

# **Voting to Repress: the 47<sup>th</sup> Congress and the Mormons**

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## Introduction

“Tolerance” requires citizens to accept political rights for individuals and groups they do not personally like.<sup>1</sup> Studies of public opinion in the United States have repeatedly shown that such tolerance is in short supply; citizens may profess a belief in universal rights to freedom of speech, the franchise, and the right to run for office, but they are unwilling to extend these rights to groups with whom they strongly disagree.<sup>2</sup> This mass intolerance, though, does not map neatly onto repressive outcomes. For the most part, feared and hated groups are allowed to retain their political rights.<sup>3</sup> This may give us some faith in the Madisonian mechanisms of democratic government that prevent majoritarian hostility from translating into government repression of minorities,<sup>4</sup> but it should not give us total faith. In some notable instances institutionalized tolerance has broken down, and intolerant public opinion has been reflected in repressive government policies. If we view democratic tolerance as an important achievement we are obliged to examine these breakdowns carefully, because it is in these

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<sup>1</sup> Walzer (1997) lists five possible meanings of “tolerance,” ranging from not killing one’s opponents to “the enthusiastic endorsement of difference.” He rejects this last meaning; “how can I be said to tolerate what I in fact endorse?” Tolerance, to be useful and interesting as a concept, must include some sense that the thing to be tolerated is somehow negative for the tolerator. See also Williams (2005)

<sup>2</sup> For two paradigmatic pieces see Stouffer (1955) and Sullivan et al (1979). The latter importantly argued that the correct way to identify tolerance and intolerance in surveys was to allow the respondent to choose the group they disliked most and then comment on what political rights should be available to them. They argued this is response to previous studies which showed increases in tolerance based on the fact that fewer respondents were advocating banning Communism in the 1970s than in the 1970s. This, they pointed out, was due to the fact that fear and hatred of Communism had receded, not because people had become any more tolerant of feared and hated groups.

<sup>3</sup> Granting these groups political rights in the first place is another matter. For example, perhaps the most powerful repressive tool available to democratic countries today is immigration law; the ability to deport foreign nationals or to refuse them entry. This allows democracies to practice repression without practicing it *inside* the polity; there is no need to deny certain political rights to individuals when you can simply eject them altogether. In the mass discourse of civil liberties, these immigration measures seem far less controversial than restrictions on the domestic political rights of citizens and permanent residents.

<sup>4</sup> See *The Federalist Papers* #51: “Whilst all authority in it will be derived from and dependent on the society, the society itself will be broken into so many parts, interests, and classes of citizens, that the rights of individuals, or of the minority, will be in little danger from interested combinations of the majority. In a free government the security for civil rights must be the same as that for religious rights. It consists in the one case in the multiplicity of interests, and in the other in the multiplicity of sects.”

breaches that we can explore exactly what it is about democratic government that usually protects minorities, and why it is that these protective mechanisms do not always hold.

This paper explores one such repressive incident: the passage of the Edmunds Act in 1882. This act effectively barred Mormons in Utah from voting, holding public office or serving on juries. The act was designed to allow the enforcement of anti-polygamy laws passed in 1862, and to break the political hegemony of the majority Mormon population in Utah. Along with its 1887 successor, the Edmunds-Tucker Act, this constitutes the most devastating majoritarian assault on religious liberty ever to occur in the United States. There were no scientific polls to measure public opinion at the time, but a vast historical literature confirms that anti-Mormon feeling was very widespread, and the Edmunds Act was popular. Polygamy, as Young (1954) notes, was the dominant “moral” issue of the late nineteenth century, even more so than prohibition. Nineteenth-century prohibitionists such as the Women’s Christian Temperance Union enjoyed far more lobbying success on the polygamy issue than on temperance. Anti-Mormon literature was a substantial industry, feeding a curious public a steady diet of tales of the unimaginable sexual depravity of Mormon leaders.<sup>5</sup> Furthermore, the Supreme Court’s *Reynolds* decision of 1879 had declared that the first amendment did not protect the practice of polygamy, as it was only concerned with religious beliefs, not practices.<sup>6</sup> Citizens and legislators alike, then, were free to pursue an anti-Mormon agenda without apparently endangering the cherished American commitment to religious liberty. Madison’s “multiplicity of interests” could not protect the Mormons in this case, because nearly all sectors of society were agreed on their abhorrence of polygamy.

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<sup>5</sup> See Davis (1960), Hofstadter (1964) and Givens (1997).

<sup>6</sup> Fisher (2002) argues that contrary to popular myth, the judiciary has never been at the forefront of minority rights protection, including rights of religious minorities. The 1879 *Reynolds* decision is a fairly typical case of the Supreme Court affirming repressive legislation, in this case the 1862 Morrill Act. The Supreme Court would later uphold the 1882 Edmunds Act and, in 1890, an Idaho law that barred polygamists from voting.

The specific puzzle I want to explore is not why this legislation was passed, but why Congressional opposition to it looked the way it did. While those Republicans who voted did so unanimously in favor of the Edmunds bill, Democrats in both houses were split. There was a notable regional pattern to the split; Southern Democrats voted against the repressive measures in much greater numbers than Northern Democrats. The Southern Democrats, however, were far from unanimous. On some measures they too were split almost evenly.

[Table 1 about here, see appendix]

Why were Southern Democrats the most likely, indeed almost the only group in the 47<sup>th</sup> Congress to oppose the repression of the Mormons? This question warrants our attention for a number of reasons. First, Southern Democrats in the late nineteenth-century Congresses were not renowned for their personal liberality. Most of them had served in the Confederate Army during the Civil War, and harbored deep grudges over Reconstruction efforts to empower African-Americans politically. None of the Southerners who opposed the Edmunds Bill opposed the Chinese Exclusion Act, passed two months later, and indeed some of them were among its most vocal supporters, despite the lack of proximity between the South and the Pacific West.<sup>7</sup> Second, Southerners arguably represented the most hostile constituencies for Mormons in the entire United States. There is one rough-and-ready measure of public opinion which may allow us to verify this: while anti-Mormon feeling was generally widespread, the South was the only region in which Mormon missionaries were actually killed during the post-war period. (Buice 1998, Sessions 1976) In the absence of polls, public violence should have served as an unusually clear signal to office-seeking legislators that Mormons were disliked.<sup>8</sup>

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<sup>7</sup> See Chin (1998) for an account of Congressional debates over the act, which banned all Chinese immigration to the United States for ten years, and would be renewed in 1892 and 1902.

