The Voluntaryist

Vol. 3, No. 1, Whole #13 *"If one takes care of the means, the end will take care of itself."* **December 1984**

PORNOGRAPHY PERIL

By Wendy McElroy

*There is an unholy alliance being established in this country between the moral majority and radical feminists, both of whom wish to censor pornography. Falwell advocates censorship because pornography is immoral; feminists advocate censorship because pornography degrades women and provides inspiration for rapists. Mind you, this is not a conscious cooperation. Each group despises the other, but this antagonism does not dilute the impact of their working toward a common goal. The impact is success. Northern cities such as Minneapolis have passed anti-pornography ordinances which are clear-cut censorship laws. After all, as feminists ask, was the First Amendment really meant to protect the brutalization of women by men?***

The ACLU and a campus libertarian group recently sponsored a debate between Wendy McElroy and Ms. Nichols in Madison, Wisconsin where an anti-pornography ordinance was being drafted. The proposition under debate was: Resolved, anti-pornography ordinances are censorship. The following is a transcript of Ms. McElroy's presentation.

***Although conservatives are a numerical majority, feminists have given new life to the push for censorship by providing fresh arguments and by disrupting the traditional liberal opposition to censorship.*

I want to begin by defining censorship as the process of legally restricting the circulation of ideas spoken, in print, or otherwise represented. And I want to emphasize the issue under debate tonight by emphasizing what is not being debated. We are not discussing anyone's personal reaction to pornography nor whether pornography does, in fact, project a bad or wrong view of women. The question under debate is: at what point are we justified in translating a personal reaction into a legal process which limits the material other people may hear or see? When is censorship justified? My opponent and other members of Woman Against Pornography believe censorship is justified whenever pictures or movies debase and humiliate women, especially when those movies or magazines depict violence against women. I believe censorship is never justified. Under any circumstances.

Attempts to control thoughts and actions of other people, especially regarding sex, are nothing new and probably most of you have heard the standard arguments and objections regarding censorship of pornography. I intend to argue along slightly different lines. To begin with, I am going to grant the best case possible to my opponent.

For the sake of argument, and in order to strip the debate down to its fundamentals, I will assume many points that are generally a matter of hot contest. I will assume pornography can be objectively defined, that it is not a matter of fashion or subjective evaluation. I will forget it is 1984 and pretend to understand my opponent's distinction between pornography, erotica, and obscenity. I will simply accept her definition of pornography as "material in which women are graphically depicted as whores" and assume that she wishes to prohibit something more than pictures of whores, pictures of women engaged in sex with money clutched in their hands. I will grant that pornography *does* have an impact on people's behavior and that the impact can be objectively measured. I will even concede that pornography can be correlated with something we all agree should be illegal: namely, rape.

Further, I will consider it possible to monitor what some people read and see and receive through the mail without violating the civil liberties of innocent parties. I will forget everything I know about the history of censorship laws. In particular, I will forget that the Comstock Law was the main barrier thrown up against 19th century feminists who were often imprisoned under it for their attempts to disseminate birth control information. For censorship laws are like the camel's nose; once introduced into the tent, they eventually, and usually with disarming speed, take over and become weapons against unpopular or minority political positions, such as feminism. I will even pass over the dangers of letting the state define what constitutes appropriate sexual behavior.

So, what has all this assuming and conceding and forgetting left me with? On what grounds can I possibly oppose banning pornography? I oppose such a ban for one reason and one reason alone. Pornography is a voluntary activity. Models who pose sign contracts and often compete vigorously for the exposure provided by magazines such as *Playboy*. Editors such as Ms. Hefner willingly work for *Playboy*. Women shopkeepers who stock *Hustler* and *Playboy* fill in order forms of their own free will. And, at least in Los Angeles where I live, no one forces a woman to purchase *Penthouse*.

Here, I hasten to add that there are undoubtedly cases in which force has been used to make women pose for pornography. In these situations I unequivocably advocate restitution to the victim and legal sanctions against the aggressor. Moreover, since the pictures would be the product of a crime, I advocate removing them for the marketplace if the victim so wishes. But such instances of force are rare. Certainly, magazines such as *Penthouse* which has been banned from crossing the Canadian border

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because its contents were judged debasing to women, deal with their models entirely through contracts, fees, and release forms. The *Penthouse* photographer does not carry a camera in one hand and a revolver in the other. Moreover, if women are assaulted, threatened or raped by pornographers, laws already exist. Radical feminists such as Andrea Dworkin maintain that all women who pose are under such intense cultural pressure that true consent is never present and that all women must be protected against this non-choice. I will address this perspective in a moment.

