive tendency for the discussions in the House to drift toward factional debates over slavery was taking a toll on some representatives. "I had hoped that one question could be introduced into this Hall and discussed," lamented Daniel W. Gooch of Massachusetts, "without the introduction of the subject of slavery."<sup>78</sup>

On the other hand, as in the 1854 debate, there was no dispute in the House over the nature of polygamy, and Southern Democrats denounced the practice more fiercely than any other faction in the House. Polygamy was "anti-Christian,"<sup>79</sup> a "bestial abomination,"<sup>80</sup>

74. House Judiciary Committee, *Polygamy in the Territories* [sic] of the United States (to accompany Bill H.R. No. 7), 36th Cong., 1st sess., 1860, H. Rep. No. 83, 2 (misquoting the First Amendment).

75. *Congressional Globe*, 36th Cong., 1st sess., 1860, 1559.

76. *Ibid.*, 1410 (Representative Lawrence D. Branch of North Carolina).

77. "What! Is it seriously supposed that we concede the right of Congress to legislate for the abolition or prohibition of slavery in the Territories, because Congress may and ought to suppress crimes? Do gentlemen see no danger from the admission that slavery in the Territories is protected by no higher guarantees than bigamy? Must the authority to suppress crime carry with it the power to abolish slavery? Is this the argument of southern men?" *Ibid.*, 1494 (Rep. Millson). See also *ibid.*, 1496 (Representative Roger A. Pryor of Virginia).

78. *Ibid.*, 1541.

79. *Ibid.*, 1522 (Representative Joshua Hill of Georgia).

80. *Ibid.*, 1496 (Rep. Pryor).

a “monstrosity,”<sup>81</sup> a “nauseating and disgusting crime,”<sup>82</sup> a “scarlet whore,”<sup>83</sup> and “the most consuming curse that can fall upon a nation.”<sup>84</sup> Its practice resulted in a “dwarfing [of] physical proportions” and an “emasculat[i]on [of] energies,”<sup>85</sup> and its presence in Utah was a “cancer” which was “soiling with its slime the otherwise spotless ermine of our national escutcheon.”<sup>86</sup> No representative disputed the Judiciary Committee’s suggestion that the Free Exercise Clause of the First Amendment only applied to traditional Christianity.

The character of the Utah Mormons was also unanimously condemned. They were “deluded,”<sup>87</sup> “debased,”<sup>88</sup> “ignorant fanatics”<sup>89</sup>: a “den of polygamists who now pollute the atmosphere of Utah”<sup>90</sup> and who must be “made subservient to the standard of Christian morality”<sup>91</sup> lest the territory “become in future time another Sodom and Gomorrah,”<sup>92</sup> if it had not already surpassed the ancient cities in depravity.<sup>93</sup> One representative went further, suggesting that it was not only the practices of the Mormons that were problematic, but that allowing for the very existence of the Mormons in a territory of the United States was where Congress had stumbled: “I do not know that we could have looked for a different state of things in that Territory, considering the character of the people who have taken possession of it. We certainly had no right to expect from them a very high degree of morality.”<sup>94</sup> Others conflated the entire Mormon religion with the practice of polygamy: “I vote for this bill upon the ground that the moral sense of my constituents of all parties demands it. I think posterity is interested in the extirpation of Mormonism in Utah.”<sup>95</sup>

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81. *Ibid.*, 1498 (Representative Emerson Etheridge of Tennessee).

82. *Ibid.*, 1500 (Rep. Etheridge).

83. *Ibid.*, 1514 (Rep. McClermand).

84. *Ibid.*, 1496 (Rep. Pryor).

85. *Ibid.*, 1514 (Rep. McClermand).

86. *Ibid.*, app. 202 (Representative William E. Simms of Kentucky).

87. *Ibid.*, 1497 (Rep. Etheridge), 1515 (Representative John B. Clark of Missouri), 1519 (Representative Eli Thayer of Massachusetts).

88. *Ibid.*, 1496 (Rep. Pryor).

89. *Ibid.*, 1519 (Rep. Thayer).

90. *Ibid.*, 1497 (Rep. Etheridge).

91. *Ibid.*, 1515 (Rep. Clark).

92. *Ibid.*, 1500 (Rep. Etheridge).

93. If polygamy were to continue, “we will merit the reproach for winking at and sustaining excesses such as, if equaled, could not have been excelled in Sodom and Gomorrah in the days of old.” *Ibid.*, app. 194 (Representative Thomas A. R. Nelson of Tennessee).

94. *Ibid.*, 1492 (Rep. Millson).

