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Beneath the Veil of Mormonism: Uncovering the Truth About Polygamy in the United States and Canada

Jason D. Berkowitz

COMMENTS

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I. INTRODUCTION

A. *The Church of Jesus Christ of Latter-day Saints' History and its Internal Struggle with Polygamy*

Colorado City, an isolated desert city straddling the Utah-Arizona border, is home to more than 9,000 Mormon Fundamentalists.[1] Mormon Fundamentalists, like their mainstream brethren within the Church of Jesus Christ of Latter-day Saints (LDS), believe that Joseph Smith founded Mormonism in 1830.[2] Simi-

* J.D. Candidate, University of Miami, 2008; B.A. Tufts University, 2003. I would like to thank my family for all of their support and encouragement, Professor Mario Barnes for his guidance and direction, and the editors and staff of the Inter-American Law Review for their efforts in preparing this piece for publication.

1. JON KRAKAUER, UNDER THE BANNER OF HEAVEN 10 (2003).

2. *See id.* at 5; *see generally* The Church of Jesus Christ of Latter-day Saints, Beliefs and Doctrines, http://www.mormon.org/learn/0,8672,956-1,00.html (last visited March 30, 2007).

larly, both sects have adopted the same holy scriptures.[3] While seemingly identical in all respects, one major distinction exists between the two groups: Mormon Fundamentalists zealously believe that Saints have a divine right and obligation to take multiple wives,[4] a practice commonly referred to as polygamy.[5] According to some critics of polygamy, the taking of multiple wives as "one of the religion's most crucial theological tenets"[6] has tarnished the proud history of the religion, and left a bitter taste in the mouth of religious and political leaders, who refer to the practice as "one of the 'twin relics of barbarism . . . .'"[7]

In response to the negative association that has existed between Mormonism and polygamy, over time "[t]he LDS leadership has worked very hard to persuade both the modern church membership and the American public that polygamy was a quaint, long-abandoned idiosyncrasy practiced by a mere handful of nineteenth-century Mormons."[8] The Church's effort to distance itself from polygamy continues today. For example, recruitment literature handed out at Utah's Temple Square in downtown Salt Lake City, glosses over the religion's shadowy history.[9] The informational material makes no mention of the fact that Joseph Smith–the religion's spiritual leader and founder–married between thirty-three and forty-eight women[10] and fathered count-

3. *See* KRAKAUER, *supra* note 1; *see also* The Book of Mormons, a Brief Explanation, http://scriptures.lds.org/en/bm/explanation (last visited March 30, 2007). "The Book of Mormon comprises fifteen main parts or divisions, known, with one exception, as books, each designated by the name of its principal author. The first portion (the first six books, ending with Omni) is a translation from the Small Plates of Nephi. Between books of Omni and Mosiah is an insert called The Words of Mormon. This insert connects the record engraved on the Small Plates with Mormon's abridgment of the Large Plates. The longest portion, from Mosiah to Mormon, chapter 7, inclusive, is a translation of Mormon's abridgment of the Large Plates of Nephi. The concluding portion, from Mormon, chapter 8, to the end to the volume, was engraved by Mormon's son Moroni, who, after finishing the record of his father's life, made an abridgment of the Jaredite record (as the Book of Ether) and later added the parts known as the Book of Moroni." *Id.*

4. KRAKAUER, *supra* note 1, at 5.

5. BLACK'S LAW DICTIONARY 1197 (8th ed. 2004) (defining polygamy as "[t]he state or practice of having more than one spouse simultaneously").

6. KRAKAUER, *supra* note 1, at 5.

7. Richard A. Vazquez, *The Practice of Polygamy: Legitimate Free Exercise of Religion or Legitimate Public Menace? Revisiting Reynolds in Light of Modern Constitutional Prudence*, 5 N.Y.U. J. LEGIS. & PUB. POL'Y 225 (2001).

8. KRAKAUER, *supra* note 1, at 5.

9. *Id.* at 3 (noting that Salt Lake City, Utah, is the epicenter of the Mormon Church).

10. *Id.* at 5; *see also* Joseph F. Smith, http://www.answers.com/topi/joseph-f-smith (last visited March 12, 2007).

less children. However, despite the church's efforts to minimize its importance to the religion, "[p]olygamy was . . . one of the most sacred credos of Joseph's [LDS] church–a tenet important enough to be canonized for the ages as Section 132 of the *Doctrine and Covenants*, one of Mormonism's primary scriptural texts."[11] In fact, Joseph Smith, the revered prophet, "described plural marriage as one of 'the most holy and important doctrines ever revealed to man on Earth' . . . and taught that a man needed at least three wives to attain the 'fullness of exaltation' in the afterlife."[12]

Although modern LDS leadership forcefully condemns the practice and insists that polygamy is an antiquated ritual, recent events suggest otherwise. New investigations reflect that the LDS Church has not only failed to extinguish the practice of polygamy, but in fact reveal that this ritualistic custom is thriving in remote locations in the United States and Canada. There are an estimated 30,000 to 100,000 Fundamentalists within the Church of Latter-day Saints (FLDS) "living in Canada, Mexico, and throughout the American West."[13]

Despite such a significant presence in the United States (for example, in states such as Utah, Idaho, and Arizona) and Canada (in the British Columbia province), Mormon Fundamentalists have essentially remained undetected and immune from legal prosecution despite brazen violations of both local and federal polygamy laws. This cloak of invisibility was pierced, however, on August 28, 2006, when authorities arrested the polygamist leader of Colorado City, Arizona, Warren Jeffs.[14] Jeffs spent four months on the FBI's ten-most-wanted list, suspected of committing rape, accessory to rape, sexual acts with minors, and unlawful flight to avoid prosecution.[15] This high-profile arrest blanketed all major newspapers and media outlets. It served as a stark reminder that members of the LDS Church, albeit a minority, were still engaging in the forbidden practice of polygamy.

Although Jeff's apprehension signified this disturbing reality,

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11. *Id.* at 6; *see also* The Doctrine and Covenants of the Church of Jesus Christ of Latter-day Saints, http://scriptures.lds.org/en/dc/132/61a (last visited March 12, 2007) ("[I]f any man espouse a virgin, and desire to espouse another, and the first give her consent, and if he espouse the second . . . then is he justified.").

12. KRAKAUER, *supra* note 1, at 6 (citation omitted).

13. *Id.* at 5.

14. Kirk Johnson et al., *Leader of Polygamist Mormon Sect is Arrested in Nevada*, N.Y. TIMES, Aug. 30, 2006, at A12.

15. *Id.*

it also marked a turning point in the battle against polygamy. Previously, law enforcement turned a blind eye to polygamists and did little to disrupt the practice. Despite explicit prohibitions in state constitutions and inclusion in both state and federal statutes, officials tolerated polygamous conduct. There are various reasons for this neglect. In some instances, government representatives feared that any "crack-down" on polygamists would be construed as a government attempt to abridge the constitutionally protected freedom of religion.[16] Also, in states such as Utah where its legislature is predominantly Mormon,[17] there is reluctance to confront fellow Saints. Further, enforcement has been ineffective because of the lack of police resources, societal prioritization of more significant or prevalent criminal violations, the inability to secure witnesses willing to testify against community spiritual leaders, and lastly, general misconceptions concerning polygamy laws. Each of these barriers to enforcement will be discussed in turn.[18]

Although Mormon Fundamentalist leaders have attempted to hide behind the shield of the First Amendment,[19] the U.S. Supreme Court has firmly held that "the First Amendment does not provide absolute immunity for all religiously motivated conduct . . . . [R]eligious principles leading to 'overt acts against peace and good order' are not protected by the Free Exercise Clause."[20] Consequently, polygamy is not a constitutionally protected right under the First Amendment. Subsequent federal and state court decisions have upheld this conclusion, affirming that the First Amendment is not limitless when it comes to religious practices

16. James Brooke, *Utah Struggles With a Revival of Polygamy*, N.Y. TIMES, Aug. 23, 1998, at A1 ("Gov. Michael O. Leavitt, a Republican, speculated that polygamy might enjoy protection as a religious freedom.").

