Using My Religion:
The Use of Religion as a Legal Tool in the 19th Century Debate on Plural Marriage

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Abstract

This thesis aims to add to the existing academic conversation on the juncture between law and religion. In this thesis, I unpack the myriad ways in which religious rhetoric was used to defend and instigate legal positions in the 19th century debate on plural marriage.

The U.S. Congress and Supreme Court spent the better half of the 1800s trying to legislate against plural marriage. Their desire to create this injunction was inspired by their mores and their stance on natural law. Members of the U.S. federal government used the religious practices of the Mormon population to show that the LDS were peripheral to American and Western sensibilities. They depicted the LDS Church as violating natural law and as a distinct race. Furthermore, the U.S. government established a clear dichotomy of “us” and “them” by casting the LDS as antithetical to centrist ideas of Christianity. The Mormon population responded by using divine law and the Decalogue to show that they were not, in their minds, in violation of natural law. Additionally, the representatives of the LDS used arguments from the New Testament in an effort to construct this as a theological issue, rather than a legal one. In using claims from the Bible, the LDS representatives attempted to tie Christianity and Mormonism together.
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Introduction

In 1854, Representative Goodrich of Massachusetts proclaimed that, “Polygamy, as we all agree, is a great moral, social, and political evil.”¹ This statement was made in a debate to limit the land-holding abilities of Mormons in the Utah Territory. Mr. Goodrich in one sentence declared that polygamy was detrimental toward nearly every aspect of public life. This idea, that polygamy not only challenged the social and political positions of Americans, but also its moral leanings, was widespread.² In the 19th century debate regarding this topic, both sides, the U.S. federal government and the Mormon population, used the law as a means of enforcing moral or theological beliefs. Moreover, both sides defended their legal positions with religious rhetoric. In this thesis, I aim to unpack the numerous manners in which both the U.S. federal government and the LDS Church used religion to justify their legal arguments.

The history of bigamy legislation in the United States foregrounds the interactions between the doctrines of law and religion and emphasizes how both sides counter and retort when they feel their traditions or values are under attack. Other scholars have endeavored to study the Morrill Anti-Bigamy Act and the Reynolds v. United States Supreme Court case as separate and individual legal events in the history of Mormon-American relations. In this thesis, I strive to provide a more in-depth analysis of the religious nature of both of these moments in history. I will show how different actors have constructed definitions of Mormon identity and natural law. Furthermore, I investigate the imagining of religious belief as distinct from religious practice. In this way, I aim to add to the existing conversation, not just on the history of the LDS Church, but also the academic conversation regarding the intersection of religion and law.

¹ Congressional Globe. 33rd Congress, 1st session, 1854, 1098.
² In this thesis, I use the terms bigamy and polygamy interchangeably. In the 21st century, bigamy refers to the legislated act of polygamy while polygamy refers to the act itself. Even still, now, the politically correct and preferred term is actually plural marriage. However, as I am often discussing quotes and ideas from the 19th century, where these terms are all used interchangeably, I will do the same.
In the debate surrounding the Morrill Anti-Bigamy Act and the *Reynolds v. United States* Supreme Court case, religion was used as a means of arguing both for and against an injunction banning polygamy. I choose to draw primarily from Congressional records and from Supreme Court briefs, as these are two different modalities for creating and enforcing the law. On the one hand, in Congress, laws are created and the principles of the nation are hashed out. On the other hand, in the Supreme Court, laws are enforced, judged, and solidified in the national imagination. These two stages are in many ways complimentary and they often rely upon each other. Yet, their differing aims help tell a more complete story when put together. I aim to focus on both in order to have a more comprehensive discussion of the evolution of this law and the legal proceedings that surround it.

In analyzing religious rhetoric, I focus predominately on the arguments made within normative legal spaces for a couple of key reasons. First, all of these statements were made in a formal setting. For that reason I believe that they are an accurate reflection of the leading ideas of the time. Furthermore, by looking at statements made in a strictly legal context it emphasizes the significance and political nature of the intersection between religion and law. While I do privilege the legal voice, I use secondary sources to ground what I claim in religious theory and the existing academic conversation. I also draw from occasional non-legal sources in order to paint a picture of the context from which these statements arose and to demonstrate that the ideas presented in the legal context are representative of the popular opinion.

In order to gather all of this information I spent the majority of my research reading upwards of twenty volumes of the Congressional Globe. As these are not digitized, the scanning of these primary documents is a lengthy and involved process. However, in doing this I have accurately captured the statements of the members of Congress regarding the legal practice of
polygamy between the 1850s and 1890s. I have organized this thesis in order to highlight the various sentiments that were expressed. I begin, in Chapter One, with an analysis of the intersection between religion and law. In Chapter Two, I move to discuss the manner in which Congress and the Supreme Court constructed the religious practice of polygamy, and consequently the entirety of Mormonism, as extraneous to natural law and Americanism. The sub-categories of Chapter Two investigate three moves that accomplished this aim: the construction of polygamy as malum in se, the discussion of polygamy as anti-Christian, and the notion that polygamy was a non-Western practice that created a distinct race. In Chapter Three, the response of the Mormon population is examined alongside how George Reynolds’ legal team used religion to defend their practice of polygamy. I conclude with a summary of the manner in which this particular case study relates to the existing discourse on religion and law.

Throughout these four decades, religion was used in order to justify the condemnation of plural marriage and to support its existence. Thus, while much of my research is legal in nature, the conversation that was being had was predominately about the place of religious practices within the public space.

**Chapter One: Religion and Law as Competing Systems of Authority**

The study of the interaction between religion and the law is crucial in that it informs how religion is understood, negotiated, applied, reified, and imposed in the lives of various persons. The Morrill Anti-Bigamy Act, and consequently *Reynolds v. United States*, set an important precedent for the way in which the Free Exercise Clause is interpreted. The Free Exercise Clause in the Constitution states that Congress shall make no law “prohibiting the free exercise [of
religion].” In *Reynolds v. United States* the Supreme Court clarified its stance on what exactly this clause was meant to protect. The landmark decision stated that limiting the practice of religion was distinct from limiting religious belief. Thus, religious practice could in fact be legislated without violating Constitutional rights. This assumes that religion can be separated into distinguishable parts, independent of one another. Furthermore, it assumes that belief can exist without practice. Numerous cases have been brought to Court since this time to challenge the idea that religious practice can be isolated from religious belief. The U.S. government continues to uphold the idea that religious beliefs are protected; yet, religious actions are not protected above the law of the land.

The increase in diversity of the American religious landscape in the nineteenth century led to the need to define what was religion, and what was religiously deviant. In a time of momentous instability and fluctuation, establishing norms created a sense of “them” and “us.” The criminalization by the government of religious practice largely aided and furthered this juxtaposition. Until, and arguably after, the 19th century, American identity was built upon a Protestant foundation. After the Civil War, as religious diversity increased with the inception of the LDS Church and many other religious organizations, the multiplicity of minorities challenged this notion. Moreover, the increase in journalism, immigration, western migration, and the flocking of people to urban areas also increased awareness of this religious diversity. This increased cognizance created a need for the matter of religious pluralism to be addressed. Contemporaneously, there was now an additional need to address religious diversity due to the

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5 Grey-Hildenbrand, Page 279.
inception of the Fourteenth Amendment following the Civil War. Originally meant to ensure rights to those who were formerly enslaved, the Fourteenth Amendment guaranteed “due process” to all. However, this impacted the treatment of all minority groups, religions included. This meant that all religions and religious persons expected to be treated equally by the law and in the courtroom. Thus, it was necessary to develop a system and a legal mechanism for dealing with matters of religion.

The central point of contention between religion and law seems to be that they represent competing systems of authority. In Reynolds v. United States, the Supreme Court concluded that to allow polygamy “would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances.”7 This recognition, that religion when permitted to exist unchecked rendered government ineffectual, is what ultimately fueled the majority of conflicts between religious doctrines and the law. When God claims one thing, and the State claims another, the citizen must ultimately make a choice about where they owe their loyalty and allegiance.

In the case of Mormon polygamy, the State feared that were it unable to control the religious practices of the LDS Church, then the religious practices of others could overrun the law of the land. This exhibits an important conclusion that the Court must have reached. Namely, that religious practice is what puts the Church at odds with the State, not religious belief. As long as one is acting in compliances with national law, the Court did not feel it necessary to regulate what they believed. This meant that continued belief in plural marriage would not pose a threat to the U.S., only continued practice of plural marriage in the face of national law. Ultimately, the Supreme Court felt that their law, national law, must be respected above divine law.

7 Reynolds v. United States 98 U.S. 145 (1878)
When forced to choose between competing authorities, many choose divine law. This is the position that the Mormon population in the 1800s adopted when faced with the Morrill Act and all of the legal proceedings that followed. The LDS Church lived in open defiance of the laws. They continued their practice of plural marriage until the President of the LDS Church, Woodruff Wilson, received a divine revelation that plural marriage was no longer a religious mandate. In these instances, the LDS Church stayed true to the idea that theological doctrines were to be privileged over State laws. For them, polygamy ended when their divine authority said it should, not when the Court mandated it. This is the essence of the conflict between Church and State and the danger that the State often perceives from the Church. If divine law supersedes the will of national law, then what is the effect and role of government in the face of religion?