95. *Ibid.*, 1500 (Rep. Etheridge). Even today, it is often assumed that polygamy was universal among adult male Mormons in the nineteenth century. However,

But although there was broad agreement on the nature of the Mormons and of polygamy, there was considerable objection to Morrill's proposed solution of criminalization. Some Southern Democrats opposed the action on constitutional grounds; the continuing fear that an anti-polygamy statute would be used as a precedent for congressional laws interfering with slavery was sometimes explicitly stated, but other times not. Others suggested that regardless of their support or opposition, the law as written would be a dead letter, since no jury in Mormon-dominated Utah would ever convict a fellow-Mormon for practicing polygamy.<sup>96</sup> To resolve this problem, some representatives proposed the elimination of Utah Territory and a division of its geography and residents between the proposed territories of Jeffersonia and Nevada, which would have resulted in the elimination of the Mormon majority in any territory of the Union.<sup>97</sup> However, the proposal to divide Utah was soundly defeated by a vote of 36:159,<sup>98</sup> and the House approved Morrill's original bill on April 5, 1860, in a 149:60 vote.<sup>99</sup> Of the sixty representatives who opposed the bill, fifty-six were Democrats and thirty-eight were from slave states.<sup>100</sup> Only one of the 116 Republican representatives, Eli Thayer of Massachusetts, voted against the Morrill Bill; representatives from free states also voted overwhelmingly in favor of the bill.<sup>101</sup> After its passage in the House, the bill was introduced into the Senate and referred to the Judiciary Committee,<sup>102</sup> but it was never debated or subjected

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most historical studies have concluded that about 20–25 percent of Mormon adults were members of polygamous households and that only 15–20 percent of all Mormon households were polygamous. Davis Bitton, *Historical Dictionary of Mormonism*, 2nd ed. (Lanham: Scarecrow Press, 2000), 147; Irwin Altman and Joseph Ginat, *Polygamous Families in Contemporary Society* (Cambridge: Cambridge University Press, 1996), 39; Daniel Bachman and Ronald K. Esplin, "Plural Marriage," in *Encyclopedia of Mormonism*, ed. Daniel H. Ludlow (New York: Macmillan, 1992), 3: 1095; Stanley S. Ivins, "Notes on Mormon Polygamy," *Western Humanities Review* 10 (1956): 230.

96. *Congressional Globe*, 36th Cong., 1st sess., 1860, 1411 (Representative Thomas C. Hindman of Arkansas), 1514 (Rep. McClernand), 1515 (Rep. Clark), 1516 (Representative John W. Noell of Missouri), 1517 (Representative Abram B. Olin of New York), app. 187 (Representative Miles Taylor of Louisiana).

97. *Ibid.*, 1411–12 (Representative John A. Logan of Illinois), 1495 (Rep. McClernand), 1520 (Rep. Thayer), app. 202 (Rep. Simms).

98. *Ibid.*, 1559.

99. *Ibid.*

100. Both the Democratic caucus (98 representatives) and the representatives of slave states (90 representatives) split their votes on the bill.

101. Only 22 of the 148 representatives from free states opposed the bill. Of these 22, only Thayer was a non-Democrat.

102. *Congressional Globe*, 36th Cong., 1st sess., 1860, 1551.

to a vote. Given the commanding 38:28 majority held by the Democrats in the Senate, passage there would have been more problematic than it had been in the House.<sup>103</sup>

## The Morrill Anti-bigamy Act Debate of 1862

The political impediments to Morrill's anti-polygamy bill were removed in the election of 1860 and the subsequent secession of the Confederate states. In the lead-up to the election, the Democratic Party had splintered along pro- and anti-slavery lines.<sup>104</sup> Republican Abraham Lincoln won the presidency, and seven states had seceded from the Union prior to the inauguration in March 1861. The subsequent removal of congressional representation from the rebel states resulted in concurrent Republican majorities in both the House and Senate for the first time in history.

In the midst of civil war, Morrill introduced his bill into the House for a third time on April 8, 1862.<sup>105</sup> Later that month, the House Committee on Territories recommended that the bill be enacted.<sup>106</sup> Morrill indicated that the bill was identical to the 1860 version, with the only exception being that the 1860 bill did not apply to the District of Columbia, whereas the new version did.<sup>107</sup> In addition to mandating penal sanctions of up to five years' imprisonment and a \$500 fine upon conviction, the proposed bill also had provisions for disincorporating the Mormon Church and prohibiting religious organizations from holding more than \$100,000 worth of real estate in the territories.<sup>108</sup> There was no House debate on the bill, and on April 28, 1862, it was passed by the House without a record vote.<sup>109</sup>

On June 3, the Senate took up consideration of the bill, with two proposed amendments.<sup>110</sup> The Senate bill punished only polygamous marriage, not mere polygamous cohabitation as in the

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103. Fifteen of the thirty-three states were slave states, meaning that slave states also held a greater proportion of total votes in the Senate than they had in the House.

104. See William W. Freehling, *The Road to Disunion*, vol. 2, *Secessionists Triumphant, 1854-1861* (New York: Oxford University Press, 2007), 288-308.

105. *A bill to punish and prevent the practice of polygamy in the Territories of the United States, and for other purposes, and to disapprove and annul certain acts of the Legislative Assembly of the Territory of Utah*, HR 391, 37th Cong., 2d sess. (April 8, 1862), *Congressional Globe*, 37th Cong., 2d sess., 1862, 1581.

106. *Congressional Globe*, 37th Cong., 2d sess., 1862, 1847.

107. *Ibid.*

108. The purchasing power of \$100,000 in 1862 was approximately equivalent to \$2.2 million in 2009.

109. *Congressional Globe*, 37th Cong., 2d sess., 1862, 1848.

110. *Ibid.*, 2506.