But first, I want to deal with an underlying question of this sort of debate which rarely surfaces in an explicit form; namely, what is the purpose of law in society? Since we are discussing the initiation of a legal procedure, it is reasonable to consider what is law meant to accomplish. I contend that my opponent and I represent two different and fundamentally antagonistic views of law. I believe the purpose of law is to protect rights, to protect self-ownership. Self-ownership means that every human being simply by being human has a moral claim to his or her own body. With specific reference to women, it means "a woman's body, a woman's right." This phrase applies not only to the abortion issue which made it popular, but to any peaceful activity a woman chooses to engage in. Law comes into play only when the woman initiates force or has force initiated against her.

Contrast this with another view of law; that is, law as a means of protecting virtue, as a means of enforcing a proper code of morality. From this perspective, certain acts are wrong and ought to be prohibited whether or not they are peaceful. Classic examples are laws against blasphemy, pornography and sexual deviance. Such laws are not aimed at protecting rights, but at enforcing virtue. Because men should not regard women as objects to be degraded, these laws discourage that attitude. By this standard, laws come into play whenever there has been a significant or public breach of morality.

To summarize: the two functions of law I believe are contrasted in this debate are the protection of rights *versus* the protection of virtue. And it is not unreasonable to ask at this point if somehow we cannot combine the two approaches and have the best of both worlds? The answer is "no." And the reason is the sticky issue of consent, for when you protect rights what you are protecting is consent . . .a woman's right to say "yes" or "no" with respect to her own body. But when you protect virtue, you are declaring consent to be irrelevant. Certain actions are wrong whether or not a woman is clamoring to take part in them. Let me use pornography as an example. A woman agrees, indeed she may vigorously compete with other women, to pose for pictures which most people would consider degrading and humiliating. These pictures are then willingly sold to those who wish to buy them. The question becomes: how do feminists who wish to restrict *Hustler* and other magazines of its ilk deal with the eager model, the willing shop-keeper, the contented female consumer of pornography? And lest it be denied that a woman has ever purchased a copy of *Hustler,* let me state that in preparing for this debate, I bought several. What do anti-pornography feminists say to the model who willingly poses? What do they say to the woman who owns a bookstore and is sued under the Minneapolis ordinance as the ACLU advises may well happen, by a rape victim who claims the rapist was inspired by a magazine purchased at her store? Are these people not women with women's rights? Who is to protect them from their protectors?

Well, if the proposed ordinance goes into effect, these feminists through law will say to the model: "It may be your body, but it is not your right to use it as you choose, nor does another woman have the right to sell your picture or to view what you so willingly display." They will say to the store owner: "It is your store, but we have the right to determine your stock." They will say to the female consumer: "Your view of other women and of yourself is unacceptable and must be restricted." In saying this, I suggest they are denying to women involved in pornography all genuine right to their bodies and property. The state or some other moral authority is given the right to make all final, legal choices. They are saying: it is a woman's body, it is not a woman's right.

Of course, it is not that simple. In side-stepping the dilemma of stripping fellow women of choice, there are several ways feminists attempt to deny that choice enters the situation. Most often, as I mentioned before, feminists claim that women who pose for pornography or who sell or consume it are coerced into doing so. They are not coerced in the common sense of that word. Liquor store owners do not hold a knife to their throats as an inducement to buy *Penthouse*. No: they are coerced by being victims of cultural attitudes which so degrade women that they are left with no choice but to buckle under to the demands of society and/or men.

I want everyone to pause for one moment to consider how insulting, how patronizing this is to women who participate in pornography. Presumably, feminists wish us to believe that their arguments are based on facts and reason. Somehow, they have risen above the culture in which they were raised and they have seen the truth. These women are unwilling, however, to extend this same courtesy to other women who disagree, to women who see the issue of pornography and sex differently. Instead, Women Against Pornography claim that pornographic models are so psychologically impaired by society they cannot be held responsible for their actions. Please consider the impertinence of this. Consider how degrading it is to the women they claim to be protecting. If a woman enjoys pornography, it is not because she has reasoned from different experience or facts to a different conclusion, it is because she is psychologically damaged. Like a five year old or any other mental incompetent, she is no longer able to give informed consent regarding her own body.

As to whether cultural pressure influences the decisions women make, of course they do. Our culture has an enormous impact on the decisions of everyone raised in it and there are times when cultural pressures lead to wrong choices. But to say that women who pose do not truly choose because cultural pressure is present at the point of decision is to eliminate the possibility of choice itself since all decisions are made in the context of cultural influences. Such a theory reduces women to the status of having no more control over their actions than Pavlov's dogs had over their saliva.

And, lest people believe that I am overstating this position, let me refer directly to the Minneapolis anti-pornography ordinance. Under the ordinance's section on coercion into pornography, a woman who has posed for pornographic pictures may subsequently sue a magazine for publishing them even though she was of age, she consented to the pictures with full knowledge of their purpose, she signed a contract and a release, she was under no threat, she showed no resistance and she was paid. None of these factors are considered legal evidence of consent. This section is said to protect women's rights. It allows women to sue in spite of contracts to the contrary. But what legal implications does this have for a woman's right to contract; what legal weight will future

negotiators give to a woman's signature? The contracts women make will be legally unenforceable and her agreement will be legally irrelevant.