<sup>8</sup> See Mayhew (1974) for an account of Congressmen as political actors most strongly motivated by election and re-election.

While these two facts should lead us to wonder why any Southern Congressman would vote against repressing the Mormons, there is another fact that poses the opposite problem. While Southern Democrats may have had every personal and office-seeking reason for voting to repress, they—along with all other Democrats—also had an extremely good strategic reason for voting *not* to repress. If the Edmunds Act was going to disfranchise most Mormons in the Utah, then it would also be disfranchising most Democrats. The party cleavage in this territory, as well as neighboring Idaho, aligned almost perfectly with the all-important religious cleavage. There were good reasons to suspect that, having turned the territory Republican, the Republicans would then press to admit Utah as a state, thus adding a vital extension to their precarious advantage in both houses, and cementing their ability to maintain such projects as the tariff and the gold standard.<sup>9</sup> Thus, long-term party strategy should have mandated voting against the Edmunds bill. The passage of Edmunds was by no means inevitable, despite the Republican majority in both houses. Due to the high number of absences during the votes, unified Democratic voting could have at least altered the legislation. Indeed unified Democratic senators did succeed in passing one amendment, to make election boards bipartisan. But for the most part, especially in the final house vote, the Democrats were deeply divided. There is no obvious reason why this division should have been on conspicuously regional lines.

Thus neither ideational reasons nor strategic ones seem to be able to explain the distinctive pattern of opposition that we see, with Northern Democrats mainly voting with the Republican majority and Southern Democrats closely divided. In this paper I seek a more useful and fine-grained explanation by further exploring both intra-Democratic and intra-Southern differences.

The rest of this paper will proceed as follows. First, I will show how some Southern Democratic Congressmen argued against the Edmunds Act in their own words, using the accounts of floor debates

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<sup>9</sup> See Stewart and Weingast (1992) for an account of the politics of statehood admission, and Bense (2000) for a good overview of the American political economy at this time.

from the *Congressional Record*. The point of starting here is simply that we should expect to see any explanation of voting patterns reflected in the public rationales of the voters, even if that explanation is strategic. The qualitative evidence of these speeches therefore allows us to generate hypotheses which can later be tested with the quantitative evidence of the floor vote. What we see in the *Congressional Record* is a strikingly liberal defense of the political rights of Mormons, combined with a set of distinctively Southern concerns about the use of election returning-boards, a device invented during the Reconstruction period which figured heavily in the Edmunds legislation.

Second, I will analyze votes in the house quantitatively to try to explain the patterns of variance. There are four main hypotheses arising from the qualitative evidence of the floor speeches and from previous scholarship. First, Southern Democrats may have opposed Edmunds when Northerners did not because they had more to lose economically from the prospect of Republican dominance in Congress, which could be cemented by the admission of Utah as a Republican state without Mormon voters. Second, they may have found disfranchisement uniquely abhorrent because of the experience of Reconstruction, in which many Southern Congressmen had themselves been disfranchised. Fourth, drawing on the scholarship of Anderson and Tollison (1988), they may have opposed it because they had less to fear from polygamy than Congressmen from manufacturing-based states, who faced the prospect of losing highly productive women from the manufacturing industry.

This episode allows us to get at a much larger general question: under what circumstances do political elites defend unpopular minorities? This is an important case for this question, because the Southern Democrats were, for the reasons mentioned above, the last group of elites we should have expected to see defending the Mormons. We can safely dismiss any null hypothesis that they sided with the Mormons out of like or affinity; their personal distaste for the Mormons was in fact a frequent theme in their speech-making. By showing how members of this group, but not others, could be induced

to support “the most unpopular white minority in the United States,”<sup>10</sup> we may begin to get a grasp of the democratic mechanisms that protect minority groups.

### **Oppositional speeches on the Edmunds Act**

The Edmunds Bill was sent to the Senate Committee on the Judiciary in December 1881, and was returned to face votes in both houses in March 1882. Like the Morrill Act before it, the Edmunds Bill made provisions to punish polygamy in the territories, but in order to give these provisions “teeth,” the Bill also contained a number of hitherto unprecedented restrictions on polygamists’ legal and political rights. To make convictions easier to obtain—prosecutions under the Morrill Act had frequently been thwarted by all-Mormon juries—anyone practicing polygamy was barred from serving on a jury. Sections 8 and 9 of the Edmunds Bill would break down Mormon political hegemony in Utah by preventing any polygamist from voting or holding public office in Utah, and appointing a five-member commission to examine and certify all election returns.

Debate in the house, which took place in March, was mainly technical and procedural. The February debate in the senate, however, was highly impassioned and fought over basic matters of democratic principle. It is these debates that provide evidence of the public justifications of Southerners who voted against the Edmunds bill. Though there was no final roll-call vote in the senate (it was passed with a voice vote accompanied by highly irregular cheering from the galleries), the votes on most of the amendments reveal a pattern very similar to the one we see in the final house vote, with all Republicans in favor of repressive measures, most Northern Democrats also in favor, and Southern Democrats split. Thus we can infer that the opinions reflected in senate debate were similar to those in circulation in the house. The bill was debated in the Senate over the 15<sup>th</sup> and 16<sup>th</sup> of February. During this period four

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<sup>10</sup> Buice (1988).

