

Sarah Barringer Gordon. *The Mormon Question: Polygamy and Constitutional Conflict in Nineteenth-Century America*.  
Chapel Hill: University of North Carolina Press, 2002.

Reviewed by Terryl L. Givens

Polygamy makes for fascinating social history and for best-selling pot-boilers as well. This study by Sarah Barringer Gordon, who teaches both law and history at the University of Pennsylvania, is the first attempt to write a full-length legal history of “the Principle.” It turns out that even in this dry-as-dust genre, polygamy fuels a very dynamic story indeed, one that reveals the rich malleability of the Constitution, the endless resourcefulness of determined guardians of public morality, and the resilience of a peculiar people committed to the practice of plural marriage.

In this story, Gordon traces how views and methods changed over the decades of conflict. The antipolygamist view of Mormon women was gradually transformed by the rhetorical arsenal of zealous crusaders: at first Mormon women are objects of pity and paternalistic federal intervention, then deluded collaborators, and finally indicted fornicators. Antipolygamist politicians and prosecutors changed their methods from righteous indignation to legal prohibition, adopted the strategies of criminal indictment and imprisonment, and eventually resorted to disfranchisement and confiscation of Church assets to destroy the “twin relic.” Mormon leaders evolved from belligerent and defiant Saints into constitutionally astute apologists before ending up as underground renegades living in basements and hidden rooms. And in one of many twists and turns, Thomas Jefferson was transformed in court opinions from an apostle of localism and individual rights into an apologist for federal action “*against* local deviance” (132–33; italics in original).

The history of the “Mormon Question” is largely the history of how the second-most contentious political issue of the nineteenth century found a tortuous path to resolution, passing along the way, as Gordon writes, through moral argument, coercion, and inhumanity (225), but also through paradox, contradiction, and irony. Where this study transcends mere legal history is in emphasizing the profound role of rhetorical representation

in shaping and controlling both public and legal opinion. As Gordon writes in one representative instance, “If liberty included the right to differ on moral questions of vital importance such as polygamy, then morality itself was subject to diverse interpretations in the name of ‘liberty’” (40). But it was not only “liberty” that became a contested term: “Christianity,” “religion,” “democracy,” “morality,” and “marriage” all came in for their share of semantic negotiation—and Gordon does a beautiful job of tracing these rhetorical struggles. Ultimately, the war over polygamy would be won by those who defined the terms of the debate, in the courts of public opinion as well as of justice. As Gordon demonstrates in another example, the concept that man and woman become “one flesh” lost legal authority in the realm of marriage law (laws of “coverture” in particular) as the metaphor’s literal power dissipated, but its “cultural currency” and power to found spiritual and romantic meanings increased as its poetic appeal grew in the popular literature of love (67–68). Time and again, novelists, crusaders, Mormon leaders, and judges vied to give more compelling cultural currency to their competing definitions of constitutional rights and religious aspiration.

One of the central constitutional dilemmas of the Mormon Question, of course, involved the public’s desire to suppress polygamous practice as a blatantly unchristian practice within the context of a legal system increasingly committed to disestablishment. In other words, the challenge was to outlaw polygamy in the name of Christian morality without outlawing polygamy in the name of religion. In part, the challenge was met by rhetorical strategies operating at the level of popular culture as well as by sitting judges. So we have it that, at one and the same time, antipolygamists could protest that Mormon theocrats were “undermining the distinctions between church and state, and between church and home” (35), even while the novelists Harriet and Catherine Beecher successfully “blended family, church, and home in the person of the [ideal American/Christian] housewife” (40). Monogamy, Protestant morality, and the nuclear family were not seen as so many selections on a cultural smorgasbord. Their ineluctable amalgamation by culturally attuned writers *was* American culture. Or as jurists such as Justice Field put it more bluntly, “general Christianity” could hardly be equated as a religion with “the *cultus* or form of worship of a particular sect” (227). Or as state courts of the era routinely ruled, “the incorporation of Christian principles was entirely distinct from an establishment of religion, which necessarily entailed denominational particularity” (138).

On occasion Gordon might have done more to explore the ways in which rhetorical practice worked to avoid this thorny distinction altogether.

Given the vexing imperative to honor both religious freedom and “general” Christian morality, it would make sense to accord some attention to ways in which the power of rhetorical representation was employed to minimize Mormonism’s association (in the public mind at least) with genuine American status (and therefore constitutional protections) and thereby avoid the whole problem of protecting “general Christianity” while allowing an American minority its rights to religious freedom. The government’s strategy of linking polygamy to images of “Hindu widows [hurling] themselves on the funeral pyres of their husbands, East Islanders . . . [exposing] their newborn babes, [Indian] Thugs . . . [committing] gruesome murders” is notable in Gordon’s analysis because it “focused on the potentially gory consequences of allowing polygamists to escape criminal punishment” (126). But surely this rhetoric and the caption on a cartoon she reproduces a little later in the text are notable instances of another strategy as well. In that image, a depiction of the Catholic Church as an alligator and the Mormon Church as a turtle, both sprawled across a famous American dome, is captioned, “Religious liberty is guaranteed—but can we allow *foreign* reptiles to crawl all over the U.S.?” (143; italics added). A more blatant instance of superimposing the red herring of ethnicity or foreignness into the debate over Mormon claims to free exercise of religion is impossible to imagine. The strategy is repeated in the cartoon that labels three irksome children clambering on Mother Columbia the “China Question,” the “Indian Question,” and the “Mormon Question” (205), and in the language of the *Reynolds* decision that links polygamy to “Asiatic and African peoples” (142). Certainly such a grouping had racist overtones, as Gordon states. But like the prior three examples, this strategy also did the cultural work of suggestively recasting an American religious group as an ethnically alien one. Therefore, though she is right that the Supreme Court in *Reynolds* explicitly differentiated Mormonism from “other religious separatists” on the basis of polygamy’s impact on “political stability” (143), the rhetorical associations had already implicitly erected a much more powerful distinction.

In addition to Gordon’s commanding examination of the legal history of the antipolygamy crusade, she performs two other useful services. First, she convincingly situates the *Reynolds* case as the foundation of current law on First Amendment issues. Most readers will be surprised to learn that previous cases dismissed the claim that the Bill of Rights afforded any protection to individuals against state governments. Second, she provides her readers an apt overview of the legal background necessary to better understand and evaluate the current debates swirling around First Amendment issues. Polygamy was not just a fascinating and traumatic episode in the social

history of a peculiar people. It also provided the forge in which legal definitions and constitutional interpretations would be hammered out, with implications that are with us even now. It is to the author's credit that we are left desiring an ampler discussion in more contemporary terms of the heritage of this painful rite of passage, a fuller exploration, in the contemporary context, of how "the constitutional conflict over polygamy remade American legal consciousness" (231). Today, for instance, a host of political issues are as hopelessly interfused with inherited Christian values as ever polygamy was (or is). Debates over modern polygamy, abortion, gay marriage, public prayer, and most recently the Pledge of Allegiance all involve, to greater or lesser degrees, and either explicitly or implicitly, a vaguely familiar pairing of antagonists asserting constitutional support for their versions of constitutionally sanctioned values: personal freedom, biblically derived morality, and a place for religion in public life that is compatible with a "wall of separation" (133). Perhaps the relevance of the Mormon Question to these controversies is part of an unfolding story that it is too early to narrate. Even so, Professor Gordon has written a history that is at once erudite, compelling, and remarkably timely.

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