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Rendered Unto God, Punished by Caesar: An Analysis of the
Reynolds Case on Polygamy and Religious Freedom

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INTRODUCTION

The United States of America was founded on the notion of liberty of conscience, and the freedom to worship as one chooses, if one chooses to worship at all. Based on historical evidence, it seems apparent that religious freedom included religious actions as well as beliefs. What is the purpose of religious belief if it cannot be acted upon? What good would it do the Quaker to fervently believe in pacifism if he were forced by his government to go to war? How would it benefit the Amish belief against compulsory education if they were forced to send their children to school? Where would it leave evangelical Christians if they could only believe in the necessity of proselytization, but were prohibited from preaching on street corners? In 1878, a unanimous Supreme Court, in a display of faulty jurisprudence, decided that the Free Exercise Clause protected religious belief only, and not action, when they upheld a congressional ban on the practice of polygamy. Polygamy, or patriarchal marriage, was practiced in America by the religious sect known as the Mormons, who occupied the territory of Utah. This paper intends to show that the religious liberty of the Church of Jesus Christ of Latter-Day Saints was violated. The Religion Clause of the First Amendment states that Congress shall make no law respecting an establishment of religion, nor prohibiting the free exercise thereof. The latter portion, known as the Free Exercise Clause, will be the focus of this paper as I demonstrate how the Mormons were prohibited by the Supreme Court from practicing their religion as their collective conscience dictated as well as coerced into uniformity. I will demonstrate that Founding Fathers, James Madison and Thomas Jefferson, who Chief Justice Morrison Waite quoted in his opinion,

intended for the Free Exercise Clause to extend protection to religious actions as well as beliefs. In the words of George Q. Cannon, “every religion has perfect liberty of worship, in faith and works, in every corner of this continent covered by the Constitution, *so long as their belief and practice do not interfere with the rights of their fellow-men.*”¹ I will also expose the weakness in Chief Justice Morrison Waite’s arguments, namely that polygamy was subversive of good order as well as his lopsided reliance on religious history. In order to demonstrate these claims, I shall first show that polygamy was indeed an important part of the Mormon religion in the nineteenth century, and then present the facts and issues in *Reynolds v. United States*.

HOW POLYGAMY CAME TO BE

As Joseph Smith entered his teenage years, he became quite intent on carving a niche for himself in the religious marketplace in America. He fervently believed that the Scriptures were from God, but found himself very confused by the practices of the Christians in his hometown of Palmyra, New York. Their actions and habits seemed to conflict with what he read in the Bible. This led to extreme frustration for the young Smith. One day he stumbled upon a Bible verse, most likely James 1:5, instructing him to ask God for wisdom.² Believing

¹ George Q. Cannon, *A Review of the Decision of the Supreme Court of the U. S., in the case of George Reynolds vs. the United States* (Salt Lake City: Deseret News Printing and Publishing Establishment, 1879), 6

² James 1:5 reads, “If any of you lacks wisdom, let him ask of God, who gives to all liberally and without reproach, and it will be given to him.”

these words literally, Smith went to the privacy of the forest behind his house and prayed for wisdom from God.³ It was on this night in 1820 that Joseph Smith received what has come to be known as the First Vision. He later maintained that a pillar of light descended upon him, filling him with the spirit of God. Two years later, on September 21, 1823, Smith received a visit from an angel named Moroni, who assured Joseph that his sins were forgiven, and that he had found favor with God. It was Moroni who showed Smith the infamous golden plates. Smith found them the next day and showed his family, who believed in earnest.⁴ In 1830, the Church of the Latter-Day Saints was founded along with the first publication of the Book of Mormon.⁵ Smith mastered the art of persuasion, and the Mormon church began to flourish. Smith led the new sect through inspiration from his continuous encounters with God.⁶ The year 1842 or 1843 (there is some dispute) marks the official entrance of polygamy into the Mormon religion.⁷ The Revelation of Celestial Marriage was dictated by Smith into section 132 of the Doctrine and Covenants, a supplement to the Bible and the Book of Mormon.⁸ Polygamy was ultimately justified by the Old Testament example set

³ Richard L. Bushman, *Joseph Smith and the Beginnings of Mormonism* (Urbana and Chicago: University of Illinois Press, 1984), 53-56.

⁴ *Ibid*, 56-64.

⁵ *Ibid*, 119.