Democrats gave substantial speeches against the bill—John Tyler Morgan of Alabama, George Graham Vest of Missouri, Joseph E. Brown of Georgia, and Wilkinson Call of Florida. The language in these speeches is an intriguing mix of liberal constitutionalism, defense of due process and concern about the radical reconstruction flavor of the Edmunds measure.

Morgan, on February 16<sup>th</sup>, made the argument in terms that would resonate most strongly with contemporary liberals and civil libertarians. He began by pointing out that 300 000 members of Indian tribes had grown up under a system of polygamous marriage within the jurisdiction of the United States, and no attempt had been made to dissuade them from polygamy because “we do not regard them as a Christian people.” It is not clear if Morgan was implying that the Mormons should be exempt from Christian moral standards for the same reason, but in both cases, he explained, they would gradually be integrated under civilized law after “a great many years,” and a great effort to convince them of the benefits of civilization. Thus polygamy was not “to be looked at as a question which should invoke our sudden anger, and drive us into legislative excesses.” He developed this Madisonian theme in eloquent detail:

It is one of the highest duties of every government in moments of excitement to stem the current of the tide of fury, of rage, or of wrath, and to appeal to the Constitution; to place the people against whom an assault is made or against whom an accusation is brought upon the ground on which we place all other people in dealing with them, fearing lest we might, in an unguarded moment, do ourselves the wrong of violating the Constitution of the country in our attempt to inflict upon other people harsh and sudden legislation.

According to Morgan, the Bill was introducing one of the most serious violations of the Constitution imaginable—a bill of attainder, which inflicts punishment on an individual or group without a judicial trial. It may be constitutionally allowable to deprive someone of the vote as punishment for a crime, but this could only be done by proper courts in accordance with the law, not by a five-member electoral commission appointed by the federal government. “That right,” Morgan argued, “belonged to American civilization and law long before the Constitution was adopted.” For this reason, Morgan was taking the

“great risk” of antagonizing the Committee on the Judiciary, because allowing such a bill of attainder would be an unprecedented violation not just of the American Constitution, but of the entire English legal tradition as well: “Never in the darkest days of the Tudors or the Stuarts, never in any of the darkest days of despotism, I undertake to say here, weighing my words deliberately, was there ever enacted a statute more exactly within the meaning of a bill of attainder than the seventh and eighth sections of this bill.”<sup>11</sup> (*Congressional Record*, Vol. 11, pp. 1196-1200)

Joseph E. Brown’s speech, delivered the same day, also began with an instructive example of tolerance. Asserting that “three-fourths of the whole population of the globe” practices and supports polygamy, he pointed out that the British have made no attempt to exterminate the practice in India, “indeed they dare not,” because they could not possibly enforce such a law. While echoing many of Morgan’s themes, Brown also raised the idea that the bill would penalize *belief* in polygamy. A polygamist, according to Webster’s Unabridged Dictionary, is “a person who practices polygamy, *or maintains its lawfulness*,” and “there is scarcely a man, woman or child in Utah belonging to the Mormon Church who does not maintain the *lawfulness* of polygamy.” This led to a fierce exchange with George Edmunds himself, who argued that according to all known laws a polygamist was someone actually practicing polygamy, and thus this bill would not punish anyone merely for believing in polygamy. The importance of this point became evident as the argument drew both senators into the realm of *reduction ad absurdum*. Edmunds, arguing for the legitimacy of disfranchisement, asked Brown “would the Senator really object to a law, supposing it were not unconstitutional, (which is another question,) which said that no man should be entitled to participate in the government of the State of

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<sup>11</sup> We can appreciate more fully the seriousness of the bill of attainder accusation if we consider the competing British and American plans about what to do with Nazi leaders at the close of the Second World War. Recently-released notes from Britain’s National Archive show that Churchill was resolutely against any trials for captured German leaders, including Hitler, should he fall into their hands (his specific plan for Hitler was to execute him summarily an electric chair rented from the Americans, which he saw as a fitting end “for gangsters.”) This would be facilitated by an Act of Attainder in parliament. Churchill, however, was forced to abandon these plans when the Americans made it clear that they were intent on trials. (“Churchill: execute Hitler without trial.” *The Sunday Times*, January 1 2006.)

Georgia that was in the practice of having all his father's wives, one or more, burned, Hindoo fashion, when his father died?" Brown replied he would certainly inflict penalties upon anyone practicing wife-burning, "but if he really believes it is right I have no right to exclude him from holding office because he says he believes it." Edmunds answered "So say I; so say we all."

Thus, Edmunds could be induced to agree that no belief, even in Hindu *Sati*, could be used to disqualify a person from office. He would claim many times in the course of the two-day debate that belief itself was not the issue, and would not be used for the purposes of disqualification. However, Brown's prediction that the bill would be "a sweeping disfranchisement of almost the entire people of a territory" turned out to be accurate. The officials charged with executing the provisions of the Edmunds Act usually did interpret "polygamist" as meaning anyone who professed a belief in polygamy. (Arrington 2005) Furthermore, the provisions of the Edmunds-Tucker Act of 1887 would abolish the distinction between belief and practice altogether.

Brown, a former Confederate governor of Georgia, then laid out concerns about the election commission that went beyond universalistic concerns about civil liberties and to the heart of the conjoined material interests of Democrats and Southerners. He remarked that Southerners were more familiar with the practice of returning-boards than Northerners:

Whenever it is necessary to make a Republican state out of a Democratic state, or a Republican State out of a Democratic Territory, the most convenient machinery for that purpose is a returning board, and it has worked admirably in the South. By fraud, perjury, forgery and villainy, the returning-board system cheated the people of these United States out of a legal election for President. It does not therefore specially commend itself to the American people. It stinks in the nostrils of honest men.