In the 19th century women fought and fought hard to become legally the equal of men, to own land, to make binding contracts and to have legal control of their bodies recognized. When after the Civil War the 15th Amendment was proposed to enfranchise black men without enfranchising women, Susan B. Anthony wrote: "We have stood with the black man in the Constitution over half a century . . . . Enfranchise him and we are left outside with lunatics, idiots and criminals." I contend that to take from women the legal recognition of their contracts is to place them once more outside with lunatics, idiots and criminals. We are marching backward. A woman's agreement is again reduced to a legal triviality. She is granted the protection of no longer being taken seriously when she signs a contract. In other words, she is protected from the consequences of her own actions. I do not think this is a step forward for the dignity or the freedom of women.

Now, before concluding, it is important for me to comment on the most common argument used by radical feminists to justify the censorship of pornography; namely, that pornography is responsible for violence against women and should be prohibited just as one prohibits heroin because it leads to crime. I want to make several points here. First, whether or not there is a clear relationship between pornography and violence such a rape depends on the authorities and reports quoted. Thelma McCormack was commissioned by the Canadian government to study pornography's link to rape and her research did not "support any connection whatever between pornography and sexual aggression." Her report, *Making Sense of Pornography,* was dismissed and quickly followed up by another one conducted by a man who established a clear link. Studies and authorities contradict each other. Perhaps this is because statistics are often used to prove just what and only what the statistician wishes proven. William Broad and Nicholas Wade make this point in their book, *Betrayers of the Truth.* Radical feminist Susan Brownmiller made the same point with startling clarity when she was asked by a reporter from the *Boston Phoenix* for statistics detailing the relationship between pornography and rape. She replied: "The statistics will come. We supply the ideology; it's for other people to come up with the statistics." Hardly a valuefree, scientific approach.

But even granting that a correlation does exist between pornography and rape, what does this mean? It is a logical fallacy to assume that if A is correlated with B, then A causes B, for such a correlation may indicate nothing more than that both are caused by a separate element, C. For example, there is a high correlation between the number of doctors in a city, and the amount of alcohol consumed there. But one statistic does not cause the other. Both statistics are proportional to the size of the city's population. Similarly, if there is a correlation between pornography and rape, it may well indicate nothing more than a common cause for both; namely, we live in a sexually repressive society. To further repress sex by restricting yet another form of its expression may contribute to the cause of rape and increase its incidence.

But, perhaps the best argument against this correlation is *reductio ad absurdum.* Should feminists, for example, be able to ban the bible because it is sexually graphic or degrades women? After airing *The Burning Bed,* a movie acclaimed by feminists because of its sympathetic treatment of a woman who kills her husband in self-defense, a man burnt his wife to death and a woman shot her husband through the head. Both pointed to *The Burning Bed* as inspiration. Would feminists ban this movie? And if women are to be protected, should blacks not receive the same treatment? Should the entire country follow the example of a high school in Winnetka, Illinois and remove *Tom Sawyer* and *Huckleberry Finn* from the school library because those books present false and degrading stereotypes and foster the type of discrimination which leads to violence against blacks.

One aspect of the push toward censorship should make feminists particularly uncomfortable and that is their unintentional, though effective, alliance with the Moral Majority. Both the New Right and radical feminism cry out for censorship, but once the mechanism of censorship is put in place, who will control it? Susan Brownmiller's *Against Our Will* contains page after page of graphic descriptions of rape and many of the women guiding Women Against Pornography are open lesbians. It is criminally naive of these women to believe that *their* literature, *their* sexual expression will be respected by the New Right to whom they offer a virtue blank check to censor. As a sign of the times it is interesting to note that the Canadian government has already restricted the showing of the feminist documentary *Not A Love Story* due to its graphic clips of mutilated women and brutalized children.

Now, my opponent tonight wished to show such a film as a part or as the whole of her presentation, but deferred to my request to discuss the issues instead. Nevertheless, she has mentioned this constraint several times and complained of the disadvantage at which she has been placed. Without viewing a film such as *Not A Love Story,* we are told, it is not possible to understand the subject under discussion (as though none of us has seen pornography before). I must suggest to her that at the risk of being a hypocrite the next time an anti-abortionist shows pictures of an aborted fetus she must accept it as valid for, after all, without such pictures one doesn't know what is under discussion in an abortion debate. If she objects to these blatant emotional appeals, she must accept my objections to her proposed presentation.

