I. INTRODUCTION

The Fundamentalist Church of Jesus Christ of Latter-Day Saints (FLDS) has recently been the focus of intense government and media scrutiny regarding the practice of plural marriage involving under-age girls. Girls, as young as fourteen, when their prophet proclaims that God has commanded them to marry men (in some cases three times their age), are forced to have sexual relations with their husbands. These girls, and their parents, submit to the command believing their prophet’s words are, in fact, the words of God.

Similarly—and just as tragically—boys in the FLDS community, some as young as thirteen, are placed in compromising and dangerous situations. While it is difficult to determine the exact number, as many as 1,000 boys have been expelled from the community for breaking its strict standards since Warren Jeffs became the prophet. Breaking these standards involves doing things as simple as wearing short-sleeved shirts, listening to CDs, watching movies and TV, staying out past curfew and having a girlfriend. According to experts, these “lost boys” are banished from their community primarily in order to minimize competition for older men seeking to marry child brides.

This Article’s primary thesis is that male and female children alike are victims of child abuse and neglect in the name of FLDS religious doctrine. While others...
have addressed “terror in the name of God”\(^5\) (attacking internal and external targets alike) child endangerment in the religion paradigm is, I suggest, fundamentally different. Simply put, it is the deliberate injury to one’s own child predicated on religious faith, in particular religious extremism. To that end, this Article will focus on the danger to members of an internal community (members of a particular faith) rather than to an external community (members of other faiths).

Though God tested Abraham\(^6\) with respect to the sacrifice of his son, Isaac,\(^7\) the sacrifice (thankfully, never brought to fruition) was the result of a direct interaction between God and Abraham. The modern day religious extremism predicated endangerment of children is not between the divine and man; rather, it is between man and man when one of the two purports to act in the name of God. This is fundamentally and philosophically different from the original sacrifice. Unlike Abraham, who ultimately did not sacrifice Isaac—for God ordered him not to do so—religious extremists do endanger their children.

While this Article’s primary emphasis is child brides, understanding the institution of polygamy is essential to understanding how children are endangered in the name of religion. From a theological perspective, polygamy as practiced by FLDS is an essential tenet of how FLDS members articulate and practice their faith. The FLDS Church perceives itself as the “true” Mormon Church; and asserts that its members practice what the prophet Joseph Smith truly believed. The practice of child brides in plural marriages is essential in ensuring obedience and subservience; needless to say, the practice involves sexual contact between adult males and underage girls.

Sexual contact with a minor is illegal and should result in criminal liability. FLDS members violate the law when they have sexual relations with underage girls—the child brides. As discussed in this Article, FLDS parents do endanger their children,\(^8\) which raises profoundly important legal, moral and theological questions pertaining to the essence of two relationships: parent-child and State...

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8 This is, undoubtedly, a relative point for people of faith. Those who engage in practices related to their children’s health, safety and welfare would argue that their actions are in accordance with their faith whereas the State attaches criminal liability to those same practices. See generally Adam Lamparello, Taking God Out of the Hospital: Requiring Parents to Seek Medical Care for their Children Regardless of Religious Belief, 6 TEX. F. ON C.L. & C.R. 47 (2001); Jennifer L. Hartsell, Mother May I . . . Live? Parental Refusal of Life-Sustaining Medical Treatment for Children Based on Religious Objections, 66 TENN. L. REV. 499 (1999).
individual. The question before us is who protects the otherwise unprotected; the question—which is complicated in and of itself—is exponentially more complex when framed in a religious paradigm. “Who owes what duty to whom” is the subtext of this Article; addressing the extraordinarily combustible confluence between religious authority, criminal law and the most vulnerable members of society—its children—is my fundamental intent. The intellectual, philosophical and constitutional premise of this Article is that the State owes a duty and obligation to children regardless of their parents’ faith. That is neither to delegitimize faith nor to cast aspersions on people of faith; it is however, to articulate the position that the State has the proactive, positive responsibility to protect children. This is particularly true when the threat to the child is faith-based.