Brown was referring both to the Hayes/Tilden election controversy of 1876, in which the Republican-dominated returning boards of Florida, Louisiana and South Carolina overturned Tilden victories in those states by disallowing a sufficient number of Democratic votes, and also to the Reconstruction-era

practice of returning-boards which had often disfranchised Democratic voters. Brown accepted that the latter might have been justified, but argued it could not be justified for the Mormons:

After the end of the war the reconstruction measures were passed. I had then a little taste of the rule that we now propose to apply to Utah. I stood by the polls, disfranchised and not permitted to vote, while my former slaves, emancipated, walked up and deposited their ballots. I made no issue. I accepted it. Why? Because I had no power to do anything; and I held that Georgia had seceded from the Union, and having seceded, and having been conquered, the conquering power had the right to dictate the terms. But the Mormons have not seceded from the Union.

Beyond the normative matter of Mormon rights there was a more immediate material concern, and this was that the Republicans would use the returning boards, as Brown said, “to make a Republican state out of a Democratic territory.” Since the Civil War, the Republicans had ensured long-term control of both houses by voting to admit states that would reliably provide Republican Congressmen. As will be discussed below, the Republicans had proven far more adept at getting their “rotten boroughs” admitted than the Democrats. (Stewart and Weingast 1992) The Edmunds Act seemed to be preparing yet another one of these boroughs.

Finally, Brown warned that repressing the Mormons could lead to persecution of other groups: “let us be careful that we do not establish precedents that may lead to the destruction of freedom of opinion and the subversion of constitutional liberty and religious toleration in this country.” As Morgan had also warned, the popular feeling against the Mormons today could tomorrow be turned on another group: “We have passed the period where there is for the present any clamor against any particular sect except as against the Mormons; but it seems there must be some periodical outcry against some denomination. Popular vengeance is now turned against the Mormons. When we are done with them I know not who will next be considered the proper subject of it.”<sup>12</sup> Brown backed this warning with

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<sup>12</sup> Consider the affinity between this statement and Pastor Niemoller’s famous poem which has become popular shorthand for why people should speak out for unpopular minorities: “First they came for the Communists, and I didn’t speak up, because I wasn’t a Communist. / Then they came for the Jews, and I didn’t speak up, because I wasn’t a Jew. / Then they came for the Catholics, and I didn’t speak up, because I was a Protestant. / Then they

cautionary tales of past religious persecution in America, mainly in New England, such as the persecution of Baptists and Catholics in the New England colonies, the burning of the Ursuline convent in Massachusetts and New Hampshire's archaic law, only recently revoked, that Catholics could not serve in the legislature. Though he insisted he was not trying to be offensive to New England, it did seem he was baiting the North. Referring to Massachusetts, he asked, "If religious intolerance in this most enlightened and intelligent State was so great forty-eight years ago as to incite men to burn down and desecrate the convents of the Catholic Church, and the riot was permitted with impunity, how can we trust ourselves forty-eight years later to make indiscriminate warfare on any Territory of these United States on account of any opinion of theirs, religious or otherwise?" When he began to tell the story of a school for young colored girls in Connecticut that was burned down by a mob, George Frisbie Hoar of Massachusetts bellowed "How was it in Georgia?" (*Congressional Record*, Vol. 11, pp. 1202-1205)

George Vest of Missouri spoke on both days. On February 16<sup>th</sup>, he delivered a tirade on the bill of attainder theme that is noteworthy because it employs a trope very familiar to twentieth and twenty-first century liberals: the idea that in the course of fighting our enemies, we risk becoming worse than our enemies.

Gentlemen proclaim, and justly proclaim, that the hierarchy which, within the dark chamber inaugurated by Brigham Young and Joe Smith, carry out their ecclesiastical theory to the destruction of both body and soul is monstrous, and so it is; but here we propose to inaugurate another star-chamber of five men, responsible to nobody, governed alone by their own prejudices, or passions, or feelings, or opinions; who can say who shall be elected; who can say who shall vote, and who can pass upon all the laws; who can say to the people of the United States 'we order this thing.' Never in the days of the inquisition was there any more questionable mode of punishment. (*Congressional Record*, Vol. 11, p. 1201)

The previous day, Vest had examined the specific constitutional issues involved in this kind of measure.

He declared it *a priori* unconstitutional, because "under the Constitution I say that no man can be deprived of the right to vote or to hold office except after conviction." The Edmunds bill had been

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came for me, and by that time there was no one left to speak up for me." For variants, see [http://en.wikipedia.org/wiki/First\\_they\\_came...](http://en.wikipedia.org/wiki/First_they_came...)

framed largely as a means of reforming a territory, but Vest argued that the bill was not the way to do it because it entailed taking away inalienable individual rights: “If Utah were applying for admission into the Union then we could say to her, ‘Accept certain conditions;’ and if they were within the limitations of the Constitution those conditions of course must be accepted or rejected. But here these rights have been conferred; they are already given.” (*Congressional Record*, Vol. 11, p. 1157)

Florida’s Wilkinson Call, speaking on the 15<sup>th</sup>, made the case in terms most similar to the traditional Southern concern with “states’ rights.” States’ rights were obviously not the issue here, as Utah was not a state, and the repressive measures of the Edmunds legislation were unlikely to be directly replicated in any Southern state. Nonetheless, a broader principle of democratic self-determination was at stake. “It seems to me,” argued Call, “that if there is anything in the institutions of this country and in the idea of self-government, that is a proposition (the Edmunds electoral commission) which destroys the whole of it. . . . For myself, sir, I can never vote for a provision which contains a power of this discretion in defiance of the popular will, based entirely upon five persons selected by the executive power of the country.” Call made the familiar declaration that he would personally like to see polygamy stamped out, but that only the judiciary—not a committee appointed by the executive—was fit to enforce any prescriptions for electoral disqualification. To put this power in the hands of the executive took it away from the realm of justice and into that of politics: “It is a subterfuge of creating an assembly which has been done before and elsewhere—creating an assembly of a particular kind by these five persons to really say who shall be the legislature, or allowing them to pass upon this subject.” (*Congressional Record*, Vol. 11, p. 1156)

