

## **POLITICS OF POLYGAMOUS PEOPLE: HOW A MINORITY RELIGION CAN HELP US UNDERSTAND RELIGION AND POLITICS IN AMERICA**<sup>2</sup>

### **Abstract**

When Texas State Troopers invaded the Yearning for Zion Ranch occupied by polygamist Mormon's in 2008, it was the third major raid in American history. Yet, fundamentalist Mormons represent a small and little understood element of the American religious landscape. Nonetheless their struggles in America represent the evolving conflicts between politics and private religious life. This study introduces the doctrine of plural marriage as understood by Fundamentalist Mormons and uses it as a case study to consider five aspects of the relationship between religions and politics in America. This includes a discussion of when government chooses to intervene in the practice of religious groups and the responses of those groups to government involvement, the impact of the federal system on religious actors, the dynamic justifications given for involvement and the constant tension between public concerns and private devotion.

**Keywords:** Fundamentalist Mormons, Latter-Day Saints, religion and politics, polygamy, religious policy

### **Introduction**

State officials, concerned about women and children's welfare, surround a community of Mormon<sup>3</sup> polygamists<sup>4</sup> intent on protecting families and the

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3 Despite recent conflict surrounding "ownership" of the term Mormon, this paper uses Mormon to refer to any religious group originating out of the prophesy of Joseph Smith and using *The Book of Mormon* as a holy text. In instances in which I discuss Mormon polygamy, this only refers to those Mormon groups practicing polygamy at that time. For example, an illustration from the 1950's using the term Mormon polygamy would exclude The Church of Jesus Christ of Latter-day Saints, but include those groups in the fundamentalist tradition.

4 Throughout this paper, I have used "plural marriages" and "polygamy" to identify the practice of marriage, either through the American legal system or the religious temple system. Polygamy is a popularly known concept and "plurality" is how polygamy

sensibilities of the community. The system, faced by an overwhelming number of women and children and by unfamiliar and confusing family ties, stumbles forward with prosecutions drawing national media attention. This is a familiar story to anyone who watched the raid unfold at the Yearning for Zion Ranch (YFZ) in Eldorado, Texas in 2008, but this incident took place over 125 years earlier on the Utah Territory border. Known as “The Raid,” it resulted in plural husbands and wives going into hiding and the imprisonment of 780 Mormons for unlawful cohabitation, 146 for adultery, 14 for polygamy, and 1 for incest (Daynes, 2001). It was the first of three major police actions by the state to curb the practice of plural marriages in America’s southwest and the beginning of the governments’ unsuccessful policy to eliminate polygamy within its midst.

These fundamentalist Mormon groups represent an interesting subset of religions, those that operate outside of the mainstream and consist of an almost invisible minority. While membership numbers are elusive, generous estimates indicate that there are probably no more than 120,000 members in the United States composing only a fraction of a percent among Mormon communities (Daynes, 2001). Today there are three main fundamentalist Mormon groups operating in America. These include the Fundamentalist Church of Jesus Christ of Latter-Day Saints (FLDS)<sup>5</sup>, the United Apostolic Brethren (UAB)<sup>6</sup> and the Kingston Clan (also known as the Davies County Cooperative, True and Living Church, Manti Church and Latter Day Church of Christ)<sup>7</sup> (Bradley, 2004). These will be collectively referred to as “fundamentalist Mormons” or “Mormon polygamists.”

The dominant tradition of this journal has been to explore the political dynamics of major religious groups around the world. This study takes an alternative approach by introducing the theology and politics of a minority religion and examining potential lessons it offers on religion and politics in America. To that end it provides an overview of fundamentalist Mormon groups and draws lessons using historical and legal analysis about the major conflicts in American religious politics. Thus Mormon polygamy serves as a case study to better understand several trends in the politics of religion in America.

One should be wary of overstating the implications of qualitative case studies, yet these incidents demonstrate some generally applicable propositions. This includes a tendency for religious groups to be subject to legal action

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is generally identified among Mormons and Mormon scholars. I have tended not to use the terms “celestial marriage” or “The Principle” unless specifically discussing theological concepts. All four terms refer to Mormon marriages consecrated in the temple between one man and multiple women.

- 5 This is the largest fundamentalist church with a likely membership of over 10,000. Historically they have concentrated on the Utah-Arizona border, but have spread throughout the west beginning with aggressive prosecution in 2001. They are the most economically disadvantaged of Mormon groups (Daynes, 2001).
- 6 The UAB is economically centralized maintaining both a complex familial and economic cooperative network (Daynes, 2001).
- 7 The Kingston Clan is the most affluent and secretive group which emphasizes economic consolidation and the purity of the Kingston blood line. Marriages to half sisters and nieces are common (Daynes, 2001).

because their beliefs are seen as deviant and their size or power is sufficiently large to attract government involvement. The responses of minority groups to state involvement are often one of exit, voice or loyalty (Hirschman, 1970). For those groups such as fundamentalist Mormons who view religious polygamy as a core belief, exit is the most common option. These conflicts play out in an evolving environment shaped by law and culture. Legally, the increasing centralization of government at the federal level has led to fewer freedoms for religious minorities while social changes have led to evolving justification for government involvement. However, across time, the core dilemma has been the constant tension between public values and private devotion.

### **Fundamentalist Mormons as a Case Study**

The case of fundamentalist Mormons is useful and interesting for four reasons. First, fundamentalist Mormons are numerically a minority religion. Fundamentalist Mormons make up less than .01% of the population and are thus different from other minority religions such as Islam, Buddhism or Judaism that have amassed sufficient membership to be widely recognized and potentially studied statistically. Thus fundamentalist Mormons are representative of minority religious groups such as Raelism, Chen Tao or Native Shaker Religions which while widely different in terms of their theology and legitimacy share membership ranks that make their quantitative study difficult.