⁶ Sarah Barringer Gordon, *The Mormon Question: Polygamy and Constitutional Conflict in Nineteenth Century America* (Chapel Hill and London: University of North Carolina Press), 19.

⁷ Gordon states 1843, see page 22; Harry M. Beardsley, *Joseph Smith and his Mormon Empire* (Boston and New York: Houghton Mifflin Company), 137-states 1842.

⁸ Danel Bachman and Ronald K. Esplin, "History of Plural Marriage" in *Encyclopedia of Mormonism*, Volume 3, Plural Marriage, 1992 ed. Accessed online at <<http://www.polygamy.com/Mormon/History-of-Plural-Marriage.htm>> on November 26, 2002.

by Abraham. It is written in the Doctrine and Covenant, Section 132, verse 31, “Abraham received promises concerning his seed, and of the fruit of his loins- from whose loins ye are, namely, my servant Joseph-which were to continue so long as they were in the world...” Verse 37 reads, “Abraham received concubines, and they bore him children; and it was accounted unto him for righteousness, because they were given unto him, and he abode in my law; as Isaac also and Jacob did none other things than that which they were commanded; and because they did none other things than that which they were commanded, they have entered into their exaltation, according to the promises, and sit upon thrones, and are not angels but are gods.” Verse 31 explicitly directs followers to imitate the works of Abraham, and receive salvation in return. David, Solomon, and Moses are heralded in subsequent verses.⁹ Though polygamy remained secret for approximately ten years, practiced only by church leaders, it was an integral part of the Mormon faith. Progression toward godhood in the eternal life was the goal of the Mormon religion, and they firmly believed that polygamy was required to achieve this end result. “Plural marriage was evidence of obedience to God’s law of celestial marriage and the hope of eternal progression through stages of heaven to eventual godhood. The sacrifice of deeply ingrained convictions in this life in return for rewards in the celestial worlds to come created a tangible tie between acceptance of the most difficult and controversial of all the prophet’s tests here on earth, and glory in the afterlife.”¹⁰

⁹ *The Book of Doctrine and Covenants*, Section 132 (Nauvoo, Illinois), 1843. Accessed online at <<http://www.lds-mormon.com/132.shtml>> on November 26, 2002.

¹⁰ Gordon, 22-23.

Polygamy was not practiced by church leaders and members simply because Smith and the elders ordered it so. It was the decision of each individual based on a personal revelation from God. Smith ardently believed that it was a revealed principle from God, and that he had little choice but to obey if he wished to remain favorable in the Lord's eyes.¹¹ In 1844 Joseph Smith was murdered in Illinois, and Brigham Young became the Mormons' new leader. It was Young who led the Saints to Utah after they suffered much persecution elsewhere. He began to preach quite frequently on the subject of plural marriage, and it soon became public knowledge.¹² In the years to come, hostility toward the unfamiliar practice escalated, finally culminating in the congressional passage of the Morrill Anti-Bigamy Act in 1862. The act essentially made polygamy a crime punishable by a fine and jail time. This did not deter the custom, for the Mormons believed it to be a violation of their constitutionally promised religious liberty, and they failed to abide by the Act.¹³ Then, in 1874, Brigham Young made the fateful decision to try a test case, to see if the congressional ban would withstand the courts' scrutiny and their interpretation of the Constitution. His mild-mannered secretary, George Reynolds, who had just married for a second time, was selected as the test case subject.¹⁴ The prohibition was indeed upheld as the Church of Jesus Christ of Latter-Day Saints miserably lost their case at the United States Supreme Court. The remainder of this paper will discuss the errors of that decision.

¹¹ Bachman and Esplin, 2.

¹² Gordon, 25-27.

¹³ Ibid, 87.