While religion and law can certainly be seen as competing systems of authority, they can also be used to compliment one another. In the case of 19th century bigamy legislation, religious doctrine was used as a primary legal argument on both sides. In attempting to prove that the act of polygamy was outside the bounds of natural law, the U.S. government made a case for polygamy being outside the bounds of divine law. Congress and the Supreme Court also constructed the LDS Church as “other” by likening it to religious practices such as sati and by claiming that it was anti-Christian. The Mormon population retorted and defended themselves by highlighting the fact that polygamy was in the New Testament and was not forbidden in the

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9 This is not always an easily accepted opinion and these conflicts persist in modernity. A contemporary example of this notion of competing authority was widely recognized in 1973. Reverend Liston Pack was served papers and charged with breaking a law from 1947 that prohibited him from handling poisonous snakes, for him a religious obligation. He stated, “I believe in obeying the laws of the land, but when they are contrary to God’s law we will have no part.” Reverend Pack boldly asserted that when the battle lines were drawn, when he was forced to pick a side, he would pick theology and God over man-made constructs. This is indeed the position of many. See Jenna Dawn. “Negotiating Authority: The Criminalization of Religious Practice in the United States.” for further analysis of this case.
Decalogue. In this way, religion was used to influence the debate on plural marriage from both sides. While this thesis is primarily about the construction of the Mormon other, it is also an important case study in how various players constructed competing notions of natural law. Both the Mormon population and the U.S. federal government made grandiose claims about the contents of natural law as inspired by their understanding of faith. These understandings of natural law came, in time, to influence national law. I turn now to a detailed analysis of each point in order to highlight the manner in which religious rhetoric was used as a means of justifying legal arguments.

Chapter Two: The Use of Religion as a Tool to Justify Legal Action
Section One: Violating Natural Law and Americanism

Hugo Groitus, a Dutch lawyer and one of the fathers of international and natural law, wrote, “When God permits a thing in certain cases, and to certain persons, or in regard to certain nations, it may be inferred, that the thing is not evil in its own nature.”10 As Groitus shows, many times the notion of something being inherently evil is inspired by the idea that it is against the will of God. Violating natural law more often than not means violating divine law. The concept of natural law is rooted in the idea that certain actions are ubiquitously and inflexibly immoral. In legal terms, some actions are designated malum in se (evil in themselves), while others are mala prohibita (evil because they are illegal). Both the Supreme Court and the U.S. Congress in their discussion regarding the legislation of bigamy attempted to prove that plural marriage was malum in se and violated natural law. Furthermore, they used the religious practice of plural marriage to justify the construction of the Mormon population as other. In these ways and others, members of the U.S. government sought to use religion to warrant legal action.

In 1850 Representative Wentworth of Illinois presented a petition to “protect the rights of American citizens while traveling through the Valley of Salt Lake, and setting forth other matters concerning the treasonable designs of the Salt Lake Mormons.” He justified his petition by stating that, “Some of the prominent movers for the organization of a State Government in the Desert are in favor of a Kingly Government, are robbers and murderers, and that these men are all in favor of polygamy.” Mr. Wentworth’s statement distinguishes two categories of people: American citizens and Salt Lake Mormons. He goes on to emphasize this dichotomization by accusing the Salt Lake Mormons of being treasonous. Thus, not only does he juxtapose their identity with American identity, he also casts them as being harmful to Americanism. Furthermore, Mr. Wentworth claimed that the Mormon’s had “treasonable designs,” insinuating that they knew that their actions were wrong and designed to continue them anyway. This move emphasizes the malignant nature of Mormonism in the congressional imagination as it underscores their insidious nature.

The idea that the very nature of the Mormon religious practice was antithetical to natural law, as it was grouped with murder and theft, actions commonly accepted as malum in se, is stressed by Mr. Wentworth’s claim. This was the beginning of a move to introduce plural marriage as being malum in se. By placing plural marriage within the same conversation as these offenses, Mr. Wentworth was claiming that it is just as ubiquitously immoral.

Additionally, Mr. Wentworth makes a point of stating that while only “some” are in favor of murder and theft, “all” are in favor of polygamy. Mr. Wentworth is emphasizing the menacing nature of the Salt Lake Mormons by stating that some of them have transgressed doubly by murdering or thieving, on top of their practice of polygamy. Yet, because they all practice polygamy, they are all immoral. This lends credibility to the belief that the disobedience that Mr.

11 Congressional Globe, 31st Congress, 1st session, 1850, 413.
Wentworth finds most egregious is practice of plural marriage. However, while members of Congress were already calling the Mormons polygamous and claiming that they all supported polygamy in 1850, it was not until 1852 that polygamy officially became a part of the LDS church with the “Revelation on Celestial Marriage.”

Four years later, a bill was presented before the House of Representative on May 4, 1854 that would give every white male in Utah 320 acres of land if single, and 640 acres of land if married. The debate occupied the better part of two days in the House of Representatives. The bill goes further to read “And provided further that the benefits of the act shall not extend to any person who shall now, or at any time hereafter, be the husband of more than one wife.” Not only did this proviso strip polygamous men of rights guaranteed to other citizens, but it also provided that those who were suspected of future polygamous relationships would be stripped of rights as well. This proviso was largely supported and it passed. This was the first tangible piece of legislation passed directly against members of the LDS. While sentiments against the Mormon people had been negative since the inception of the LDS Church in 1830, no legislation had existed until this time that would directly criminalize Mormon behavior or belief.

It was with the introduction of this bill that the U.S. Congress began its crusade to legislate, what in its mind was viewed as the morally offensive and inherently evil act of plural marriage. This encompassed not only the debate surrounding polygamy, but also the contemporaneous debate of slavery. Representative Davis of Rhode Island defended the land bill by claiming “I do not see that this discrimination is any worse than that of inserting the word

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13 Congressional Globe. 33rd Congress, 1st session, 1854, 1091-1114.
14 Smith, Joseph. *The Book of Mormon: An Account Written by the Hand of Mormon Upon Plates Taken from the Plates of Nephi.* Salt Lake City, Utah: Church of Jesus Christ of Latter-day Saints, 1981. Print. While Joseph Smith was receiving revelations and visitations before this date, it was in 1830 that the Church of Jesus Christ of Latter Day Saints was first brought into being with the publication of the Book of Mormon.
‘white’ in these territorial bills.”15 In this way, Mr. Davis is asserting that Mormons deserve the same second-class form of citizenship that slaves endured. “White” citizens, in his mind, were superior both to black slaves and polygamous Mormons. The coupling of Mormons and slaves here emphasizes that Mr. Davis saw Mormons as just as distinct from “white” Americans as slaves. In the congressional imagination the two constructions of slavery and polygamy were inextricably linked, as the quote from Mr. Davis begins to illustrate. Both were at odds with the values Congress envisioned for 19th century America and “white” American identity. In many ways, the conversation surrounding polygamy was fueled by race.

Seen as no better than slaves and as the antithesis to American-Christian identity, Mormons were forced out of what it meant to be an American citizen. Polygamy at this time was envisioned as a conversational, and moral, surrogate for slavery. This conversational surrogacy explains why Representative Boyce of Southern Carolina felt the need to inquire into “what right has this Government to interfere with the religious relations of the people in this Territory?”16 As Mr. Boyce was from a slaveholding state, it is likely that he is posing this question in order to protect his constituents’ interests. In practice, Mr. Boyce was likely concerned with the ability and authority of the government not because of First Amendment freedoms, but because of the interwoven notions of slavery and polygamy. Mr. Boyce’s fear, and the fear of many Southerners, was that if one could address a domestic issue like polygamy, slavery would be next. At this time, because of the conflation between polygamy and slavery, Congressional Representatives from the South still did not feel like they had legitimate authority to address the issue of plural marriage in the West.

Representative Giddings of Ohio in 1854, in the midst of the debate on granting land to

15 Congressional Globe. 33rd Congress, 1st session, 1854, 1091-1114.
16 Ibid, 1110.
polygamous men, appealed,

I am myself in favor of this proviso…It is in favor of morality, of propriety, of decency, and of good order. But I never will go for it while we legislate for slavery in our Territories…. I will permit the Mormon to enjoy his dozen wives, and I believe I could do it with a great deal better conscience that I could give the slaveholder the privilege of an unlimited number of concubines…I would exclude slavery and polygamy from both, and from all Territories.¹⁷

Unlike Mr. Wentworth’s earlier claim that polygamy belongs lumped in with murder, theft, and other crimes against the natural laws of man, Mr. Giddings claims here that there are crimes worse than polygamy, namely, slavery. Thus, while Mr. Giddings does conjoin the issues of slavery and polygamy he also clearly delineates one as worse than the other by arguing that his conscience can stand the existence of one but not the other. He sees that it is unjust to prohibit polygamy while slavery still exists as an institution. In fact, he even goes so far as to liken slaveholders to Mormons, as both are outside the bounds of morality. Additionally, he thought that both slaveholders and Mormon men created victims: slaves and wives, respectively.

Mr. Giddings claims that slavery and polygamy, Mormons and slaveholders, are beyond the constraints of what he feels to be moral, as he charges to have them removed from all Territories. There exist two distinct parallels made in these arguments. First, Representatives moved to link slavery and polygamy as the “twin barbarisms.” Members of Congress saw these constructs as immoral and indecent. Their licentious nature was seen as deviating from the intended norms of Americanism and natural law. The second parallel between slaveholders and Mormons demonstrates that Congress also felt that both slaveholders and Mormons created victims: slaves and wives. Mormons were seen simultaneously as being the oppressor and the oppressed, as the perpetrator of evil and as the victim of that evil. Members of Congress envisioned the Mormon religion as being perverse in a number of manners. They were both the

¹⁷ Congressional Globe. 33rd Congress, 1st session, 1854, 1091-1114.
dehumanized slave and the dehumanizing slaveholder, rolled into one. Mr. Giddings’ statement claims that both polygamy, and slavery, lay beyond the bounds of what is “decent” and “moral.”

Representative Simmons of New York took the relationship between slavery and polygamy one step further when he decreed that polygamy was the “parent” to slavery. He stated,

[T]he reason why the civilization of Asia is so behind that of Europe is owing to the institution and prevalence of polygamy, which spoiled the domestic relations, and occasioned more evil than slavery itself, because one was the parent of the other.\(^\text{18}\)

Furthermore, he boldly emphasized that polygamy and slavery are “institutions at war with all true liberty.”\(^\text{19}\) This critique of polygamy claimed that slavery and polygamy were not only both indecent, but that polygamy was more immoral than slavery as it could lead to enslavement. Additionally, both the institution of slavery and plural marriage were at odds with the concepts of freedom and emancipation. This is further evidence that Representatives in the House saw the religious practice of polygamy as creating victims. Polygamy could incite slavery and thus make victims of those who would be enslaved.

