

The Mormon Disfranchisements of 1882 to 1892

Joseph H. Groberg

A flurry of anti-Mormon lawmaking from 1882 to 1892 was designed to disfranchise most Mormons on the grounds of religious practice or affiliation. The Mormon people challenged these laws by contending that the constitutional guarantees of religious freedom protected their franchise. The outcome of this conflict as recorded in the decisions of state, territorial, and federal courts cast a dark shadow across the history of religious liberty in the United States, a shadow which, because of the law's use of precedent, may yet prove long enough to reach and influence the outcome of future conflicts between religious belief and public policy.¹ Consequently, this is an instructive as well as an interesting episode in American history.

During the early years of the American colonies, the privilege of voting was often denied expressly on the basis of religious affiliation or belief. However, in the last century of the colonial period great strides were made toward breaking down religious and moral qualifications of electors. This enlightened attitude dominated the Constitutional Convention, and our founders prohibited religious discrimination by the federal government partly by forbidding any religious oath for offices held under the federal government² and partly by providing that "Congress shall pass no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ."³ Although these restraints were thought to be generally applicable to the territories, it was believed that the Constitution did not impose similar restrictions on the states until the adoption of the Fourteenth Amendment in 1868. Nevertheless, most state governments had abolished all religious tests for voters before or soon after

Joseph H. Groberg is an attorney in Denver, Colorado.

¹John G. Fletcher, "A Look Into the Future," *Liberty* 68 (Jan./Feb. 1973):13.

²U. S. Constitution, Article VI.

³U. S. Constitution, Amendment I.

the adoption of the federal Constitution. Universal white male suffrage became the rule for the states and the territories in the nineteenth century. With the exception of the Mormon disfranchisements, it appears that during the entire history of the union there have been almost no attempts to impose religious qualifications on the voters of a state or territory.

Between 1882 and 1892, the federal government, the territorial legislatures of Idaho and Arizona, and the state legislatures of Idaho and Nevada made efforts to disfranchise Mormons because of their religious practices and beliefs. The reason most often given for those efforts was polygamy. Local non-Mormons capitalized on the national revulsion toward polygamy to further their own aims of weakening the closely-knit Mormon social order, and more importantly, of reducing the threat of Mormon political power, which took the form of block voting. The political power was dominant in Utah, very strong in Idaho, and less important in Nevada and Arizona. The final capitulation on the issue of polygamy, while greatly tempering national concern, did not quell local concern over Mormon political power.

The first step toward disfranchisement came in 1882 when Congress passed the Edmunds Act (applicable to the territories) which disfranchised any ". . . polygamist, bigamist, or any person cohabiting with more than one woman" or any woman cohabiting with a man of that description.⁴ In Utah, the act also removed jurisdiction over voting matters from the territorial government and placed it in the federally controlled Utah Commission.⁵ Two years after its creation, the Utah Commission reported that 12,000 persons had been disfranchised. Though polygamy had been a crime in the territories since 1862, few, if any, of these 12,000 had been tried for that crime.⁶

In the case of *Murphy v. Ramsey*,⁷ the Supreme Court of the United States, while sustaining the Edmunds Act as "wholesome and necessary," cut back the powers being exercised by the Utah Commission and restricted disfranchisements to those persons expressly described in the Edmunds Act.

Because the Edmunds Act did not result in the downfall of the Mormon leadership, in 1887 Congress passed the Edmunds-Tucker

⁴Edmunds Act, Ch. 47, 22 Stat. 30 (1882).

⁵Ibid., Sec. 9.

⁶Orma Linford, "The Mormons and the Law: The Polygamy Cases Part II," *Utah Law Review* 9 (1965):543.

⁷*Murphy v. Ramsey*, 114 U. S. 15, at p. 41 (1885).

Act⁸ which categorically disfranchised all women in Utah on the ground that they persisted in voting for the incumbent Mormon leadership. (Utah women had been given the vote by the territorial legislature in 1870.)⁹ In the same act, Congress provided for an oath to be administered to voters with which it intended to disfranchise most male Mormons. The test oath, which was prepared by the Utah Commission, contained the following language:

I especially will obey the [anti-polygamy laws] and . . . I will not directly or indirectly aid or abet, counsel or advise any other person to commit any of said crimes defined by acts of Congress as polygamy, bigamy, unlawful cohabitation, incest, adultery and fornication.¹⁰

But neither did this act have a great effect on practical politics in Utah. The House Committee on Territories reported that:

At the time the law was enacted the opinion was entertained by many persons that no Mormon would take such an oath without having formed a clear intention to obey it, [but that] . . . the results of the registration under the advice given by the Mormon leaders rendered the law absolutely nugatory in accomplishing the purpose for which it was enacted.¹¹

The failure of the 1887 law to wrest political control in Utah from the Mormon leadership led to recommendations for more drastic congressional action.