17. Bob Bernick, Jr., *Letter by LDS Leaders Cheers Utah Democrats*, DESERET MORNING NEWS, Mar. 15, 2006, *available at* http://deseretnews.com/dn/view/0,1249,635191859,00.html ("[A]bout 80 percent of the 104 part-time state legislators [are] members of the LDS Church . . . .").

18. Todd M. Gillett, *The Absolution of Reynolds: The Constitutionality of Religious Polygamy*, 8 WM. & MARY BILL RTS. J. 497, 500 (2000) (citing John Heliprin, *Hatch Joins Leavitt in Game of Twister over Polygamy Issues,* SALT LAKE TRIB., Aug. 29, 1998, at A1) ("Senator Orrin Hatch of Utah, the chairman of the Senate Judiciary Committee, when questioned about the potential constitutionality of polygamy, said, "I don't think the Constitution is clear. I think the constitutional law is clear. . . . The Constitution is ambiguous with regard to this. It provides for religious freedom.").

19. U.S. CONST. amend. I ("Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . .").

20. Cassiah M. Ward, *I Now Pronounce You Husband and Wives: Lawrence v. Texas and the Practice of Polygamy in Modern America*, 11 WM. & MARY J. WOMEN & L. 131, 139 (2004) (quoting Reynolds v. United States, 98 U.S. 145 (1878)).

deemed violative of the criminal law.[21]

B. Canada's Polygamist Enclave

The practice of polygamy is not isolated to the territorial boundaries of the United States. Canadian officials are also battling a polygamy "outbreak." At the root of the problem is a fundamental sect of Mormonism burgeoning along the southern border in British Columbia. Nestled between the Purcell Mountains and the Kootenay River, a few miles outside of Creston, the Fundamentalist Mormons have established a colony, referred to as Bountiful.[22] Bountiful is home to more than seven hundred Fundamentalists under the command of Prophet Rulon Jeffs.[23]

Mormon Fundamentalists, who fled Utah after the LDS Church renounced polygamy in the United States, founded Bountiful.[24] Despite the plain language of the Canadian Criminal Code, which forbids the practice of polygamy, residents of Bountiful have remained essentially undisturbed by law enforcement.[25] "Bountiful is no secret to local people[,] . . . [n]or is it to the province's police and social workers. It is [even] known to British Columbia's top law-enforcement officer, the attorney-general."[26] Furthermore, despite first-hand testimony from former Bountiful residents who escaped the community, the crown attorney's office has declined to charge anyone with violating polygamy laws. This lack of enforcement stems from a concern that the Canadian

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21. *See, e.g.*, Utah v. Green, 99 P.3d 820, 825 (Utah 2004) ("Utah's bigamy statute does not violate the First Amendment as interpreted by the United States Supreme Court . . . ."); Utah v. Holm, 137 P.3d 726, 742 (Utah 2006) ("*Reynolds* . . . has never been overruled by the United States Supreme Court . . . . Regardless of the wisdom of the United States Supreme Court's current federal free exercise analysis, that analysis is controlling, and this court does not enjoy the freedom to tamper with or modify pronouncements by that Court."); Barlow v. Blackburn, 798 P.2d 1360, 1366 (Ariz. Ct. App. 1990) ("Although the First Amendment and the Arizona Constitution absolutely protect religious beliefs, the protection extended to religiously-motivated conduct is not absolute, and not all burdens on religion are unconstitutional.").

22. KRAKAUER, *supra* note 1, at 29.

23. *Id.*

24. *Id.* at 30.

25. Canada Criminal Code, R.S.C., ch. C-46, § 293(1) ("Every one who (a) practises [sic] or enters into or in any matter agrees or consents to practise [sic] or enter into (i) any form of polygamy, or (ii) any kind of conjugal union with more than one person at the same time, . . . is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.").

26. *Hunting Bountiful; Polygamy in Canada*, THE ECONOMIST, July 10, 2004 ("For half a century, a hotbed of polygamy has quietly flourished there in a commune called Bountiful. It is run by a breakaway sect of the Mormon Church, in successful defiance of the law.").

courts would reject such a conviction because of the freedom of religion guarantee in Canada's Charter of Rights and Freedoms.[27]

The fundamental question therefore becomes: how can two countries that obsessively protect the rights of women and children,[28] tolerate polygamy, which contradicts our notions of family values? To answer this question, Part II of this comment will trace the development of polygamy laws within the United States, from a historical perspective. Part III will explore both formal and informal protections afforded to polygamists within the United States and why enforcement of polygamy laws has been ineffective. Part IV will focus on the status of polygamy laws in Canada and the reasons for failed enforcement. Part V will analyze the destructive nature of polygamy and the societal ills attributable to the practice, including its detrimental impact on women and children. Finally, Part VI will suggest the necessary course of action.

II. POLYGAMY LAWS: THE SWINGING PENDULUM

"Although most people logically assume that, somewhere in the world, people practice polygamy, they usually consider the concept of plural marriage to be beyond the 'accepted norms of [American] society.'"[29] The American struggle against polygamy flared in 1844 when the founder of Mormonism, Joseph Smith, was murdered "by a mob of Mormon haters" in Illinois.[30] Brigham Young assumed the leadership of the Mormons and encouraged his followers to "embrace the covenant of 'spiritual wifery.'"[31] The Victorian-era American population found the practice of polygamy

27. *Id.* ("[T]he guarantee of religious freedom in Canada's Charter of Rights and Freedoms renders the law against polygamy unconstitutional.").

28. *See* The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program Act, 42 U.S.C. § 14071(a)(1) (2006) ("The Attorney General shall establish guidelines for State programs that require - (A) a person who is convicted of a criminal offense against a victim who is a minor or who is convicted of a sexually violent offense to register a current address . . . and (B) a person who is a sexually violent predator to register a current address . . . ."); *see also* Catherine L. Carpenter, *The Constitutionality of Strict Liability in Sex Offender Registration Laws*, 86 B.U. L. REV. 295, 326 (2006); *see also* Sex Offender Information Act, R.S.C. 1985, ch. C-46, s. 490.012(1) (2004) ("A court shall, on application of the prosecutor, make an order in Form 52 requiring a person to comply with the *Sex Offender Information Registration Act* for the applicable period specified . . . as soon as possible after it imposes a sentence on the person . . . .").

29. Gillett, *supra* note 18, at 497 (quoting LENORE J. WEITZMAN, THE MARRIAGE CONTRACT 205 (1981)).

30. KRAKAUER, *supra* note 1, at 6.

31. *Id.*

deplorable and socially undesirable.[32] In response to public outcry, Congress initiated a series of measures aimed at punishing the Mormons for their unacceptable ritual.