Second, like other minority religions they have experienced a level of stigmatization. One of the defining characteristics of minority religion in the United States is that these groups have been periodically subject to social stigma and occasionally legal persecution (Berg, 2004). Thus, in this way, fundamentalist Mormon adherents share common characteristics with both those “super minority” religions mentioned previously and those minority religions that are more widely recognized such as Muslims, Jehovah’s Witnesses and Orthodox Jews.

Third, fundamentalist Mormon members share a psychological orientation common among many minority religions. While bemoaning the difficulty of defining a minority religion, Etienne, Tazzi and Verkest (2009) point to one defining characteristic as a psychological process by which membership in a minority religion comes to serve as an identity boundary between group members and mainstream society. Thus state action against minority religions is not only a theological or behavioral conflict but a clash between identity communities.

Lastly, fundamentalist Mormonism as a minority religion is a valuable case study not only for what it tells us about minority religions but because of its ability to provide insight into American religion. Fundamentalist Mormons consider polygamous marriage to be divinely sanctioned while the government has gen-

erally seen it as dangerous practice. As such it presents an interesting case study of how government addresses issues that are normally considered private: religion and family life.

The case study begins with an overview of the beliefs and history of fundamentalist Mormon groups regarding plural marriage. It then proceeds to consider five themes:

- Three predictors of government influence in the practice of religious groups
- The response of religious people to government involvement
- The impact of federalism on religious political actors
- The dynamic interpretations for government involvement; and
- The tension between public and religious concerns

Each of these themes could be a paper in and of itself. Consequently, no section is a comprehensive treatment of a theme. Rather, each section will illustrate the fundamentalist Mormon experience of this theme, draw conclusions about America's experience of religion and politics and apply the theme to a current political debate. While fundamentalist Mormons represent only a fraction of a percent of Americans, their history nonetheless helps illustrate a recurring tension in America's religious-political debates.

### **Polygamy as a Religious Doctrine**

In order to explore how such a little known religion can help America learn about its history, it is important to understand the religious doctrine as it has evolved. A defining characteristic of the Mormon churches are that they are open to the continued revelation of God. Thus the modern church is not the same as it was when founded by Joseph Smith and alternative revelations have resulted in schisms and parallel churches (Shipps, 2000). Thus it should not be surprising that plural marriages have not been part of Mormon practice since its inception. By most accounts, the practice of plurality began in 1835 or 1836 when Joseph Smith became involved with Fanny Alger who had lived with the Smiths and helped take care of their children (Bushman, 2005). But during this period, plural marriages were far from the norm. In fact, in 1835 the *Doctrine and Covenants* of the LDS church published an article on marriage that reproached church members for committing the crime of fornication and polygamy. In 1838 Oliver Condrey, a friend of Joseph Smith, was tried for excommunication for assailing Smith's character by falsely insinuating that he was engaged in adultery – a charge that is now almost universally accepted as true (Brodie, 1946; Bushman, 2005). In 1841,

Smith married Louisa Beaman (historians debate another wife, Lucina Williams, in between) (Brodie, 1946; Bushman, 2005). In the next 30 months, he married thirteen more women, ten married to other men – all of whom continued to live with their first husband (Bushman, 2005). Smith's personal life is important for understanding the doctrine of polygamy. Some have argued that the revelation was brought about by a pious fraud looking to justify his own behavior (Brodie, 1946), whereas others describe Smith as responding to revelations about celestial marriages in the face of a doctrine that could tear the community apart (Bushman, 2005).

There is disagreement about the actual date of the revelation. Some scholars place it as early as 1831 (Bushman, 2005) and others as late as 1842 (Gordon, 2002). Smith told one plural wife, Mary Rollings Lightern, "The angel came to me three times between the year of '34 and '42 and said I was to obey the principle or he would [s]lay me" (Bushman, 2005, p. 438). It is known that Smith privately supported plural marriages as early as 1835 (Nussbaum, 2008). Smith notified the twelve leaders of the church in 1841, but it wasn't until 1843 that the revelation was officially written down:

"You have enquired of my name and to know and understand where in I the Lord justified my servants, Abraham, Isaac and Jacob, as also Moses, David, and Solomon, my servants, as touching the principles and doctrine of having many wives and concubines" (Bushman, 2005, p. 326).

Thus in 1843, plural marriages became the official doctrine of the Mormon Church, but it wasn't until the 1850s when it came to widespread practice (Bushman, 2005).

During the years after 1850, polygamy expanded from a clandestine practice among church leaders in the Great Basin to a respectable practice where the number of wives was demonstrative of the intensity of a man's faith.<sup>8</sup> For each wife taken, a man assumed full responsibility for her honor and support and marriage was conducted with the consent of existing wives (Brodie, 1949; Daynes, 2001).<sup>9</sup> Under Brigham Young's leadership, plural marriages evolved into what M. R. Werner had sagely called "puritan polygamy" free from the connotations of sensuality common among Middle East polygamy practices (Brodie, 1949, p. 401).

Some point to this evolution of the practice of plural marriages as a critique of its legitimacy. If it truly were a vital doctrine, would it not have been es-

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8 Plural marriages were common, but were never practiced by more than 20 to 40% of Mormons (Nussbaum, 2008).