Mr. Simmons uses the religious practice of polygamy here to explain the perceived stagnation of Asian civilizations. Moreover, polygamy could hinder the development of civilization in the United States, thus victimizing the entire country. Mr. Simmons claims that he perceives the civilization of Asia as being behind the civilization of Europe because of the presence of polygamy in Asia. He states that polygamy has “spoiled domestic relations” more so than the institution of slavery. Mr. Simmons seems to be motivated by a fear that plural marriage will deteriorate the development of the United States. He sees polygamy as not only leading to slavery but also the breakdown of American civilization. His comparison of polygamy, and

\(^{18}\) Congressional Globe. 33\(^\text{rd}\) Congress, 1\(^\text{st}\) session, 1854, 1095.

\(^{19}\) Ibid.
consequently Mormons, to the people of Asia pushes the Mormon people further from the realm of centrist American identity as it removes them from a Western context because of their religious practice of plural marriage. They are so antithetical to American identity, in other words, that they are Asiatic.

In a political cartoon from the 1880s in The Judge a Mormon man is shown atop a platform labeled polygamy and he is shaking a fist at Congress. His five wives have chains around their necks and he is holding the other end of the chain.\textsuperscript{20} The scene is reminiscent of a slave auction. Images like these speak volumes about the public attitude regarding polygamy. Just as Mr. Giddings had done earlier in Congress, the press saw it fit to compare Mormon men to slaveholders. Many saw it as subjugating to women or as a challenge to governmental authority. Furthermore, this image insinuates that polygamy was making slaves out of the women involved in it. In this way we see that others in the general public agreed with Mr. Simmons that polygamy lead to at least one form of enslavement. The cartoon further shows the husband of these women shaking his fist at Congress. The man is defiant and audacious; he seems threatening. This is a reflection of the depiction of the Mormon population as openly disobedient. We see in this cartoon the contrasting depictions of the Mormon population. The wives are seen as victims, while the men are seen as the perpetrators of atrocities.\textsuperscript{21}

The link between slavery and polygamy emphasized the perceived depravity of polygamy, and thus the entirety of the LDS faith. Polygamy was seen as being foreign to American identity and extraneous to Christian civilization. It was called the parent of slavery. Slaveholders and Mormon men were seen as being one in the same as they both corrupted those

\textsuperscript{20} Gordon, Sarah B. See appendix for a copy of the cartoon.
\textsuperscript{21} In popular culture and media Mormons were often portrayed in much the same way. Sir Arthur Conan Doyle described in his first Sherlock story in 1887 the “harems” of Utah and the “women who pined and wept and bore upon their faces the traces of an unextinguishable horror.” He was, in fact, referring to the women engaging in polygamy. Doyle, A. Conan. “A Study in Scarlet,” Beeton’s Christmas Annual 28 (1887): 64-5. Reprinted in 2009.
around them and created victims in their wake. Both endangered American advancement and were inspired by a bloodlust that went against natural law. The link between slavery and polygamy highlighted the immorality of both. Additionally, the link served to other the entirety of the Mormon population.

The issue of polygamy dealt with the matter of federalism the South was so heavily feeling at this time with the pressure to abolish slavery. Many Southerners could not in good conscience condone the legislation against polygamy in the Territories while they were so strongly opposing the same ideas for polygamy’s twin sister: slavery. These two domestic institutions were hardly ever discussed separately. Republicans in the North hoped to do away with both entirely and often saw the discussion of one as a way to introduce the other. The struggles against polygamy and slavery were ultimately conjoined for the Republicans. John Kincaid notes, “The battles against slavery and polygamy both reflected federal efforts to liberate persons from the tyranny of places and, as such, signaled a rejection of territorially based multiculturalism in the United States.” In this way, the contemporaneous discussion of slavery and polygamy in the 1800s was instrumental in advancing both abolition and injunctions against bigamy.

Democrats in the South agreed, in principle, with the condemnation put forth by the Republicans of the North, yet they feared that granted the ability to marshal federal power against domestic institutions, slavery would be next. Both parties wanted to do away with polygamy. Yet, the Democrats could not fully support anti-bigamy legislation while they tried to

23 The topics of slavery and polygamy were so inextricably tied that Representative David Gooch of Massachusetts lamented, “I had hoped that one question [regarding polygamy] could be introduced into this Hall and discussed without the introduction of the subject of slavery…” Such was the condition of the House and the conjoined nature of the topics of slavery and bigamy. Congressional Globe, 36th Congress, 1st Session, 1860, 1541.
protect slavery. The Republicans realized this and in 1856 the party participated in the election on a platform that encouraged the “prohibition of those twin relics of barbarisms, polygamy and slavery.” In a Currier and Ives lithograph commemorating the election, the Republican states are depicted as balls rolling over Democratic President James Buchanan and papers representing the conjoined ideas of slavery and polygamy. Thus, the Republican members of Congress began to try and change the political climate in Congress such that they could begin to demolish the institutions of slavery and polygamy simultaneously. Ultimately, it was the mores of the national parties that influenced the elections in the late 1850s. Everything was up for grabs: the House, the presidency, and the moral character of the American populace.

But, even after the targeted propaganda of the Republican party, the Democrats retained majorities in the House and Senate in the 1856 election and Democratic President James Buchanan won with merely 45 percent of the popular vote. However, this represented a 6 percent decrease in support for the Democratic Party since 1852. In an attempt to gain support for the Democratic party without alienating the South, President Buchanan took the advice of a Southern strategist and attempted to appease Republicans by dealing with polygamy. President Buchanan’s strategist, Robert Tyler, had recommended that:

We can supercede the Negro-Mania with the almost universal excitement of an Anti-Mormon crusade…Should you 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.

27 Multiple issues were listed in the lithograph, all on separate banners. Yet, one banner contained two ideas: "slavery & polygamy." Lithograph found in: Gordon, Sarah B. See the appendix for a copy of this lithograph.
Tyler’s description of the Anti-Mormon crusade as nearly “universal” made it an easier sell than taking on the so-called “Negro-Mania.” The hope was that President Buchanan could address the concerns about his party by addressing the nearly ubiquitously agreed upon immorality of polygamy. Here the link between slavery and polygamy may have pushed President Buchanan into action against the Mormon people. If he could not interject his wishes in the abolition effort, at least he could quell his party by taking on the Mormons. He would also be able to dissolve any discussion of abolition.

Perhaps acting on this advice, in 1857, President Buchanan dismissed Brigham Young, the living Mormon prophet and governor of Utah, and replaced him with a non-Mormon. One sixth of the U.S. Army – 2,500 troops – was sent to Utah to enforce President Buchanan’s decision. President Buchanan claimed this was necessary because Young had too readily conflated ideals of Church and State and had replaced the government in Utah with his own “despotism.” He asserted that Brigham Young was leading a Territory that was devoid of democracy and that he too readily conjoined his role as a living prophet and his role as the Governor. In this way, President Buchanan was attempting to use legal jargon in order to refine and reshape the moral and religious leanings in the West. By using both political and military tools, he was trying to shape the mores of the country and curtail the religious practices of the LDS Church.

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31 Congressional Globe, 35th Congress, 1st Session, 1857, app. 5.
32 When the Morrill Anti-Bigamy Act did finally pass it was more of a symbolic gesture than anything else. When a Mormon journalist asked President Lincoln how he intended to enforce the Act, he reportedly stated: Occasionally [in clearing timber from a field] we would come to a log that had fallen down. It was too hard to split, too wet to burn, and too heavy to move, so we ploughed around it. That’s what I intend to do with the Mormons. Tell Brigham Young that if he will let me alone, I will let him alone. Lincoln did not intend to prosecute the Mormons. Rather, he wanted to send a message to the LDS Church and the politicians who were currently residing in Richmond. In signing this bill into law, Lincoln simultaneously announced to the country that the Mormon way of life was licentious and indecent, and that the government still in
Both members of Congress and the President at this time had voiced their opinions about the morally corrupting nature of polygamy. To the Justices on the Supreme Court, Mormons were seen as violating natural law by engaging in behaviors that lead to murder, bloodlust, theft, and perversion. Charles Devens, the acting attorney for the prosecution in Reynolds v. United States, defended the injunction against polygamy by calling attention to the perceived foreignness of bigamy. His arguments focused heavily on humanitarianism; he claimed that polygamy was inhumane and that if Reynolds were not prosecuted, the territories would soon be overrun by all manner of religious atrocities.\(^{33}\) This snowball argument was rooted in the idea that abolishing polygamy protected Americans. Moreover, this argument emphasized that what separated Mormons from American identity was their religious practice of plural marriage.

Devens’ closing arguments drew upon the Mountain Meadows massacre, a murder of approximately 120 members of a wagon train in 1857 by a group of Mormons and Native Americans. As members of the wagon train were crossing what is today southern Utah, a group of LDS men and recruited Paiute Native Americans attacked the wagon train and killed everyone over the age of seven. Many contemporary scholars and spokespeople for the LDS Church have accounted for this tragic event by claiming that it was the result of paranoia and war hysteria due to high tensions between the LDS and the rest of America at this time.\(^{34}\)

For Devens, this event emphasized what he believed and many feared: that behind polygamy hid bloodlust. He claimed that this event was motivated by the practice of polygamy. Devens felt, and boldly asserted, that human sacrifice was the logical consequence “of the

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\(^{33}\) Gordon, Sarah B. Page 127.

sacrifice of humanitarianism at the behest of local religious majorities in the territories.”

Devens is claiming here that plural marriage, the practice of the local religious majority, could lead to human sacrifice and to the complete disruption of humanity. He claimed it must be abolished in order to protect all against its effects. Devens, and many others felt that humanitarianism and natural law were complicated by the practice of plural marriage to the point where it would impede judgment in other humanitarian endeavors. This was part of the natural law argument that the prosecution brought to the oral arguments.