House bill, and the Senate version also reduced the maximum real estate holdings of religious organizations to \$50,000. The Senate debate on the bill was short: a senator from New Hampshire sought and received assurances that the bill was consistent with the Supreme Court decision of *Dred Scott vs. Sandford*,<sup>111</sup> and James A. McDougall, a senator from California, voiced opposition to the bill on the grounds that “we have just at this time trouble enough on our hands without invoking further trouble.”<sup>112</sup> Echoing some of the concerns voiced in the 1860 House debate, McDougall also suggested that the provisions of an anti-polygamy law “will be either ignored or avoided” by the Mormons.<sup>113</sup> No further debate occurred, and the amended bill passed the Senate in a 37:2 vote.<sup>114</sup>

When the bill with its amendments were reintroduced in the House, one representative expressed concern that the new \$50,000 limit would affect religious bodies other than the Mormon Church, in that he “should not be at all surprised if it were ascertained that the Catholic Church in the city of Santa Fe owns real estate in the amount of more than fifty thousand dollars.”<sup>115</sup> Once it was determined that the Catholic property in Santa Fe was protected by “treaty stipulations” with Mexico and was therefore immune from any limit imposed by Congress, the amended version of the bill was approved by the House.<sup>116</sup>

The Morrill Act became law upon its signing by President Lincoln on July 1, 1862.<sup>117</sup> In light of the ongoing civil war, it is not surprising that the enforcement of the act against the Mormons was low on Lincoln’s list of priorities for the executive branch of government. A Utah journalist in Washington later claimed that shortly after signing the Morrill Act, Lincoln had told him that the Mormons were like a log on his Illinois farm that was “too hard to split, too wet to burn and too heavy to move, so we plowed around it. That’s what I intend to do with the Mormons. You go back and tell Brigham Young that if he will let me alone, I will let him alone.”<sup>118</sup>

111. *Dred Scott vs. Sandford*, 60 U.S. (19 How.) 393 (1857).

112. *Congressional Globe*, 37th Cong., 2d sess., 1862, 2507.

113. *Ibid.*

114. *Ibid.* The negative votes were cast by the two senators from California, McDougall and Milton S. Latham.

115. *Ibid.*, 2769 (Representative John S. Phelps of Missouri). At the time, Santa Fe was located in the Territory of New Mexico.

116. *Ibid.*, 2906.

117. *Morrill Act, Stats at Large of USA*, vol. 12 (1862): 501.

118. T. B. H. Stenhouse to Brigham Young, June 7, 1873, quoted in Leonard J. Arrington, *Brigham Young: American Moses* (Urbana: University of Illinois Press, 1986), 295.

## The Cullom Bill Debate of 1870 and Other Approaches

Throughout the 1860s and into the early 1870s, few efforts were made to enforce the Morrill Act. When attempts were made to prosecute Mormon polygamists, federal officials found it impossible to impanel a grand jury in Utah that would issue an indictment. "It was a most singular oversight," as one member of Congress commented, "that when Congress passed the law in 1862 against polygamy it left the execution of the law against polygamy in the hands of the polygamists themselves."<sup>119</sup> In 1870, James B. McKean, the newly-appointed chief justice of the territory's supreme court, impanelled a grand jury that indicted Brigham Young and other Mormon leaders; however, the United States Supreme Court quashed the indictments on the grounds that in his efforts to keep Mormons off of the jury, McKean had failed to follow the statutory rules for the proper jury selection in Utah.<sup>120</sup> As many in the House of Representatives had predicted in 1860, the Morrill Act had indeed become a "dead letter."

Bills that would have removed Mormons from juries in polygamy trials had been proposed in Congress as early as 1866.<sup>121</sup> Other members of Congress proposed creative means of solving the Mormon Question; for example, in 1869, Representative George W. Julian of Indiana introduced a bill the purpose of which was to "discourage polygamy" by granting women the right to suffrage in Utah Territory.<sup>122</sup> However, the issue of polygamy in Utah was not again debated in Congress until early 1870. In the House, Representative Shelby M. Cullom of Illinois proposed a bill<sup>123</sup> to aid in the

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119. *Congressional Globe*, 41st Cong., 2d sess., 1870, 2147 (Representative Austin Blair of Michigan).

120. *Clinton vs. Englebrecht*, 80 U.S. (13 Wall.) 434 (1872).

121. *A bill to regulate the selection of grand and petit jurors in the Territory of Utah, and for other purposes*, S 404, 39th Cong., 2d sess. (December 6, 1866), *Congressional Globe*, 39th Cong., 2d sess., 1866-67, 27, 1193, 1292 (introduced by Senator Benjamin F. Wade of Ohio); *A bill to regulate the selection of grand and petit jurors in the Territory of Utah, and for other purposes*, S 24, 40th Cong., 1st sess. (March 7, 1867), *Congressional Globe*, 40th Cong., 1st sess., 1867, 13 (introduced by Senator Aaron H. Cragin of New Hampshire).

122. *A bill to discourage polygamy in Utah by granting the right of suffrage to the women of that Territory*, HR 64, 41st Cong., 1st sess. (March 15, 1869), *Congressional Globe*, 41st Cong., 1st sess., 1869, 72. Ironically, in the 1887 Edmunds-Tucker Act, Congress repealed the Utah Territorial Legislature's 1870 grant of suffrage to women, presumably on the theory that a plural wife submissively voted according to the dictates of her polygamous husband. *An act to amend an act entitled "An act 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," U.S. Statutes at Large* 24 (1887): 635, § 20.