While this is neither the first, nor tragically the last, time this issue will require resolution, it is one that urgently requires candid examination and analysis. The May 15, 2009 decision of Brown County (Minnesota) District Judge John Rodenberg, holding that thirteen-year-old Daniel Hauser was “medically neglected” by his parents, Colleen and Anthony Hauser, who refused to provide him with the appropriate medical treatment and was also in need of child

9 The Juvenile Court Act of 1996, Utah Code Ann. § 78A-6-317(4) (2008), specifies:

In every abuse, neglect, or dependency proceeding . . . the court shall order that the child be represented by a guardian ad litem, in accordance with Section 78A-6-902. The guardian ad litem shall represent the best interest of the child, in accordance with the requirements of that section, at the shelter hearing and at all subsequent court and administrative proceedings, including any proceeding for termination of parental rights in accordance with Part 5, Termination of Parental Rights Act.

11 Minnesota Criminal Code, Minn. Stat. Ann. § 609.378 (2010) specifies that a person is guilty of neglect or endangerment when:

(a)(1) A parent, legal guardian, or caretaker who willfully deprives a child of necessary food, clothing, shelter, health care, or supervision appropriate to the child's age, when the parent, guardian, or caretaker is reasonably able to make the necessary provisions and the deprivation harms or is likely to substantially harm the child’s physical, mental, or emotional health is guilty of neglect of a child and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than $3,000, or both. If the deprivation results in substantial harm to the child’s physical, mental, or emotional health, the person may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than $10,000, or both. If a parent, guardian, or caretaker responsible for the child’s care in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the child, this treatment or care is “health care,” for purposes of this clause.
protection services,\textsuperscript{12} is but the latest manifestation of this issue. Whatever the religious context, this is an issue that will continue to confront the public, the courts and people of faith.

This Article is divided into four sections. Section one is a historical examination of the FLDS Church.\textsuperscript{13} Section two addresses government intervention with respect to the Church’s leadership and membership. This section also discusses how limited contact has impacted members’ perceptions of the outside world and how that affects criminal prosecutions. Section three addresses the concept of child neglect and abuse in the FLDS context. Section four provides policy makers and law enforcement officials with concrete recommendations for how to more effectively protect these children, particularly in the context of Rousseau’s social contract theory.

II. HISTORY OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS

According to the Church of Jesus Christ of Latter-Day Saints (Mormon Church), its founder, Joseph Smith, had revelations and visions that he was ordained as a prophet of God.\textsuperscript{14} Smith’s followers believed that he had a relationship with God and was his spokesman and prophet on earth.\textsuperscript{15} Unquestioning obedience to the latter day prophet was instrumental to Church members who believed that the only way to heaven was to follow Smith’s commandments.\textsuperscript{16} That faith was tested in the 1830s as Smith gradually began introducing polygamy, claiming that it was a divinely inspired practice.\textsuperscript{17}

“However, it wasn’t until 1852, eight years after Smith’s death, that the Church officially acknowledged the practice of polygamy under the leadership of the new prophet, Brigham Young.”\textsuperscript{18} Young led the Mormons across the continent ultimately settling in Utah in order to “escape the intense persecution members faced for their unique religious beliefs.”\textsuperscript{19} As members of the Church began to live in Utah, “polygamy became a part of their culture and religion.”\textsuperscript{20} While Utah quickly developed into a unique frontier theocracy under Young’s guidance, Church leaders understood the benefit of becoming a state.\textsuperscript{21} However, the U.S.

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\textsuperscript{13} Much of this section is based on Amos N. Guiora, \textit{Freedom from Religion: Rights and National Security} 139-44 (Oxford Univ. Press 2008) (in particular, the appendix written by Brady Stuart addressing FLDS history).

\textsuperscript{14} \textit{Id.} at 139.

\textsuperscript{15} \textit{Id.} at 140.

\textsuperscript{16} \textit{Id.}

\textsuperscript{17} \textit{Id.} at 139-40.

\textsuperscript{18} \textit{Id.} at 140.