The Supreme Court nearly mirrored the sentiments expressed by the prosecution about the otherness of Mormons. Not only were Mormons viewed as extraneous to American-identity, they were also seen as dangerous. The Court wrote,

Consider what are to be the consequences to the innocent victims of this delusion [the doctrine of polygamy]. As this contest goes on, they multiply, and there are pure-minded women and there are innocent children -- innocent in a sense even beyond the degree of the innocence of childhood itself. These are to be the sufferers; and as jurors fail to do their duty, and as these cases come up in the Territory of Utah, just so do these victims multiply and spread themselves over the land.

In this way, the Court played not only on the otherness of the Mormon religion, but to the “victims” of plural marriage as well. In doing this, the Court put polygamy not only outside of the bound of Americanism or Christianity, but also outside the notions of natural law. Due to the corruption of minors and women, and because this corruption can seep into the rest of society, it is necessary, the Court maintains, to uphold the injunction against plural marriage. Those who were in favor of overturning the Morrill Act countered this argument by claiming that there were no victims in polygamy: the women were not coerced into marriage, the men were not forced or pressured into having multiple wives, and the children were welcomed into the community as

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35 Gordon, Sarah B. Page 127.
accepted as the fruit of a blessed union. However, some perceived other threats, threats that extended outside of the LDS population and that impacted all of American society. Congress had originally argued for the protection of those crossing the desert and now the Court system argued that ridding the U.S. landscape of polygamy protected all Americans in every corner of the country.

In linking slavery, murder, victimhood, and plural marriage the U.S. government advanced the claim that plural marriage was malum in se. Not only did they feel that the religious practice of polygamy was immoral, they also felt that polygamy could lead to other indecencies such as bloodlust or the corruption of the nation. Representatives argued that the practice of polygamy could even lead to slavery, an offense that the Northerners at this time saw as immoral. Polygamy was seen as outside the construct of natural law because of its perceived bedfellows. In casting Mormons as malum in se, the U.S. government was able to advance and justify their legal position on the injunction against polygamy. Moreover, they were able to accomplish this largely by attacking a religious practice. Because of the religious practice of polygamy, Mormons were cast as other and as outside of natural law.

Chapter Two: The Use of Religion as a Tool to Justify Legal Action
Section Two: The Mormon Population as Anti-Christian

In order to justify their legal position, certain members of the U.S. federal government othered the polygamous persons within the Mormon population by making them peripheral to Christian identity. The government portrayal of the LDS Church as foreign to Christianity furthered their argument about the alien and immoral nature of polygamy. This is demonstrated...

37 Cannon, George Q.
by a quote from Representative Lyon of New York. In the 1854 debate on the land holding abilities of Mormons, he stated:

Point me to a nation where polygamy is practiced and I will point you to heathens and barbarians. It seriously affects the prosperity of the States, it retards civilization, it uproots Christianity.38

Here, the representative from New York is claiming that the influence of polygamy extends beyond those in the Utah Territory as it can lead to the downfall of prosperity and Christianity. It is, as he sees it, a moral outrage that leads to a greater moral depravity. Mr. Lyon envisions the practice of plural marriage as being a practice tied to barbarism, and consequently as antithetical to natural law. This corruption in turn hinders civilization, he claims. Accordingly, polygamy is not only evil insofar as the action itself. It is also seen as evil because if can occasion more corruption of the society around it. Further, it can taint, or “uproot,” other belief systems, such as Christianity.

Mr. Lyon sensed a threat inherent to Mormonism that meant that it not only made victims of those involved, but it also challenged and spoiled the moral character of any who were near it. Not only could it impact Christianity and the values of Christians, but it may also “retard civilization.” Thus, all were in peril if polygamy continued to exist as a religious practice. In making this claim, Mr. Lyon was arguing that prohibiting polygamy would protect Christianity and Americanism.

Christianity represents the first suggestion of what would be seen as the antithesis or solution to the “evil” of polygamy. If polygamy “uproots Christianity” then, perhaps, Christianity is the appropriate alternative to Mormonism. Mr. Lyon set Christianity and Mormonism at odds with each other in an effort to prove that they are not akin and that they do not uphold the same moral ideals. It was for this reason that Mr. Lyon, and others, perceived a

38 Congressional Globe. 33rd Congress, 1st session, 1854, 1101.
danger in polygamy, and thus Mormonism. If it is true that Mormonism and Christianity were not in line, and if Christianity was in line with American mores, then Mormon beliefs lay outside the boundaries of normative American identity. Polygamy was viewed as being at odds with the moral character of the nation and Christianity. In this way, Mr. Lyon used religion as a defense of a legal argument against another faith’s practices.

The condemnation of polygamy was readily apparent within the House of Representatives in the 19th century. Referred to as a “monstrosity,” as “nauseating,” “disgusting,” and as “odious,” polygamy was seen as a disfigurement on the moral character of the nation. Representative John McClernand of Illinois charged:

As to polygamy, I admit, nay, I charge it to be a crying evil; sapping not only the physical constitutions of the people practicing it, dwarfing their physical proportions and emasculating their energies, but at the same time perverting the social virtues, and vitiating the morals of its victims. It originated in the house of Lamech, the second murderer, and in the family of fratricide, Cain. It is often an adjunct to political despotism; and invariably begets among the people who practice it the extremes of brutal bloodthirstiness or the timid and mean prevarication. The Ancient Egyptians, and the Greeks and Romans, were strangers to it during the period of their greatest prosperity and power. It is a scarlet whore. It is a reproach to the Christian civilization; and deserves to be blotted out…

Mr. McClernand’s expressive sentiment here reveals many of the underpinnings of the discussion on polygamy within Congress. First, the representative charges it as evil, claiming that it alters the physical being of those who engage in it. This highlights the move made by other representatives to view Mormons as foreigners, both in physicality and mentality. They were seen as othered, changed by their practice of plural marriage so much so that they were outside of the traditional American identity and race.

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40 Ibid, 1500. (Rep. Etheridge)
41 Ibid, 1519. (Rep. Thayer)
42 Ibid, 1514.
Mr. McClernand goes further to claim that plural marriage disrupts the moral character of its victims. It isn’t entirely clear here whom the representative feels these victims are, but we can infer he means the women and children involved. He could also be referring to the nation and civilization as a whole as other representatives, like Mr. Lyon, had. Mr. McClernand expresses that plural marriage corrupts those who engage in it and makes victims of the women who are married, as this is not an acceptable union. Furthermore, it makes victims of all who are around it. He goes on to highlight the natural law argument made by many before him. He likens plural marriage to murder by stating that it comes from the same origins of murder and emphasizes that polygamy can lead to bloodlust.

The invocation of the Bible here is particularly noteworthy, as is the comparison of Mormons to Cain. In both early Christianity and in Mormonism the “mark of Cain” is used to explain the presence of black skin. In a speech in 1852, Brigham Young proclaimed, in reference to the mark of Cain, “What is that mark? You will see it on the countenance of every African you ever did see upon the face of the earth, or ever will see…. I tell you, this people that are commonly called Negroes are the children of old Cain.” Thus, the Mormon population would have seen this as a direct attack. They believed that those with the mark of Cain were unsuitable to hold priesthoods in the LDS Church and that they bore the mark of God’s distaste for all eternity. To liken Mormons to Cain was to attack their position in the eyes of God and to question their morality. This furthered the claim that Mormons were extraneous to Christianity. If they bore the mark of God’s distaste, then they were clearly not acting in accordance with

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43 *Brigham Young's Speech on Slavery, Blacks, and the Priesthood*, Feb 5, 1852. Reprint by Utah Lighthouse Ministry
44 *Abraham 1:23-26*
45 *Brigham Young's Speech on Slavery, Blacks, and the Priesthood*, Feb 5, 1852.
46 Ibid.
God’s will. This accusation helped to advance the legal argument by demonstrating that polygamy was not, as Mormons claimed, a sanctioned theological doctrine.

Both Protestants and Mormons also used the curse of Cain to explain slavery in the 19th century.47 The mark of Cain comes from Cain’s act of murder.48 So, to accuse someone of bearing the mark of Cain is to accuse them of coming from a family tree that bears the indiscretion of murder. Here, Mr. McClernand twists the use of the mark of Cain it to explain the existence of polygamy. Thus, in a skilled, exegetical swoop Mr. McClernand links blackness, polygamy, and murder in one declaration.

Because he claims that the religious practice of polygamy and blackness are of the same origin, he is harkening back to the ever-present comparison between slavery and polygamy. Furthermore, he is claiming that Mormons suffer from the same God-imposed affliction as black people. In doing this, he is attempting to show that both Mormons and black people are similarly corrupted and that they are both lower in social and moral standing than men like himself. He is distinguishing Mormons as a distinct race of people, descendent from a branch of humanity that long ago deviated from the one he would claim. This is not a new assertion. Representative Davis, earlier, had distinguished Mormons from “white” Americans in the discussion of the land bill.49 He was, in effect, constructing Mormons as a distinct race, just as McClernand is attempting to do here.

Representative McClernand goes on to claim that polygamy is a “reproach to Christian civilization.” In this he is implying that America is a Christian civilization and thus polygamy deserves to be treated in the same vain as other crimes or immoralities forbidden by the Bible: “it deserves to be blotted out.” This is quite reminiscent of the claims made by Mr. Simmons and

47 Ibid.
48 Genesis 4:15-16
49 Congressional Globe. 33rd Congress, 1st session, 1854, 1091-1114.
Mr. Lyon earlier. Both drew parallels between Mormon polygamy and alternate races while also claiming that Mormon polygamy make a victim of Christianity and others around it. Representative McClernand’s rousing speech touches on many of the key points of the Congressional discussion regarding the religious practices of the LDS Church.

The members of Congress assumed that plural marriage created a race of people distinct from other Americans. It was widely invoked that polygamy corrupted those around it and lead to other atrocities such as murder and bloodlust. In an adept way, McClernand used the Bible in order to show that, as many claimed, slavery and polygamy were indeed linked, not just to each other, but to murder and perversion. McClernand stated, as others had, that polygamy, and ultimately Mormonism, was corrosive to the fabric of Christian mores. Polygamy was readily denounced as being antithetical to decency and moral behavior. It was for this reason the U.S. Congress was trying so hard to remove it from the American landscape. Because of their ideals and mores the U.S. Congress saw it imperative to both denounce plural marriage and to find legal avenues for legislating it.