**“IF GEORGE REYNOLDS IS TO BE PUNISHED, LET THE WORLD KNOW
THE FACTS.” -George Q. Cannon**

Reynolds v. United States (hereafter *Reynolds*) was decided by a unanimous Supreme Court in October of 1878. Chief Justice Morrison Waite wrote the majority opinion. In so doing, the Chief Justice posed and answered six questions, only one of which is pertinent to the thesis of this paper. The other five concern nineteenth century federal trial procedure to which he offers satisfactory answers. I will briefly note these issues to give the context in which the case was decided. Let it be noted that it is not my intention to retry the case, but to point out the manner in which the Supreme Court violated the Free Exercise Clause of the First Amendment. Accompanying the Morrill Act of 1862 was the Poland Act of 1874, which greatly expanded the federal jurisdiction in the territory of Utah. Upon its passage, federal prosecutors pursued the Mormons with a newfound determination. It was then that George Reynolds was prosecuted for the practice of polygamy. At trial, none of the witnesses could recall Mr. Reynolds' second marriage except his pregnant second wife, Amelia Jane Schofield. A guilty verdict was rendered overnight by the judge. Reynolds and his lawyer George Biddle appealed to the territorial supreme court, who reversed the grand jury's conviction on the basis that the jury was improperly impaneled. While the Mormons rejoiced, federal prosecutors brought a second indictment against Mr. Reynolds and the grand jury reconvened a few months later. This time, the second Mrs. Reynolds did not reappear, but her testimony at

¹⁴ Ibid, 113.

the previous trial was found to be sufficient, and the territorial supreme court sustained the conviction. Reynolds appealed to the United States Supreme Court, invoking his Free Exercise rights, but was to no avail.¹⁵

The first question asked and answered by Chief Justice Waite in his majority opinion regarded the number of grand jurors required to indict a person under the law of the Territory of Utah. Fifteen jurors were present, and George Biddle, counsel for George Reynolds, contended that Section 808 of the Revised Statutes required sixteen. Chief Justice Waite demonstrated that this statute only applied to circuit and district courts, and that the portion of the Poland Act passed in 1874 concerning federal trials in the territory of Utah did not specify the number of jurors needed for a grand jury. The second and third inquiries resolved by the Chief Justice concerned the impartiality of certain petit jurors. Reynolds and his council alleged that certain jurors had already formed opinions about the case and could not decide Mr. Reynolds' fate fairly. Chief Justice Waite found that the jurors had been thoroughly questioned, and while they may have formed opinions about the issue of polygamy, they were still willing to keep an open mind and hear all of the facts before rendering a decision. The fourth question pertained to whether the testimony given by Amelia Jane Schofield, Reynolds' second wife, was admissible. Biddle contested this evidence was improper, since she was not present at the second trial. Chief Justice Waite dismissed this contest by stating that the defendant was present during her testimony and was afforded all opportunities to cross-examine. Since her testimony was for the same cause in both trials, it was perfectly admissible.

¹⁵ Ibid, 113-116.

The sixth question posed by the Supreme Court regarded the issue of the part of Reynolds' charge which directed the jury to consider the moral and social consequences of polygamy. Biddle found this unsuitable. Chief Justice Waite found it quite typical of a trial setting. He asserted that the jury was only informed of the situation at hand, and found "no appeal to (their) passions, no instigation of prejudice."¹⁶ The fifth question will be the subject of the discussion to follow.

THE WRONG ANSWER

This question asked in the majority opinion of *Reynolds*, "Should the accused have been acquitted if he married the second time, because he believed it to be his religious duty?"¹⁷ My answer is yes. My next task will be to refute the flaws in Chief Justice Waite's majority opinion. First of all, he is correct in stating that the word "religion" is not defined in the Constitution. It is quite possible that "religion was left undefined because to define it would *establish* it."¹⁸ If this is true, then the Chief Justice missed the mark by looking to history to define it. He also erred by giving us an extremely one-dimensional view. He properly asserts that polygamy has always been found abhorrent in northern and western Europe and only practiced in Asiatic and African religions, using this as a partial means of justification for outlawing it.¹⁹ However, he forgets to mention that northern and western European nations have been havens for religious intolerance and

¹⁶ *Reynolds v. United States* 98 U.S. 145 (1878).

¹⁷ *Ibid.*

¹⁸ Jeremy M. Miller, "A Critique of the Reynolds Decision," *Western State University Law Review*, Spring, 1984, 186.

¹⁹ *Reynolds v. United States* 98 U.S. 145 (1878).

persecution, precisely the reason that people fled them and came to America. It is also “racist,” notes Brooklyn Law School Professor Emeritus Henry Mark Holzer, “to assert that polygamy is not a legitimate religious belief simply because it has heretofore been practiced mainly by Asians and Africans.”²⁰ Chief Justice Waite essentially implies that religious customs not endorsed by Christianity do not merit protection under the Free Exercise Clause. This is clearly tyranny by the majority, something James Madison warned against in his *Memorial and Remonstrance Against Religious Assessments*.²¹ I do not believe the Founding Fathers and ratifiers of the Constitution envisioned any reenactments of the religious persecution their ancestors struggled and fought so bravely to escape.