Outside of Utah, further federal action was not needed. The territorial legislatures of Idaho and Arizona and the state legislature of Nevada passed their own laws to disfranchise Mormons. In 1885, Idaho and Arizona each enacted laws going beyond the Edmunds Act by attempting to disfranchise all Mormons. Idaho's law disfranchised

member[s] of any . . . organization . . . which teaches . . . its members . . . to commit the crime of bigamy or polygamy . . . as a duty arising or resulting from membership in such . . . organization . . . or which practices bigamy or polygamy or plural or celestial marriage as a doctrinal rite of such organization¹²

The Arizona law, which was passed a month after Idaho's, was very

⁸Edmunds-Tucker Act, Ch. 397, 24 Stat. 635 (1887).

⁹Orma Linford, "The Mormons and the Law: The Polygamy Cases Part I," *Utah Law Review* 9 (1964):324, footnote 80.

¹⁰Edmunds-Tucker Act, Sec. 24.

¹¹U. S. Congress, House Report 1811 for H.R. 9265 #2812 at pp. 1, 22 (April 29, 1890).

¹²"An Act to Provide for Holding Elections," Idaho, *13th Session Laws* (1884-1885), Sec. 16, p. 110.

similar. It disfranchised any "member of an order, sect or organization which teaches . . . polygamy . . . as a duty or privilege resulting or arising from the faith or practice of such order. . . ." ¹³

In 1887, the Nevada State Legislature avoided the circuitry of its neighboring territorial legislatures and flatly declared that "No person shall . . . vote . . . who is a member of the 'Church of Jesus Christ of Latter-day Saints,' commonly called the Mormon Church" ¹⁴

The Arizona law was repealed in 1887 without being tested. ¹⁵ The Idaho law was challenged in the cases of *Innis v. Bolton* (1888) ¹⁶ and *Wooley v. Watkins* (1889). ¹⁷ The Nevada law was tested in the case of *Whitney v. Findlay* (1888). ¹⁸

Innis v. Bolton was a serious attempt to grapple with the issues involved in disfranchising persons because of their religious affiliation. The question was put straight to the court: Is this territorial enactment in violation of the provisions of the federal constitution which guarantee religious freedom?

The Idaho court conceded "that if the statute prohibits or interferes in any substantial manner with the free exercise of religion then it is void and of no effect." ¹⁹ The leading case on that question was *Reynolds v. United States* ²⁰ in which the Supreme Court of the United States had found that the *practice* of polygamy was not protected by the First Amendment because while ". . . the government cannot interfere with mere religious belief and opinions, [it] may [interfere] with practices." ²¹ In *Innis*, the Idaho court was urged to find that by belonging to a church which tolerated polygamy, all Mormons had crossed the line from opinion to practice.

The territorial court found that because ". . . [T]he intention of the legislature was to withdraw the right of suffrage from persons who encourage, aid and abet those who are endeavoring, not by constitutional methods, but against all law, to overthrow a sound public policy of the government . . ." the statute did not infringe upon the free exercise of religion. ²²

¹³*Arizona Laws* (1885), No. 87, Sec. 2, p. 214.

¹⁴*Nevada Laws* (1887), Ch. CX, Sec. 1, p. 107.

¹⁵Absent from subsequent editions of *Arizona Laws*.

¹⁶*Innis v. Bolton*, 2 Id. 407, 17 Pac. 264 (1888).

¹⁷*Wooley v. Watkins*, 2 Id. 555, 22 Pac. 102 (1889).

¹⁸*Whitney v. Findlay*, 20 Nev. 198, 19 Pac. 241 (1888).

¹⁹*Innis v. Bolton*, p. 414.

²⁰*Reynolds v. The United States*, 98 U. S. 145 (1897).

²¹*Ibid.*, p. 166.

²²*Innis v. Bolton*, p. 415.