No Representatives in the House went on record to state that he saw these discussions as discriminatory or disputed the suggestion of the Judiciary Committee that “the Free Exercise Clause of the First Amendment only applied to traditional Christianity.” Mormonism was seen as a nontraditional form of Christianity, or another religion entirely, and thus the First Amendment did not apply. This argument assumes that one religion, Christianity, is superior to others. Furthermore, it guarantees that the members of that faith, Christians, have protections that others do not. With this idea in place, there was a clear and present need to be considered Christian. Thus, the depiction of the LDS Church as anti-Christian was a weighty argument. Due

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50 Congressional Globe. 33rd Congress, 1st session, 1854, 1095; Congressional Globe. 33rd Congress, 1st session, 1854, 1101.
51 Smith. "Barbarians within the Gates: Congressional Debates on Mormon Polygamy, 1850-1879."
to this conception, the LDS Church was not extended the privilege of being protected by the Constitution because they were seen as non-Christian. Without the protection of the First Amendment, the LDS Church could repeatedly be ostracized in the Congressional imagination. Furthermore, the lack of protection meant that the U.S. Government could make laws with their moral code in mind, all the while disregarding the theological mandates of the LDS.

By creating a “them,” the U.S. Congress was creating an “us,” namely, Christians. This discourse readily harkens back to traditional Orientalist discussions and Edward Said’s seminal work. While, “Orientalism is a way of thought that justifies political action… it is also a method of defining self or own culture.” One can construct an “us” by recognizing the resultant “them.” Armin W. Geertz reflected in his essay about the ethnographic practices surrounding Native Americans, that Orientalism is indeed a science: it is the “science of imperialism.” Geertz calls Orientalism “the tendency to dichotomize humanity into we-they contrasts and to essentialize the resultant ‘other.’” Thus, while the term Orientalism refers to the characterization of a particular people during a particular time period, the rhetoric employed by Congress during this time can be seen as having an Orientalist flavor. In a time of momentous flux for the nation, when national identity was fluid in every sense imaginable, it makes sense that Congress would be so readily defining what it means to be an American through the Orientalizing of Mormons. Congressional polygamy discussions took place “during historical moments when the meaning and scope of national citizenship were profoundly unstable.”

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52 Christine Talbot details in her law review the Orientalist rhetoric that tainted discussions regarding Mormonism. She relates the “othering” of Mormons in this time period to Edward Said’s seminal work Orientalism by arguing that the sexualizing and exoticizing of Mormons during this time mirrored Orientalist discourse.


54 Ibid.

More than anything, the Orientalization of Mormons can also be seen in the authority that Congress begins to claim over their practices, both religious and otherwise. Said states that [Authority] is formed, irradiated, disseminated; it is instrumental, it is pervasive; it has status, it established canons of taste and value; it is virtually indistinguishable from certain ideas it dignifies as true, and from traditions, perceptions, and judgments it forms, transmits, and reproduces.\(^{56}\)

In an effort to exert control, authority, over the Mormon population, Congress established a clear “canon of taste” and constructed the Mormon people as extraneous to it. They discussed their ideas for years before reproducing them into legislation and even after that they continued to reproduce the idea that Mormons were inferior to Americans in order to advance their aims and create more stringent legislation.\(^{57}\) The authority over the Mormon population, the way it was seen and the way it was treated, was controlled by Congress at this time.

Said claims that another important aspect of Orientalism is that the Orient could not represent itself.\(^{58}\) In the case of the 19\(^{th}\) century Mormon population, this was also certainly the case. Far estranged from Washington, they had little voice. What was known of the Mormons was often hearsay, as few Congressmen traveled to Utah. Further, the ideas regarding Mormons that proliferated through the government and general public on the East Coast were largely shaped by the manner in which Congress framed and discussed them. The authority that Congress exercised was not only over their practices and ways of life, but also over their image.

The control over the Mormon image facilitated the casting of the Mormon religion as foreign to Christianity. For the time being, the idea that Mormonism, and specifically polygamy, was anti-Christian proliferated. This idea helped to further the claim that polygamy was


\(^{57}\) The discussion of the immorality of polygamy began over a decade before the Morrill Anti-Bigamy Act passed in 1862 and even predated the official inception of polygamy as a doctrine in the LDS Church. After the Morrill Act was passed three subsequent pieces of legislation (the Poland Act, the Edmunds Act, and the Edmunds-Tucker Act) continued the prosecution of polygamy.

dangerous and needed to be treated as a crime. I will now turn to another manner in which the U.S. government displayed its xenophobia toward Mormons: by casting them as a distinct, non-Western race.

Chapter Two: The Use of Religion as a Tool to Justify Legal Action
Section Three: The Mormon Population as A Distinct, Non-Western Race

The decision in Reynolds v. United States, on January 6, 1879, upheld the constitutionality of federal anti-bigamy legislation. Writing for a unanimous Court, Chief Justice Morrison R. Wait wrote, “A party’s religious belief cannot be accepted as a justification for his committing an overt act, made criminal by the law of the land.” He compared polygamy to human sacrifice, murder, or a wife’s intent to throw herself upon her husband’s funeral pyre and stated that actions such as these, even when motivated by religious intent, are still to be seen as illegal because they are in conflict with the laws of the land. The Court wrote,

Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices. Suppose one believed that human sacrifices were a necessary part of religious worship; would it be seriously contended that the civil government under which he lived could not interfere to prevent a sacrifice? Or if a wife religiously believed it was her duty to burn herself upon the funeral pile of her dead husband; would it be beyond the power of the civil government to prevent her carrying her belief into practice?

The Court aimed to show that while the First Amendment protected religious beliefs, not all religious actions are protected. The Court assumed that “mere” religious belief and religious practices are distinct. The two practices that polygamy is likened to are human sacrifice and the

62 Ibid.
63 Reynolds v. United States 98 U.S. 166. (1878).
Indian practice of sati. The practice of sati involved a recent widow immolating herself, either on the funeral pyre of her dead husband or in some other manner. This was never a widely practiced tradition, but it gained notoriety when the British Raj inhabited India. The British outlawed the practice in 1829 and used their condemnation of it as justification for continuing their rule in India. Comparing the Mormon practice of polygamy to the Hindu practice of sati highlighted the perceived foreignness of the Mormons people.

This comparison constructed the idea that polygamy was a foreign religious practice, just as sati was foreign. At this time, the religious practices of those in Asia were seen as extraneous to decent, Western sensibilities. To compare the Mormon religion to the religious practices of those in Asia was to say that they lacked civility. This was far from a new notion: men in Congress had been comparing Mormons to Asians for decades because they saw the practice of polygamy as informing the downfall of Asian civilizations.

Furthermore, this comparison likened federal rule in Utah to the British Raj in India. In this comparison the Mormons were likened to those in India while the U.S. Government was seen as the enlightening British. The Mormon population was seen as outsiders in need of a humanizing influence. This comparison of the foreigners in Utah to Indians, and the U.S. federal government to the imperialist forces in India, was a newer form of argumentation that won favors in the Court over the tired natural law arguments. The Supreme Court was likening itself to the imperialist British in order to claim that they were civilizing those in the West, much as the British Raj had done when they banned sati. In drawing the comparisons between sati and polygamy, the U.S. Supreme Court cast the U.S. government as a force of civilization against the

65 Congressional Globe. 33rd Congress, 1st session, 1854, 1095.
66 Oman, Nathan B.
perceived Mormon barbarism. The Court saw it as moral that the British Raj wiped out the practice of sati, so too they would see it as just for polygamy to be abolished.

This two-step move to emphasize imperialism and exoticism was an old trope in the anti-polygamy movement. In 1858, for example, an Army surgeon serving in Utah wrote a report for the War Department in which he described the Mormons as an alternate race. He felt that polygamy had given rise to psychological and physiological differences:

Isolated in the narrow valleys of Utah, and practising the rites of a religion grossly material, of which polygamy is the main element and cohesive force, the Mormon people have arrived at a physical and mental condition...  

The rise of this new race, according to Bartholow, was due to the exaggerated lust of the Mormon patriarchs and, consequently, the inability for girls to develop naturally sexually. “To sustain the system,” he writes, “girls are ‘sealed’ [married] at the earliest manifestations of puberty, and I am credibly informed, that means are not infrequently made use of to hasten the period.” He claims that this results in children being born anemic and that the men in the community experience “genital weakness,” in that they are too easily stimulated from a young age. He claimed that the taking of multiple wives lead to men being too readily aroused, which in turn altered the Mormon physicality.

It turns out the Bartholow was stationed far-removed from any Mormon settlement and it was unlikely that he would have even had contact with members of the LDS Church. But, while these claims are dubious, what they do reveal is the conceptions of Mormon identity and religiosity that had proliferated from the 1850s until the time of this trial. They were not seen as

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68 Ibid. Insertion is my own.
69 Ibid.
70 Nathan Oman in his research showed that Bartholow was not stationed in a location where it was likely that he even met Mormon people.
American; rather, they were seen as a distinct race, an impression that was attempting to be justified by pseudo-science. Additionally, and importantly, the cause of their racial identity was tied directly to their religious practices. Their marriage practices, as dictated by their faith, were viewed as the very root of their perceived sexual perversions.

Bartholow goes further in his descriptions to show how the Mormon can be identified with a mere glance:

[The Mormon expression is] compounded of sensuality, cunning, suspicion, and a smirking self-conceit. The yellow, sunken, cadaverous visage; the greenish-colored eyes; the thick, protuberant lips; the low forehead; the light, yellowish hair; and the lank, angular person, constitute an appearance so characteristic of the new race, the production of polygamy, as to distinguish them at a glance.\textsuperscript{71}

The Mormon physical appearance, Bartholow writes, has been permanently altered because they engage in polygamy. They are distinct now, not only in practice, but also in form and race. The practice of plural marriage, he believed, had influenced their physical appearance because it had removed them so completely from the understood norms of monogamy. Polygamy has, in effect created a new race.