\textsuperscript{19} \textit{Id.}

\textsuperscript{20} \textit{Id.}

\textsuperscript{21} \textit{Id.}
\end{flushleft}
government strongly opposed polygamy and refused to grant statehood unless the practice was rescinded.\textsuperscript{22} Outside pressure to forbid polygamy increased as the Church grew in Utah.\textsuperscript{23} In 1856, the newly created Republican Party declared that, “[i]t is the duty of Congress to prohibit in the territories those twin relics of barbarism, polygamy and slavery.”\textsuperscript{24} True to its promise, the federal government sent law enforcement officials to Utah to end polygamy, confiscating land and possessions of those who practiced plural marriage.\textsuperscript{25}

\textit{A. Legal History of Polygamy}

From the beginning, polygamy has not only been at odds with mainstream values, but also the law. The Republican Party first compared polygamy to slavery in 1856;\textsuperscript{26} in 1862, Congress passed the Morrill Act for the Suppression of Polygamy (the “Morrill Act”). Section One of the Morrill Act states:

   Every person having a husband or wife living, who shall marry any other person, whether married or single, in a Territory of the United States, or other place over which the United States have exclusive jurisdiction, shall . . . be adjudged guilty of bigamy, and, upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars, and by imprisonment for a term not exceeding five years.\textsuperscript{27}

However, the Morrill Act proved to be ineffective in outlawing the practice of polygamy primarily because those involved are also key witnesses who, generally, have no interest in cooperating with the prosecution. Additionally, “no grand jury in Utah would indict Church leaders for violating the [Morrill] Act, so the Act was never used or challenged in court.”\textsuperscript{28}

In 1878, the question of polygamy reached the Supreme Court for the first time in \textit{Reynolds v. United States}. George Reynolds, a member of the Church of Jesus Christ of Latter-day Saints, was charged with bigamy under the Morrill Act after he married Amelia Jane Schofield while still married to his first wife. Reynolds was originally convicted in the District Court for the 3rd District of the Territory of Utah. Before the Supreme Court, Reynolds argued that his conviction should be overturned for a number of reasons: the statute exceeded Congress’ legislative power; his challenges to jurors in the original case were improperly overruled; testimony from his second wife should not have been permitted; and

\begin{itemize}
\item \textsuperscript{22} Id.
\item \textsuperscript{23} Id.
\item \textsuperscript{25} Id.
\item \textsuperscript{26} Id.
\item \textsuperscript{27} Morrill Act, ch. 126, § 1, 12 Stat. 501 (1862).
\end{itemize}
most significantly, he had a constitutional right to engage in polygamy as it was part of his religious duty.29

Justice Waite distinguished between government control of beliefs and government control of actions. He concluded that “[l]aws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices.”30 An example of this is, if one believes that human sacrifice is an integral part of worship, the government can validly restrict the religious practice. Justice Waite concluded that to permit illegal practices in the name of religion would be “[t]o 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.”31

Nevertheless, problems in prosecuting under the Morrill Act persisted; therefore, in 1882 Congress passed the Edmunds Act, making it significantly easier to prosecute polygamy as prosecutors did not need to prove actual marriage but only cohabitation, which the act prohibited.32 Additionally, the act allowed prosecutors to strike jurors who practiced polygamy, as well as those who did not practice polygamy, but believed it acceptable.33 Nearly 1,300 polygamists were prosecuted under various anti-polygamy statutes after the Edmunds Act.34

On October 6, 1890, the Church’s then prophet, Wilford Woodruff, issued an official declaration stating that the Church would obey the laws of the federal government and cease the practice of polygamy.35 Woodruff explained to Church members that he had received a revelation from God and had been shown a vision in which the Church would be destroyed if the practice of polygamy were to continue.36 Most Church members followed the new commandment from Woodruff; others believed he was a fallen prophet who had succumbed to pressure from the United States.37 Shortly after the official renunciation of polygamy, Utah became a state in 1896.38 As a condition to statehood, Utah included in its constitution a provision that “polygamous or plural marriages are forever prohibited.”39