123. *A bill in aid of the execution of the laws in the Territory of Utah, and for other purposes [Cullom Bill]*, HR 1089, 41st Cong., 2d sess. (February 17, 1870), *Congressional Globe*, 41st Cong., 2d sess., 1870, 1367-69.

execution of the Morrill Act that he described as “stringent, positive, and even severe.”<sup>124</sup> The proposals were far-reaching in their effect: most significantly, the bill would have (1) created the new crime of “concubinage” by extending the Morrill Act’s application to men who merely cohabited with but did not marry two or more women<sup>125</sup>; (2) prohibited anyone who “believes in, advocates, or practices bigamy, concubinage, or polygamy” from serving on a grand or petit jury in Utah<sup>126</sup>; (3) prohibited practicing polygamists from voting, holding political office, and from becoming U.S. citizens<sup>127</sup>; and (4) authorized the president to use the U.S. Army in enforcing federal law in the territory and to allow the army to enlist up to forty thousand additional soldiers for this purpose.<sup>128</sup> “Polygamy has gone hand in hand with murder, idolatry, and every secret abomination,” Cullom told the House in introducing the bill. “Instead of being a holy principle, receiving the sanction of Heaven, it is an institution founded in the lustful and unbridled passions of men, devised by Satan himself to destroy purity and authorize whoredom.”<sup>129</sup>

The Cullom Bill was ultimately passed by the House,<sup>130</sup> but the debate that preceded the vote was quite unlike the congressional debates of 1854 and 1860. Most obviously, the slavery issue was now off the table and therefore no faction in the House used opposition to polygamy as the means to the end of shielding slavery from Congress. However, there was strong opposition to the Cullom Bill which came in a form that Congress had not witnessed any time previously: members of Congress spoke positively of the Mormons. The transcontinental railroad had been completed in 1869 with the assistance of the Mormons, and some members of Congress—particularly those from western states—had traveled by train to Utah Territory and visited with Mormon residents. “History nowhere makes mention of a colony of equal age more industrious, more united, more powerful, or more self-sustaining,” said Thomas Fitch of Nevada, who led House opposition to the bill. “They are industrious, thrifty, temperate; they are free from vice comparatively. . . . We might look in vain elsewhere than in Utah for cities without a brothel or gaming-house.”<sup>131</sup> Another representative said of his stay in Salt Lake City: “Everything characterizes it as

124. *Congressional Globe*, 41st Cong., 2d sess., 1870, 1371.

125. *Cullom Bill*, § 13.

126. *Ibid.*, § 10.

127. *Ibid.*, § 19.

128. *Ibid.*, § 32.

129. *Congressional Globe*, 41st Cong., 2d sess., 1870, 1373.

130. *Ibid.*, 2181.

131. *Ibid.*, 1517.

one of the best-governed villages in the land. Everywhere were seen cleanliness, thrift, industry, education, schools, and love of music."<sup>132</sup> However, such voices were still a minority and other representatives dismissed such discussion as merely "covert and ill-conceived apologies for polygamy."<sup>133</sup> To some, Utah was still the "pest-house of iniquity"<sup>134</sup> populated by a "benighted and ignorant people"<sup>135</sup> who employed a "barbarous and brutalizing social and political system."<sup>136</sup> Only the House delegate from Utah, who was a Mormon, raised constitutional concerns about the bill.<sup>137</sup>

Opponents of the bill most stridently objected to its provisions that authorized the use of military force to ensure compliance with the Morrill Act. "I fear that the people of Utah would regard the passage of the bill as a declaration of war," Fitch worried.<sup>138</sup> Another speaker agreed: "I believe this bill has in it the seeds of civil war or of some sort of war which will be expensive and troublesome."<sup>139</sup> Representatives from western states expressed concern that the Mormons' first reaction to the bill would be to destroy the portions of the transcontinental railroad and national telegraph lines that passed through Utah, thus cutting off these states from the rest of the Union.<sup>140</sup> "Of course we could finally conquer them, because we could exterminate them," said Fitch. "But it would cost us millions upon millions of treasure; it would cost us thousands upon thousands of lives."<sup>141</sup> Other representatives were less intimidated by the prospect of war: "It is not probable that over eight thousand [Mormons] could be pressed into military service," sniffed Charles Pomeroy of Iowa. "These raw troops, poorly armed, with no experienced leader, would be no match for even three thousand of our regular Army. . . . Five or six regiments might readily be sent to Salt Lake, which would be all that would be required for the successful prosecution of this fearful war."<sup>142</sup> Several representatives suggested that an influx of non-Mormons

132. *Ibid.*, 2178 (Representative Samuel B. Axtell of California).

133. *Ibid.*, 2150 (Representative Charles Pomeroy of Iowa).

134. *Ibid.*, 2145 (Representative Hamilton Ward of New York).

135. *Ibid.*, 1373 (Rep. Cullom).

136. *Ibid.*, 2151 (Rep. Pomeroy).

137. "Polygamy is an established feature of our religious faith. . . . If this course is decided upon I can only say that the hand that smites us smites the most sacred guarantees of the Constitution." *Ibid.*, app. 174, 179 (Delegate William H. Hooper of Utah Territory).

138. *Ibid.*, 1517.

139. *Ibid.*, 2149 (Representative Samuel S. Cox of New York).