Race is generally perceived as eternal and inescapable: one cannot alter their race. Thus, the construction of Mormons as a separate race eternally ossifies them as distinct from Americanism. Michael Jerryson in his work on racial and ethnic relations in Thailand notes that racial formation is a process “by which social, economic, and political forces determine the content and importance of racial categories, and by which they are in turn shaped by racial meaning.”\textsuperscript{72} In the case of Mormon racial formation, political forces determined the importance of this racial category by deliberately deeming the Mormon people inferior. However, the

formation of the Mormon race went beyond merely defining the social capital and position of that race. Bartholow and others constructed the race, and defined the content of that race, based on the religious practice of the LDS Church and effectively made an inexorable category for the Mormon people manifest. Beyond using skin color or immigration status to define nation and selfhood, the U.S. government used religious identification.

Bartholow goes on to show that it was not only their physical appearance that had been altered:

In eastern life, where [polygamy] has been a recognized domestic institution for ages, women are prepared for its continuance, and do not feel degraded by their association with it. The women of this Territory, how fanatical and ignorant soever, recognize their wide departure from the normal standard in all Christian countries; and from the degradation of the mother follows that of the child, and physical degeneracy is not a remote consequence of moral depravity.73

Bartholow and others saw Mormonism as distinct and deviant from Christianity and Christian countries, like the United States of America. It was the recent departure of Mormonism from Christianity, as Bartholow sees it, which made their physical and psychological differences so acute and egregious. Thus, not only did the LDS faith and polygamy characterize the Mormon people as an entirely distinct race of people, it also served to highlight their recent move from mainstream Christian identity. Furthermore, because Bartholow talks about “Christian countries,” he is also implying that polygamy has removed Mormons from American identity in more ways than just making them racially distinct. He sees them as morally estranged from American culture, as well. This recent move away from what was perceived as the correct form

of Christianity caused the LDS to suffer both physically and mentally more so than other distinct races in Asia, Bartholow explains.

It is Bartholow’s opinion here that it was this choice to depart from Christianity via polygamy that ultimately corrupted the Mormon physical appearance and makes it so distinct as to stand out with only a glance. Because the Mormons should recognize that they are outside of Christianity, Bartholow argues, their physical and moral corruption will be more exaggerated than that of the people living in the Far East. In a sense, Bartholow contends that the Mormon polygamy is worse than that of those in the East because they should recognize that what they are doing is wrong. Their “moral depravity” leads to physical differences that not only alter those willingly engaging in polygamy, the mother, but also impact the appearance and constitution of the unwilling, the child. In this way polygamy creates unwitting victims. In this, it is possible to see that one of the many fears surrounding plural marriage in the LDS Church is that it could be conflated with centrist views on Christianity. Additionally, it is also seen as claiming victims, and thus being harmful to those around it. There is clear trepidation and anxiety evident here in Bartholow’s need to distinguish Mormons from Christians.

This desire to propagate an “us-them” dichotomization is reminiscent of Orientalism. Edward Said writes that Orientalism is

Neither science, nor knowledge, nor understanding; it is a statement of power and a claim for relatively absolute authority. It is constituted out of racism, and it is made comparatively acceptable to an audience prepared in advance to listen to its muscular truths. 74

While it should be clear to the modern reader or observer that the LDS population was not, and is not, a distinct race, Bartholow’s work shows that this idea is not without contestation or convolution. There were some, like Bartholow, for whom the desire to distance themselves from

Mormons stemmed from racism. Thus, it is not out of the question to liken this rhetoric to the rhetoric of Orientalism that Said describes. The Mormon people were, indeed, seen as a distinct race and the discussion surrounding their identity was often born of racism and xenophobia. However, their racial identity was not informed by the color of their skin or their heritage. Rather, it was informed by their religious identity.

It is because of this sense of “absolute authority” and “power,” emboldened by the detachment from Mormons that many felt, that the othering of Mormons was so complex and complete. The juxtaposition of Mormons and Americans made it easier for the U.S. government to exert control over the Mormon population. Also, this distinction of Mormons as an alien race made the link between polygamy, slavery, and sati an easier sell. All were seen as being affects of a differing race, or as barbarisms, that must be blotted out, lest they contaminate the whole. In a way, the casting of Mormons as an alternate race completed the jettisoning of them from mainstream American culture. The disgust and anxiety felt toward polygamy was racist in nature, above anything else, as Bartholow and the comparisons between polygamy, slavery, and sati show. This racism was inherently inspired by the manner in which Bartholow and others viewed the religious practices of the Mormon population.

Said correspondingly discusses how these distinctions between “us” and “them” that become reified through racial or geographic boundaries are often largely “arbitrary” in the sense that they only need to be recognized by the “us.” Said claims, “It is enough for ‘us’ to set up these boundaries within our own minds; ‘they’ become ‘they’ accordingly, and both their territory and their mentality are designated as different from ‘ours.’” Thus, in order for Mormons to truly become distinct, it is enough for members of the U.S. government to recognize the Mormon religion as distinct. This in no way needs to be structured as a conversation. This is

75 Said. Page, 54.
readily apparent when looking at the manner in which Biddel’s arguments were shot down, specifically his argument regarding natural law via consensus gentium.

Because the “other’s” voice is not considered when these arbitrary boundaries are created, the Mormon response to this estrangement is often ineffectual at best, and unnecessary or unheard at worst. It is the U.S. government that got to articulate the Mormon identity because of their religious practice. This articulation, as Said claims, is the “prerogative, not of a puppet master, but of a genuine creator, whose life-giving power represents, animates, constitutes the otherwise silent and dangerous space beyond familiar boundaries.” 76 The creation of the Mormon other in the Congressional, Court, and U.S. imagination, then, did more than to merely justify authority. It also enabled the U.S. government to construct a known space in place of what was once alien. This contrived knowing, however, did not negate the extraneous or dangerous nature of the Mormon population, in the U.S. imagination. Rather, it furthered their sense of authority as it called for them to civilize that which they had just created. With the established distinction of Mormons as a distinct race, more likely to practice sati than be American, the U.S. Government cast itself in a position to try and enlighten those who engaged in polygamy. This is incredibly similar to the manner in which the British Raj viewed itself.

Said claims that psychologically speaking, “orientalism is a form of paranoia.” 77 In the case of the Orientalizing of Mormons in 19th century America, this was undoubtedly the case. Mormon polygamy was seen as being corrosive to Christianity, civilization, and progress. It was seen as dehumanizing and akin to slavery, if not the parent of slavery. It was seen as being fueled by bloodlust and as antithetical to natural law. It was denounced over and over again because it was feared. Polygamy was always the sticking point. This is no surprise, as there exists an almost

76 Said. Page, 57.
77 Said. Page, 74.
“uniform association” between Orientalism and sex.\textsuperscript{78} The fixation on, and fetishizing, of polygamy within Mormonism is perhaps the most key example of how the faith was exoticized. The sex lives of Mormons were discussed haphazardly; in a way that Congress would not have discussed the sex lives of other Christians.

The sexualization of the polygamous Mormon population represents violence to their faith as it reduces them to a single element. In Randall Styers book, \textit{Making Magic}, he quotes Emily Apter, who states, “Fetishism, in spite of itself, unfixes representations even as it enables them to become monolithic “signs” of culture.”\textsuperscript{79} In the case of the LDS Church, the fetishism with which polygamy was discussed permitted polygamy to be seen as a sole unanimous facet of Mormon identity. The practice of polygamy and the beliefs of Mormonism were inextricably conjoined in the governmental vision.

While all of this long predates the trial, it is important to understand when considering the trope of sati that was invoked as it furthers our understanding of the conception of the Mormon people as other. The reduction of Mormonism into a hyper-sexualized group of individuals that exists outside of the traditionally accepted norm allowed Congress to exert power over the group. Furthermore, the move to make Mormons exotic, by casting them as a distinct race, with specific diverging sexual mores, aided in allowing the U.S. government to feel as thought they had an authoritative power over the Mormon population. Thus, it is with this in mind that the Court comes to the discussion of sati. The LDS identity was, yet again, portrayed as peripheral to the more general, uncontroversial ideas of civility. In this way, the U.S. government continued to Orientalize the LDS population by, literally, likening them to those in the Far East and by making them as distinct from Americans as possible. Members of the U.S. government used the

\textsuperscript{78} Said. Page, 188.
religion and religious practices of the LDS Church in order to advance their claims regarding the alienation of the Mormon population.

Chapter Three: The Mormon Response

While members of the U.S. federal government used religion and their mores to guide and justify their legal positions, the LDS Church defended their practice of polygamy with religion, as well. When the Mormon practice of polygamy was challenged in the Supreme Court, they defended their religious obligation by stating that the lack of mention of polygamy in the Decalogue implied that it did not violate natural or divine law. Further, they claimed that polygamy was a theological, not legal, debate as no consensus gentium existed on the matter and it could be found in the Bible.

Frustrated with what they felt were infringements on their constitutional rights after the passage of the Morrill and Poland Acts, members of the LDS Church took to the court. In 1878 George Reynolds, secretary to Brigham Young, took the case Reynolds v. United States to the Supreme Court with the hope that anti-bigamy laws would be repealed under the First and Fourteenth Amendments. He argued that the First Amendment protected the practice of plural marriage, as it was a religious obligation. George Biddel, on behalf of the Mormon defendant, George Reynolds, stated that Mormons should be protected by the very “genius of the Constitution.” Biddel was appealing to the newly created Fourteenth Amendment. The Fourteenth Amendment, created following the Civil War, guaranteed equal access to and protection by the law. In legislating the religious practice of polygamy, Biddel felt that this right was being ignored.