But if I object to slide shows as poor taste and legal processes as violations of right, how do I suggest women change what I agree to be unpleasant and damaging stereotypes of women. Stereotypes which are not restricted to pornography but to commercials in which women become orgasmic over soap suds. As a woman who is struggling to be taken seriously intellectually let alone compete with men, as a woman who has been physically raped, as a woman who is trying to build a career, I understand the helplessness and rage that women feel. What can be done with this anger? Well, women must remove their personal support from products which fortify a degrading image of women. The should vote with their dollars by refusing to buy them. But most of all they should educate, for no change can occur unless it comes from the hearts and minds of people. By education, I do not mean passivity. When an anti-gay movies entitled *Cruising* ran in Los Angeles, gays were very effective in picketing outside the theatre and they received a great deal of media attention. Perhaps the best example of a non-legal, non-violent campaign to change a stereotype by changing the hearts of people was that waged by Martin Luther King. There are many ways for women to protest their stereotype without instituting a legal process.

To summarize my position: I am against criminalizing pornography for the same reason I am for women's rights . . .because this is *my* body. No one, no man, no woman has the right to tell me what my eyes can see, what my ears can hear, what is the proper attitude toward my body or how I may display it. It is a woman's body, a woman's right.

Update on Paul Jacob

Paul Jacob's battle against registration has entered a new phase. He was recently arrested by FBI agents at his home town in Little Rock, Arkansas, where his indictment for non-registration occurred and held overnight awaiting a hearing. Bail was set at $75,000 and met by Paul's parents

who put up their property as guarantee. Although the trial was originally set for January 14th, a continuance has been granted until May 6th. Paul intends to use a David Waite defense; that is, he will contend that his prosecution is selective and therefore a violation of his civil liberties. Waite successfully defended himself in Southern California, but his case is now under review by the Supreme Court. By May 6th, the Supreme Court should have reached a ruling and Paul will be able to make a final decision as to his strategy in the courtroom.

Paul is represented by an ACLU attorney with an extremely good track record on civil liberty issues. Moreover, the presiding judge is George Howard who is one of the more liberal judges in the Eastern District of Arkansas. Given that Paul could have been tried before a judge who was a former FBI agent, both he and his lawyer are pleased with the circumstances. If found guilty, Paul will face imprisonment or community service work. His lawyer believes the probably sentence would be 6 months to one year in jail. As a devoted husband and father, Paul finds the prospect of longterm separation from his family unacceptable. If his sentence is not in the form of community service or if it is over six months in jail, he plans to appeal.

His probation officer is willing to let him travel for political purposes, so Paul is available to lecture. Money, of course, is a constraining factor in his travel and his legal defense. Legal fees are likely to exceed $20,000. As always, donations toward the Paul Jacob Defense Fund can be channelled through the *Voluntaryist*. **W.M.**

Update on George Meeks

by Carl Watner
(December 9, 1984)

Figuratively, I thought this might happen: the December *Voluntaryist* going out in the mail and then finding out that George Meeks had been released. Well, sure enough, it did.

Meeks, as readers may recall, was a Texas businessman imprisoned on civil contempt charges for refusal to turn over to the I.R.S. what he claimed were non-existent corporate records. He had been held for nearly a year at the U.S. Bureau of Prisons' facility in Bastrop, Texas. George called Saturday night, December 8, 1984, and informed me that he had been released on the afternoon of December 4th (a Tuesday). The previous week, on Wednesday, November 28th, he had been contacted by CBS's *60 Minutes*. They were interested in doing a story about his case and he gave them the go ahead. CBS's people then tried to contact the U.S. Attorney's Office in San Antonio for the government's side of the story. Their calls were not answered for three days straight. The Tuesday following *60 Minutes* initial contact with him, Meeks was taken by a federal marshall from Bastrop to the Courthouse in San Antonio. He was held there a short time and finally taken to the basement of the building, where the chief federal marshall handed him Judge Suttle's order that Meeks be released immediately.

George related that he was without even a dime in his pocket and that the afternoon was rainy and cold. George said to the marshall, "You mean you're going to turn me loose like this, without even money to make a phone call, or a rain coat?" The marshall then drove Meeks to his lawyer's office. Meeks' lawyer was not present: nor had he known anything about Meeks' release. A newspaper reporter had been at the Courthouse at the time Suttle's clerk had filed the order. The media representatives were contacted and an impromptu press conference was held that afternoon.

Judge Suttle's order simply stated that since incarceration was no longer serving its coercive function (meaning that there was no prospect that George would cave in) he was releasing him. None of the other issues which Meeks and his attorney had raised were addressed. In a typical government copout, the Judge simply ignored the fact that Meeks had been denied a trial by his peers and that the statute of limitations had expired with respect to any further I.R.S. investigations. George believes that the investigation by *60 Minutes* may well have had something to do with his release. In the meantime, he has not been contacted by the Internal Revenue Service, although the U.S. Attorney's Office has let out rumors that he may be indicted on criminal charges after the first of the year. George seriously doubts that they could make such charges stick (for one thing, if they had grounds for pressing criminal charges, why wasn't that done before?), and that secondly, it would be unlikely that a jury would convict him, given the fact that he has already spent so much time in jail and never been charged with a crime.