140. *Ibid.*, 1517 (Rep. Fitch), 1519 (Representative Aaron A. Sargent of California), 2178 (Rep. Axtell).

141. *Ibid.*, 1517.

142. *Ibid.*, 2151.

to Utah was expected to be the result of the recent completion of the transcontinental railway and that this influx would do more to Americanize and Christianize Utah than any act of Congress could ever hope to do: "Utah is no longer isolated," Fitch noted. "In that fact alone the days of polygamy are numbered."<sup>143</sup>

The Cullom Bill passed the House without a record vote, but in the Senate the bill was "suffocated by the chloroform of postponement."<sup>144</sup> When its introduction into the Senate was first proposed, one senator commented that the bill "was a very bad one."<sup>145</sup> The bill was the subject of a speech by just one senator, but it did not otherwise emerge out of Senate committees and was not debated. However, the lone speech, delivered by Aaron H. Cragin of New Hampshire, is notable for being perhaps the most venomous attack on Mormonism ever to be delivered in the halls of Congress. Concerning Mormon polygamy, Cragin asked, "Was there ever such arrant, wicked humbuggery passed off upon deluded mortals? . . . Such is the Mormon idea of woman and of the marriage alliance. Woman is regarded as an inferior, soulless being, created for man's convenience and passions, and marriage but another name for licentiousness."<sup>146</sup> Brigham Young was a "hoary-headed monster"<sup>147</sup> and "one of the most wicked" men on the earth.<sup>148</sup> Although Cragin's vigorous condemnations of polygamy and the Mormon leader were familiar refrains in congressional debates, other aspects of his comments were exceptional. In the past, no other member of Congress had ventured far from polygamy in condemning Mormonism, but Cragin's speech was unique in its scope. "Polygamy is not the only revolting feature of Mormonism," he began. "The whole system is a compound of monstrosities and frauds. It enjoins falsehoods, theft, and murder as sacred religious duties."<sup>149</sup> In his remarks, Cragin quoted extensively from former Mormon John Hyde's sensational exposé, *Mormonism: Its Leaders and Designs*,<sup>150</sup> and from Catherine Waite's influential *The Mormon Prophet and His Harem*.<sup>151</sup> Cragin recited in detail the litany of charges against the

143. *Ibid.*, 1518. See also *ibid.*, 1520 (Rep. Sargent), 2145 (Representative Robert C. Schenck of Ohio).

144. *Ibid.*, 2149 (Rep. Cox).

145. *Ibid.*, 2603 (Senator Samuel C. Pomeroy of Kansas).

146. *Ibid.*, 3574-75.

147. *Ibid.*, 3576.

148. *Ibid.*, 3581.

149. *Ibid.*, 3576.

150. John Hyde, Jr., *Mormonism: Its Leaders and Designs* (New York: W. P. Fettridge, 1857).

151. C. V. Waite, *The Mormon Prophet and His Harem; or, An Authentic History of Brigham Young, His Numerous Wives and Children* (Cambridge: Riverside Press, 1866). Catherine Waite was the wife of Charles Waite, who was appointed

“loathsome and festering monster” of Mormonism,<sup>152</sup> including allegations of human sacrifice performed on Mormon dissenters<sup>153</sup>; the existence of “Danite Avenging Angels,” a quasi-official vigilante death squad led by Bill Hickock<sup>154</sup>; barbarous blood oaths and oaths of vengeance against the United States taken in Mormon temples<sup>155</sup>; church-authorized theft, robbery, plunder, and extortion of non-Mormons<sup>156</sup>; and Mormon perpetration of the 1857 Mountain Meadows massacre, “the most perfidious act of cruelty and wholesale butchery to be found in the annals of this or any other country.”<sup>157</sup> “If there is any conceivable crime not to be found in their devilish plan,” Cragin summarized, “I am unable to tell what it is.”<sup>158</sup> After Cragin’s speech, the Senate did not take up further discussion of the Cullom Bill.

The next Congress produced a proposal that could not have been further removed from the Cullom Bill in its approach to the Mormon Question. Representative Francis P. Blair of Missouri proposed a bill that would have legalized polygamy in Utah and withdrawn the jurisdiction of the courts to entertain prosecutions under the Morrill Act.<sup>159</sup> In his remarks before the House, Blair pointed out that marriage was not defined by legislation in the United States, and in light of his own calculation that polygamy had been expressly approved by God in the Bible for “a space of thirty-nine hundred and twenty-five years . . . who can dogmatically affirm that polygamy is contrary to the laws of God?”<sup>160</sup> But Blair’s principal argument rested upon the Treaty of Guadalupe Hidalgo between the United States and Mexico,<sup>161</sup> which had ended the Mexican-American War and transferred all of Upper California, including what later became Utah Territory, to the United States.<sup>162</sup>

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by President Lincoln in 1862 as an Associate Justice of the Supreme Court of the Territory of Utah.

152. *Congressional Globe*, 41st Cong., 2d sess., 1870, 3582.

153. *Ibid.*, 3577.

154. *Ibid.*, 3577–78, 3581.

155. *Ibid.*, 3579–80.

156. *Ibid.*, 3577.

157. *Ibid.*, 3578–79.

158. *Ibid.*, 3578.