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80 Mary K. Campbell. Page 5.
81 U.S. Constitution. Amend. XIV, Sec. 1-5.
Biddel invoked principles of natural law in response to the prosecutions claims and linked them to the Free Exercise Clause. Unfortunately, no transcript of the oral arguments made in the courtroom exists. But, the bare bones of the position held by Reynolds’ lawyers can be found in the *U.S. Report’s* summary of the arguments made in the case and in the brief that was submitted to the Court before oral arguments were heard. In this, Biddel writes:

Bigamy is not prohibited by the general moral code. There is no command against it in the Decalogue. Its prohibition may, perhaps, be said to be found in the teachings of the New Testament...But a majority of the inhabitants might be persons not recognizing the binding force of this dispensation. In point of fact, we know that a majority of the people of this particular Territory deny that the Christian law makes any such prohibition. We are therefore led to the assertion that as to the people of this Territory the supposed offence is a creature of positive enactment.\(^\text{82}\)

Reynolds’ lawyers built an argument that was centered on ideas of natural law. They invoked the idea that some actions are inherently prohibited, but polygamy fell outside of this realm, as it is “not prohibited by the general moral code.” By the general moral code, Biddel meant the Ten Commandments. He expressed that the general guiding moral code was found in the Bible.

While he admits that some see the New Testament as not recognizing the religious obligation of polygamy, he stresses that those in the Utah Territory do not recognize that “Christian law” makes such a prohibition.

He emphasized that only things that were mala in se, things that were prohibited by the Ten Commandments, should be banned everywhere by the federal government.\(^\text{83}\) Otherwise, he claimed, the local authorities should have control. He argued, that since bigamy should be seen

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\(^{82}\) Reynolds v. United States, 98 U.S. 145, 152–53 (1878).

\(^{83}\) For a fuller discussion on the nuances of the mala in se and natural law argument see Cannon, George Q. *A Review of the Decision of the Supreme Court of the United States: In the Case of Geo. Reynolds Vs. the United States*. Salt Lake City, Utah: Deseret news printing and Pub. Establishment, 1879. Print. George Q. Cannon wrote this short book in the months following the trial. He aptly summarizes the issues the preceded the case and does an excellent job outlining the manner in which the Court and the government defined religion. Cannon had no formal legal training so it is believe that Biddel and the rest of Reynolds’ counsel probably assisted in writing this piece. Because of this, the ideas and theories in the book are relatively subjective, though they do illuminate the ideas that Biddel may have had about his argument in Court.
as mala prohibita it was outside of the realm of control of the federal government, as it was a matter of interpretation. Here, Biddel uses his interpretation of a theological text, the Bible, to defend his legal position regarding the nature of plural marriage.

Biddel reinforced his argument by relying on biblical claims, or “Christian law.” Biddel strongly stressed that the list of malum in se offenses, murder, adultery, etc., were to be found in the Ten Commandments. Since polygamy was not listed it should not be viewed as being inherently evil or against natural law. In this way, Biddel was responding to decades of Congressional discussions that put Mormonism at odds with Christianity and, consequently, Christian law. By drawing on Christian law in his defense of polygamy, Biddel was attempting to reimagine the relationship between Mormonism and Christianity. In claiming that the majority of the people in Utah deny that Christianity makes any claims against polygamy, Biddel was making this a conversation that occurred within the bounds of the Christian faith. He used this as a way of reuniting the LDS Church with mainstream Americanism. His point here was to show that because Mormons turned to the same Bible as Christians, they were cut from the same cloth.

Furthermore, Biddel turned to the “teachings of the New Testament” to show that there is biblical support for polygamy. He asserted that how one interprets the text is a matter of theological, rather than legal, dispute. Biddel attempted to create a separation of Church and State by arguing that polygamy was not a matter to be teased out in courtrooms. In essence he argues that whether or not one practices polygamy should determine one’s religion or sect, not what side of the law they fall on. Biddel contends that the majority of those living in the Utah Territory do not see polygamy as being contrary to Christian, Biblical, or natural law.

Because God had not universally outlawed plural marriage, it was acceptable, in the eyes of Biddel. He tried to convince the Court of this by linking these two ideologies together. Biddel
agreed with Groitus’ claim that because it was not revealed as forbidden in the Bible it “cannot be inferred that [polygamy] is evil in itself, according to the laws of nature.” Biddel and the rest of Reynolds’ legal team made the powerful assertion that the “revealed word provided evidence as to the content of natural law.” This was a conventional legal argument in the nineteenth century as many cases drew upon the Decalogue as a base from which natural law might be deduced. In this way, Biddel and the rest of the legal team used Biblical foundations to argue for the protection of polygamy in a U.S. courtroom. This case was not only about religion; it was defended by religion.

Biddel continued to drive at this point when, in the oral argument, he appealed that polygamy is “an artificial crime, created by legislative enactment, and involving, when practiced as a religious duty, no moral guilt.” Biddel felt that this crime was artificial in so far as it was only mala prohibita and was constructed as being immoral by men, and not God. Because the crime was not one that was inherently evil, Biddel claimed that Congress had no jurisdiction over these issues. In making these statements regarding popular opinion and Biblical claims, Reynolds’ legal team was attempting to prove two distinct points about natural law. First, they were trying to prove that natural law and divine law overlapped and coincided with each other. They were claiming that if God has not specifically outlined it as immoral, then it is not inherently immoral. This is directly tied to Hugo Groitus’ original conception of natural law.

The second point about natural law that Biddel and the rest of the legal team endeavored to emphasize was to draw upon popular opinion to prove that polygamy was not outside of the

85 Oman, Nathan B. Page 675.
86 See Stramler v. Coe, 15 Tex. 211, 215 (1855); Caldwell v. Hennen, 5 Rob. 20, 26 (La. 1843); State v. Foreman, 16 Tenn. 256, 284 (1835)
87 The Utah Polygamy Case, N.Y. TIMES, Nov. 16, 1878, at 2
88 Cannon, George Q. Page 33.
consensus gentium (the agreement of the people). This principle held that as long as something was prohibited everywhere, such as murder, it could be seen as outside of the natural law. However, something that was not prohibited everywhere, like polygamy, even if the places it was permitted were Asian, was not outside of natural law.\(^{89}\) The absence of a ban on polygamy in ancient Israel, in the New Testament, in Asia, or among Mormons themselves proves that there is no universal consensus on the legality of plural marriage and thus it does not violate natural law. This was, perhaps, a more tenuous argument as it reified what the Court already believed: that Mormons are different from Americans. Biddel was appealing to a consensus gentium that lay outside of the borders of the United States.

When the Court did address Biddel’s natural law argument it stated, “Polygamy has always been odious among the northern and western nations of Europe, and, until the establishment of the Mormon Church, was almost exclusively a feature of the life of Asiatic and of African people.”\(^{90}\) In one move, the argument of consensus gentium was turned on the Mormon population. Because Reynolds’ legal team invoked historical and non-Western examples to prove that the opinion of plural marriage was not universal, they took an optimistic and Universalist view of humanity that was negated by the Supreme Court’s views of what counted as civilization. The Court contrasted civilization in “the northern and western nations of Europe” to “African and Asiatic” practices.\(^{91}\) This juxtaposition reinforced the idea that the Mormon practice of polygamy was not native to the civilization of the northwestern world. In fact, it highlighted the idea that the religious practice of polygamy introduced non-Western sensibilities into the United States.

\(^{89}\) Congressional Globe. 33rd Congress, 1st session, 1854, 1110.  
\(^{90}\) Reynolds v. United States, 98 U.S. 145, 164 (1878).  
\(^{91}\) Reynolds, 98 U.S. 164.
Ultimately their position was that if Mormons were in consensus with those outside of the West then they were clearly foreign, as the Court and Congress had originally suspected. In doing this, the Court continued to hammer home the foreignness of the Mormon population as they aligned themselves with those outside of what was perceived as civilized. Mormons were, by their own admission in this instance, in agreement with non-Western standards and mores. This made the alienation of Mormons all the easier and Biddel’s case all the weaker.

Finally, Biddel concluded by arguing that the criminalization of polygamy was an abuse of power by the center against the periphery.\(^{92,93}\) In creating the Morrill Act, Biddel claimed, the U.S. Government was not doing all that it could to protect the minority in the country from the majority. This, he appealed was not what it meant to be an American or to exercise control effectively. In 18\(^{th}\) and 19\(^{th}\) century courtrooms natural law and divine law were often drawn upon. But, “the newer narratives of race, progress, and imperialism were replacing… reason based on a universal human nature.”\(^{94}\) Perhaps knowing this, Biddel talked about the Revolutionary War and how it had been fought, at least in part, to protect those in the margins against a central ruling authority. He used this to strengthen his claim that the Morrill Act represented an abuse of power against a minority of the country based entirely on faith. Biddel attempted to "align this powerful, insurrectionary tradition with the Mormon claim to local determination."\(^{95}\) The argument he claimed stated that since America was built on a foundation of protecting the minority against the majority, those values should be reflected in the treatment of the Mormon religion. In this way, Biddel invoked newer trends of imperialism as an argumentative strategy. Biddel additionally chose to focus overwhelmingly on technicalities.

\(^{93}\) Oman, Nathan B.
\(^{94}\) Oman, Nathan B. Page 679.
\(^{95}\) Gordon, Sarah B. Page 125.
related to the number of jurors necessary to try a case and the admissibility of witness testimony in court.\textsuperscript{96} He did this to show that the proceedings in the trials of Mormon men did not uphold constitutional ideals. However, it was ultimately the Free Exercise Clause that was most responded to by the Court.\textsuperscript{97}

Biddel’s argument regarding natural law and the place of the Mormon religion within society is more nuanced than it may, at first glance, appear. Not only does it draw upon traditions of natural law, it also invokes popular opinion and subtly, but strongly, raises the point that Mormons are to be thought of as Christians. By talking about the Decalogue and the New Testament, Biddel emphasized that Mormonism and Christianity were similar. This was a contentious idea; most viewed Mormons as unconnected to Christian identity. In trying to tie Christianity and Mormonism together, Biddel created a new “twin” that, if accepted, potentially could usurp the old pairing of polygamy and slavery as barbarisms. If Mormonism and Christianity held to be similar, then much of the Orientalist rhetoric would fall away. However, this argument did not stick; the exotic nature of the LDS was already too well ingrained into the discussion by Representative McClernand and many others.