First, it refused to admit the state of Utah into the Union until its Mormons abandoned polygamy altogether.[33] Second, in 1854, Congress attempted to gain federal control of Utah by acquiring title to the lands upon which the polygamists lived.[34] Meanwhile, tolerance for the Mormons continued to decline. Three years later, U.S. President James Buchanan ordered the army to invade Utah and destroy Brigham Young's community, in hopes of permanently "eradicat[ing] polygamy."[35] This "so-called Utah War," failed in both removing Brigham Young from power and eradicating the practice of polygamy.[36]

In response to the Mormons' defiance, Congress enacted more punitive measures. "In 1862, Congress passed the Morrill Act, making multiple marriages punishable by a $500 fine or five years' imprisonment."[37] Congress then passed the Poland Act "[to take] judicial power from the [Utah] government, which was controlled by the [LDS] Church, [and] vest[ed] such power in the federal government."[38] The Poland Act also prohibited those living in Utah from selecting juries.[39] This placed the power of jury selection in the hands of the federal government, which ultimately resulted in the exclusion of Mormons from the judicial process.[40]

In response to the "escalating sequence of judicial and legislative challenges to polygamy[,]" Congress enacted the Edmunds Act of 1887, "which disincorporated the LDS Church and forfeited to the federal government all church property worth more than $50,000."[41] Additionally, the Morrill Act revoked the Mormon Church's incorporation and declared that "no religious or charitable organization could own more than $50,000 worth of land."[42]

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32. *Id.*

33. *See* Potter v. Murray City, 760 F.2d 1065, 1067 (10th Cir. 1985) ("Utah's proscription against plural marriages was mandated by Congress in Utah's Enabling Act as a condition for admission into the Union.").

34. Cassiah M. Ward, *I Now Pronounce You Husband and Wives: Lawrence v. Texas and the Practice of Polygamy in Modern America*, 11 WM. & MARY J. WOMEN & L. 131, 135 (2004).

35. KRAKAUER, *supra* note 1, at 6.

36. *Id.*

37. Ward, *supra* note 34, at 134.

38. *Id.*

39. *Id.*

40. *Id.* at 136.

41. KRAKAUER, *supra* note 1, at 6-7.

42. Ward, *supra* note 34, at 135.

Although this Act impacted all religions to some degree, its retroactive nature had the greatest impact on the Mormon Church, which at the time was experiencing a period of rapid growth.[43] The Edmunds Act also "imposed civil [penalties] on polygamists and dramatically simplified the prosecution of polygamy."[44]

A. Polygamists Turn to the Court of Last Resort

In response to the mounting pressure, polygamists turned to the U.S. Constitution for refuge. Specifically, they asserted that "[t]he First Amendment of the Constitution allows Americans to observe the religion of their choice, free from governmental interference."[45] The first challenge to polygamy laws occurred in Utah in 1878 after George Reynolds, then assistant to LDS President Brigham Young, was charged with practicing bigamy.[46] In defending himself, "Reynolds asserted that, because polygamy was practiced in the name of God, it was protected by the Free Exercise Clause of the First Amendment of the Constitution despite the fact that it was intentionally committed in violation of existing state law."[47] However, in *Reynolds v. United States*,[48] the Supreme Court concluded that "the First Amendment does not provide absolute immunity for all religiously motivated conduct."[49] The Court stated:

> [N]ever has [there] been a time in any State of the Union when polygamy has not been an offense against society . . . . [I]t is impossible to believe that the constitutional guaranty of religious freedom was intended to prohibit legislation in respect to this most important feature of social life."[50]

Although the Court held that Congress could not enact legislation that prohibits the free exercise of religion, it concluded that the realm of acceptable religious acts is not boundless and that rituals performed in the name of religion must conform to the law of the

43. *Id.* (noting that only lands acquired after the Act's passage were restricted).

44. *Id.* at 137 ("[T]he Act changed the evidentiary requirement for proving polygamy. Instead of requiring marriage to two or more women at once, simply cohabiting with two or more women was sufficient to imply guilt of a polygamy offense. [The Act also] provided that any man who was or had been a polygamist could be excluded from a jury. . . . Men practicing polygamy were prohibited from voting or holding office.").

45. Ward, *supra* note 34, at 138.

46. *Id.* at 138.

47. *Id.* at 139.

48. Reynolds v. United States, 98 U.S. 145, 167 (1878).

49. Ward, *supra* note 34, at 139.

50. *Reynolds*, 98 U.S. at 165.

land.[51] The Court ultimately found that "Congress was free to regulate 'subversive' activities performed in the name of religion . . . ."[52]

In 1890, the polygamy question again reached the Supreme Court in *Davis v. Beason*.[53] In *Beason*, the Idaho statute in question required that all residents who register to vote must declare, under oath, that they themselves were neither bigamists nor polygamists and had never been affiliated with an organization that encouraged such practices.[54] Samuel Davis brought an action challenging the law's constitutionality after police charged him with violating the statute because of his past membership in the Mormon Church.[55]

The Court upheld Mr. Davis's conviction and stated that "[i]t was never intended or supposed that the [First Amendment] could be invoked as a protection against legislation for the punishment of acts inimical to the peace, good order, and morals of society."[56] This was despite the fact that Mr. Davis had terminated his Mormon Church membership before taking the oath.[57] The Court's holding, which permitted government to "disenfranchise voters because of their religious affiliation,"[58] was consistent with a wave of anti-Mormon sentiment sweeping the nation.[59]

On September 24, 1890, the LDS Church finally bowed to government demands. LDS President Wilford Woodruff issued a manifesto which declared the Mormon Church's intention to ban celestial marriages from its religious doctrine.[60] As a result, the

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51. *See id.* at 166-167 (drawing an analysis between the practice of polygamy and the act of human sacrifice as a necessary part of religious worship). Both are activities which the civil government has the power to regulate. *Id.*

52. Gillett, *supra* note 18, at 512.

53. Davis v. Beason, 133 U.S. 333 (1890).

54. *Id.* at 336.

55. Gillett, *supra* note 18, at 515.

56. *Davis*, 133 U.S. at 342-43 ("However free the exercise of religion may be, it must be subordinate to the criminal laws of the country, passed with reference to actions regarded by general consent as properly the subjects of punitive legislantion [sic].").

57. *Id.* at 515.

58. Gillett, *supra* note 18, at 516 (noting that the disenfranchisement portion of the decision was later overruled).

59. *See Davis*, 133 U.S. at 341 ("Bigamy and polygamy . . . tend to destroy the purity of the marriage relation, to disturb the peace of families, to degrade woman, and to debase man. Few crimes are more pernicious to the best interests of society, and receive more general or more deserved punishment. To extend exemption from punishment for such crimes would be to shock the moral judgment of the community.").

60. Ward, *supra* note 34, at 137.

distrust of Mormons began to diminish, and slowly, they became more accepted into mainstream American culture.[61] "Having jettisoned polygamy, Mormons gradually ceased to be regarded as a crackpot sect[ ] . . . [and] [t]he LDS Church acquired the trappings of a conventional faith . . . ."[62] In addition to greater public acceptance, Utah satisfied the primary condition for statehood imposed by Congress,[63] joining the union in 1896.[64]

Over time, public concerns about polygamy began to subside. However, "even as LDS leaders publicly claimed . . . to have relinquished the practice, they quietly dispatched bands of Mormons to establish polygamous colonies in Mexico and Canada, and some of the highest-ranking LDS authorities continued to take multiple wives and perform plural marriages . . . ."[65] The "roving" polygamists that the LDS Church covertly sanctioned existed in self-sustaining communities, undisturbed for years. It was not until law enforcement perceived the "rebirth" of Mormon Fundamentalists did the pendulum swing back against the polygamists. The revelation precipitated the next generation of anti-polygamy fervor in the United States, as exemplified by the nationwide manhunt for polygamist leader Warren Jeffs.