159. *A bill to legalize polygamous marriages in Utah, and to dismiss all prosecutions on account thereof in the courts of said Territory on account of such marriages*, HR 721, 42d Cong., 2d sess. (December 18, 1871), *Congressional Globe*, 42d Cong., 2d sess., 1871–72, 197, 1096.

160. *Congressional Globe*, 42d Cong., 2d sess., 1872, 1097.

161. “Treaty of Peace, Friendship, Limits, and Settlement” [Treaty of Guadalupe Hidalgo], February 2, 1848, *Stats at Large of USA*, vol. 9 (1848): 922.

162. Upper California consisted of all of present-day Nevada, California, and Utah, as well as most of Arizona and parts of Colorado, Wyoming,

Blair indicated that the Mormons were resident in Upper California at the time of the treaty's signing, and because the United States had agreed in the treaty that the residents of the ceded territory would be "secured in the free exercise of their religion without restriction,"<sup>163</sup> the treaty obligation, as part of the "supreme law of the land," demanded that Mormon polygamy be tolerated.<sup>164</sup> Blair's proposal was brave, if quixotic; as he acknowledged, "no member upon this floor has a constituency more strongly prejudiced against that people and polygamy than my own."<sup>165</sup> But, he couched his proposal as an "appeal to the magnanimity, generosity, and exalted sense of justice of my constituents for a vindication of my act."<sup>166</sup>

### The Poland Act Debates of 1873–1874

Blair's proposed bill did not gain any traction in the House, and it was completely overshadowed later that year when President Ulysses S. Grant called upon Congress in his State of the Union address to enact a law that would "secure peace, the equality of all citizens before the law, and the ultimate extinguishment of polygamy" in Utah.<sup>167</sup> Within a few months, the Senate had responded by passing a bill that proposed reforming the way in which jurors were selected in Utah.<sup>168</sup> The debate in the Senate that led to passage of the bill was markedly different than the previous polygamy debates that had taken place in that chamber. Rather than condemning Mormonism, some senators began to discuss the situation from a Mormon perspective:

No matter how right we may be in our opinions . . . we must not lose sight of the condition of the eighty or ninety thousand Mormons in the Territory of Utah. You may say that they are wrong, but they believe that they are right. You may say they are superstitious. They believe that it is religion. You may say that their institution is contrary to civilization.

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New Mexico, and Texas. The transferred land consisted of what was then 55 percent of Mexico's territory. For a discussion, see John Porter Bloom, ed., *The Treaty of Guadeloupe Hidalgo, 1848: Papers of the Sesquicentennial Symposium, 1848–1998* (Las Cruces: Yucca Tree Press, 1999).

163. *Congressional Globe*, 42d Cong., 2d sess., 1872, 1098, citing Treaty of Guadeloupe Hidalgo, § 1, art. 9.

164. *Ibid.*, 1098, citing U.S. Const. art. VI, cl. 2.

165. *Ibid.*, 1099.

166. *Ibid.*

167. *Congressional Globe*, 42d Cong. 3d sess., 1872, 9.

168. *A bill in aid of the execution of the laws in the Territory of Utah and for other purposes*, S 1540, 42nd Cong., 3d sess. (February 6, 1873), *Congressional Globe*, 42nd Cong., 3d sess., 1873, 1133, 1780–81.

They believe that it is a civilizing institution as well as a sound and a just one.<sup>169</sup>

Other senators agreed that Congress needed to enforce the law without acting rashly against the Mormons:

I do not wish to do anything of an unkind nature against the people who live in Utah. They have developed a beautiful and prosperous country in the midst of the desert; and although their peculiar habits are as repugnant to me as any other Senator . . . they are a misguided people and they ought not to be dealt with harshly. . . . Without their agency on the plains I doubt very much whether we could have built the Pacific railroad when it was built; we certainly could not have built the telegraph lines and maintained them but for their agency. We owe them therefore a little kindness on that score for physical development.<sup>170</sup>

“My advice,” one senator opined, “is to do just as little as possible not inconsistent with the public sentiment, and nothing that is cruel or oppressive towards the Mormons.”<sup>171</sup> In a country still in the midst of Reconstruction, many senators were also in no mood to authorize military intervention against the Mormons, as had been proposed in the Cullom Bill: “I am so sick and tired of bayonet rule and bayonet threats in this country,” complained Thomas F. Bayard of Delaware. “This country is to-day passing away from the theory of being supported by the hearts of the people, and it is becoming a mere Government of coercion, and this bill is a suggestion of it.”<sup>172</sup>

Unlike most previous congressional debates on polygamy, the majority of the discussion on the Senate bill focused not on polygamy and the Mormons, but rather on technicalities of the meaning of the language of the bill and its expected application in the court system. Late in the debate, a senator from Minnesota attempted to steer the discussion into a general denunciation of the Mormon Church: “It is not merely the polygamous character of that organization which in my judgment merits condemnation,” began William Windom, as he commenced a speech that highlighted the Mountain Meadows massacre and alleged human sacrifice by Mormons.<sup>173</sup> However, before he sank to the depths that Cragin had reached in his 1870 Senate speech, other senators began to mock Windom: “The gentleman seems to be in a perfect panic about Mormonism. I do not participate at all in his fears. I have not the slightest apprehension that I shall wake up some morning

169. *Congressional Globe*, 42d Cong., 3d sess., 1873, 1782–83 (Senator Frederick T. Frelinghuysen of New Jersey).