Without the ability to make the LDS seem relatable, Biddel tried to make polygamy seem less foreign. By drawing on popular opinion, the opinion that the Decalogue was, indeed, a list of mala in se crimes, and the popular opinion of those in Utah Territory who held that polygamy was a religious obligation, Biddel made the argument that polygamy was not as remote as the Court believed. Invoking Christianity sent the same message. Biddel brought religion into the courtroom in order to show that the defense of this religious practice was plausible. By invoking

\textsuperscript{96} Brief of the Plaintiff in Error, Reynolds v. United States, 98 U.S. 145 (1978) (No. 108)
\textsuperscript{97} Oman, Nathan B.
Christian law, Biddel equated the law of the land to the New Testament. He also attempted to show that Christianity and Mormonism are analogous, if not in practice, then in belief.

Biddel and Devens arguments played off each other. While Biddel claimed that the Morrill Act undoubtedly ostracized those in the margins, Devens claimed that it was the marginality of the Mormons that made this law so important. While Biddel claimed that the lack of polygamy in the Decalogue meant that it was not inherently evil in itself, the acts that Devens claimed polygamy led to (murder, sati, corruption of infants) were indeed prohibited by the Decalogue. Sarah Gordon, a contemporary scholar, aptly recapitulated the situation:

The connections between Christian family structure, human rights, and stable government could not have been more clearly drawn. As Devens hammered the connection between polygamy and Asian religion, he also distinguished the Christian localism sanctioned by the Constitution from the “foreign” practices of the majority in Utah Territory. None of the states had ever (or would ever, Devens implied) authorized such an abuse of the law of marriage. The point has some irony, to be sure, since enslaved persons were formally prohibited from marrying in Southern states before the Civil War.98

Biddel tried to tie the LDS Church to the Christian faith, but this was ultimately a null point as the prejudice toward Mormons was well entrenched in the American imagination. Devens played on this by highlighting sati and the bloodlust that he and others felt came with the practice of plural marriage. Furthermore, while both invoked religion, they did so to different ends. Biddel made a two-step move to tie divine and natural law, while Devens used natural law as a means of showing that the religious practice of bigamy violated the concepts of humanitarianism.

Ultimately, the ideas of how families should be structured, as seen through a Christian lens, were too ingrained to be defeated.

Conclusions

The common opinion of Mormons as foreign and separate because of their religious practice grew to inform common law. Bartholow’s likening of Mormons to a distinct race that was more Asian than American informed the views of the Court when sati was invoked. The invocation of sati highlighted the opinion that polygamy was simultaneously immoral and too public. The comparison of polygamy to slavery created a characterizing moral flavor of polygamy, and Mormons, that made people and lawmakers alike view the practice as barbaric. Similarly, the same comparison constructed rhetoric of victimhood within polygamous families and societies. These opinions dictated how Congress and the Supreme Court talked about Mormons and their religious practice. Furthermore, these comparisons advanced the notion that polygamy was a practice that defined the character and state of the Mormon population.

Moreover, the moral leanings of the predominately Christian Congress and Supreme Court informed the discussion surrounding polygamy. Representatives frequently discussed the morally corrupting nature of polygamy as justification for its abolishment. In the Supreme Court and on the floor of the House, Mormons were seen as violating natural laws and as engaging in behaviors that lead to murder, bloodlust, theft, and perversion. The men in the Supreme Court and in Congress were no doubt considering their faith when they were discussing the Mormons and polygamy. Additionally, the construction of the religious practice of polygamy as anti-Christian advanced the notion that Mormon people were extraneous to American identity.

This was not one sided. In Biddel’s arguments he drew upon the New Testament to try and show how this was, indeed, a theological debate, not a legal one. In doing this, he was trying to prove that the space in which these conversations was being held was not fitting of their character. Furthermore, he brought up natural law as informed by the Decalogue in order to show
that polygamy was not as much of a moral outrage as the lawmakers believed it to be. The entire argument, on both sides, was characterized by religion and moral beliefs.

Those engaging in the conversation evoked religion on purpose as a means of arguing for what was religiously acceptable and what was religiously deviant. Both sides of the conversation wanted religion to inform the law. The U.S. government saw it as necessary to seize this opportunity to address religious diversity in the country and to set a precedent for what would be seen as outside of the moral norm. They continually talked about Christian law and what was considered normal in order to ensure that the American law would not become tainted with any religion outside of what they views as Christianity. If one “deviant” religious practice were allowed to proliferate, they would face a challenge in striking down others that may arise. This was crucial with the explosion of religious diversity in the country.

The Mormons engaging in the conversation felt that their First and Fourteenth Amendment rights meant that because this practice was informed by religious belief they had the right to engage in it. They used religion as a shield and claimed that it should protect them and their marriage customs. They also used religion as an offensive strategy when they continually invoked natural and divine law. Yet, these tactics were ultimately rejected in the eyes of the Court with the contemporaneous move away from the natural law defense in favor of more secular styles of argumentation.

The dividing line between religious law and legal mandate is not always as solid as many imagine. Bryan Turner, in his work on religion and law, noted that the only way to tell the difference between moral rules and legal rules is through the “procedures by which they come into existence.” This seems simple: one comes from God; one comes from man. Yet, in the history of natural law procedure and procedural correctness were never enough to guarantee the
existence of a law.\textsuperscript{99} As seen in the proceedings surrounding the Morrill Act and the Reynolds v. United States case, the invocation of natural law meant the invocation of divine law. If natural law was used to inform the creation of national law, then someone’s theology was being inserted into the laws of the State. This can be seen in this case study by looking at the entreaty to the Decalogue and Christian law, points of commonality between the general American Protestant tradition and the LDS Church. Both sides drew upon natural law as part of their reasoning for why polygamy should or should not be sanctioned by the State. Both sides made moral claims inspired by their understanding of theological doctrines. Thus, it is difficult to determine the sources of State law in a complete manner.

In the tradition of English law, law is based upon judicial precedents, not upon deduction or logic. This builds into common law, which is defined as “precedent in which judges see themselves as part of a chain of legal decisions that, as a whole, constitute a consensus.”\textsuperscript{100} These chains can been seen as creating what as see as normative within a community and society. Upheld over generations, common law is the assembly of norms that governs the people and informs the will of the people. When common law embraces the norms of society, as it so often does and must, then we are brought back to religion and the mores of society. With this, the line between religion and law becomes dismantled. Emile Durkheim claimed that religion is one of the most fundamental parts of life and that it is a primary classification system in any society.\textsuperscript{101} If this is accepted as being the case, that people are informed by and defined by their religious systems, as I believe they are, then religion and law cannot be separated. Stephen Carter in his work on culture and belief noted that, “faith may be so intertwined with personality that it is

\textsuperscript{100} Turner, Bryan S. Pages 452-454.
impossible to tell when one is acting, or not acting, from religious motive.”\textsuperscript{102} The overlap of religion, religious morals, and politics is not mere coincidence. Rather it is a circular set of reasoning whereby the populace and the lawmakers create political system based upon their religious codes, and conversely the modernization of religious law reflects the prevailing political doctrine.

In this way, religion shaped the formation of how the Free Exercise Clause was to be interpreted. This should not be seen as an imposition. As Carter states, “The Establishment Clause by its terms forbids the imposition of religious beliefs by the state, not statements of religious belief in the course of public dialogue. This distinction is more than one of semantic significance.”\textsuperscript{103} The idea that the First Amendment is made to keep religion out of secular or political discourse is flawed. The First Amendment is meant to keep the secular from creating or mandating the religious. The Supreme Court was walking this fine line when it chose to create the Free Exercise Clause to protect belief and not practice. Ultimately, the government cannot tell its citizens what to believe. Yet, it can limit the actions allowed by those beliefs. This limitation enabled the law to influence religion without overstepping its boundaries. The Establishment Clause is also how the Court and Congress were, and are, able to invoke religious claims and moral leanings without violating the mandated separation of Church and State. There is nothing that limits what a secular official can say, or what a citizen can say, in a secular space. Thus, we can believe and say what we want, but we cannot always take our belief into practice. This is what \textit{Reynolds v. United States} gave us: the assumption that religious belief and religious practice can be separated.

\textsuperscript{103} Carter, 112.
Timeline: Important Dates in the 19th Century

1829 – British Raj outlaws Sati

1830 – Publication of the Book of Mormon

1838 – Mormon War in Missouri

1844 – Joseph Smith killed in Nauvo, Illinois; begins Illinois Mormon War

1846-1857 – LDS Church relocates to Utah

1857 – Mountain Meadows Massacre

1850 – Petition to “Protect Americans traveling West” Presented by Representative Wentworth

1854 – Bill to limit the land holding abilities of polygamous men passes in Congress

1856 – Morrill Act is presented for the first time

1857 – President Buchanan ousts Governor Young

1857-1858 – Utah War

1858 – American surgeon, Bartholow, sends report about the distinctiveness of the Mormon race

1861-1865 – Civil War

1862 – Morrill Act passes (third presentation of the Act)

1871 – First Mormon convicted under the Morrill Act

1874 – Poland Act relocates control of prosecutions under the Morrill Act away from Utah

1878-1879 – Reynolds v. United States: Supreme Court upholds constitutionality of the Morrill Act

1882 – Edmunds Act amends the Morrill Act

1887 – Edmunds-Tucker Act further amends the Morrill Act

1890 – LDS v. United States: Supreme Court upholds constitutionality of the Edmunds-Tucker Act

1890 – President of the LDS Church, Woodruff Wilson, receives a divine revelation ending plural marriage

1904 – Second manifesto reveals that those engaging in plural marriage will be excommunicated
Currier and Ives lithograph from 1856 Election:
Found in Sarah B. Gordon’s work.
Political Cartoon from *The Judge*:
Found in Sarah B. Gordon’s work.
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U.S. Constitution. Amend. XIV, Sec. 1-5.

The Utah Polygamy Case, N.Y. TIMES, Nov. 16, 1878, at 2


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