B. The States Open a Second Front in the War Against Polygamy

In addition to federal law, the three States (Idaho, Arizona, and Utah) with confirmed populations of Mormon Fundamentalists have also proscribed significant criminal penalties for the practice of bigamy or polygamy. In Idaho, bigamy is a felony offense punishable by incarceration for a period up to three years.[66] In Arizona, "[a] person having a living spouse who knowingly marries any other person is guilty of a class 5 felony."[67] In Utah, the epicenter of the LDS Church, the legislature has gone beyond mere inclusion of polygamy restrictions in the criminal

61. *See* KRAKAUER, *supra* note 1, at 7.

62. *Id.*

63. *See* Oliverson v. West Valley City, 875 F. Supp. 1465, 1476 n.20 (D. Utah 1995) ("The Church of Jesus Christ of Latter Day Saints (LDS Mormon) manifestos abolishing polygamy as a church practice were issued September 24, 1890 and became church doctrine October 6, 1890. The Territorial Act was apparently passed to meet conditions of the Utah Enabling Act to allow Utah to become a state.").

64. *See* IPL Kidspace: Stately Knowledge, http://www.ipl.org/youth/stateknow/ut1.html (last visited on March 12, 2007).

65. KRAKAUER, *supra* note 1, at 7.

66. IDAHO CODE ANN. § 18-1103 (1972).

67. ARIZ. REV. STAT. ANN. § 13-3606 (1978).

code. Instead, in order to satisfy conditions of statehood,[68] the Utahans memorialized the prohibition of polygamy in the state constitution. Article III of the Utah Constitution expressly states that "polygamous or plural marriages are forever prohibited."[69] The Utah Criminal Code enforces the constitutional command by categorizing bigamy as a third-degree felony.[70]

Polygamists throughout the mountainous region charged with violating their respective state laws have brought claims in state court challenging the constitutionality of the laws. However, state judiciaries have been unswayed by the polygamists' argument. In *State v. Green*,[71] a defendant appealed his polygamy conviction, insisting that the Utah bigamy statute violated the Free Exercise Clause of the First Amendment to the U.S. Constitution.[72] In upholding the defendant's conviction, the Utah Supreme Court stated:

> The State of Utah's interest in regulating marriage has resulted in a network of laws, many of which are premised upon the concept of monogamy. . . . [P]rohibiting bigamy implicates the State's interest in preventing the perpetration of marriage fraud . . . [and] protect[s] vulnerable individuals from exploitation and abuse."[73]

Therefore, according to the Utah Supreme Court, preventing marriage fraud is a governmental interest sufficient to uphold the state's bigamy statute. Furthermore, the court noted that although the bigamy statute has "[a]n adverse impact on those wishing to practice polygamy as a tenet of their religion[,] . . . an adverse impact on religion does not by itself[ ] prove impermissible targeting."[74]

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68. *See* State v. Holm, 137 P.3d 726, 739-40 (Utah 2006) ("Given the framers' express intent to comply, and, indeed, their assessment of the necessity of complying with the terms of the Utah Enabling Act, their discussion at Utah's constitutional convention centered on Congress's intent in requiring Utah to include such an ordinance . . . . [T]he proposal to declare in the constitution that the territorial law criminalizing polygamy remained in effect was also viewed as necessary to comply with the spirit of the Utah Enabling Act.").

69. UTAH CONST. art. III.

70. UTAH CODE ANN. § 76-7-101 (1953).

71. State v. Green, 99 P.3d 820 (Utah 2004).

72. *Id.* at 822.

73. *Id.* at 830.

74. *Id.* at 828. "'[I]n many instances, the Congress or state legislatures conclude that the general welfare of society, wholly apart from any religious considerations, demands regulation of conduct whose reason or effect merely happens to coincide or harmonize with the tenets of some or all religions.'" *Id.* at 829 (citing McGowan v. Marylan, 366 U.S. 420, 442 (1961)).

Two years later, the Utah Supreme Court revisited the issue of polygamy in *State v. Holm*.[75] Mr. Holm, a member of the FLDS Church, was legally married to one wife, Suzie Stubbs, but subsequently participated in another "religious marriage ceremony" to Suzie's sixteen-year-old sister, Ruth Stubbs.[76] By Ruth's eighteenth birthday, she had conceived two children with Holm and shared a house with Holm, her sister Suzie, and their children.[77] Mr. Holm was charged with two counts of unlawful sexual conduct with a minor and one count of bigamy, both felony offenses.[78] Mr. Holm challenged the constitutionality of his conviction, insisting that the government did not have the right to legislate social values.[79] The court disagreed and reinforced the government's role in defining a legal marriage,[80] thus upholding his conviction.[81] The court again held that "the Utah Constitution offers no protection to polygamous behavior and, in fact, shows antipathy towards it by expressly prohibiting such behavior. . . . [The Constitution's] language . . . unambiguously removes polygamy from the realm of protected free exercise of religion."[82]

In 1990, the Arizona Court of Appeals discussed the legality of polygamy in Arizona in *Barlow v. Blackburn*.[83] The issue on appeal was whether the appellee, Mr. Barlow, a peace officer in Colorado City, could have proceedings initiated against him by the Arizona Law Enforcement Officer Advisory Council (ALEOAC) because of his open practice of polygamy.[84] The appellant, ALEOAC, voted to revoke Barlow's status as a certified law

75. State v. Holm, 137 P.3d 726 (Utah 2006).

76. *See id.* at 730; *see also* KRAKAUER, *supra* note 1, at 25 (noting that Holm broke the law by marrying three women and had committed statutory rape by having sexual intercourse with a sixteen-year old, both which are felonies in the state of Utah). Even though Officer Holm broke the law, the Colorado City Police Department never disciplined him. *Id.*

77. *See Holm*, 137 P.3d at 730.

78. *See id.* at 731.

79. *See id.* at 730-31.

80. *See id.* at 744 ("Moreover, marital relationships serve as the building blocks of our society. The State must be able to assert some level of control over those relationships to ensure the smooth operation of laws and further the proliferation of social unions our society deems beneficial while discouraging those deemed harmful.").

81. *See id.* at 730 ("[T]he protections enshrined in the federal constitution, as well as our state constitution, guaranteeing the free exercise of religion and conscience, due process, and freedom of association do not shield Holm's polygamous practices from state prosecution.").

82. *Id.* at 738 (citing *In re Black*, 283 P.2d 887, 905 (Utah 1955)).

83. Barlow v. Blackburn, 798 P.2d 1360 (Ariz. Ct. App. 1990).

84. *See id.* at 1361.

enforcement officer, insisting that a polygamist officer "'tend[s] to disrupt, diminish or otherwise jeopardize public trust and fidelity with regard to the law enforcement profession.'"[85]

Barlow brought his case in the Arizona Superior Court, seeking to enjoin of the agency's decision.[86] The appellate court began its opinion by first addressing whether Arizona's anti-polygamy clause was valid. The majority stated that "[f]or more than 100 years, the United States Supreme Court has refused to extend the protection of the free exercise clause to the practice of polygamy. . . . [The Supreme Court] ha[s] held that bigamy may be forbidden, even when the practice is dictated by sincere religious convictions."[87] The court rationalized that "[a]lthough the first amendment and the Arizona Constitution absolutely protect religious beliefs, the protection extended to religiously-motivated conduct is not absolute, and not all burdens on religion are unconstitutional."[88] Therefore, the court upheld the administrative decision because Mr. Barlow failed to comport with state law.[89]

III. LAWS AGAINST POLYGAMY: AN EMPTY THREAT?

As noted *supra*, both state and federal laws provide law enforcement the necessary tools to target anyone who engages in the practice of polygamy.[90] Further, all challenges to the constitutionality of such legislation have been dismissed, providing prosecutors the ability to confront polygamists, prevailing over all claims of religious freedom. Despite such explicit authorization, however, officials have opted not to fully enforce the law.