9 Some have argued that Smith was rather frivolous in his marriage practice (Brodie, 1949). There is no debate that Smith entered into marriages without the consent of his first wife Emma who continued to frown on the practice throughout her life. Her sons, the founders of the Reformed Church of Latter-Day Saints, never admitted to plural marriages (Brodie, 1949; Bushman, 2005; Newell & Avery, 1949). There are examples such as in 1875 when Brigham Young refused to recognize a marriage until a man had been reconciled with his wife (Daynes, 2001).

sential since the beginning? Yet, references to plural marriages are found within the *Book of Mormon*. Five passages denounce it (Jacob 1:15, 2:23-37, 3:5; Mosiah 11:2-4, Esther 10:5) including one calling it “whoredom”. However in Jacob 2:22, one finds the following passage:

“but the word of God burdens me because of your grosser crimes. This people begin to wax in inequity; they understand not the scriptures, for they seek to excuse themselves in committing whoredoms, because of the things which were written concerning David, Solomon his son. Behold, David and Solomon truly had many wives and concubines, which thing was abominable before me, saith the Lord...For I, the Lord God, delight in the chastity of women. And whoredoms are an abomination before me; thus saith the Lord of Hosts. Wherefore, this people shall keep my commandments, saith the Lord of Hosts, or cursed be the land for their sakes. For if I will, saith the Lord of Hosts, raise up seed unto me, I will command my people; otherwise they shall hearken unto these things” (2:22-24, 28-30).

This passage contains an escape clause for plural marriages. Plural marriages are to be banned *unless* God chooses to reveal the founding of a new order. The prohibition only operates unless God chooses to “command my people.” This opportunity for a latter day revelation created a context in which polygamy could become acceptable. Smith told Orson Pratt that in 1832 he had inquired of the Lord and found plural marriages to be acceptable (Nussbaum, 2008). Additionally, plural marriages could be justified by the Old Testament. Many of the most respected prophets (i.e. Abraham, Isaac, David) had plural wives (Gordon, 2002). The prophecy allows Mormons to reconcile inconsistencies between the *Book of Mormon* and the *Old Testament* (Brodie, 1949).

The doctrine of plural marriages also served as an important theological concept for the afterlife.<sup>10</sup> During Joseph Smith’s days, the marriages were not about companionship, but to create a network of related wives, children and kinsmen for eternity. It creates familial connections that are essential to the “restoration of the ancient order of things” (Bushman, 2005, p. 50). Couples married by the state could not grow in heaven. Only those married in the temple could be married in heaven and thus a broader network of relations could expand the flock in heaven. Through celestial marriages, Mormons could experience the full love of God by becoming like God and producing life in heaven (Brodie, 1949). These ties were not only related to marriage, but rather through other family ties. Through temple rights, one could adopt someone, even someone much older, into their family for eternity (Daynes, 2001).

10 It is significant to note that this doctrine refers to Temple marriages. Temple marriages as opposed to purely civil unions continue into the afterlife. This distinction is critical for understanding religious policy issues given the many areas of public and private life that are affected by both civil and religious law.

For these Mormons, the “unit of salvation” is the individual, but the “unit of exaltation” is the family (Shipps, 1985, p. 146-147). For many Mormons, plural marriages were seen as a doctrinal necessity in order to reach the highest levels of heaven (Daynes, 2001; Gordon, 2002).<sup>11</sup> Smith created a kind of theocratic pressure to practice plural marriages that was difficult to overcome when he proclaimed “a New and Everlasting Covenant and if ye abide not the Covenant [of plural marriages], then are ye damned” (Bushman, 2005, p. 438).

Thus, the social nature of salvation, the connection to the *Old Testament* and the centrality of the practice of plural marriages for good fundamentalist Mormons makes religious polygamy a particularly thorny political issue. As an issue that strikes at the heart of family life it has been the target of many attempts at government action and the responses of Mormons and later fundamentalist Mormons has been fierce. This debate has been shaped by the federal character of America and demonstrates significant tensions between public and private concerns.

### **Government Influence in Religious Practice**

Government intervention can take many forms ranging from direct police action to rhetorical critique. This article is concerned with government action in the most direct forms ranging from regulation of religious activity to direct police intervention in the practice of religious actors. Beginning in the 1880s, the United States government launched a drive to create a more moral society. Beginning with the 1887 Edmunds-Tucker Act, the federal and territorial government dissolved the LDS corporation and seized its business property. Threats were made to seize temples and other religious property as well. Furthermore, it became clear that Utah would never be admitted to statehood as long as the LDS church sanctioned polygamy (Flake, 2004). Finally in 1890, the fourth president of the LDS, Wilford Woodruff, in a manifesto intended to win statehood and peace, “renounced the practice of plural marriages while retaining the principle as an ideal” (Brodie, 1949, p. 401).

“In as much as laws have been enacted by congress forbidding plural marriages, which laws have been pronounced constitutional by the court of last resort, I hereby declare my intention to submit to those laws, and to use my influence with the members of the Church over which I am president” (Wilford Woodruff, *Doctrines and Covenants, Official Declaration I* as cited in Brodie, 1949, p. 401).

In enacting the Manifesto, Woodruff noted that the United States govern-

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11 Doctrines and Covenants 121: 1-2 “in the celestial glory there are three heavens or degrees; And in order to obtain the highest a man must enter into this order of the priesthood [plural marriages].”

ment had “taken a stand & passed laws to destroy the Latter-Day Saints upon the Subjet [sic] and of Polygamy or Patriarchal order of Marriage” and that it placed him “under the necessity of acting for the Temporal Salvation of the Church” (Shipps, 2000, p. 302).

Government tends to intervene in religious practice when three sufficient but not necessary conditions are met.<sup>12</sup> First, the group dissents from the dominant religious and social discourse. Second, the religious group is of sufficient size that they draw the attention of government officials or that the size of the group constitutes a threat to conventional social mores. Third, the nature of the belief that is being regulated represents an issue that is threatening. In many cases, government intervenes when two or three of these conditions are met.