It had not been clear in *Innis v. Bolton* that the disfranchised persons involved in the case were themselves innocent of personally encouraging polygamy. Therefore, in the case of *Wooley v. Watkins*, it was expressly stipulated that the disfranchised plaintiff "... does not teach, advise, counsel or encourage persons to commit the crime of bigamy . . . unless he does so by the bare fact that he is a member of the Mormon Church."²³

The court again relied on *Reynolds* and this time specifically concluded that simple membership in the Mormon Church was itself an unprotected putting of beliefs into practice.²⁴

The court declared:

Organizations, . . . by whatever name they may be called, which teach . . . the practice . . . of acts forbidden by law, are criminal organizations. To become and continue to be members of such organizations are such overt acts as make them [the members] as guilty, as though they actually engaged in . . . unlawful . . . purposes.²⁵

The Nevada Mormons were more successful in attacking the law that disfranchised them. In *Whitney v. Findlay* the Supreme Court of Nevada held that the state constitution prescribed the qualifications for electors and that the legislature could not abridge these by adding new and different qualifications. The court did not say, however, that had the state constitution allowed this legislative action, the Nevada law would have violated the Fourteenth Amendment to the Constitution through which the First Amendment is thought to apply to the states.

In 1890, efforts to disfranchise Mormons in Utah and Idaho came to a peak. The United States Supreme Court was considering the case of *Davis v. Beason*²⁶ in which the Idaho territorial law disfranchising Mormons was again being challenged; the Territory of Idaho was petitioning for statehood with a proposed state constitution which contained an irrevocable provision disfranchising all Mormons; and the Territorial Committees of the House and Senate were considering a similar law to be applied to Utah—the Cullum-Strubble Bill.

The case of *Davis v. Beason* arose when Samuel D. Davis, a member of the Church, took the Idaho oath in order to vote and was jailed for conspiracy to violate the election laws. Davis asked

²³*Wooley v. Watkins*, p. 560.

²⁴*Ibid.*, p. 566.

²⁵*Ibid.*

²⁶*Davis v. Beason*, 133 U. S. 333 (1890).

for a writ of Habeas Corpus on the ground that that part of the law which disfranchised "members" was in violation of the First Amendment and void. The Idaho Court did not free him. He appealed to the Supreme Court of the United States, which in an opinion by Justice Stephen J. Field, bitterly attacked polygamy and reiterated that it was an overt criminal act, apparently overlooking the fact that the man in jail never had been a polygamist.

In his enthusiasm to attack polygamy, Justice Field also overlooked Davis' argument that the *Reynolds* case, if anything, supported his position. In *Reynolds*, Chief Justice Morrison R. Waite had written that because polygamy is a crime, practicing it as part of one's religion does not protect a person from criminal liability. The other side of this principle is the proposition that if an act is not a general wrong or does not generally result in disqualification from voting, it cannot become a grounds for disqualification simply because it is done for a religious purpose. Davis argued that by the language of the Idaho statute

. . . simple encouragement to commit crime by an organization of which the citizen is a member does not disqualify him from voting, because, by the language of the act, the encouragement must be offered upon the ground of duty, or religious obligation arising from membership in the organization, or the latter must teach the commission of these acts from religious motives, otherwise the exclusion does not operate. And so, also the practice must be "as a doctrinal rite" or the member is not excluded.²⁷

The force of this argument would appear overwhelming, but Field ignored it and concluded that the law

. . . simply excludes from the privilege of voting, or of holding any office of honor, trust or profit . . . those who advocate a practical resistance to the laws of the Territory and justify and approve the commission of crimes forbidden by it.²⁸

The disfranchisement of Mormons had been a critical issue in the 1890 state constitutional convention of Idaho. The inclusion of a provision to that effect in the proposed state constitution drew nationwide comment.²⁹ When the petition for statehood reached Congress, hearings were held by both House and Senate committees on what had become known as the anti-Mormon test oath.³⁰

²⁷Ibid., p. 339.

²⁸Ibid., p. 347.

²⁹"Trouble Ahead in Idaho," *New York Times*, 24 June 1889, p. 5.

³⁰The term "test oath" has not been used nor have the implications of such a device been explored in this article. However, to many the most offensive characteristic of these laws was the use of test oaths. It was thought that by their nature they

Fred T. Dubois, Idaho's territorial representative to Congress, told the Senate committee, "There is no desire on my part to deny the fact that this law was intended to disfranchise the Mormons, that is the plain intention of the law."³¹ The committee hearings proceeded with that understanding.