One noteworthy exception to this general pattern occurred in 1953 on the Short Creek polygamist community located on the Arizona-Utah border.[91] In an effort to build support prior to the law enforcement raid, Arizona Governor Howard Pyle released a scathing statement vilifying Mormon Fundamentalists and dram-

85. *Id.* (quoting A.A.C. R13-4-07(A)(6)).

86. *See id.* at 1362.

87. *Id.* at 1365.

88. *Id.* at 1366; *see also* Bob Jones Univ. v. United States, 461 U.S. 574 (1983)).

89. *See id.* ("By practicing polygamy, Barlow has chosen to disregard the Arizona Constitution's proscription of polygamous marriage and cohabitation and his oath to uphold the constitution. That conduct may be sufficient to permit ALEOAC to conclude that Barlow does not meet the reasonable minimum qualifications required for peace officer certification.").

90. *See* discussion *supra* at Part II.

91. *See* KRAKAUER, *supra* note 1, at 16.

atizing activities occurring in Short Creek.[92] The media campaign stirred a public outcry. Governor Pyle embraced the momentum and ordered a military assault on Short Creek. In the early morning of July 26, 1953, police officers and members of the Arizona National Guard stormed into Short Creek and arrested 122 polygamous men and women.[93] This crackdown generated national attention, but to the dismay of the Governor, much of the media coverage portrayed the polygamists as ordinary Americans simply trying to exercise their constitutionally protected freedom of religion.[94] Simultaneously, the media depicted children torn from their parents by government officials.[95] Outraged, the public immediately criticized the government and sentiment shifted back in favor of the Mormons. As a result of the military incursion, Governor Pyle was voted out of office and all of the polygamists detained were eventually released.[96]

Years later as memories of Short Creek began to fade,[97] officials in Utah and Arizona reinvigorated a campaign to eliminate polygamy within their borders. Rather than attacking the polygamy problem directly, however, police arrested FLDS for offenses associated with polygamy such as rape, sexual contact with minors, and sexual assault.[98] By vigorously enforcing the "peripheral" charges, authorities shifted the focus away from a more sympathetic religious custom to crimes targeting innocent victims. Unfortunately, this tactic fell prey to the same shortcomings of previous strategies and ultimately failed to achieve the objective.[99]

Sources of Neglect: Willful Disregard or Inexcusable Ambivalence?

In an age of rising religious fundamentalism and a height-

92. *See id.* at 16-17 ("It is in this most isolated of all Arizona communities that this foulest of conspiracies has flourished and expanded in a terrifying geometric progression. Here has been a community entirely dedicated to the warped philosophy that a small handful of greedy and licentious men should have the right and the power to control the destiny of every human soul in the community.").

93. *See id.* at 16.

94. *See id.* at 17 ("[T]he raid was widely perceived as religious persecution by overly zealous government agencies, and it sparked a great outcry in support of the polygamists.").

95. *See id.*

96. *See id.*

97. *See* James Brooke, *Utah Struggles with a Revival of Polygamy*, N.Y. TIMES, Aug. 23, 1998, at 112 ("Since [the last major raid], Utah has largely taken an increasingly tolerant stance toward polygamy.").

98. *See* Kirk Johnson, *Leader of Polygamist Mormon Sect is Arrested in Nevada*, N.Y. TIMES, Aug. 30, 2006, at A12.

99. *See id.*

ened skepticism of extreme practices of religion,[100] the question surfaces as to why law enforcement continued to tolerate the distorted religious customs of Mormon Fundamentalists. It is important to note that failed enforcement does not equate to acceptance of the polygamist culture. In fact, the recent arrest of Warren Jeffs demonstrates that the government does not condone polygamy. Notwithstanding, why are polygamists permitted to openly defy the law of the nation and of the states without recourse? There are a multitude of explanations and it is the conglomeration of all the possibilities that explain the failure of law enforcement to confront polygamists.

The first reason for failed enforcement is the difficulty in actually proving polygamist behavior.[101] "Polygamy is difficult to prosecute because the men generally obtain marriage licenses for only their first wives. Subsequent marriages are performed secretly, and the additional wives often present themselves to society as single women."[102] To compound the problem, it is difficult to secure a witness willing to testify,[103] especially if it is against a woman's own polygamist husband.[104] Mormonism is a patriarchal religion and its fundamentalist members take notions of obedience and loyalty very seriously from an early age.[105] "The

100. Daniel Gordon, *Dead Students, An American Story and Answer: A Sociological Analysis of Fundamentalism Explaining the Legalization of Religious Textualism,* 40 WASHBURN L.J. 13, 17-18 (2000) ("[I]n the late Twentieth Century, [there has been] a resurgence of religious fundamentalism around the world.").

101. Dawn House, *Prosecuting Polygamy Is No Easy Matter*, SALT LAKE TRIB., June 28, 1998, at J6 ("[S]ince the 1950's, not a single polygamist has been criminally prosecuted in the United States.").

102. James Brooke, *Utah Struggles With a Revival of Polygamy*, N.Y. TIMES, Aug. 23, 1998, at A12; *see also* Rosanne Piatt, *Overcorrecting the Purported Problem of Taking Child Brides in Polygamist Marriages: The Texas Legislature Unconstitutionally Voids all Marriages by Texans Younger than Sixteen and Criminalizes Parental Consent*, 37 ST. MARY'S L.J. 753, 759 (2006) (detailing how FLDS members in polygamist marriages orchestrate their multiple marriages).

103. Brian Maffly & Sheila McCann, *Former Wives Demand Action Against Polygamy*, SALT LAKE TRIB., July 28, 1998, at A1 ("Proving polygamy would require firsthand evidence that usually is impossible to obtain . . . . There's never anybody to testify . . . [and there is] never [ ] evidence because no one ever complains.").

104. Gwen Florio & Brian Passey, *Some Members of Polygamy Sect Fleeing as Law Closes In*, USA TODAY, Apr. 13, 2006, at 3A (stating the difficulty in securing witnesses willing to testify in court).

105. *See* KRAKAUER, *supra* note 1, at 31; *see also* Hema Chatlani, *In Defense of Marriage: Why Same-Sex Marriage Will Not Lead Us Down a Slippery Slope Toward the Legalization of Polygamy*, 6 APPALACHIAN J. L. 101, 131 (2006) (citing Susan Greene, *Polygamy Prevails in Remote Arizona Town*, DENV. POST, Mar. 4, 2001, at A1) ("[W]omen are expected to walk ten feet behind their husbands and are taught at a young age to be subordinate to their husbands.")).

primary responsibility of women in FLDS communities . . . is to serve their husbands, conceive as many babies as possible, and raise those children to become obedient members of the religion."[106] In addition to the instilled notions of submissiveness, the wives of polygamists are intimidated with threats of eternal damnation and the loss of their children should they choose to flee the community or seek police protection.[107] Therefore, chances of successful prosecutions are slim because it is difficult for a state to prove polygamy with multiple marriage certificates or to secure witnesses willing to testify.