The concept of a dissenting religion may seem strange these days given the wide ecumenism in our society, but despite pluralistic sentiments in America, some religious groups continue to operate in ways that seem strange or even threatening to Americans and their government (Carter, 1993). America has a way of incorporating religions but this process is not always quick. Puritanism was the most influential force in the nation’s founding and any religious group deviating from puritanical beliefs served a role in shaping how America responded to religion (Reichley, 2002). Today it is hard to think of Baptists as dissenting from the American mainstream, but for much of American history Baptists were a dissenting group that had a major impact on public policy. At different times in history, America has struggled with how to respond to such dissenting religious groups as Baptists, Catholics and Unitarians (Hamburger, 2002).

In many ways, Mormons are not a dissenting religion. They believe that Jesus is the son of God, there is salvation in the afterlife and they share the Puritan work ethic. By many respects they are a model minority: hardworking, frugal and economically productive (Nussbaum, 2008). Yet in many ways they are outside of the Christian mainstream with decidedly different marital and sexual habits and with individuals who speak directly for God (Shipps, 2000). What is clear is that they are definitely outside mainstream and evangelical Protestantism. Martin Marty, in his treatise on American Protestantism, *Righteous Empire*, describes a tacit compact in which protestant groups banded together around shared spiritual values and an agreement to deemphasize aspects based on different histories (Marty, 1986). Mormons violated this denominational compact by not limiting their focus to issues of heaven and hell and by competing in the public dialogue of faith (Marty, 1986).

Mormons do not necessarily subscribe to the shared history of most American Christians. A belief in the coming of Christ in the 1800s and discovery of the *Book of Mormon* that tied them to the ancient Hebrew-Christian story sets

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12 This three factor distinction should not be confused with the legal standard of centrality and sincerity used by the courts to determine protected religious behavior.

them apart from other Christians (Shipps, 1985). This theology contains critical doctrines such as a new scripture, three personage of God, a priestly hierarchy, temple building, modern revelations, and in some instances, economic communalism and plural marriages that seem alien and confusing for many Americans (Flake, 2004). These differences have set Mormonism as a dissenting religion and led to its politicalization since the early 1800s. Stories of the Mormon “other” served as fund-raising propaganda during the 1800s with political propaganda in the war against the “twin relics of barbarism-slavery and polygamy” (Flake, 2004, p. 24). Yet even as recently as the 2012 presidential election, Mormonism remains pundits’ fodder.

But America is full of dissenting religions. Some receive attention or intervention from the government and others do not. Why have Mormons received such attention and other equally dissenting groups with even more unorthodox beliefs such as the Aetherius Society are all but unheard of? Dissenting views raise public attention when the group gains power through size or control of institutions or when the doctrine threatens the “American way of life.”

Philip Hamburger (2002), in his thoughtful exploration of the separation of church and state, identified anti-Catholicism as the root of the modern separation movement. Beginning in the 1830s, the Catholic Church because it is large and more unified than other religious groups drew violent protests and legislative action to protect America from its influence (Hamburger, 2002; Nussbaum, 2008). In many respects, Mormonism shares this centralized quality that leads to threats based on power.<sup>13</sup> Also like Catholics and unlike Marty’s (1986) protestant denominational compact, the Mormon Church tended to participate in the spiritual and temporal world of its members (Flake, 2004). The Mormon Church was one of the most powerful, organized and largest of the dissenting groups of its time. Moreover it was centralized economically as well as socially (Gordon, 2002).<sup>14</sup> This made Mormonism a target of the Progressive Era as the Mormon monopoly had influence in people’s lives economically, religiously and socially (Shipps, 1985). The growing size and economic success of Mormons in America continues today and serves as a basis for how America responds to Mormonism.

The role of size is an important but not sufficient explanation for government involvement. The Catholic Church as a large and dissenting religious group was recently the target of a Connecticut state proposal aimed to shift control of parish finances from church hierarchy to lay officials (Lorson, 2009). This was largely unsuccessful partially because the nature of the Catholic Church’s belief structure is insufficiently threatening and the political issue of Church finances is largely obtuse.

An alternative explanation for understanding when government intervenes in religious governance is doctrine. Consider the Church of Lukuni Babalu

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13 During the 1800s and early 1900s Mormons were derogatorily accused of “popery” (Flake, 2004).

14 The UAB and Kingston Clan retain this economic centralization (Bradley, 2004; Gordon, 2002).

Aye.<sup>15</sup> The Lukuni Babalu Aye has received political attention (and protection) for their animal sacrifice activities, but few Americans could identify them as a religious group based on their size and power (Diulio, 2007). The Lukuni Babalu Aye became the subject of political attention because their animal sacrifice activities were a threat to traditional notions of right and wrong.

There are few things that seem to be a greater threat to traditional notions than non-traditional beliefs about marriage, family and sex. Mormon beliefs about angels, golden plates and the history of ancient America seemed exotic, but it was beliefs about plural marriages that went to extremes that few Americans could accept (Bushman, 2007). Mormons were part of a triad of indigenous religious movements that included the Shakers and Oneida communities. The Shakers who practiced sexual abstinence were considered odd but not threatening. The Oneida community with its unrestricted sexual mores was threatening but this threat was limited by its size (Daynes, 2001). The Mormons' commitment to the commandment to go forth and multiply and status as the largest group dissenting from traditional morality was seen as a real threat to American notions of sexual self-control and limited fertility (Daynes, 2001; Gordon, 2002).

