Reynolds v. United States
(1879)

Reynolds v. United States *was the first case ever in which the Supreme Court ruled on the meaning and limits of the First Amendment's guarantee of religious freedom. The case was brought by George Reynolds, a white Latter-day Saint, or Mormon, living in the Utah Territory, to which he had immigrated from England. In Utah, Reynolds entered a polygamous marriage with two women and was subsequently convicted under a federal anti-bigamy law. His conviction was part of a massive legal crackdown on the Mormon practice of "plural marriage," which Mormons held that God had enjoined on them through revelation to their founder, Joseph Smith Jr. Appealing his conviction to the Supreme Court, Reynolds argued that because the First Amendment denied Congress the power to make a law that prohibited the free exercise of religion, his prosecution was unconstitutional.*

The Supreme Court ruled unanimously against Reynolds. In the process, the justices laid down a principle that the courts still apply, in the 21st century, not only to polygamy but also to other cases in which people try to appeal to the First Amendment for religious exemptions from laws. In these excerpts from the Reynolds *decision, we can see how assumptions of Western superiority—and white superiority—informed the justices' decision about where the limits of religious freedom lie.*

Congress cannot pass a law for the government of the territories which shall prohibit the free exercise of religion. The First Amendment to the Constitution expressly forbids such legislation. [...] The question to be determined is whether the law now under consideration comes within this prohibition.

The word "religion" is not defined in the Constitution. We must go elsewhere, therefore, to ascertain its meaning, and nowhere more appropriately, we think, than to the history of the times in the midst of which the provision was adopted. The precise point of the inquiry is: What is the religious freedom which has been guaranteed?

Before the adoption of the Constitution, attempts were made in some of the colonies and states to legislate not only in respect to the establishment of religion but in respect to its doctrines and precepts as well. The people were taxed, against their will, for the support of religion and sometimes for the support of particular sects to whose tenets they could not and did not subscribe. Punishments were prescribed for a failure to attend upon public worship and sometimes for entertaining heretical opinions. The controversy upon this general subject was animated in many of the states but seemed at last to culminate in Virginia[, ...where a] bill [...] "for establishing religious freedom," drafted by [Thomas] Jefferson, was passed. In the preamble of this act, religious freedom is defined; and after a recital "that to suffer the civil magistrate to intrude his powers into the field of opinion, and to restrain the profession or propagation of principles on supposition of their ill tendency, is a dangerous fallacy which at once destroys all religious liberty," it is declared "that it is time enough, for the rightful purposes of civil government, for its officers to interfere when principles break out into overt acts against peace and good order."

In these two sentences is found the true distinction between what properly belongs to the church and what to the state. [...] Congress was deprived [by the First Amendment] 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.

Polygamy has always been odious among the northern and western nations of Europe and, until the establishment of the Mormon church, was almost exclusively a feature of the life of Asiatic and of African people. [...W]e think it may safely be said there never has been a time in any state of the Union when polygamy has not been an offence against society, cognizable by the civil courts and punishable with more or less severity. In the face of all this evidence, it is impossible to believe that the constitutional guarantee of religious freedom was intended to prohibit legislation in respect to this most important feature of social life. Marriage, while from its very nature a sacred obligation, is nevertheless, in most civilized nations, a civil contract and usually regulated by law. Upon it society may be said to be built, and out of its fruits spring social relations and social obligations and duties, with which government is necessarily required to deal. In fact, according as monogamous or polygamous marriages are allowed do we find the principles on which the government of the people, to a greater or less extent, rests. Professor Lieber says polygamy leads to the patriarchal principle, which, when applied to large communities, fetters the people in stationary despotism, while that principle cannot long exist in connection with monogamy. [...]

In our opinion, the statute immediately under consideration is within the legislative power of Congress. It is constitutional and valid as prescribing a rule of action for all those residing in the territories and in places over which the United States have exclusive control. This being so, the

Francis Lieber on polygamy and white superiority

The "Professor Lieber" cited in Reynolds *is Francis Lieber, a German American political philosopher who taught at the colleges that later became the University of South Carolina and Columbia University. The justices are paraphrasing a passage from a textbook Lieber produced in 1839 for law students. Here is a longer quotation:*

> *Whatever view of the superiority of European civilization we may take, and however ready we may be to acknowledge those imperfections and vices which unfortunately belong more peculiarly to our own race—that is, the white Caucasian race as developed in Europe and the western hemisphere—it cannot be in fairness denied that mental action, both in variety and intensity, is infinitely greater in the progressing European race than in any other on the globe; and, at the same time, that among those things which most characterize our race, political superiority stands among the first.* [...]
>
> *The true cause seems to be that Europe first broke the unhappy chains with which the patriarchal principle, if applied to larger communities—that is, if family relations are made the fundamental principle of the state—fetters the people in stationary despotism, a species of government to which, it seems to me, polygamy must almost irresistibly lead and which I cannot imagine to exist long in connection with monogamy* [*...This*] *consideration leads us again to perceive the superiority of the European race.*

Francis Lieber, Manual of Political Ethics *(Boston: Charles C. Little and James Brown, 1838-39), 2:8-9 (book 3, chap. 1), https://hdl.handle.net/2027/uc1.$b54183. Spelling, capitalization, and punctuation emended in line with modern American conventions by John-Charles Duffy.*

only question which remains is whether those who make polygamy a part of their religion are excepted from the operation of the statute. If they are, then those who do not make polygamy a part of their religious belief may be found guilty and punished, while those who do must be acquitted and go free. This would be introducing a new element into criminal law. Laws are made for the government of actions, and while they cannot interfere 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?

So here, as a law of the organization of society under the exclusive dominion of the United States, it is provided that plural marriages shall not be allowed. Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land and, in effect, to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances.

Source: *Reynolds v. United States*, 98 U.S. 145, 162-167 (1878), https://www.loc.gov/item/usrep098145. Public domain because a US government document.

Excerpts edited and annotated by John-Charles Duffy. In-text citations omitted for readability. An additional paragraph break inserted. An instance of *and which* emended to *which* to correct a grammatical error. Spelling, capitalization, and punctuation emended in line with modern conventions.

These edited excerpts from the *Reynolds* decision are intended for ***teaching*** purposes only. For ***research*** purposes, you should consult, quote, and cite the source publication listed above.