What insights can we glean from all this speechmaking? The first major point is that the overall outcome of the Edmunds Act was not an inevitable product of nineteenth-century illiberalism. The fact that Southern Democrats saw fit to use pleas for tolerance and civil liberties as tools of persuasion

shows that they carried substantial rhetorical power, and by no means unfamiliar to nineteenth-century audiences. Appealing to liberalism was clearly an important strategy. Whether they were sincere in their pleas is less important than that they show the language of liberalism and due process was valuable currency in the 1882 Congress. We can look at this in the terms proposed by Schattschneider (1960): the Southern Democrats were trying to “expand the scope” of political conflict by showing that more was at stake than the individual fates of a few polygamists. If an executive-appointed committee could disfranchise voters, then the United States was abandoning much of the protection it had traditionally provided for dissident minorities and for individuals generally. Thus congressmen should not complacently approve the Edmunds measures as a matter of course, thinking they would not affect them personally.

The question then becomes, why did these liberal appeals fail? They failed to convince any Republicans, a majority of Democrats, and even many Southern Democrats. We may be able to explain away the Republicans by the fact they were obviously voting on strict party lines, but we still need to explain why many Democrats were not swayed. We may get some guidance on this question by looking to debates a few years earlier on the assimilation of Catholic migrants. While the driving force of anti-Catholic politics in America was usually the Republican Party (which had absorbed much of the nativist, now-defunct Know-Nothing party), Democrats often also acquiesced to anti-popery, despite the fact their party was the natural political home of Catholic immigrants. The Blaine Amendment, for example, which would have made it nationally illegal to provide government funds for Catholic schools, while retaining funding for Protestant “common schools,” passed the house in 1876 with only seven opposing Democratic votes. Hamburger (2002) argues that this nineteenth-century anti-Catholicism was no violation of the American liberal tradition; in fact, the perpetrators of it *saw themselves as liberals*, and frequently described themselves as such. Anti-Catholicism was part of the nineteenth-century liberal Protestant consensus that had adherents on both political sides, and anti-Catholic citizens, politicians

and clergy believed that breaking down the internal authoritarianism of the Catholic church was an eminently liberal cause.

It is easy to extend this logic to anti-Mormonism. The perceived authoritarianism of the Mormon church and family structure was a popular target for crusading liberals, and particularly for early feminists. Gordon (1996) notes that late nineteenth-century feminists opposed woman suffrage in Utah, because Mormon women were not ready to participate in consensual government; they voted according to the wishes of their husbands, and thus reinforced their subordinate position in family, sexual and childbearing relations. One feminist anti-Mormon publication declared explicitly that Mormon women in Utah needed to be liberated by outside intervention, because they were themselves incapable of doing anything about their servitude:

The saying "who would be free themselves must strike the first blow," is undoubtedly true in the majority of cases, yet the questions seem pertinent are all those in bondage so circumstanced that they can or will "strike the blow," and if freedom is not to be theirs, except through their own courage and resistance must they forever remain in fetters? Had the abolition of slavery in the South depended entirely on the slaves striking for freedom, they would have remained in bondage until this day. (*The Anti-Polygamy Standard* (Salt Lake City), Vol. 1 No. 1)

Nineteenth-century liberalism, then, had a decidedly authoritarian tone in America. It was about creating a liberal culture, by force if necessary. Before personal autonomy could be respected, individuals had to be liberated from oppressive influences. This may be why the appeals of the Southern Democrats failed to persuade other Democrats, including some Southern Democrats. They were trumped by the rhetoric of the anti-Mormons, which was made in more muscular liberal terms. Edmunds, for example, argued that his bill would empower those Mormons who did not support polygamy, whom he had frequently insisted were actually the majority: "Now if there be in this Mormon Church a body of people, as we believe there are, who have no more faith in this idea of polygamy than any Senator who hears me has, as a fact, and who wish to discourage it and who wish to emancipate themselves from the tyranny of this hierarchy that now has its foot on their necks, there will be a cause

for them to assert themselves.” He scorned those who claimed that they wanted to see polygamy abolished, but opposed his measures:

No man, North or South, who believes in the Christian religion, who believes in a republican government, can maintain or has maintained in this body that this institution of polygamy is one that can exist consistently with our universal idea of the theory of a republican government. Nobody has pretended such a thing. Then may I not assume that we wish to get rid of it? Everybody says do. How are you going to do it? You say you do not like what we have proposed. Will you propose something else? Oh, no. It is always some other day, some other measure that is not now defined, that is not now brought forward. It is some other day, some other time, some other measure, than the one that is proposed. (*Congressional Record*, Vol. 11, p. 1212-13)

If appeals to crusading Protestant liberalism were inherently more appealing in nineteenth-century America than appeals to constitutionalism and due process, this still does not explain why a majority of Southern Democrats were swayed by the latter rather than the former. To explain this, we must turn to quantitative analysis of the vote itself.

## **Hypotheses**

### *Hypothesis 1: statehood politics, sectionalism, and party competition*

As noted earlier, every Congressional Democrat should have had a good reason to vote against Edmunds: if the Mormon population of Utah were disfranchised by the returning board, then the heavily-Democratic territory would turn Republican. Stewart and Weingast (1992) extensively document the role of statehood admission politics in the nineteenth-century Congress. They argue that Republican dominance in Congress, which was vital to the continuation of such policies as the tariff, was maintained by Republican maneuvers around the admission of new states. Republicans, for example took advantage of their overwhelming Civil War majority to admit heavily-Republican Nevada in 1862, long before its admission could have been justified on the grounds of population. In 1889, Democrats tried to redress the imbalance with the Omnibus Statehood Admission Bill, which in its original form would have admitted two Democratic and two Republican states. However, Republicans managed to get heavily-Democratic (and Catholic) New Mexico excluded from the final act with the help of twenty dissenting

Democratic votes. Thus, Brown's warning that the returning board was a vehicle "for making a Republican state out of a Democratic territory" was entirely plausible in the case of Utah.