George's plans are to catch up on his business interests and to publicize the injustice of his incarceration. He sees himself playing a vital part in the war of propaganda against the government and the Internal Revenue Service. A victory celebration is planned in Dallas within a few days, and he already has some speaking engagements throughout the south scheduled during the next few months.

Any contributions which have been sent to the George Meeks Fund c/o The Voluntaryists will be retained by The Voluntaryists pending notification of the donor as to George's release and further instructions from the donor.

Letter To The Editor

I was more than pleased to find out what your organization stands for. It's comforting to know that the ideals of freedom held by Goldman, Berkman, Stirner and Kropotkin have not been buried with them.

I am optimistic. I must be. I truly appreciate life and consider freedom an inherent right of the individual upon birth.

My abhorrence for blood-letting and brainless violence is sincere. This I also kept in mind when I decided to subscribe to your publication. Indeed, I will hold you to your commitment to non-violence. I am not some vulgar thug, and it's time to stop giving people reasons to believe that idealism must be associated with terror, chaos and bloodshed.

Perhaps, just perhaps, there are many more people such as I, and you, who haven't allowed ourselves to be brainwashed into accepting a watered-down definition of freedom. Perhaps, just perhaps, many others also will reject the sordid notion that freedom is conditional upon the state. Perhaps, just perhaps, the dormant seeds of freedom will yet bloom. Perhaps we can live as human beings after all.

Thank you very much.

Sincerely,
David S. Jacobson

The Second Relic of Barbarism: The Crusade Against Mormon Polygamy, 1862–1890

The Republican party platform of 1856 referred to slavery and polygamy as the "twin relics of barbarism." The extirpation of the first caused a civil holocaust lasting five years. The second witnessed a massive program launched by the federal government, which included the passage of anti-polygamy laws imposing serious criminal and civil sanctions against the Mormons in 1862, 1882, and 1887. This relatively unknown episode in American history only reinforces the voluntaryist contention that the State is an aggressive institution, having no respect whatsoever for individual rights. It proves Lysander Spooner's assertion that "there is not a single human right, which the government of the United States recognizes as inviolable. It tramples upon any and every individual right, whenever its own will, pleasure, or discretion shall so dictate." According to the voluntaryist view, the second relic of barbarism was not polygamy at all, but rather the 30 year crusade of the United States government against a peaceful and non-invasive people. The purpose of this paper is to detail the history of this attack on the Mormons and to catalog it in the roster of crimes perpetrated by the United States government.

From the time of its founding in the early 1830's, the Church of Jesus Christ of Latter-day Saints exhibited several unusual characteristics. To the non-Mormon, outside the Utah territory, the theocracy created by Joseph Smith and Brigham Young seemed un-American. Most noteworthy was its practice of plural marriage, but the religious community's strong commercial and social solidarity are not to be overlooked. Biblical precedent and the need for more saints to populate the eternal hereafter were their religious justifications. On the practical side, they argued that monogamy could not be proved morally superior to polygamy. The evidences of infidelity, prostitution, divorce and the like were found commonly in monogamy, while such things were absent from Mormon society. The Mormons asserted that the Gentile objection was "not to a man's having more than one woman, but to his calling more than one woman his wife." "Celestial marriage" was not bigamy because the parties to plural marriages understood that their husbands would take other wives. It was their religious duty, if they were financially capable of doing so. Mormon family life did not suffer from the practice nor was it harmful to society. Plural wives were not deceived or coerced and they enjoyed complete freedom with respect to marriage.

The first national legislation directed against this Mormon practice was the Anti-Bigamy Act of 1862, which was sponsored by Representative Morrill. Polygamy had been agitated against all during the sectional strife of the 1850's. President Buchanan had sent an ill-fated expeditionary force against the Mormons in 1857. Morrill's bill had been introduced into the House several years before its final acceptance by President Lincoln on July 1, 1862. The bill defined bigamy and made it a crime for any person who already had a husband or wife to marry another person in the territory of the United States. The territorial law which had incorporated the Mormon Church was declared invalid and it was made illegal for religious or charitable groups in the Utah territory to hold real or personal property in excess of $50,000. Property held in excess of this value would be forfeited to the federal government.