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30 Id. at 166.
31 Id. at 167.
33 Id. at § 5.
34 Sigman, supra note 28, at 128.
35 GIJORA, supra 13, at 140.
36 Id.
37 Id.
38 Id.
39 UTAH CONST. art. III, § 1.
B. Fundamentalism—the Break Off

Those that refused to give up polygamy, believing it an eternal principle, were the predecessors of the Fundamentalist Church of Jesus Christ of Latter-Day Saints (FLDS). FLDS members claim that in 1886, four years before the Church’s renunciation of polygamy, the then prophet and president of the Church, John Taylor received a very different revelation. According to FLDS historians, in Taylor’s revelation the Lord declared that polygamy was an everlasting covenant, and that God would never revoke it. FLDS members claim that the following morning Taylor placed five men under covenant to practice polygamy as long as they lived, and gave them power to ordain others to do the same.

For some time those practicing polygamy stayed in Salt Lake City, alongside the Mormons who renounced plural marriage. However, as polygamy became less acceptable in mainstream Utah, many polygamists went into hiding. Eventually Short Creek, Arizona (now known as Colorado City), became a strong hold for polygamists. FLDS members felt comfortable in this remote area surrounded by desert, over a hundred miles away from law enforcement and believed they could safely practice polygamy unbothered by the outside world.

III. GOVERNMENT INTERVENTION AND FLDS ISOLATION

The FLDS’s belief that law enforcement would tolerate their polygamist practices was mistaken; government officials have conducted a number of raids on FLDS compounds dramatically affecting the outside world’s opinion of the Church. One of the most traumatic raids is known as the ‘Short Creek Raid.’

In the summer of 1953, over a hundred Arizona police officers and National Guardsmen descended on the FLDS compound in Short Creek. The reason given for the raid by Arizona Governor John Pyle was to stop a pending insurrection by the polygamists. Pyle accused FLDS members of being involved in the “foulest
conspiracy you could possibly imagine” designed to produce white slaves.50 The Governor even invited reporters to witness the raid with him.51

However, the attempt to demonize those practicing polygamy failed. Church members had been tipped off to the impending raid. As law enforcement entered the compound they found the community’s adults congregated in a schoolhouse singing hymns, while their children played outside.52 Instead of reporting on the evils of polygamy, the media focused on the over-reaction of government officials.53 Regardless of the media reaction, the government removed over 236 children from their families at Short Creek.54 It took more than two years for 150 of those children to be reunited with their families.55

The Short Creek Raid became a rallying cry for FLDS members; a manifestation of the secular world’s desire to destroy God’s chosen people.56 The memory of losing their children further isolated members from the outside world which was dramatically increased by Jeffs’ orders who declared his actions sanctioned by God.57 Shortly after his father’s (the previous prophet) death Jeffs married all but two of Rulon’s twenty wives, increasing the number of his wives to approximately seventy, according to some ex-members.58 Jeffs claimed that this was necessary to ensure the preservation of his sacred bloodline.59

As the only person who possessed the authority to perform marriages, and assign wives, Jeffs often used this power to discipline members by reassigning their wives, children and homes to another man.60 This was demonstrated in 2004 when Jeffs exiled twenty male members from the community and assigned their wives to more worthy men.61 Similar to his predecessors, Jeffs teaches that it is only through plural marriage that a man may enter heaven.62 To that extent, Jeffs has taught that any worthy male member should have at least three wives, and the more wives a man has, the closer he is to heaven.63

In 2004, the FLDS, especially the current prophet, Warren Jeffs, began facing trouble from the outside world once again. In 2004, several of Jeffs’ nephews alleged that Jeffs and his brothers sodomized them in the late 1980s, leading to a
lawsuit against them. In 2005, Jeffs was charged with sexual assault on a minor and with conspiracy to commit sexual misconduct with a minor for arranging a marriage between a fourteen-year-old girl and her nineteen-year-old first cousin. In late 2005, Jeffs was placed on the FBI’s most wanted list; he was charged in Utah with rape as an accomplice and in Arizona with two counts of sexual conduct with a minor, one count of conspiracy to commit sexual conduct with a minor, and unlawful flight to avoid prosecution. While a fugitive, Jeffs nevertheless continued to perform marriages between underage girls and older men. In August 2006, Jeffs was captured in Nevada during a traffic stop and, in September of 2007, Jeffs was convicted in Utah for the accomplice to rape charge.