Either of these factors, power or beliefs, might lead to attention. Southern evangelicals, whom many would consider sizable but less theologically threatening, have been the subject of policy on discrimination (Dilulio Jr., 2007). Conversely, the small but exotic Lukuni Bablu Aye have been the subject of legislation. However, those groups that are the target of the greatest amount of political attention are those that are both powerful, by size or economics, and are seen as threatening in their beliefs. The Mormon Church fits both of these criteria.<sup>16</sup>

### The Responses of Religious People

In many ways, the responses of religious groups to government involvement are like the responses of individuals to organizational change. Religious actors face a choice among voice, loyalty and exit (Hirschman, 1970). They can protest the actions of government and seek restitution in the courts or the courts of public opinion. They can demonstrate loyalty and adhere to the government mandate or they can exit from the element of society regulated by government.

15 In the *Church of the Lukumi Babalu Aye, Inc. and Ernesto Pichardo v. City of Hialeah* (1993), the City of Hialeah passed an ordinance prohibiting the unnecessary killing of animals. The law was passed to prevent the church which practices Santeria from locating in the City of Hialeah. The Supreme Court ruled that that the law was unconstitutional and that laws targeting specific religious groups must be subject to strict scrutiny and thus must be narrowly tailored and advance a compelling governmental interest.

16 As an alternative consider how Rhode Island has approved a religious accommodations for Jews so that uncles are allowed to marry nieces. This is a generally illegal custom that was encouraged but not required (Nussbaum, 2008). It is the same pattern of marriage that has been targeted in many of the polygamist prosecutions.

## Loyalty

The actions of Mormons and fundamentalist Mormons represent a combination of loyalty and exit. The manifesto that ended plural marriages among Mormons was understood differently by different groups of Mormons. The first group saw it as an attempt by LDS leaders to make Mormons more American. The second group saw it not as a defeat, but rather as a turning point in Mormon history. Thus since the 1930's the LDS church has continued to move in a consistent direction against polygamy including the excommunication of Mormons practicing plural marriages. For these groups, the elimination of plural marriage and the continued integration with the larger United States social context was an act of loyalty that was authentic and theologically sound.

## Exit

The third group of Mormons saw the manifesto only as a pretense to get statehood and after statehood more freedom. For these Mormons who see salvation as resting on the restoration of plural marriages, the cleansing of society and enforcement of the *Old Testament* law, the end of plural marriages was not an option (Gordon, 2002).<sup>17</sup> When the manifesto turned out to be a legitimate pledge, many members of this last group separated and continued to practice polygamy (Shippo, 2000). In this way, they exited from the mainstream United States society and set up independent institutions which while within the geographic borders of the United States were segregated and more authoritative than the general United States' legal and economic structures.

This third group of Mormons came to be known as fundamentalist Mormons. They base their claim for the continuation of plural marriages on the purported revelation to President John Taylor in 1886. Taylor's Son, Apostle John W. Taylor, told others that his father's estate contained papers revealing a revelation "that the principle of plural marriages would never be overcome" (Bradley, 1993, p. 19). They also described a September 26 and 27, 1912 vision in which Jesus appeared to John Taylor and put several members "under covenant" to keep plural marriages (Bradley, 1993, p. 19). Fundamentalists differ from other Mormons in that an "eternal principle" once valid was valid forever. Excommunicated from the LDS church, fundamentalists did not have to adhere to the LDS teachings and could structure their life on their own religious convictions which are consistent with 19<sup>th</sup> century Mormon life (Bradley, 1993).

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17 There are also non-theological reasons contributing to the persistence of plural marriages among fundamentalist Mormons including: the psychology of sacrifice, maintenance of community (Flake, 2004) and economic reasons (Daynes, 2001). Just as economic reasons served to encourage polygamy on the frontier, financial stability continues to be a factor. A recent study found financial stability to be a reason many women joined the Apostolic United Brethren (Cited in Daynes, 2001).

The almost complete separation from society is not the only option that exists for religious actors who are the subject of government involvement. In 2011, the state of Illinois passed the Religious Freedom Protection and Civil Union Act which required state-funded adoption agencies to place adoptive and foster children with same sex couples. As a result of this act, Catholic social service agencies chose to exit from adoptive and foster care services in Illinois (Brachear, 2011). This form of exit allowed Illinois Catholic agencies to maintain aspects of their religious mission while removing themselves from the public arena in which there was a government conflict.

### **Voice**

The choice to exit from adoptive and foster care services was not Catholic Charities first choice. Rather it came only after an attempt to exercise voice through an extended court battle. Religious organizations regularly fight government involvement in the courts or in battles of public opinion. The current fight over the implementation of the Affordable Care Act and the United States Health and Human Services mandate represents such an attempt to exercise voice. A coalition of Catholic and Evangelical groups have organized national protests, letter writing campaigns and legal action to protect their institutions from a government mandate that requires them to cover birth control and abortifacients as part of their health care coverage (Lopez, 2012). Thus religious actors often choose a third option of neither loyalty nor exit but rather engagement and debate with government actors.

Thus one can see how government involvement in religious action can beget a wide range of responses including voice, exit and loyalty. In some instances such as the actions of fundamentalist Mormons, religious actors exit from mainstream society. However, religious groups often choose among several strategies depending on the centrality of the threatened belief. Exit, voice and loyalty represent a way to classify religious action in the face of government involvement.

### **Federalism and the Regulation of Religion**

As the examples in the preceding section show, government action against religious groups comes from many levels. Conflicts regarding marriage, discrimination and governance have come from local, state and federal actors. This federal system influences the political dynamics of religious actors because it simultaneously allows them to find “friendly” governments while requiring that they balance the sometimes contradictory messages sent by political actors at different levels of governance.

Given that fundamentalist Mormons operate in several states, this section will deal specifically with the most recent incidents of Mormon polygamy in Texas. In order to understand how federalism influences the politics of religion one must consider both the application of the First and Fourteenth amendments to all states and Texas constitutional law.