TAKING THE FRAMERS OUT OF CONTEXT

Historians and legal scholars agree that the Founding Fathers, particularly James Madison and Thomas Jefferson, placed extreme value and importance on religious liberty. They were adamantly against the nation establishing a religion or church of any kind, and they revered the notion of liberty of conscience, for instance that every citizen has the right to choose their own sect of religion, or no religion at all. Chief Justice Waite quoted Madison from his *Memorial and Remonstrance*, and Jefferson from his *Letter to the Danbury Baptist Association* to lend credence to his viewpoint that the Free Exercise Clause protects beliefs

²⁰ Henry Mark Holzer, “The True *Reynolds v. United States*,” *Harvard Journal of Law and Public Policy*, Winter 1987, 43.

only, and not actions.²² However, through their writings we see that the Framers sought to protect religious practices as well as opinions, and the Chief Justice has misused select phrases to support his own misguided opinions. Thomas Jefferson is quoted from his *Letter to the Danbury Baptist Association* as saying,

“Believing with you that religion is a matter which lies solely between man and his God; that he owes account to none other for his faith or his worship; that the legislative powers of the whole American people which declared that their legislature should ‘make no law respecting an establishment of religion or prohibiting the free exercise thereof,’ thus building a wall of separation between church and state. Adhering to this expression of the supreme will of the nation in behalf of the rights of conscience, I shall see with sincere satisfaction the progress of those sentiments which tend to restore man to all his natural rights, convinced he has no natural right in opposition to his social duties.”²³

From this, Chief Justice Waite reached the conclusion that Jefferson intended for Congress to be able to legislate as it pleased against religious actions or practices. Obviously, the Reynolds Court did not peruse Jefferson’s *Virginia Act for Establishing Religious Freedom*. If they had, they would have read, “The rights of conscience we never submitted, we could not submit. We are answerable for them to our God. The legitimate powers of government extend to such actions only as are injurious to others. But it does me no injury for my neighbor to say there are twenty gods, or no God. It neither picks my pocket nor breaks my leg . . . Constraint may make him worse by making him a hypocrite, but will never make him a truer man. It may fix him obstinately in his errors, but

²¹ James Madison, *Memorial and Remonstrance Against Religious Assessments*, viewed in *Cornerstones of Religious Freedom in America*, edited by Joseph L. Blau (New York: Harper and Row, 1949), 85.

²² *Reynolds v. United States* 98 U.S. 145 (1878).

will not cure them.”²⁴ As I will demonstrate in my next section, polygamy did no injury to others.

Mormonism professed to be an alternative sect of Christianity, rightly offending many traditionally practicing Christians. It even went so far as to instill fear in them, and they were frequently persecuted; this was something Jefferson obviously did not advocate or prescribe. His advice was to leave differing sects alone, and let reason “laugh (them) out of doors, without suffering the State to be troubled with it.”²⁵ Chief Justice Waite also briefly quoted James Madison from his *Memorial and Remonstrance*, and seemed to draw the same conclusion as he did in reading Thomas Jefferson.²⁶ However, he must have overlooked Madison’s *The Memorials of the Hanover Presbytery and the Baptists*. It says, “. . . that the duty they owe their Creator, and the manner of discharging it, can only be directed by reason and conviction, and is no where cognizable but at the tribunal of the Universal Judge.”²⁷ The Chief Justice was also quite selective in his readings of Madison’s *Memorial and Remonstrance*. He must have missed the part that says, “The religion, then, of every man, must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is, in its nature, an

²³ Thomas Jefferson, *Letter to the Danbury Association*, 1802, viewed in *Reynolds v. United States* 98 U.S. 145 (1878).

²⁴ Thomas Jefferson, *Virginia Act for Establishing Religious Freedom*, 1779, Viewed in *Cornerstones of Religious Freedom in America*, edited by Joseph L. Blau, 77.

²⁵ *Ibid*, 83.

²⁶ *Reynolds v. United States* 98 U.S. 145 (1878).