A second reason for the failed enforcement of polygamy laws stems from a general unwillingness on the part of elected officials and law enforcement to make enforcement a priority. Government officers in states such as Utah have expressed reluctance to target polygamists because of lasting memories of the persecution LDS polygamists received from the federal government,[108] finite law enforcement resources, and the fact that in some communities police officers themselves are polygamists and unwilling to enforce the laws against their fellow worshippers.[109]

Federal legislation and the 1953 raid, both targeting FLDS, left a bitter taste in the mouth of many Utahans.[110] For example, Utah Representative Marlon Snow rejected recent legislation sponsored in the Utah State House that would appoint a special prosecutor solely to fight polygamy offenses because it unfairly "singled out polygamists . . . who never ask for anything."[111] Further, the Utah Attorney General Jan Graham recently announced that she had advised prosecutors to avoid prosecuting cases of consensual adult bigamy.[112] Utah's chief Deputy Attorney General Reed M. Richards defended her policy by asking: "Do we want polygamy squads looking in windows to see who is sleeping with

106. KRAKAUER, *supra* note 1, at 31.

107. *See* Chatlani, *supra* note 105, at 131.

108. *See* Editorial, *Prosecuting Polygamists a Dilemma*, DAILY HERALD (Provo, UT), Jan. 26, 2001, at A6.

109. David Kelly & Gary Cohn, *Justice System Catching Up to Sect*, L.A. TIMES, May 12, 2006, § Business.

110. *See* Kirk Johnson et al., *Leader of Polygamist Mormon Sect Is Arrested in Nevada*, N.Y TIMES, Aug. 30, 2006, at A12 (stating that the 1953 Arizona raid against the fundamentalists is now regarded by officials as a "disaster because of the acrimony and mistrust it engendered").

111. Dan Harrie, *House Nixes Bill to Fight Crimes by Polygamists*, SALT LAKE TRIBUNE, Jan. 28, 2000, at A1 (noting that Representative Snow has employed more than 60 polygamists in his construction firm).

112. *See* Brooke, *supra* note 102, at A1.

whom? . . . If [we] are not making any effort to prosecute fornication, adultery, or gay people indulging in sodomy, why polygamy?"[113] This policy was promulgated at a time when the number of Utahans living in polygamous families had increased tenfold in the prior fifty years and was now at about two percent (40,000) of the state's population.[114] Additionally, these assertions reflect concern shared by many that polygamy laws are a purely moral regulation, and that so long as the victims are not underage, the custom of marrying multiple wives should not be subject to government intervention.[115]

Another reason that government officials are unwilling to prosecute polygamists is because of insufficient resources and funding. Mark Shurtleff, Utah's 2004 Attorney General, stated that Utah does not "have the resources, nor [does he] think that [Utah] should use [its] resources, to convict every polygamist in Utah, put them in jail and put 20,000 kids in foster care . . . ."[116] In addition, Paul Boyden, executive director of the State Association of Prosecutors, summarized the situation by stating that "[f]irst, we couldn't get a jury to convict and second, we don't have the resources. . . . There's been no public outcry to do it."[117]

Some police officers in certain Utah and Arizona precincts have refused to enforce polygamy laws because they themselves have more than one spouse or are sympathetic to the religious practices of fellow Mormons. Colorado City police have long had a reputation for protecting and serving church interests instead of the community at-large.[118] Colorado City's polygamous police chief, Sam Roundy, insisted that the polygamists are just trying to live in accordance with their deeply held, constitutionally protected beliefs.[119] Mr. Roundy asserted that "[w]hat goes on in our homes here is nobody's business . . . . We're not infringing on anybody. Don't we have the right to practice our religion?"[120] This mentality has fostered an environment whereby a victim of polygamy would go "against the whole town" in seeking protection from

113. *Id.*

114. *Id.* (citing unnamed social scientists).

115. *See generally* Lawrence v. Texas, 539 U.S. 558 (2003) (rejecting sodomy laws as unconstitutional and holding that the Due Process Clause gives consenting adults the right to engage in sexual activity without government intervention).

116. Kirsten Scharnberg & Manya Brachear, *Where the Polygamists Have White-Picket Fences*, L.A. TIMES, Oct. 15, 2006, § News.

117. Maffly & McCann, *supra* note 103, at A1.

118. Kelly & Cohn, *supra* note 109.

119. *See* KRAKAUER, *supra* note 1, at 24.

120. *Id.*

a polygamous spouse.[121]

A third reason for the failure to prosecute polygamists stems from a general misconception concerning the scope of First Amendment protection for religious practices. The parameters of the First Amendment have stirred confusion among law enforcement officials who are unclear whether polygamy, in the name of religion, is a protected right. Even Utah Governor Michael Leavitt has "speculated that polygamy might enjoy protection as a religious freedom."[122] To make matters worse, some of the bigamy and/or polygamy statutes are ambiguously worded. "Legal experts argue that Utah's definition of cohabitation is vaguely written, making it difficult to determine if a crime [actually] took place."[123] Although both federal and state courts have definitively held that the First Amendment does not provide an informal shield for polygamy, many have yet to enforce the courts' rulings. To fix this situation, police officers must educate themselves on the proper scope of the First Amendment in order to effectively enforce the laws, as they have done with the parameters of the Fourth Amendment.

A fourth reason for the failure of government officials to prosecute polygamists is a more practical consideration. If the government were to suddenly arrest all polygamists who had reared multiple children, the state social services would be overwhelmed by the sudden massive influx of children.[124] A recent study of plural families indicated that nearly 80% of polygamous wives had four or more children and almost 20% of the families had eleven or more children.[125] Although the government frequently takes children from criminals prior to their incarceration, that volume pales in comparison to the number of potentially orphaned children that would result from an unabashed assault on polygamists. In addition to the burden on the state child welfare system, the taking of so many children would be a public relations nightmare.[126] Using history as a guide, images of children being seized from the arms of parents will not be warmly received by the public–especially on a large-scale operation. From a pragmatic standpoint, the local

121. Kelly & Cohn, *supra* note 109.

122. *See* Brooke, *supra* note 102, at A1.

123. *See Prosecuting Polygamists a Dilemma*, *supra* note 108, at A6.

124. *See* KRAKAUER, *supra* note 1, at 6 (noting that 'Uncle Rulon' in Colorado City, fathered at least sixty-five children).

125. *See* Chatlani, *supra* note 105, at 132.

126. *See Prosecuting Polygamists a Dilemma*, *supra* note 108, at A6.

governments are simply incapable of providing for thousands of suddenly 'orphaned' children.

IV. CANADA STRUGGLES TO DEFINE ITS RELIGIOUS PARAMETERS

A few miles outside Creston, British Columbia, and nine hundred miles north of Colorado City, the Purcell Mountains and Kootenay River envelop a Mormon Fundamentalist settlement known as Bountiful.[127] Bountiful is home to roughly seven hundred Fundamentalists and has significant ties to the polygamist community in Colorado City.[128] In fact, nearly all of the founding Fundamentalists that colonized Bountiful were initially residing in Colorado City, but were sent north to Canada to continue the practice of plural marriage after the LDS Church renounced polygamy in the United States.[129]

The Mormons undertook the arduous migration to Canada with a vision of uninterrupted polygamy under the religious freedom protection of Canada's Charter of Rights and Freedoms, which promises fundamental freedom of conscience and religion.[130] Despite the bedrock guarantees proclaimed in the Charter of Freedoms, Canada, like the United States, has deemed polygamy to be an unacceptable religious and social practice. As a result, Canadian legislators have added a provision to the Canadian Criminal Code, which states:

> Every one who (a) practises [sic] or enters into or in any manner agrees or consents to (i) any form of polygamy, or (ii) any kind of conjugal union with more than one person at the same time . . . is guilty of an indictable offense and liable to imprisonment for a term not exceeding five years.[131]

Although the Canadian legislature concluded that polygamy laws

127. *See* KRAKAUER, *supra* note 1, at 29.