170. *Ibid.*, 1790 (Senator John Sherman of Ohio).

171. *Ibid.*, 1793 (Senator Allen G. Thurman of Ohio).

172. *Ibid.*, 1813.

173. *Ibid.*, 1806–8.

in the arms of two wives. [Laughter.] . . . We have here the details of a bill to regulate criminal trials, and the crimes, the bloodshed, the enormities that have been committed in that Territory have no place in this discussion.”<sup>174</sup> The bill passed the Senate in a 29:10 vote,<sup>175</sup> but the House of Representatives did not take up the Mormon Question again until the next Congress.

In June 1874, both houses of Congress at last approved a bill to facilitate enforcement of the Morrill Act.<sup>176</sup> The bill was similar in content to the 1873 Senate bill and was introduced in the House of Representatives by Luke P. Poland of Vermont.<sup>177</sup> Reminding the House of the harsh provisions of the Cullom Bill, Poland observed that the bill was “mainly remarkable for its moderation when compared with previous bills that have been before the House upon this vexed subject.”<sup>178</sup> The Poland Act sought to strengthen the Morrill Act in two principal ways: first, jurisdiction over criminal matters in Utah was transferred from the territorial probate courts to the federal district courts.<sup>179</sup> It was thought that doing so would solve the problem of Mormon judges presiding over polygamy trials, since district court judges were appointed by the president.<sup>180</sup> Second, in an attempt to give district court judges the ability to keep polygamists off juries in polygamy trials, the act reformulated the procedures whereby both petit and grand jurors were selected.<sup>181</sup> Most importantly, the act allowed any person to be removed from a jury in an adultery, bigamy, or polygamy trial if it were shown that the prospective juror “practices polygamy, or that he believes in the rightfulness of the same.”<sup>182</sup>

174. *Ibid.*, 1808–9 (Senator Matthew H. Carpenter of Wisconsin) (bracketed material in original).

175. *Ibid.*, 1815 (34 of the 74 senators were absent for the vote).

176. *An act in relation to the courts and judicial officers in the Territory of Utah [Poland Act]*, *U.S. Statutes at Large*, 18 (1874): 253.

177. *A bill in relation to the courts and judicial officers in the Territory of Utah*, HR 3097, 43d Cong., 1st sess. (June 2, 1874), *Congressional Record*, 43d Cong., 1st sess., 1874, 4466–67.

178. *Congressional Record*, 43d Cong., 1st sess., 1874, 4467.

179. *Poland Act* § 3.

180. “Federal control over the territorial government . . . was undeniably feeble. The governor, supreme court justices, and few other officials were appointed by the president, but the territorial legislature and the bulk of the judiciary lay in Mormon hands.” Edward Brown Firmage and Richard Collin Mangrum, *Zion in the Courts: A Legal History of the Church of Jesus Christ of Latter-day Saints, 1830–1900* (Urbana: University of Illinois Press, 2001), 140. One representative claimed that “every probate judge [in Utah] is a Mormon bishop.” *Congressional Record*, 43d Cong., 1st sess., 1874, 4474 (Representative Jasper D. Ward of Illinois).

181. *Poland Act* § 4.

182. *Ibid.*

Debate of the Poland Bill in the House was rushed, so much so that some speakers departed from the usual practice of allowing their speeches to be interrupted by questions or remarks from other members,<sup>183</sup> and the delegate from Utah had to ask for a fifteen-minute extension in time to conclude his remarks in opposition of the bill.<sup>184</sup> When Representative Lorenzo Crouse of Nebraska suggested that each provision of the bill should receive the usual full consideration of the House, he claimed that he heard other representatives say that “they did not care what was in the bill; that they were going for it anyhow.”<sup>185</sup> Crouse was primarily concerned that the bill would remove an element of self-rule from the Mormons, “which in the future may be evoked as a precedent in order to oppress people of other Territories.”<sup>186</sup> Crouse did not oppose the anti-polygamy objects of the bill, but complained of its limited consideration by the House:

I hope that as presented here and sought to be forced through it will be voted down, and that the opportunity may be given to correct and modify it in those essential particulars which I know this House upon calm consideration would not approve. . . . I have never known a case in which the law for the government of a great people who are asking to become a State of this Union has been passed in such haste.<sup>187</sup>

In the limited debate that did occur, some representatives suggested that the bill was simply unnecessary, and that the cultural changes that would be resulting from the transcontinental railroad “will have more effect in destroying and rooting out polygamy than any legislation we can adopt providing for packed juries.”<sup>188</sup> Others returned to the more general theme of denouncing “this Latter-Day nonsense,”<sup>189</sup> but compared with those of previous debates the attacks were brief and tepid. The bill passed the House in a 159:55 vote, with 75 representatives not voting.<sup>190</sup>

In the final hours of the final day in the congressional session, the Senate took up consideration of the Poland Bill. The Senate debate over the bill was even more rushed than the House’s consideration of the bill. Several technical amendments were proposed and

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183. *Congressional Record*, 43d Cong., 1st sess., 1874, 4467 (Rep. Poland refusing Representative Lorenzo Crouse of Nebraska), 4473 (Rep. Poland refusing Representative Alvah Crocker of Massachusetts), 4473 (Representative John Cessna of Pennsylvania refusing Representative J. Allen Barber of Wisconsin).