²⁷ James Madison, *The Memorial of the Hanover Presbytery and the Baptists*. Viewed in George Q. Cannon, *A Review of the Decision of the Supreme Court of the U.S., in the Case of George Reynolds vs. the United States*, 1879, 11-12.

unalienable right.”²⁸ The words exercise and discharge distinctly denote actions. Christianity, admittedly the reigning religion in America since its founding, is the only major religion that has not endorsed polygamy.²⁹ Chief Justice Waite thus assumed that this made it undesirable for America, and against the Founding Fathers’ wishes. Based upon the following selections from Thomas Jefferson’s *Virginia Act*, he may not have agreed. He wrote, “The bill for establishing religious freedom . . . meant to comprehend, within the mantle of its protection, the Jew and the Gentile, the Christian and the Mohammedan, the Hindoo and Infidel of every denomination.”³⁰ He evidently wished to make room in America for not only a plurality of Christian denominations, but also a variety of religions. Why would Jefferson have mentioned such a diverse cross-section of religions if he did not intend for all of them to be able to practice them? Let it also be noted that Biblical Judaism and Hindu religions have traditionally accepted and practiced polygamy.³¹ Madison also makes reference to religions other than Christianity. In his *Memorial to the Hanover Presbytery and the Baptists*, he mentions “the tenets of Mahomet,” and “those who believe in the Alcoran.”³²

Another error the *Reynolds* Court made was coercing the Mormons into uniformity. Religious coercion was expressly frowned upon by the Framers. This notion is well documented. The *Declaration of Rights of Virginia*, originally drafted by George Mason and amended by James Madison, read when finished, “That religion, . . . and the manner of discharging it, can be directed only by

²⁸ James Madison, *Memorial and Remonstrance*, 84

²⁹ Henry Mark Holzer, 43.

³⁰ Thomas Jefferson, *Virginia Act for Establishing Religious Freedom*, 15-16.

³¹ Jeremy Miller, 179.

reason and conviction, not by force or violence, and therefore all men are equally entitled to the free exercise of religion according to the dictates of conscience...”³³ Jefferson, in his *Virginia Act*, says,

“Millions of innocent men, women, and children, since the introduction of Christianity, have been burnt, tortured, fined, imprisoned; yet we have not advanced one inch towards uniformity. What has been the effect of coercion? To make one half the world fools and the other half hypocrites. To support roguery and error all over the earth. Let us reflect that it is inhabited by a thousand millions of people. That these profess, probably a thousand different systems of religions. That ours is but one of that thousand. That if there be but one right and ours that one, we should wish to see the nine-hundred-ninety-nine wandering sects gathered into the fold of truth. But against such a majority we cannot effect this by force. Reason and persuasion and the only practicable instruments.”

EXERCISE DEFINED

The word “exercise” in the Religion Clause was carefully selected, and it denotes action. The American Heritage Dictionary defines exercise as “an act of employing or putting into play; to use.” Webster’s Dictionary defines it, “to make effective in action; to implement the terms of.” Black’s Law Dictionary defines it “to make use of; to put into action.” While none of our rights are absolute except those that are natural and inalienable, such as life, liberty, or the pursuit of happiness, religious actions must still merit protection under the Free Exercise Clause. Chief Justice Waite states in *Reynolds* that “Congress was deprived of all legislative power over mere opinion, but was left free to reach actions which were subversive of good order.” Waite also stated in his opinion that “laws are made for the government of actions, and while they cannot interfere with mere

³² James Madison, *The Memorial to the Hanover Presbytery and the Baptists*, 11-12.

religious belief and opinions, they may with practices.”³⁴ To an extent this must be true. Human sacrifice, destroying a neighbor’s property, or flying airplanes into buildings cannot be permitted under any circumstances, religious or otherwise. But where does the Supreme Court draw the line? What kind of actions can it interfere with, and with which kinds can it not? The *Reynolds* Court gives no satisfactory answers. If Chief Justice Waite is read *prima facie*, then it appears that the government can prohibit citizens’ free exercise rights every time it does not agree with their religious practice. This is unacceptable, and is in conflict with the Framers’ writings. The Framers chose the word exercise to make it obvious that religious actions as well as opinions would be protected. All of these sources include the word action, which brings us back to the original question posed in the thesis: What is the use of a religious belief that cannot be acted upon?