128. *See id.*

129. *See id.* at 30.

130. *See* Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982, ch. 11 (U.K.), *available at* http://lois.justice.gc.ca/en/charter [hereinafter Canadian Charter of Rights and Freedoms]; Constitution Act, 1867, 30 & 31 Vict. Ch. 3 (U.K.) ("Canada is founded upon principles that recognize the supremacy of God and the rule of law" and that "[t]he *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.").

131. Canada Criminal Code, R.S.C., ch. C-46, s. 293 (1985).

could be tolerated in a democratic society, it was necessary for the judiciary to ultimately determine whether the felony statute violated the freedoms guaranteed in the Charter.

Courts in Canada have held that the Canadian Rights Charter does not provide immunity for polygamists, even if the subsequent marriages were performed in a country that permits polygamy.[132] The British Columbia Supreme Court in a 1948 case held that "[s]ince a polygamous marriage is contrary to the conception of marriage as understood under English law . . . a marriage under the law of a country which permits polygamy will not be recognized here as a valid marriage . . . ."[133] In 2005, the Canadian Supreme Court directly addressed the constitutionality of the polygamy statute, and held:

> According to contemporary Canadian social morality, acts such as . . . polygamy . . . are unacceptable regardless of whether or not they cause social harm. The community considers these acts to be harmful in themselves. Parliament enforces this social morality by enacting statutory norms in legislation such as the *Criminal Code*.[134]

Although there have been only a few polygamy cases before Canadian Courts, these rulings have expressly adjudged polygamy to be an unacceptable practice, contrary to the nation's morals and values. Furthermore, these rulings confirm that those convicted of polygamy will not be afforded relief based on broad principles enumerated in the Charter of Rights and Freedom.

Canadian Inconsistencies Mirror Those of the United States

As discussed *supra*, the United States has been unsuccessful in eradicating the practice of polygamy. Its neighbor to the north, Canada, has suffered a similar fate. Even though the polygamy laws in Canada were proscribed with the requisite precision and have successfully withstood the scrutiny of the judiciary, enforcement has simply been ineffective. Although "[p]olygamy is illegal in Canada . . . , [] authorities in British Columbia to date have chosen not to take any meaningful action against polygamists." Thus, "Canada seems to have become a haven for polygamists."[135]

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132. *See* R. v. S. (M.), Her Majesty the Queen against M.S., [1994] B.C.W.L.D. 1333 ("The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.").

133. Lim v. Lim, [1948] 2 D.L.R. 353.

134. Labaye v. The Queen, [2005] 3 S.C.R. 728.

135. Rick Ross, *Has Canada become a safe haven for polygamists* (July 19, 2002),

"Bountiful is no secret to the locals" or even British Columbia's top law enforcement officer, the Attorney General.[136] In 1992, for example, police raided Bountiful and discovered a community which openly embraced plural marriages and tolerated men engaging in sexual intercourse with girls as young as thirteen.[137]

However, despite incontrovertible evidence of guilt, "authorities opted against charging leaders of a 50-member polygamous commune, . . . concluding that the laws banning plural marriage unconstitutionally restricted religious freedom."[138] Thus, even though Canadian courts have ruled on the subject, law-enforcement has nonetheless questioned the legitimacy of the law prohibiting polygamy.[139] A 2004 article in *The Economist* highlighted this trend. This article noted the arrest of two polygamists for violation of Section 293 of the Canadian Criminal Code.[140] However, the crown attorney's office declined to prosecute, fearing that the polygamy laws conflicted with the guarantee of religious freedom in Canada's Charter of Rights and Freedoms.[141] This conflicting interpretation of basic rights afforded in the Charter resulted in the release of the two polygamists who were in clear violation of Section 293.[142]

A second explanation for Canada's failure to prosecute polygamists is a lack of public support. A recent study conducted by the federal Justice Department reflected the widening gap between the 'crime-stopping' ambitions of elected officials and the willingness of constituents to tolerate infringement of religious practices.[143] The survey concluded that "[c]riminalization does not address the harms associated with valid foreign polygamous mar-

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http://www.rickross.com/reference/polygamy/polygamy82.html ("According to anti-polygamists Debbie Palmer of the advocacy group Eye on Polygamy, 'the word is out there that British Columbia is a safe place for polygamists. There are many polygamous families coming to Canada looking for a safe haven.").

136. *See Hunting Bountiful; Polygamy in Canada*, ECONOMIST (U.S.), July 10, 2004.

137. *See* Dawn House, *Prosecuting Polygamy Is No Easy Matter*, SALT LAKE TRIBUNE, June 28, 1998, at J6 ("Dan Barlow, mayor of Colorado City, Ariz., whose fundamentalists followers run the Canadian commune, said the decision is another signpost on the road to legalizing polygamy in the United States.").

138. *Id.*

139. *See Hunting Bountiful*, *supra* note 136.

140. *See id.*

141. *See id.*

142. *See generally id.*

143. *See Taxpayer-funded Study Wants Repeal of Polygamy Ban*, GUELPH MERCURY (Ontario, Canada), Jan. 13, 2006, at A7 ("A new study for the federal Justice Department says Canada should get rid of its law banning polygamy, and change other legislation to help women and children living in such multiple-spouse relationships.").

riages and plural unions, in particular the harm to women."[144] The diverging views of legislators and the population at-large was reflected by one respondent to the survey who asked: "'[I]n light of the fact that we have a fairly permissive society . . . why are we singling out [this] particular form of behavior for criminalization?'"[145]

As part of the Justice Department's investigation, three law professors at Queen's University in Kingston received a $150,000 grant to complete a research paper[146] analyzing the effectiveness of polygamy laws.[147] The report concluded that "[Section] 293 of the Criminal Code banning polygamy serves no useful purpose and in any case is rarely prosecuted."[148] The study and report both emphasize that Canadians may be willing to tolerate socially undesirable practices for the sake of preserving the cherished freedom to openly practice one's religion without government interference. Therefore, prosecution of polygamists has been hampered without the support of the public.

V. THE SOCIOECONOMIC AND PSYCHOLOGICAL COSTS OF POLYGAMY

The legislatures in both the United States and Canada have provided law enforcement the necessary tools to combat polygamy. In both nations, the judiciaries have upheld the scope of the polygamy laws. However, despite the delegated authority, polygamists have remained essentially undisturbed and free to engage in their illegal practice. Unfortunately, society will pay for this neglect, literally and figuratively. "Though polygamists claim that they are simply exercising [sic] their freedom to practice religion, anti-polygamists say the practice of polygamy is destructive and a form of abuse. . . . '[I]t's about power and greed and sex.'"[149]

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144. *Id.*

145. *Id.* (quoting Martha Bailey, chief author of a Canadian Justice Department study that recommends repealing Canadian laws that ban polygamy).

146. *See id.* ("The Justice Department project was prompted in part by an RCMP investigation into the religious community of Bountiful in Creston, British Columbia, where polygamy is practiced openly.").

147. *See id.*

148. *Id.* ("Chief author Martha Bailey says criminalizing polygamy, typically a marriage involving one man and several wives, serves no good purpose and prosecution could do damage to the women and children in such relationships.").