In *Meyer v. Nebraska* (1922) the courts ruled that the Bill of Rights free expression clause extended to the states. This was given even greater weight when *Cantwell v. Connecticut* (1940) extended religious freedoms to the states and acknowledged that religious practice as well as religious belief is protected (Reichley, 2002).<sup>18</sup> This includes a right to strict scrutiny when federal laws violate religious expression as in *Shervert v. Verner* (1963).

This right to free exercise should be bolstered for religious polygamists in Texas as a result of the Texas state constitutions that protects “All men ... to worship [an] Almighty God according to the dictates of their own consciences” and that “No human authority ought...control or interfere with the rights of conscience in matters of religion” (Article I, Section 8). Additionally, Texas is not bound by Blaine Amendments crafted to prohibit state support for religious institutions that prohibit states from “touching” or “respecting” religion. By these standards, polygamy framed as a religious issue would likely be subject to some accommodations under state law.

Contrast this with the fact that marriage laws have traditionally been the purview of the state. States have wide latitude in determining who gets married to whom and at what age. Age of marriage is a perfect example of the diversity introduced by the federal system. Some states have minimum marriage age laws as old as 17 (Indiana, Nebraska and Oregon) or 18 (Kentucky, Louisiana, and West Virginia), but some have marriage ages as low as 14 for men and 12 for women (Massachusetts) (*Marriage Laws of the 50 States*). Thus religiously motivated polygamists are protected by religious protections while bound by Texas’s ability to regulate marriages within its boundary.

A full legal analysis of this issue is beyond the scope of this paper, but this section serves to highlight how religious actors are shaped by the federal context and the multiple levels of authority found within the federal system.

Certainly the highest profile cases concerning religious freedom and the federal context of recent years have been those concerned with same-sex marriage. Religious groups ranging from Evangelic Protestants to Orthodox Jews have been involved in efforts to limit same-sex marriage at the state and federal level. This effort has produced a patchwork of laws including constitutional

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18 This distinction has since been brought into question by *Employment Division v. Smith*. It is not yet clear if this is a judicial abnormality or a sign of a dramatic shift in judicial findings (Nussbaum, 2008). Regardless, it is now less applicable at the Federal Level as a result of the Religious Freedom Restoration Act of 1993. *City of Boerne v. Flores limits the RFRA's applicability to the states*.

amendments banning or allowing the banning of same-sex marriage in 31 states and twelve states permitting same sex marriage (Stark & Roberts, 2013). Within this context, religious actors are faced with a bewildering array of regulation regarding employment, marriage and adoption policies. The state in which a religious group operates and the varying courts' interpretations of state and federal laws affect the freedom of that religious group to act. Recently, the United States Supreme Court ruled on section three of the Defense of Marriage Act (DOMA) which restricts the definitions of marriage to unions between a man and a woman for purposes of federal law (*United States v. Windsor*, 2013). The Court found the Act unconstitutional based on issues of equal protection and due process under the Fifth Amendment. While this ruling will have significant impact on federal policy, many issues of same-sex marriage are unresolved and few are optimistic that this decision will eliminate the debate on same-sex marriage in the religious context.

Thus to understand the tensions between religion and politics in America involves not only understanding federal law but the continued tension between state and federal laws, local social norms and religious tradition. This tension has played out over the past 200 years of Mormon polygamy, is playing out in Texas today and affects a wider range of religious groups and public policy issues. As federal law continues to affect more aspects of life traditionally regulated by local governments such as education, healthcare and family life, the importance of understanding federalism in political debates will only continue to increase.

### **Evolving Interpretations of Government Intervention**

The fourth lesson to be learned from fundamentalist Mormons is that the politics of religion is dynamic. Over time, the social justifications for how and why governments should respond to religious practices change, even as the underlying conditions that shape those responses are more enduring.

There have been three raids against polygamist Mormon communities. Each raid was predicated on a different social concern. During the 1878 Utah raid, the official reason for the raid was that officials were concerned that polygamy should be banned because it was "subversive of good order" (Carter, 1993, p. 133). By this, officials were concerned that allowing Mormon polygamy would incite violence by non-Mormons against them resulting in social disturbances. While this may only be a pretense based on underlying social sensibilities, it is no less important for understanding how politics evolve over time.

By the 1953 raid in Short Creek, Arizona, government action on polygamists was predicated on child safety. More than 1,500 Arizona State officials and police officers surrounded United Effort Plan Mormon community in Short Creek to serve 122 warrants for 26 men and 86 women. However, unlike the most recent

raid, the threat to child safety was not underage marriage but the state of polygamy itself (Bradley, 1993). Ultimately only 36 men were charged (Life Magazine, 1953), but in 1955 the Utah Supreme court ruled that the juvenile court had the right to deprive polygamous groups of its children if the father continued to live with multiple mothers (Daynes, 2001). The decades following Short Creek largely found plural marriages ignored by the state unless involving incest and marriage by girls under the age of 16.

This uneasy truce ended in 2002 when Utah's attorney general started aggressively prosecuting polygamy and driving portions of the fundamentalist community out of the state where they settled in surrounding areas (Bradley, 2004). When in April of 2008, 700 Texas State Troopers, Texas Rangers and Texas Department of Family and Protect Service workers descended on the YFZ ranch in Eldorado, Texas with search and arrest warrants, polygamy again rose to national attention (Blumenthal, April 5, 2008; Johnson, April 12, 2008). This time, state officials were not responding to polygamy per se but rather allegations of abuse by a 16 year-old girl who had reportedly called a family violence shelter to report that while 15 years-old she had been forced to become the 7<sup>th</sup> wife of a 49 year old man (Blumenthal & Kovach, April 8, 2008; Kovach, April 9, 2008). This time the focus of debate has not been polygamy but on the underage and intra-family relationships that often accompany it.