Stewart and Weingast's analysis does not directly explain variance in Democratic voting on statehood matters, but extending their analysis is simple enough. If the goal of Congressional Republican office-holding was to facilitate the enactment and maintenance of particular policies then Democrats who were hurt more by these policies should have been more likely to vote against any legislation that established or increased Republican dominance. As Bense (1984) shows, Republican economic policies during this period redistributed from South to North. A high tariff barrier protected Northern manufacturing centers at the expense of the cash-crop South, and some rents from the tariff were redistributed to Union Civil War veterans in the form of a pension. Thus, we might expect that Southern Democrats would generally be more hawkish on statehood matters than their Northern counterparts, many of whom were sectionally aligned with manufacturing and may have actually benefited from Republican policies. On the other hand, Northern Democrats, while no more anti-Mormon than their Southern counterparts, would have felt less economically threatened by Republican hegemony in Congress, and thus more free to vote on their anti-Mormon ideational tendencies.

To test this explanation, we need a measure of economic interest that is not reducible to regional effects. In this paper, I use a logged measure of congressional district-level manufacturing value-added. I obtained the raw measure from Parsons *et al* (1986), *United States Congressional Districts and Data 1843-1883*. The most important caveat about this data is that it does not disaggregate manufacturing activity in urban districts; therefore I assign to urban districts an average measure obtained by dividing total city value-added by its number of districts. I do not believe this will affect the substance of the analysis. One further problem is that, due to as-yet unrectified coding error, Colorado's manufacturing score is excluded and thus Colorado's representative James Bedford Burns is excluded.

As he was a Republican who voted in favor of Edmunds, his vote has extremely low analytical leverage and the analysis will not suffer by his absence.

### *Hypothesis 2: disfranchisement and the legacy of Reconstruction*

Scholars who have examined the Edmunds vote previously have tended to emphasize the pain and humiliation of the Reconstruction-era returning boards, and infer that white Southerners empathized with the Mormons who were about to be subject to the same “tyranny.” (Buice 1977, Driggs 1988).<sup>13</sup> This is certainly one of the things Brown’s speech implies. We can imagine a psychological mechanism by which the victims of a certain technique of repression would be so averse to it that they would oppose the use of it even for individuals and groups they hated.<sup>14</sup> If this explanation is correct, then we should expect to see that Congressmen who had closer ties to the Confederacy would be more likely to vote against the Edmunds Act. Congressmen who had served in Confederate armies or governments would be more likely to have personally experienced disfranchisement, and also would be more likely to identify with the plight of the South. To obtain a binary measure of whether the congressman served in the Confederate Army or in any Confederate government I simply searched every congressman’s biography using the government’s online Biographical Dictionary of the United States Congress, 1774-present.<sup>15</sup>

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<sup>13</sup> One of the things that makes this explanation important is the fact that Mormon scholars themselves favor it.

<sup>14</sup> Consider the commonplace phrase “I wouldn’t wish that on my worst enemy.” A concrete example is Sen. John McCain’s opposition to the use of torture by American interrogators and their surrogates.

<sup>15</sup> <http://bioguide.congress.gov/biosearch/biosearch.asp>

### *Hypothesis 3: election boards and racial threat*

White Southern Democratic Congressmen had good reason to fear any extension of federal authority in state and local elections. Southern Democrats were committed to white supremacy in their states, and were building institutions (such as the White Primary and literacy tests for voting) that would prevent most of the Southern black population from voting until the mid-twentieth century. (Mickey 2009) Edmunds, by allowing federal authorities to decide who could or could not vote, threatened to re-establish a norm of federal intervention which had already been used during Reconstruction to increase black representation at the expense of white Southern Democrats. If this concern was influencing Southern congressmen, then we should expect to see significantly more negative votes from congressmen in districts with higher black populations. While Democratic congressmen right across the South might have had strong feelings against federal intervention regardless of their own district's racial make-up, there is good reason to believe that office-seeking politicians would have been particularly wary of electoral reforms that would threaten their own seats. This hypothesis also conforms to the expectations of Key (1949) that whites in areas with higher black populations are more likely to vote to maintain white supremacy.

In this paper I use a logged measure of the black population percentage of congressional districts to assess racial threat. The raw data was also obtained from *United States Congressional Districts and Data*, and it contains the same caveats as the manufacturing value-added data.

### *Hypothesis 4: high marginal product of women*

In the only previous systematic quantitative analysis of the Edmunds vote, Anderson and Tollison (1998) argue that the most important variable driving the voting pattern was whether Congressmen came from states where women possessed a relatively high marginal product, as

measured by the ratio of female to male manufacturing workers in the state. The political-economic logic is as follows. Polygamy is more attractive to women with a high marginal product, given the bargaining power they would enjoy in a polygamous marriage (as argued by Becker, 1981). Polygamy is bad for men with a low marginal product, who tend to lose out in the marriage market as a result. The anti-polygamy movement in Congress reflected male concerns (as only men could vote at the time) among which was the supply of marriageable women. States with a higher ratio of women in manufacturing employment were those in which women generally had the highest marginal product, and so where men had the most reason to be concerned about “leakage” in the marriage market as women left for polygamous communities in Utah or elsewhere (including in-state). Therefore, congressmen from these states should have had the greatest incentive to vote in favor of the Edmunds Bill.