AN EXAMPLE OF PROPER FREE EXERCISE JURISPRUDENCE

A subsequent Supreme Court in 1972 decided that the Free Exercise Clause did extend to religious action. *Wisconsin v. Yoder* is one case that overruled the legal theory promulgated in *Reynolds*. The Amish religious sect sought to take their children out of public school after the eighth grade, believing that what was to be taught in school would undermine their religious teachings, philosophy, and way of life. The Amish, like the Mormons, sincerely believed that

³³ James Madison, *The Declaration of Rights of Virginia*, Section 16, Viewed in George Q. Cannon, *A Review of the Decision...*, 9.

³⁴ *Reynolds V. United States* 98 U.S. 145 (1878).

their salvation would be in jeopardy if they complied with the law.³⁵ On May 15, 1972, a six-justice majority ruled in favor of the Amish, stating that it was their right to keep their children home from school if done for religious reasons. The Court reasonably found that “by exposing Amish children to worldly influences in terms of attitudes, goals, and values contrary to beliefs, and . . . substantially interfering with the religious development of the Amish child . . . contravenes the basic religious tenets and practice of the Amish faith, both as to the parent and the child.”³⁶ *Yoder* is but one case of many that demonstrates a widely held opinion that the Free Exercise Clause extends to actions as well as beliefs. Another case that protected religiously motivated actions was *West Virginia Board of Education v. Barnette*. The Supreme Court here held that Jehovah’s Witness children did not have to salute the American flag during school, since their religious beliefs dictated that they only pledge allegiance to God.³⁷ *Sherbert v. Verner* is yet another case protecting actions. This Court ruled that a Sabbatarian Seventh Day Adventist could collect unemployment benefits because she could not find work that would allow her to observe her religion’s Sabbath day, which was Saturday.³⁸

Viewed in light of more recent Supreme Court decisions, one might think that *Reynolds* would be overturned, and much speculation of the sort existed after the ruling in *Yoder*, despite the fact that there has been little subsequent effort from the Mormons to legalize polygamy. However, *Reynolds* has never

³⁵ *Wisconsin v. Yoder* 406 U.S. 205 (1972).

³⁶ *Ibid.*

³⁷ *West Virginia Board of Education v. Barnette*, 319 U.S. 624 (1943).

³⁸ *Sherbert v. Verner*, 374 U.S. 398 (1963).

been overturned; polygamy is still illegal, with even the Church of Jesus Christ of Latter-Day Saints denouncing the practice in 1890 and excommunicating practicing members. The idea that the Free Exercise Clause fails to protect religious actions has been overturned, though there have been some notable exceptions in recent Supreme Court jurisprudence.³⁹

REFUTATION OF OPPONENTS

I now turn to other arguments presented by Chief Justice Waite. The first argument he articulates is that polygamy is subversive of good order. This is hardly true. It was a sincere religious belief, and only practiced by about twenty-five percent of the Mormon population.⁴⁰ Brigham Young preached many sermons about the self-discipline it required. Husbands were under strict orders to care for all of the needs of their wives and children. Most Mormon men married no more than twice. Cannon articulated, "Plural marriage...is a religious duty and obligation of the most sacred character. Men take upon them the responsibility and care of wives and children, because they believe God has commanded them so to do. It is not lust, self-ease, self-indulgence or selfishness which prompts them to marry, for all these can be better gratified by conforming to the custom of the world."⁴¹

Antipolygamists have claimed that the practice of polygamy leads to despotism, and had no place in a democratic republic. This argument completely

³⁹ For what is probably the most well-known case in Free Exercise jurisprudence, see *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990).

⁴⁰ Bachman and Esplin, 5.

ignores Thomas Jefferson's wall of separation between church and state, a concept advocated and cherished by many Americans. The United States government was designed as a democratic republic, but nowhere in the Constitution or the Bill of Rights does it direct religions to imitate this model. This nation was founded on religious freedom, and religions were and are free to conduct themselves as they see fit. If any sect wishes to institute a hierarchy or dictatorship, they should be perfectly free to do so. To say that a religious denomination must parallel the United States government would possibly violate the Establishment Clause.

Another assertion from Chief Justice Waite's majority opinion is that polygamous couples violated their social duties.⁴² How is this possible? Mormons were and still are one of the most peaceful religious faiths. They paid their taxes, left their neighbors' property undisturbed, and were observed by visitors to be sober, somber, and law-abiding. Mormons have also never collectively disturbed the peace. Men who father children and fail to support or care for them violate their social duties. This was not the practice of men in plural marriages.