Prominent non-Mormons and at least one Idaho Church leader appeared on behalf of the Idaho Mormons before the House Committee on the Territories. It was pointed out that approximately 25,000 Mormons lived in Idaho. Of these, perhaps 150 were polygamists. One of the non-Mormons, Jeremiah Wilson, presented the substance of the case:

It is not the prohibition of bigamy and polygamy that they object to, . . . but they do protest that they shall not be disfranchised when they have not committed any offense against the law. . . .³²

The introduction of the Idaho Statehood bill to the floors of the House and Senate led to heated debates. For the Republican majority, Congressman George Washington Dorsey from Nebraska began by declaring that "the only opposition to the admission of Idaho under the constitution, which the legal voters of the Territory adopted almost unanimously, came from the Mormons." He neglected to mention that the vote was almost unanimous because the Mormons weren't allowed to vote. He pointed out that Justice Field's opinion in *Davis v. Beason* settled any constitutional problems with "preventing polygamous Mormons from voting" and added "that the admission of Idaho by this Congress under the Constitution adopted by its people will give encouragement to other territories that contain Mormon population."³³

On the other side, Charles H. Mansur of Missouri for the Democratic minority, saw the proposition before the House to be whether "a man will be struck down . . . because of an alleged belief in certain doctrines, when the fact is the constitution does not say what in reality they intend, which is that it shall strike down the Mormon

interfered with the free exercise of religion. However, the view taken by the courts was that " . . . the oath required was a proper mode of ascertaining the disqualifications imposed by law, and that it did not interfere with the free exercise of religion." *Innis v. Bolton*, p. 418. In 1961 the Supreme Court of the United States in the case *Torasco v. Watkins*, 367 U. S. 488 (1961) declared religious test oaths unconstitutional.

³¹U. S. Congress, House Committee on the Territories, Feb. 8, 1890, 51st Congress, 1st Sess, p. 4. Only the House Committee Hearing was printed.

³²*Ibid.*, p. 5.

³³U. S. Congress, House Congressman Dorsey speaking for passage of the bill, 51st Congress, 1st session, *Congressional Report*, 51st Congress, p. 2931 (1890).

Church.”³⁴ Mr. Mansur’s argument was answered by Mr. Dubois from Idaho who said that Mormon political activity made the disfranchisement of Mormons imperative. Dubois claimed that Mormonism was a theocracy and contrary to good government and that until Mormons as a church stopped meddling in politics, they should not be allowed to vote.³⁵ “Mormons are a peculiar people,” he said, “and [should] be subjected to peculiar laws.”³⁶

The final house vote on the Idaho statehood bill was 120 to 1, with 67 present and not voting, the majority of which were southern Democrats.³⁷ Idaho became a state with the Mormons disfranchised.

In Utah the Church still held political control. If Utah Mormons were to be disfranchised, Congress would have to do it. To that end the Cullum-Strubble Bill was reported out of the territorial committees of the House and Senate with recommendation for passage. The Senate version provided that:

No person who is . . . a member of, or contributes to the support, aid, or encouragement of, any . . . organization . . . which teaches, . . . any person to enter into bigamy, polygamy, or such patriarchal or plural marriage, . . . shall either vote, serve as juror, or hold any civil office in the Territory of Utah.³⁸

Included in the House committee’s report on its version of the bill was a copy of the recently reported Supreme Court decision in the case of *Davis v. Beason*. The Committee report contended that the decision had resolved all questions in favor of the proposed act’s constitutionality. The bill was never voted on. Before Congress could act, the Church officially proscribed polygamy for its membership.

The Idaho Legislature had planned for this day. Notwithstanding the announcement on polygamy, the local concern over Mormon political power had not abated.³⁹ The Idaho state election law was

³⁴Ibid.

³⁵Ibid., Territorial Representative Dubois speaking for passage of the bill, p. 2943. In the House Committee Hearings a possible reason for Dubois’ stubbornness on this issue was suggested by an Idaho Mormon: “Why, it is a battle for political life with Mr. Dubois. He would not give the Mormons the right to vote because they would not vote for him, not because he is a Republican, but because he is a determined and persistent enemy to that people.” U. S. Congress, House Committee on Territories, p. 38.