This legislation remained a dead letter because the Mormons saw it as an unconstitutional attack on their religion. They controlled the territorial courts and juries and it was simply impossible to get indictments for what they viewed as a non-crime. Second marriages were called "sealings" and done in secret to avoid outright condemnation of the law. Church property was turned over to Brigham Young in an effort to minimize its assets. As Congress realized that its anti-polygamy policy was being thwarted, additional anti-Mormon legislation was introduced. The Poland Act of 1874 transferred jurisdiction over civil and criminal cases to the federal courts in an effort to curtail the Mormon domination of juries. This legislation was necessitated by the fact that Brigham Young and other Mormon dignitaries had been indicted under Utah territorial law for "lewd and lascivious cohabitation." The Supreme Court had determined that the federal courts had violated due process in an effort to impanel juries which were not sympathetic to the Mormons. In the case against Brigham Young, the judge had called it "the Federal Authority *versus* Polygamic Theocracy."

The major federal case testing the constitutionality of the anti-bigamy legislation was initiated by George Reynolds, secretary to Brigham Young. It was carried to the U.S. Supreme Court, where Chief Justice Waite delivered the majority opinion. The major issue for the Mormons was whether federal law violated Reynold's freedom of religion. It was his contention that his second marriage was part of his religion, and therefore immune from interference by the government. The Court had to determine "whether religious belief can be accepted as justification of an overt act made criminal by the law of the land." The Court concluded that "Congress was deprived of all legislative power over mere opinion, but was left free to reach actions which were in violation of social duties or subversive of good order." This was the extent of the protection afforded by the First Amendment. What this meant was that polygamous practices under the guise of religion were to be outlawed. The majority of the Court determined that belief might not be interfered with, but that action in pursuance of belief could be regulated:

> . . . Laws are made for the government of actions, and while they cannot interefere with mere religious belief and opinions, they may with practices. Suppose one believed that human sacrifices were a necessary part of religious worship, would it be seriously contended that the civil government under which he lived could not interfere to prevent a sacrifice? Or if a wife religiously believed it was her duty to burn herself upon the funeral pile of her dead husband, would it be beyond the power of the civil government to prevent her carrying her belief into practice?

To permit a person to justify his or her criminal actions on the basis of religious belief would be "to make the professed doctrines of religious beliefs superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances."

Agitation against polygamy did not abate as the nation entered the 1880's. Both Presidents Hayes and Arthur had their minds set on destroying "the barbarous system which rests upon polygamy as its cornerstone." Senator Edmunds of Vermont introduced legislation in 1881 to amend the earlier Morrill act. The Edmunds bill became law on March 22, 1882. It effectively vested political control of the Utah territory with the federal government by creating the Utah Commission. This was a five person committee to supervise elections, voter registration and eligibility. The practice of polygamy was heavily penalized and cohabitation with a polygamous wife was declared a misdemeanor and punishable by a fine of $300, by imprisonment not to exceed six months, or both. The Utah Commission determined that those who professed belief in polygamy (even if not convicted of the practice) were

ineligible to vote, hold office, or serve on juries. In its first year of operation, some 12,000 Mormon men and women were disenfranchised for their beliefs. This was at a time when the total population of Utah was approximately 141,000 people of which 33,000 were registered to vote.

At first the federal officials moved slowly against the Mormons, since there was some justification in believing that the Supreme Court would hold the Edmunds Act unconstitutional. In March 1885, the Court upheld the constitutionality of the law. This marked the beginning of what was referred to as "the raids" or the "holy war against the cohabs," which was the name given to polygamists who were allegedly cohabiting with more than one woman. The most common charge against the Mormons was unlawful cohabitation. Eventual definition by the federal courts in Utah held that refusal to deny the existence of a plural marriage was sufficient evidence of cohabitation. Women were forced to testify against their husbands or face contempt charges. Many women were jailed. Prosecutors introduced the principle of segregation, by which they charged polygamists with more than one offense. By dividing the time of the suspect's cohabitation with his polygamous wife into periods and bringing separate charges for each period, the six month's imprisonment and $300 fine could be extended indefinitely. Hunting "cohabs" provided income for many informers. Congress appropriated a "spotter's fund," which paid out $20 to every informer whose information led to the arrest of a polygamist.

There were over 1000 convictions based on the Edmunds Act. Nearly all the church officials went "underground" to avoid arrest. They regarded themselves as objects of religious persecution and could not be brought by force to obey a law against conscience. They were determined not to cooperate with the law,but did not resort to violent resistance, because they believed that the federal government would use that as an excuse to impose military rule. The United States Attorney in Utah viewed the situation as dangerous:

> The fact of the matter is, that practically an entire people were in open hostility and rebellion against the government of the United States. They were not in arms, it is true, but they denied the authority of Congress to enact laws and prescribe offenses, and the authority of courts to interpret those laws and the constitution; and they denounced officers who had taken oaths to enforce the laws of the government, because they refused to close their eyes to violations of laws and stay their hands from executing them. They only admitted the authority of the courts when the decisions were in accord with their views, and from adverse decisions, appeal was always made to a higher law than the constitution.