To measure this affect, Anderson and Tollison construct a ratio (FMRATIO) of average number of women employed in manufacturing to average number of men employed in manufacturing in a congressman’s state. In earlier quantitative analyses of the vote, this variable proved to be significant and amazingly robust. However, it became apparent that FMRATIO is a proxy for industrialization in general. FMRATIO correlates with a state-level measure of manufacturing value-added at a very high level of 0.82. Given this high degree of collinearity, it seems prudent to drop FMRATIO from the analysis altogether. I am comfortable dismissing Anderson and Tollison’s hypothesis as implausible, as the cognitive demands it places on actors are too high. It requires women with high marginal product to be aware of the benefits of polygamy, and congressmen to be aware of the relative threat this poses to their state’s marriage market according to female/male manufacturing ratios.<sup>16</sup> Furthermore, as Carolyn Warner has pointed out to me, urban women who worked in nineteenth-century manufacturing

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<sup>16</sup> Bill Clark suggested to me that all congressmen really needed was an intuitive understanding of the mechanics of exit and voice, and to understand that women in manufacturing jobs enjoyed relatively good bargaining positions within marriages. This does seem much more plausible.

enterprises were more likely to be poor than urban women who did not, which casts doubt on FMRATIO's usefulness as a proxy for high female marginal product.<sup>17</sup>

## Results

I tested the first three hypotheses using logistic regressions in which the congressman's vote on the Edmunds Act was the binary dependent variable ("yea" = 1, "nea" = 0, non-voters are omitted). I have run three models here; the first encompasses the whole sample of voting congressmen, the second is all voting Democrats, and the third is all voting Southern Democrats, including the Border South. I decided to include the latter with the South because they too were subject to some Reconstruction measures, and because previous scholarship on this subject has lumped them together. (Buice 1988) I have included the first model, although no Republicans voted against the measure, to avoid truncating the sample; it is entirely possible that all Republicans voted sincerely and not out of a sense of party loyalty, in which case we must include them or our estimates for the Democrats could have problems. The results are as follows:

[Table 2 about here, see appendix]

The first thing to note here is that only the manufacturing variable retains any significance across all three models. It is positively related to a "yes" on the Edmunds vote in all three samples, suggesting that congressmen from districts with higher levels of manufacturing were more likely to vote in favor of Edmunds. In the Democratic-only and Southern Democratic-only samples, its  $p$ -values are 0.059 and 0.062 respectively—meaning the variable does not quite reach the canonical 0.05 level of significance, but nonetheless allowing for substantial confidence in these results. Thus it appears that the logistic regression provides support for hypothesis 1, with level of manufacturing explaining intra-Democratic and intra-Southern variance on the Edmunds vote.

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<sup>17</sup> Personal correspondence at SSSR Conference, Louisville, KY, October 15 2008.

The other two variables are insignificant in the Democratic and Southern Democratic models, meaning they cannot explain any part of intra-party or intra-regional variance. The black population variable is highly significant in the overall sample, reflecting the joint fact that the overwhelming majority of black Americans lived in Southern Democratic congressional districts, and the overwhelming majority of “no” votes against Edmunds came from Southern Democrats. Without significant results in the other two models, however, there is no evidence that the black population measure has any explanatory power over *why* these congressmen voted as they did. This perhaps suggests that Southern congressmen believed the Edmunds provisions contained could only be applied to territories such as Utah. Post-reconstruction and redemption, the federal government could not impose similar measures on Southern states.

The Confederate disfranchisement variable is not significant at any level. This suggests, somewhat unfortunately, that the victims of repressive measures are not deterred from using the same measures against others. Despite the impassioned personal speeches on the senate floor, formerly-disfranchised Southern Congressmen were no less adverse to mass disfranchisement than anyone else, once we control for more strategic material variables. Overall, then, only the first hypothesis seems capable of explaining the “Southern” character of the “no” vote, and why some Democratic congressmen voted against the long-term strategic interests of their party while others voted against the overwhelming national mood of anti-Mormonism.

### **Replication and further discussion**

If, as this finding suggests, sectional economic competition was driving the Edmunds vote, then we should expect to see this pattern replicated in other votes around statehood and religion. The 1889 Omnibus Statehood bill, in which New Mexico was excluded from joining the Union, provides a useful test. The final vote was mainly split along party lines, but twenty Democrats voted with the Republicans

to keep out New Mexico, with its largely Spanish-speaking and Catholic population. Stewart and Weingast note that New Mexico's Catholicism was a major issue at a time when Congress was attempting to ban federal funding to Catholic schools; New Mexico had no secular public schools at the time, and all common schooling was provided by the Catholic Church. Weingast and Stewart admit that the twenty Democratic defections are a "mystery" requiring further investigation, but we can imagine once again that those Democrats who had relatively little to lose from continuing Republican dominance might have felt more free to indulge their anti-Catholic sentiments in the Omnibus Statehood vote. On the other hand, as Stewart and Weingast conjecture, the twenty defecting Democrats may have been more anti-Catholic, or attempting to prove their anti-Catholic credentials.

To test these two hypotheses, I construct measures of (a) logged manufacturing value, and (b) logged Catholic population. I assume once again that higher logged manufacturing will make congressmen more favorable to Republican economic policy, and thus more likely to vote in favor of the statehood bill. I assume that a higher Catholic population would make a Democratic congressman *less* likely to vote for a bill with anti-Catholic ramifications, as Catholic voters became important constituencies for the Democratic Party from the 1850s onwards. Unfortunately, I have been unable to locate relevant congressional district-level data for 1889; as there was substantial redistricting after 1883 we cannot simply reuse the earlier data. For this replication, then, we will have to make do with state-level data, which is inferior because it essentially assigns each congressman the state average of these measures, which should result in much larger standard errors around any effect. Once more, I am running a logistic regression on three samples: all voting congressmen, Democrats and Southern Democrats. The binary dependent variable is the congressman's vote on Omnibus Statehood admission ("yea" = 1, "nay" = 0, non-voters omitted). The results are as follows:

[Table 3 about here, see appendix]

These results support the primacy of sectional economic competition. The logged measure of state Catholic population is not significant in any model, suggesting that the “ethnocultural” concerns of their constituents were relatively unimportant to congressmen even when deciding on an issue that had important ethnocultural implications.<sup>18</sup> The logged manufacturing variable is positively related to a positive vote for the Omnibus Statehood Bill, as my first hypothesis predicts, and is highly significant for the whole house (which partly reflects the fact that more Republicans represented more manufacturing districts). For the Democratic sample, the *p*-value of the manufacturing variable is 0.093, which again does not meet the canonical standard of 0.05, but nonetheless provides a certain acceptable level of confidence in the result. This variable is not significant for the Southern-only sample.