Underage marriage has emerged as the dominant argument against plural marriages in the contemporary context, but there are other arguments that have also been advanced. In order to attempt to disentangle polygamy from a marriage context, some have argued that the state has an interest in eliminating polygamy in order to reduce the burden imposed on the states to maintain records and prevent social disturbances (Carter, 1993). This is consistent with the legal findings in *Frazee v. Illinois Department of Employment Security* (1989). Alternatively, the state may have an interest in limiting polygamy on the basis of sex equity. Mormon men can have multiple wives while women may only have one husband (Nussbaum, 2008). While these are by no means dominant arguments, they serve to show the evolutionary nature of political debates.

Likewise, one may consider how the debate around abortion has evolved. In the decades preceding *Roe v. Wade* (1973), a number of political justifications were given for legalizing abortion. For religious conservatives, the earliest justification for keeping abortion illegal was a moral one based on a mixture of protecting life and discouraging promiscuity. The earliest legalization argument was predicated on public health. Given that illegal abortions were often performed in a way that increased health risks to the mother, legalized abortion was seen as a way of increasing public health. However, the primacy of this argument gave way in the 1960s to an argument based on equality and feminism. Legalized abortion was argued to be necessary for the full participation of women in the workforce.

By the 1970s the current abortion debate emerged pitting a freedom argument (pro-choice) against the pro-life moral argument (Greenhouse & Siegel, 2010). Thus when examined longitudinally, many religious political issues are quite persistent but the social justification changes over time.

### Public Concerns Versus Religious Concerns

Among the religious and political debates, probably the most paramount is the tension between protecting the rights of religious practitioners while maintaining social welfare. This is the root conflict behind Christian Scientists' desire to avoid medical care for their children, the need for native worshipers to ingest peyote and the need for religious institutions to discriminate in who they employ and serve. Even in *Reynolds v. The United States (1878)*, the most significant bigamy case in United States history, the court was conscious of the concerns for public welfare conflicting with plural marriages. In releasing its verdict, the courts commented on the findings important role in protecting women (Gordon, 2002).<sup>19</sup> In recent conflicts over fundamentalist Mormon polygamy, there is a tension between the need to marry freely and inculcate youth into the church community and the need of the larger community to protect young people from sexual exploitation. A need that is unfortunately all too real. In the instance of the YFZ community, Texas Department of Family and Protective Services was responding to incidents of child and not women's welfare. Reports indicated that "investigators determined that there is widespread practice among the residents of YFZ ranch in which minor female residents are conditioned to expect and accept sexual activity with adult men at the ranch upon being spiritually married to them" (Kovac, April 9, 2008). Additionally, male children were removed from the compound for fear that the environment would result in their becoming sexual predators (Blumenthal, April 5, 2008; Kovac, April 9, 2008). While this article presents a political and legal analysis of fundamentalist Mormonism, brevity prohibits its ability to fully tackle the potentially dangerous conditions of incest and pedophilia that often accompany plural marriage.

Supporters of plural marriages argue that legitimizing plural marriages and permitting children to stay with their parents is in their best interest by 1) advocating that the plural marriages serve to protect and not endanger children, 2) pointing to the importance of respecting religious freedom of parents to raise their children and 3) demonstrating that the state is unprepared to properly care for these children in the absence of their parents.

First, White and White (2005) in their study of polygamous families

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<sup>19</sup> A somewhat dubious claim given that polygamous Mormons were one of the staunchest supporters of women's suffrage (Gordon, 2002).

found that plural marriages serve an important role in replacing decentralized families in the time since the industrial revolution. Polygamous groups generally have no unemployment and fathers do not abandon their families as has become common in other social groups (White & White, 2005). It can also be said that marriage at a younger age locks juveniles into a healthier lifestyle. Divorce is less common in plural marriages and plural mothers are able to provide care while other mothers work (Bradley, 1993). Also marriage at a younger age shields youth from the dangerous sexual behavior that has become more common in the late adolescent years. Additionally, legalizing polygamous marriages would help reduce child abuse by bringing the practice above ground to make sure that plural marriages are practiced in the safest possible way (Bradely, 2004). The practice of plural marriages must itself not be dangerous given that in 1991 the Utah Supreme Court ruled that plural families could adopt, thereby voluntarily introducing children into this environment (Bradley, 2004).

Second, in *Wisconsin v. Yoder* (1972), the court allowed parents to make religiously motivated decisions for their children in order to maintain their way of life. For many polygamous Mormons, the practice of plural marriages is necessary. They argue that state action should not force them to forfeit their or their child's salvation (Bates, 1993). However, in the *Yoder* decision the court considered that Amish, during their high school years, would learn a trade that is valued by society and provide them a future option of leaving the community (Nussbaum, 2008). This is not true for women in polygamous communities who have limited freedom, little experience making decisions of their own and few skills valued by society (Bradley, 1993).

Third, the state is generally unprepared to deal with the task of breaking up polygamous families. Richard LaVallo, a Texas child protection expert, considers the YFZ ranch response a "situation where the cure is worse than the original problem" (Johnson & Frosch, April 26, 2008). The use of large group shelters across Texas could compound any damage that the children might have suffered before they were removed (Johnson & Frosch, April 26, 2008). This also is reflected in the comments by Utah Attorney General Paul Van Dam in 1990,

"Every law enforcement officer in Utah knows there are tens of thousands of polygamists in the area, and they are clearly violating the law. Yet if we prosecute these men and women, we know from Short Creek that we will produce an incredible social disruption. Thousands of Children must be cared for emotionally and otherwise, and that's a terribly expensive proposition" (Bradley, 1993).