149. Ross, *supra* note 135, http://www.rickross.com/reference/polygamy/polygamy82.html (quoting Carmen Thompson, an anti-polygamy activist and director of the U.S. Center for Public Education and Information on Polygamy) (noting the concern about minor children who have been shipped across the border to become wives of

One significant problem with polygamists is the extreme poverty often associated with their communities.[150] As the New York Times reported, poverty runs rampant in polygamous colonies, and oftentimes requires significant subsidies from state and federal agencies.[151] For example, the polygamist community in Colorado City is one of the poorest cities in America[152] and is "dependent almost entirely on welfare since none of the men earn enough to support their [families]."[153] A polygamist colony in Hildale, Utah, with an average household of 8.5 people, has the lowest average federal tax return of any Utah town – approximately $650 for each filer.[154]

Fraud and misuse of government funding is a chronic problem in the polygamy communities. For instance, although the polygamists receive millions of dollars in aid, they openly resent the United States Government and view fraud as a virtuous act.[155] The Government spends significant amounts of money to support polygamist families in Idaho, Utah, and Arizona. For example, "[m]ore than $4 million of government largesse flows each year into the Colorado City public school district . . . [yet it was] determined that school administrators have "plundered the district's treasury by running up thousands of dollars in personal expenses . . . ."[156]

> Colorado City has received $1.9 million from the U.S. Department of Housing and Urban Development to pave its

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men old enough to be their fathers). For example, polygamists Thomas Green's fifth wife was his 13-year-old step-daughter. *See id.*

150. *See* Chatlani, *supra* note 105, at 131-32 (stating that a large percentage of polygamist families live in poverty).

151. *See* James Brooke, *Utah Struggles With a Revival of Polygamy*, N.Y. TIMES, Aug. 23, 1998, at A12.

152. *See* Chatlani, *supra* note 105, at 132 ("29% of families in Colorado City, Arizona . . . live below the federal poverty level, as compared to the 9.9% total for the state of Arizona.").

153. Richard A. Vazquez, *The Practice of Polygamy: Legitimate Free Exercise of Religion or Legitimate Public Menace? Revisiting Reynolds in Light of Modern Constitutional Prudence*, 5 N.Y.U.J. LEGIS. & PUB. POL'Y 225, 244 (2001).

154. *See* Chatlani, *supra* note 105, at 132 ("An astonishing 41.2% of the individuals residing in Hildale, Utah, a town known for its high concentration of polygamists, live below the poverty level.").

155. *See* KRAKAUER, *supra* note 1, at 13 (noting that even though the polygamists despise the Canadian and American governments, the leader of Colorado City justified "all [the] assistance from the wicked government by explaining that really the money is coming from the Lord. . . . We're taught that it's the Lord's way of manipulating the system to take care of his chosen people."). In fact, Fundamentalists regard defrauding the government as a "virtuous act." *Id.*

156. *Id.* at 12.

> streets and upgrade the water system. Immediately south of the city limits, the federal government built a $2.8 million airport that serves almost no one beyond the fundamentalist community. Thirty-three percent of the town's residents receive food stamps – compared to the state average of 4.7 percent.[157]

Even more shocking is the fact that Colorado City residents receive approximately eight dollars in government subsidies for every dollar that they pay in taxes.[158]

In Canada, Bountiful residents also blatantly abuse government resources. For example, the Bountiful schools receive grants from the provincial government totaling more than $450,000 per year.[159] "Yet [polygamists] provide minimal education, preparing boys only to work on Bountiful's farms and girls to be 'young brides and mothers.'"[160] In addition to the monetary costs attributable to polygamy, women and children are truly the victims:

> Girls as young as thirteen are forced into marriage, sexual abuse is rampant, rape is covered up, and child molesters are shielded by religious authorities and law enforcement. . . . Wives are threatened with mental institutions if they fail to "keep sweet" for their husbands.[161]

The polygamy culture has a history of "physical abuse, rape, incest and underage marriage."[162] The living conditions stifle the emotional maturation of those children permitted to remain in the community and inflict severe emotional trauma on the women forced into marriage.

Vicky Prunty, co-director of Tapestry Against Polygamy, insisted that "[a]nyone who tells you women are not being hurt there–forced into allowing their husbands to take on other wives in the name of religion, getting married too young to men much older, being hit or worse–are not being truthful."[163] The children

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157. *Id.* at 12-13.

158. *See id.*

159. *See Hunting Bountiful*, *supra* note 136.

160. *Id.* (citation omitted) ("Women who have fled tell of girls as young as 13 being married off to polygamous men three times their age; of babies born to girls of 14 and 15; and of under-age girls being brought in from similar American communities for arranged marriages and to serve as 'breeding stock.'").

161. David Kelly & Gary Cohn, *Blind Eye to Culture of Abuse: Children of a Polygamist Sect Have Been Exploited, Molested for Years,* L.A. TIMES, May 12, 2006, at A1.

162. Kirsten Scharnberg & Manya Brachear, *Where the Polygamists Have White-Picket Fences*, L.A. TIMES, Oct. 15, 2006, at A12.

163. *Id.*

born into polygamist families also suffer tremendously. They are deprived of monetary support because the fathers are unable to provide for all their children. Further, "[i]n polygamous households, the father invests less time in the upbringing of his children[] because there are more of them."[164] All of these factors result in a destitute existence for the women and children of polygamous communities, who oftentimes were forced into the situation against their will.[165]

VI. CONCLUSION

The protections afforded by the First Amendment of the U.S. Constitution are some of our most cherished rights as Americans. As a nation founded with secular values, the freedom to practice one's religion without government interference is a bedrock principle of our democracy. The First Amendment greatly limits the government's ability to regulate religious practices. However, the Supreme Court has concluded that there are limited circumstances upon which government interests outweigh the value of religious liberty.[166]

Polygamy is one such instance. Although Mormon Fundamentalists insist that the First Amendment provides a shield against official state action, the Supreme Court has consistently ruled otherwise. A state's interest in protecting innocent women and children, according to the courts, is far more compelling than any claim to religious autonomy. The legislative and judicial grant of authority has opened the door to authorities seeking to curtail polygamous acts. Despite express authorization, however, fundamentalists have remained essentially undisturbed. Police and other authorities, for various reasons, have expressed great reluctance to target Mormons who assume multiple wives in the name of religion.

Unfortunately, such reluctance is misguided. Although tolerance for another's religion is a hallmark of a truly democratic society, it is imperative that we never lose sight of the fact that polygamy is not a victimless crime. The women forced into

164. Richard Posner, *If Polygamy Were Legal,* CHI. SUN TIMES, Nov. 5, 2006, at B4.

165. *See* KRAKAUER, *supra* note 1, at 5-6.

166. *See* Bob Jones Univ. v. United States, 461 U.S. 574, 181 (1983) ("Not all burdens on religion are unconstitutional. . . . The state may justify a limitation on religious liberty by showing that it is essential to accomplish an overriding governmental interest . . . [and] on occasion [the] Court has found certain governmental interests so compelling as to allow even regulations prohibiting religiously based conduct.").

arranged marriages and the resulting multitude of children, suffer tremendously as a result of this ritual. Therefore, while freedom of religion is, and must always be, one of our most revered rights, certain limits are necessary. When the freedom of religion clashes with ones' right to live unshackled to the demands of another, the pendulum must swing in favor of ones personal liberties. To protect the innocent victims from exploitation, sexual slavery, and psychological manipulation, our society must enforce its rule of law and uniformly condemn the destructive practice of polygamy.