## Conclusion

Perhaps the most important finding of this paper is that while the basis of religious *intolerance* in 1882 was ideological, reflecting the national rise of crusading Protestant liberalism, the basis of religious *tolerance* was material, reflecting the agrarian economic interests of Southern Democrats. Southern Democrats seem to have voted against the bill because the economic interests with whom they most strongly identified had the most to lose from Republican domination of the Congress that could eventuate if Utah became a state with no Mormon voters. Ideational factors such as the trauma of Reconstruction seemed to have little to do with the final vote, though the liberal rhetoric of the floor debates show that they understood the importance of making the argument in ideational terms.

This has bleak but important implications for minorities in general. Madison argued this:

Whilst all authority in it will be derived from and dependent on the society, the society itself will be broken into so many parts, interests, and classes of citizens, that the rights of individuals, or of the minority, will be in little danger from interested combinations of the majority. In a free government the security for civil rights must be the same as that for religious rights. It consists in the one case in the multiplicity of interests, and in the other in the multiplicity of sects.

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<sup>18</sup> See Swierenga, 1971, for a survey of literature than emphasizes the importance of ethnocultural issues such as prohibition in nineteenth-century American voting.

Occasionally a repressive movement arises which enjoys a near-consensus; anti-Mormonism in the 1880s was one such movement. Anti-Mormonism could become “an interested combination of the majority” because, like anti-Catholicism and anti-Chinese sentiment, it cut across party lines. An 1870 floor speech by Benjamin Butler, arguing for proposed legislation which would prevent Mormons from serving on juries,<sup>19</sup> provides a stark counterpoint to Madison’s vision:

The feeling of all our people demands this question be settled. I think the sentiments of the people are more enlisted in favor of this measure than of any other that is before the house. Upon this I think there is no party division. There is no division of sentiment among good men on the subject. Upon funding bills, tariff bills and tax bills we disagree and divide into parties and sections of parties. But that something should be done here, I think there is no division of sentiment.

Precisely because polygamy was in some ways such a trivial issue—it affected no-one but a small, isolated sect of polygamists—the liberal Protestant crusaders were free to pursue their campaign against Mormons without much fear of treading on anyone else’s interests, religious, economic or otherwise. The only thing that tied Southern Democratic interests to the Mormons was the issue of electoral apportionment, which exposed a sectional cleavage that ran deeper than party competition. Were it not for the fact that the anti-polygamy campaign had the potential to further entrench Republican and industrial interests at the expense of Democrats and especially agrarians, Southern Democrats conceivably would have been as anti-Mormon as anyone else.

This suggests that it is over the most seemingly trivial, purely symbolic issues—such as marriage rites or flag salutes—that the most serious religious or political persecution is likely to occur, because it is on these issues that would-be persecutors are most likely to enjoy an ideological consensus without the interference of opposition based on material interests.

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<sup>19</sup> This legislation, the Cullom Bill, passed the House but died in committee, as did several other pieces of anti-Mormon legislation in the 1870s. Butler’s speech reflects the frustration of the vocal anti-Mormons in the House at their failure to enact seemingly popular legislation.

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**Appendix: tables**

<b>Table 1: Edmunds bill, final house vote</b>									
<b>Party</b>	<b>Northern states</b>			<b>Southern states</b>			<b>Totals</b>		
	Yea	Nay	Abs.	Yea	Nay	Abs.	Yea	Nay	Abs.
Republican	120	0	17	7	0	3	124	0	20
Democrat	38	6	6	28	36	22	66	43	28
Other	5	0	0	4	1	1	9	0	1
<b>Totals</b>	163	6	23	39	37	26	202	43	49

<b>Table 2: Logit analysis of final house vote on Edmunds bill; binary dependent variable is “yea” vote</b>			
	<b>Whole house</b>	<b>Democrats</b>	<b>Southern Democrats</b>
Constant	-1.764423 (2.262742)	-3.305878 (2.750838)	.4472522 (6.324948)
Logged district manufacturing	.5317577 (.2447813)**	.5522005 (.2921419)*	.631713 (.3384905)*
Logged district black population	-.5845805 (.166806)***	-.4706463 (.2054031)**	-.0966363 (.3624198)
Served in Confederate army / government	-.6000999 (.5437957)	.4046762 (.6293857)	.5711605 (.6702392)
Pseudo-R <sup>2</sup>	0.3375	0.1783	0.0505
<i>N</i>	238	108	64

\*Significant at  $p < 0.1$ ; \*\*Significant at  $p < 0.05$ ; \*\*\*Significant at  $p < 0.01$

<b>Table 3: Logit analysis of final house vote on 1889 Omnibus Statehood bill; binary dependent variable is "yea" vote</b>			
	<b>Whole house</b>	<b>Democrats</b>	<b>Southern Democrats</b>
Constant	-2.314625 (1.214171)*	-3.335053 (2.465406)	-6.373048 (5.724139)
Logged manufacturing value (state)	1.310409 (.3137787)***	.9999605 (.5943838)*	-.5754984 (2.340664)
Logged Catholic population (state)	.1505716 (.2072388)	.2981492 (.457807)	-.7460741 (.8086665)
Pseudo-R <sup>2</sup>	0.2340	0.1801	0.1074
<i>N</i>	250	116	73

\*Significant at  $p < 0.1$ ; \*\*Significant at  $p < 0.05$ ; \*\*\*Significant at  $p < 0.01$