³⁶Ibid., p. 2941.

³⁷Ibid., p. 3005.

³⁸S. 3480 (1890). 51st Congress, 1st Sess. The House version was much more descriptive.

³⁹The Idaho Legislature, in 1889, worked on an amendment to section 501 of the *Idaho Revised Statutes* which would have provided that all persons who had been Mormons on 1 January 1888 were disqualified from office, voting, and jury duty.

changed to provide that no member of any organization which "... teaches or *has* taught . . ." any person to commit polygamy, could vote, hold office or serve as juror.⁴⁰ This law which would have even disfranchised members who joined the Church after the Manifesto on polygamy, was immediately challenged by Idaho Mormons. To their surprise it cleared all legal hurdles placed before it. In the case of *Shepherd v. Grimmer*⁴¹ the Supreme Court of Idaho sustained the constitutionality of this seemingly *ex post facto* law by holding that only the Fifteenth Amendment, which prevented states from denying the vote to persons because of race, limited the state's otherwise unlimited power to fix the qualifications of voters.

Two years later the Idaho election law was changed back to its original version. There is evidence that this followed a decision by Idaho Mormons to discontinue the practice of voting as a block, thus to some extent satisfying Mr. Dubois' decree that to vote, the Mormons as a church must stay out of politics.

The final case to interpret this Idaho law was *Toncray v. Budge*⁴² which reached the Supreme Court of Idaho in 1908. The Idaho constitution then, as it does to this day,⁴³ disqualified from voting or holding public office members of any organization which practices "patriarchal or celestial marriage." It was claimed that the Mormon Church still met this description. For the first time an appellate Court considered that question, and concluded that the Church was not such an organization. The court found that the terms "patriarchal or celestial marriage" were used in the Idaho constitution only to get at the practice of polygamy. They were not applicable to the current Mormon marriage practices. Mere belief in a future life with more than one wife could not be prevented. There were no further efforts in Idaho to disfranchise Mormons.

In summarizing the events of this period one realizes that only the Mormons themselves seriously contended that the Constitution protected them from the loss of valued rights and privileges which were theirs as American citizens. They were genuinely surprised to discover that it did not. But most Americans were concerned with stopping the practice of polygamy and with curtailing local church political power. They were not at all concerned with pre-

Merrill D. Beal and Merle W. Wells, *History of Idaho* 3 vols. (New York: Lewis Historical Publishing Company, 1959), 1:605.

⁴⁰*Idaho General Laws* (1891), Sec. 43, pp. 67-70.

⁴¹*Shepherd v. Grimmer*, 2 Id. 1123, 31 Pac. 793 (1892).

⁴²*Toncray v. Budge*, 14 Id. 261, 95 Pac. 26. (1908).

⁴³*Idaho Constitution*, art. VI, sec. 4.

serving religious liberty for persons who appeared to be threatening cherished institutions and challenging basic public policy. Consequently, the nation's leaders and judges were not disturbed that their laws and decisions were in large part extinguishing religious liberty for Mormons. In the context of a great popular concern, Mormonism was excluded from the First Amendment meaning of religion, and the rule from the *Reynolds* case, i.e., that the government cannot interfere with religious opinion but may interfere with illegal conduct based on religious conviction, was stretched to justify disfranchisement merely on the grounds of membership in the Church.

A conflict very similar in principle to that which existed in the 1880s recently arose between the Amish people and the state of Wisconsin.⁴⁴ The Amish refused to allow their children to attend public school beyond the eighth grade. Although this violated Wisconsin law and public policy, the Supreme Court of the United States heard the case and found for the Amish on the ground that their conduct was protected by the Free Exercise Clause of the First Amendment and therefore was beyond the power of the state to control, thus apparently weakening the cases of *Reynolds* and *Davis v. Beason*. But the education of Amish children was not a significant concern to most Americans, and for a number of reasons the court was of the opinion that the Amish were not seriously threatening basic public educational policy. Consequently it remains not only possible but probable that if a church's position seriously conflicted with and threatened a basic public policy of great popular concern, religious liberty would again be subordinated to that concern, trampled upon by the legislatures, and ignored by the courts. This is the lesson of 1882 to 1892.

⁴⁴*Wisconsin v. Yoder*, et al., 406 U. S. 205 (1972).