Yet, these arguments often fall short such as during a recent incident in Utah in which a 14 year old girl was forced to marry her 19 year old cousin and submit to sexual relations against her will (Blumenthal & Kovach, April 8, 2008). Perhaps this is why the courts have been consistent in limiting the free exercise rights that involve children while remaining committed to protecting the liberty

of parents to direct the upbringing of their children (Carter, 1993; Reichley, 2002).<sup>20</sup> How to protect the public welfare and the rights of families has always been a challenge and finding the optimal balance is an important endeavor. Under the current court's ruling, *Employment Division v. Smith* (1990) the courts can limit the free exercise of religion if the law does not serve to specifically target a religious belief but rather is designed to address a general public concern as would be the case in most cases involving child welfare.

The issue of public concern versus religious concern is not always about child and family welfare but extends to other elements of society. The most significant religion case of the last Supreme Court session was *Hosanna-Tabor v. Equal Employment Opportunity Commission (EEOC)* (2012). The EEOC argued that they were pursuing an important public concern when the Hosanna-Tabor Evangelical Lutheran Church and School fired a teacher who was on leave for disability. The EEOC believed that employment laws applied to teachers in religious schools. However, the court ruled that the ministerial exemption should be widely understood and religious groups have a private religious need to hire and fire based on their best religious judgment. Thus, suggesting that in this case that the private religious concerns trump the larger social concerns regarding fair employment law.

The issue of when accommodations should be given precedence to religious concerns is a complex one. What was once determined by a "compelling interest" appears now to be based on a less strict standard. Since *City of Boerne v. Flores* (1997) it also appears that the standard for accommodations differs between federal and state laws. Regardless, the balancing of public and religious concerns is likely to remain a major debate in American society.

## Conclusion

Since prior to the first raids in the 1880s, the United States has had a complicated history with Mormon polygamy. Polygamous Mormons have never made up a significant portion of Americans, yet their history helps us understand the experience of many minority religions in the United States. By studying minority religious groups we can better understand the complex relationship that Americans have with religion and politics.

Outside of Islam and Judaism, the lack of data has made minority religions generally understudied in American political science. Hopefully, this article has made the case that the study of minority religions has implications outside of its narrow effect on congregants. A few cases in particular that would be worth studying include the Ethical Culture Society and Christian Scientists. In 2003, the Texas

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20 See *Prince v Massachusetts* (1944) and *Anderson v. Town of Durham* (2006). Also see *Pearce v Society of Sisters* (1925).

Court of Appeals ruled in *Strayhorn v. Ethical Society of Austin* that the nontheistic Ethical Culture Society is eligible for religious tax exemption. There has been a lot of subsequent legal analysis but little that examines the political dynamics. The Court's findings that religion does not require god has potential implications for a wide range of religious protections and for shaping how religion is viewed in America. Alternatively, Christian Scientists have been understudied in light of the Patient Protection and Affordable Care Act of 2010. Christian Scientists face greater threats to conscience protections than the highly publicized concerns of the Catholic Church. Yet their relative size and controversial beliefs have limited their involvement in the public debate. This creates an interesting opportunity for a comparative case study on religious political activism.

This case study illustrates a number of lessons that can be explored in future analysis. It provides an interesting example to better understand when government intervenes in religious affairs. While many religious groups have practices that may be distasteful to other Americans, it is only when knowledge of these behaviors becomes widely known either because of the size of the group or the deviance of the behavior from social norms that government involves itself. Thus the allegedly sordid nature of polygamy and its threat to traditional family values makes it a likely subject of government involvement.

When faced with government involvement religious actors generally choose among three options: loyalty, voice and exit. This choice fractured the early Mormon Church with the mainstream Church of Jesus Christ of Latter-Day Saints opting for loyalty and the abolition of polygamy while fundamentalist Mormons opted for exiting from the traditional social structure of the United States.

This decision is heavily rooted in the federalist system. As Mormons moved west and Utah shifted from a territory to a state, competing levels of government allowed polygamous Mormons to exert their independence at various times in history. Today, religious actors are subject to a patchwork of oversight and freedom depending on the laws of their jurisdiction.

Religious conflicts continue to play out in the political and legal domain in varying ways, but the primary debate is fundamentally one that balances the rights of worshipers against some public concern. For Mormon polygamist, this balance is between the need to protect children from sexual exploitation and the desire of fundamentalist Mormons to protect an often misunderstood way of life. In this way, fundamentalist Mormons are like other religious groups committed to their salvation and the salvation of their children in a national context that is characterized by plurality and competing religious claims.

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## **ПОЛИТИКА ПОЛИГАМНИХ ОСОБА: КАКО МАЊИНСКА РЕЛИГИЈА МОЖЕ ДА НАМ ПОМОГНЕ У РАЗУМЕВАЊУ РЕЛИГИЈЕ И ПОЛИТИКЕ У АМЕРИЦИ**

### **Резиме**

Када су трупе државе Тексас извршиле инвазију на ранч “Yearning for Zion” који су окупирали Мормони 2008. године, то је била трећа велика рација у америчкој историји. Ипак, Мормони фундаменталисти представљају мали и слабо разумљив елемент верског пејзажа Америке. Без обзира на то, њихова борба у Америци представља конфликт између политике и приватне сфере верског живота. Овај рад нас упознаје са плуралним браковима онаквим каквим их представљају Мормони фундаменталисти и користи их као студију случаја за разматрање пет аспеката везе између религије и политике у Америци. То укључује дискусију о томе када влада одлучи да се умеша у праксу верских заједница и одговор тих заједница на владино мешање, утицај федералног система на верске актере, динамику оправдавања мешања и константну тензију између бриге за јавно и посвећење приватној сфери.

**Кључне речи:** Мормони фундаменталисти, Црква Светаца последњег дана, религија и политика, полигамија, верска политика

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