The government responded with the passage of the Edmunds-Tucker Act, which was adopted on February 19, 1887. As one historian has noted, this "Anti-Polygamy Act" was "a direct bid to destroy the temporal power of the Mormon Church. Congressional leaders reasoned that the church would have to yield on the principle of plural marriage or suffer destruction as an organization of power and influence." This bill, among other things, **1** dissolved the church as a legal entity; **2** allowed the Attorney General to commence forfeiture and escheat proceedings as outlined in the Anti-Bigamy Act of 1862 (to confiscate church property held in excess of $50,000)—such property to be applied to the use and benefit of district schools in Utah; **3** disenfranchised all women voters in Utah; **4** disinherited the children of plural marriages; and **5** prescribed a test oath to prevent polygamists from voting, holding office and serving on juries. Congressional critics labelled the bill "naked, simple, bold confiscation, and nothing else."

Undaunted the Mormons still believed that portions of the Edmunds-Tucker Act were unconstitutional and arranged to challenge the law. They declared that they could not revoke the principle of polygamy, since it was their religion. They prepared to resist the taking of their church's property by appointing secret trustees-in-trust. In November 1887, a receiver was appointed to control whatever property was found in the possession of the late church corporation. The government claimed that there was over $2,000,000 worth of real estate and personal property of over $1,000,000 subject to escheat. In the end, the receiver took possession of perhaps $1,000,000 worth of church assets, which represented at most one-third of the value of the church wealth at the time of the Edmunds-Tucker Act. The church sued the government and the decision of the case of The Late Corporation of the Church of Jesus Christ of Latter-Day Saints *v.* United States determined two main questions. First, did Congress have the authority to repeal the charter of the church? And second, could the courts authorize seizure of the property of the corporation and apply it for uses contrary to its original purpose?

The Supreme Court affirmed the power of Congress in both instances. In the words of the majority of the court:

> — Congress had before it — a contumacious organization, wielding by its resources an immense power in the Territory of Utah, and employing those resources and that power in constantly attempting to oppose, thwart, and subvert the legislation of Congress and the will of the government of the United States. Under these circumstances we have no doubt of the power of Congress to do as it did.

One of the immediate effects of this case was the issuance of a church "Manifesto" proclaiming an end to Mormon polygamy. Wilford Woodruff, president of the Church, issued an "Official Declaration" in late September 1890. He claimed to have had a revelation which authorized the removal of religious sanction from plural marriages. The Mormon church realized that it was fighting a powerful enemy and had appealed to the court of last resort. The fact that the U.S. Government was apparently threatening the confiscation of non-Church property belonging to Mormon businessmen undoubtedly hastened the Woodruff manifesto. Government prosecution slacked off when it was realized that the manifesto was no subterfuge and public opinion seemed to have been satisfied with the capitulation of the Mormon theocracy. After a lengthy judicial process, the receivership was terminated. What was left of its personal property was returned to the church in 1894, and the remainder of its real property, in 1896. The Manifesto also enabled the Mormons to achieve long sought after statehood in 1896.

Thus ends the chronology of 30 years warfare against the Mormons. As one legal historian of this episode has noted, "Having fined and imprisoned polygamists, barred them from the polls and public office and eliminated them from juries, the nation abolished the Mormon Church, and not satisfied with this seized its property." The crusade against polygamy was in essence a crusade against Mormondom because the United States government perceived it as a powerful rival and competitor in the Utah territory. There was not enough room for two governments, when at least one of them wished to exercise monopolistic control. Even though only 2% of the Church membership practiced plural marriages during the era, polygamy was used as the major focus of attack. Time and again, authorities within the federal government made it plain that what they were really after was the power of the Mormon Church. For example, in 1889 a federal judge speaking in opposition to statehood said, "I do not regard polygamy as the great evil in Utah. It is the great power which the church exercises over the people which I regard as a fundamental objection to a State Government. Polygamy is only a symptom but it is one that attracts attention by reason of its violation of our ideas of propriety and morality." Other commentators noted that the "Utah question" was simply a matter of law and government. "There is no hostility against the common people who call themselves Mormons. The hostility is against their illegal system of

government." The most common objection was to Mormon unity and their political and commercial solidarity.

Nineteenth Century libertarians were fully aware of the government's war against the Mormons. For example, Dyer D. Lum spent a year in Utah during the early 1880's and wrote two books about the Mormons. Lum took the side of the Mormons and insisted that both his freedom and that of the Mormons was jeopardized when the government regulated marital relations. While noting Lum's attachment to free love, one historian of American anarchism has written:

> Denying the right of law and society to force any opinion whatever on the individual, Lum maintained that monogamy, like virtue itself, needs no assistance from the coercive forces of the state to maintain itself if it is natural to man. Siding with Macaulay, Lum insisted that "The true remedy for the abuses of freedom is more freedom."