184. *Ibid.*, 4472 (Delegate George Q. Cannon of Utah Territory).

185. *Ibid.*, 4468.

186. *Ibid.*

187. *Ibid.*, 4469.

188. *Ibid.*, 4470 (Representative Clarkson N. Potter of New York).

189. *Ibid.*, 4473 (Rep. Ward).

190. *Ibid.*, 4475.

approved, and the bill was approved without a record vote.<sup>191</sup> The House approved the Senate's amendments on the same day,<sup>192</sup> and the Poland Act became law after being signed by President Grant. Ironically, later in 1874 when George Reynolds was indicted by a Utah grand jury for violating the Morrill Act, recourse to the Poland Act was not required. For the first time, a grand jury composed entirely of Mormons had issued an indictment under the Morrill Act.<sup>193</sup> Four and a half years later, the *Reynolds* decision by the Supreme Court affirmed that Congress had acted constitutionally in enacting statutes that had targeted Mormon polygamy.

## Conclusion

Over fifty years passed from the establishment of the Territory of Utah to the end of polygamy in the Mormon Church, and the *Reynolds* case marks the approximate half-way point between the two. The overall legislative and judicial action taken by the federal government to eradicate polygamy in Utah Territory during this time is often viewed by Mormons as a resurfacing of the religious persecution that drove them out of Missouri and Illinois: "the nation united against the Church" in an "anti-polygamy crusade."<sup>194</sup> However, during the first half of the lengthy crusade,

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191. *Ibid.*, 5418.

192. *Ibid.*, 5443-44.

193. In all likelihood, this extraordinary turn of events was the result of an agreement between the Mormon Church and federal officials. There is some evidence that Reynolds, who was Brigham Young's personal secretary, was asked by leaders of the church to act as a defendant in a test case that was being organized to determine the constitutionality of the Morrill Act. The existence of such an agreement is suggested in part by Reynolds's diary entry in which he noted that he had been asked by church officials if he would be willing to be indicted for polygamy. Unless an agreement was in place, it is unlikely that the church hierarchy could have had any control over the particular defendant that non-Mormon federal prosecutors chose to present before a grand jury. The unprecedented action of the all-Mormon grand jury is also particularly telling. Most historians agree that at least initially, some form of arrangement must have existed between the church and federal officials. See Gordon, *Mormon Question*, 119; Firmage and Mangrum, *Zion in the Courts*, 151; B. H. Roberts, *A Comprehensive History of the Church of Jesus Christ of Latter-day Saints: Century I* (Salt Lake City: Deseret News Press, 1930), 5, 469; Orson F. Whitney, *History of Utah* (Salt Lake City: Cannon and Sons, 1893), 3, 46-47. Some historians have disagreed that there was an agreement between the government and the Mormon Church; cf. Robert Joseph Dwyer, *The Gentile Comes to Utah: A Study in Religious and Social Conflict, (1862-1890)* (Washington, D.C.: Catholic University of America Press, 1941), 112-13.

194. *Church History in the Fulness of Times: The History of the Church of Jesus Christ of Latter-day Saints*, 2nd ed. (Salt Lake City: Church of Jesus Christ of Latter-day Saints, 2003), 425.

the efforts of Congress and the federal government to eradicate polygamy can best be described as sporadic, unfocused, and uneven. While initially there was general agreement among legislators concerning the depraved nature of Mormonism and its adherents, early anti-polygamy legislation was blocked by congressional Democrats who feared it would be the prelude to and precedent for abolition of another kind—the kind for which it soon became clear that the South was willing to fight a civil war to prevent. The Democrats were never in favor of polygamy, but they protected it as part of the proxy war over slavery before the real war began.

But even after the Civil War, the congressional debates reveal that there was little agreement on the solution to the Mormon Question, and a significant number of congressmen even began to doubt if the nature of the Mormon people was as irredeemable as was once commonly assumed. While “everyone—except the Mormons—favored the eradication of polygamy,”<sup>195</sup> once the first step of criminalization had been taken, Congress had difficulty reaching a consensus on how to act. The proposed approaches varied from the Cullom Bill’s “all-out-war” to the “wait-it-out” attitudes of many of the congressmen from western states. A sole representative in Congress endorsed the “live-and-let-live” solution of legalization. The compromise that was adopted was the Poland Act, which never played a significant role in convincing the Mormon Church to abandon polygamy.

It was not until after *Reynolds* that Congress went on to enact legislation that succeeded where the Morrill and Poland Acts had failed. These statutes, most notably the Edmunds Act of 1882<sup>196</sup> and the Edmunds–Tucker Act of 1887,<sup>197</sup> were more severe than the pre-*Reynolds* legislation and ultimately led to the end of polygamy among mainstream Mormons. It was a destination that had long been agreed upon, but arrival was significantly delayed by a Congress that, prior to *Reynolds*, could never quite agree on which map to use.

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195. Firmage and Mangrum, *Zion in the Courts*, 129.

196. An act 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, *U.S. Statutes at Large* 22 (1882): 30.

197. An act to amend an act entitled “An act 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,” *U.S. Statutes at Large* 24 (1887): 635.