The *Reynolds* Supreme Court alleged that if polygamy were exempt for religious reasons, then the abominable practice of human sacrifice for religious convictions will also have to be given consideration.⁴³ This is entirely absurd. Destroying a human life is a violation of the natural law and one's inalienable rights. No man, woman, or child has ever lost their life by participating in a plural

⁴¹ George Q. Cannon, 29.

⁴² *Reynolds v. United States* 98 U.S. 145 (1878).

marriage. As was mentioned earlier, a line must be drawn; no one should lose their life or property because of religious practices, but to assert that polygamy is synonymous with human sacrifice is complete nonsense.

Chief Justice Waite states that it would be improper for the Supreme Court to make an exception for polygamy simply because of a religiously held belief.⁴⁴ In view of the words of the Founding Fathers and the Free Exercise Clause, it seems most reasonable for the Court to do so. The Court exists to sustain the rights of all citizens, including those in the minority. If outlawing polygamy is the will of the people, then Congress should outlaw it. However, it is the job of the Supreme Court to uphold the Constitution, and protect the minority from a tyranny by the majority. James Madison warned that “the majority may trespass on the rights of the minority.”⁴⁵ The Supreme Court was implemented in part to prevent this from happening.

Part of Chief Justice Waite’s reasoning in *Reynolds* is that he believes that, “to permit (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.”⁴⁶ While this is the extremist viewpoint, it does have merit. Letting each and every citizen live as he or she pleases will eventually lead to chaos. However, if the United States Supreme Court consistently coerces all those possessing divergent or unorthodox beliefs into acting as the majority does, we will have a society of despotism and totalitarianism. The

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ James Madison, *Memorial and Remonstrance*, 85.

⁴⁶ *Reynolds v. United States*, 98 U.S. 145 (1878).

Founding Fathers vehemently spoke out against coercion or religious discrimination. Neither society is desirable, for both lead to tyranny. It is the duty of Congress and the courts to strive for a middle ground that values the civil liberties of all citizens without “courting anarchy.”⁴⁷

Chief Justice Waite does not specifically mention this next opposition, but many antipolygamists professed that polygamy oppressed women.⁴⁸ There is a distinct possibility that this is true, depending on what one considers to be oppression. However, plural marriage, oppressive or not, was completely voluntary, and those women who did not wish to participate could remain single or monogamously married. Mormon women, as well as men, claimed religious convictions directing them to polygamous marriages, and expressed fervent belief in the custom. They, along with their male counterparts, were most distressed with the decision in *Reynolds*.⁴⁹

CONCLUSION

In conclusion, the Supreme Court missed the mark with *Reynolds v. United States*. I hold absolutely no religious sympathies with the Mormons, but for them to have been left alone to marry again and again would neither “pick my pocket nor break my leg.”⁵⁰ While they certainly offended many Christians of all varying sects, that is no reason to coerce them into uniformity. If anyone who is offensive merits a curtailment of their constitutional rights, then it is only a matter

⁴⁷ Associate Supreme Court Justice Antonin Scalia, *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990), majority opinion.

⁴⁸ Gordon, 53.

⁴⁹ *Ibid*, 113.

of time before political extremists, rap artists, and homosexuals are banned from society. Polygamy may have been new to America, but it was practiced for many years in other countries, making it a time-honored way of life. Our Founding Fathers strongly advocated religious tolerance, and nineteenth century America was anything but tolerant toward the Mormons. To sum up Madison in Federalist 10 and 51, “the best way to maintain a condition of religious freedom in a religiously pluralistic society is not to subject the pluralism to some legally enforceable substantive principle, but rather to permit the pluralism to flourish and to maintain institutional structures in which pluralism *can* flourish.”⁵¹ The *Reynolds* Court applied intolerant jurisprudence in this case. Chief Justice Waite looked to history and the writings of Madison and Jefferson to support his decision, but instead of examining the entire context, he took only what he needed to make his case. I originally asked if religious belief serves any advantage if one is prohibited from practicing as his conscience dictates. My answer is no. If the Supreme Court had continued down the path it laid in *Reynolds*, no religious act would be safe.

⁵⁰ Thomas Jefferson, *Virginia Act for Establishing Religious Freedom*.

⁵¹ Steven Smith, *Getting Over Equality* (New York and London: New York University Press, 2001), 20.