Like most other libertarians who wrote in Benjamin Tucker's *Liberty*, Lum was convinced that "human freedom is the necessary condition for the growth of a healthy society" and responsible people. It was Tucker's own position that the State should have nothing to do with marriage. It made no difference if one believed in polygamy, monogamy, or celibacy. Liberty "denies the right of the State to say to any man whether he shall 'keep' one, two, five, twenty, or one hundred women, or to any woman whether she shall 'keep' corresponding numbers of men. Both Spooner and Tucker noted the hypocrisy of legislators who claimed to outlaw polygamy. (The Mormons also began investigations into the sexual behavior of members of Congress, rightfully noting that many of them had mistresses.) As Tucker noted, "even those who are honestly free from the practice of polygamy are committing an unmitigated piece of impudence and despotism when they attempt to deny to any man the right to 'keep' just as many women as he pleases with his own money, and at his and their sole cost."

Spooner in an unsigned editorial in *Liberty* (July 22, 1882), was even more acerbic. "If Congress were really waging an honest war against unchaste men, or even unchaste women, or even religious hypocrites and impostors, they would not need to go to Utah to find them. And the fact that they do go to Utah to find them—passing by hundred of thousands of vicious persons of both sexes at home, and the religious hypocrites that are not supposed to be very scarce anywhere—is the proof of their hypocrisy; and of their design to make political capital for themselves, by currying favor with bigots and hypocrites, rather than to promote chastity on the part of either men or women." "X," another contributor to *Liberty* in 1885, asked why every honest man is not an anarchist in the face of the Edmunds Act and the judicial decisions enforcing it. "Our whole governmental machine," he wrote, "is nothing less than a conspiracy for robbery, black-mail, and irresponsible power." Gertrude Kelly, another writer for *Liberty*, noted that neither monogamy or polygamy was actually the question. The question was, as she put it, whether the Mormons "have a right to any system of marriage that suits them, that they maintain at their own cost, and that they do not force upon others."

A common libertarian response to the Mormon problem was that moral suasion should be directed against them rather than the coercive processes of the State. In that respect, Gertrude Kelly thought that the Mormons were far superior to the Christian politicians that initiated legislation against them. "The Christian rushes to the ballot, and, if necessary to the bullet, to force his system down the Mormon's throat." Benjamin Tucker lamented it was a shame that the Mormons were not more anarchistically inclined. While rejecting the authority of the federal government in religious matters, they refused to jettison altogether. Had they been more consistent about their belief in the separation of church and state, they would never have applied for statehood status and simply refused to pay their taxes to the central government. In this respect, the Mormons are not to be looked upon as heroic in any sort of voluntaryist sense. They were simply the victims of government aggrandizement on a scale not to be matched until the internment of those of Japanese ancestry during World War II.

The government created unanswerable questions with respect to Mormon conduct. It penalized the polygamous father who cared for all his wives and families. Punishing men who had contracted plural marriages before there was ever any national legislation against such actions was clearly a case of an *ex post facto* law. Mormons who didn't practice polygamy themselves, but merely "believed" in it were subject to guilt by association. Homes were broken up and family life disrupted on the illogical basis that polygamy caused harm to wives and children. The government refused to extend the presumption of First Amendment protection to the Mormons because they refused to look upon Mormonism as a legitimate religion. Their church was not only abolished, but its property stolen.

The main issue, however, which the government really never faced, was the propriety of extending police powers to the extirpation of polygamy. The Mormon system of polygamy harmed no one. Not one court case ever really documented the use of physical violence against women or children of polygamous marriages. According to the judicial decisions any action—once it had been declared a legitimate object of the government's police power—could be used to justify government intervention. No aspect of community or personal life would then be immune from governmental interference. When the laws of religion and the laws of the State conflict, it is clear that the State shall prevail. No government would ever permit the free exercise of religion or claims of conscience to be a justification for disobedience to its laws. As Lysander Spooner sarcastically remarked in his *Liberty* editorial, "How could we have any religious freedoms, if it were not for Congresses and Supreme Courts!" Spooner concluded his editorial by commenting on the unity of all freedom:

> When we get rid of Congreses and Supreme Courts, as we no doubt sometime will, it is to be hoped that men will learn that there is but one single kind of 'legal' freedom; and that is simply the 'natural' freedom of each individual to do whatever he will with himself and his property, for his body here, and his soul hereafter, so long as he does not trespass upon the equal freedom of any other person. It is to be hoped that they will sometime learn that this 'one natural' freedom comprehends all of men's moral freedom, social freedom, religious freedom, industrial freedom, commercial freedom, political freedom, and all the other freedoms (if there are any others), to which every human being is by nature entitled. Until men learn this—and especially until they learn that moral, social, religious, industrial, commercial, and political freedom mean freedom from the laws of Congresses, and the decisions of Supreme Courts—it is very clear that they are to have no 'legal' freedom at all.

Carl Watner
September 1984

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