The FLDS Church faced additional difficulties at a second compound, the Yearning for Zion Ranch, near Eldorado, Texas. On April 16, 2008, Texas state authorities entered the community after they had received calls from an individual claiming to be an abused child from the ranch. Child Protective Services determined that the children living in the compound required protection from forced underage marriages. As a result, 416 children were removed from the FLDS compound while over a hundred adult women chose to leave the ranch in order to accompany their children. The state determined that, of fifty-three girls aged fourteen to seventeen, thirty-one have children or are pregnant. On May 22, 2008 after a state court ruled that there was insufficient evidence to justify holding the children in custody they were returned to their families within ten days.

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67 Id.
69 Id.
after the raid only one child remained in state custody, though twelve of the men from the group were indicted on a variety of sex charges, including assault and bigamy.74

IV. CHILD ABUSE AND NEGLECT

A. Who Defines the Best Interest of the Child?

The essence of the parent-child relationship is the ‘duty to care’ obligation which the parent owes to the child. That duty, obligation and responsibility has been one of the core essences of the human condition since time immemorial: “But if any provide not for his own, and specially for those of his own house, he hath denied the faith, and is worse than an infidel.”75 “And, ye fathers, provoke not your children to wrath: but bring them up in the nurture and admonition of the Lord.”76 “But whoso shall offend one of these little ones [a child] which believe in me, it were better for him that a millstone were hanged about his neck, and that he were drowned in the depth of the sea.”77

Herein lays a fundamental tension: while Scripture unequivocally articulates parental responsibility with respect to children, some religious extremists are endangering their children. That endangerment violates both the criminal law and religious scripture. Nevertheless, rather than adhering and respecting law and scripture, FLDS members who either marry their daughters to adult men or who themselves marry under-age children are violating both the law and scripture. They are doing so in accordance with the religious teachings of an individual claiming to articulate a particular interpretation of their faith. That interpretation however endangers their children, which both scripture and the law obligate them to protect. That said, there are “obscure laws in many states that let parents rely on prayer, rather than medicine, to heal sick children.”78

In Employment Division v. Smith,79 the Supreme Court held that the state, consistent with the Free Exercise Clause, could “prohibit sacramental peyote use” thereby not granting religious actors an exemption with respect to the requirements of the law.80 The concept that a parent’s religious beliefs do not justify denial of

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74 Owens, supra note 71.
75 1 Timothy 5:8 (King James).
76 Ephesians 6:4 (King James).
77 Matthew 18:6 (King James).
80 Id. at 872, 890.
medical care to their children has been widely upheld in state courts. In Commonwealth v. Barnhart, the Superior Court of Pennsylvania upheld the conviction of parents, whose son died of cancer when they did not seek medical treatment, for involuntary manslaughter and endangering the welfare of a child. The trend has been overwhelmingly towards criminal prosecution and the conviction of parents whose children’s death results from a lack of medical treatment due to religious beliefs. Recently, Leilani Neumann was convicted of second-degree homicide in Wisconsin, after her daughter died from a diabetic condition which caused symptoms Neumann ignored and for which Neumann refused to take her to a hospital, predicated on her religious beliefs.

However, while criminal prosecution of parents is common in medical neglect cases, the state has failed to adequately prosecute FLDS parents whose children suffer abuse and neglect; specifically sexual abuse and child abandonment. The Utah child abuse and neglect laws are similar to other state abuse and neglect laws, and are used for medical neglect, but are not sufficiently applied to FLDS parents whose actions endanger their children. While state authorities have been and are fully aware of “on the ground reality” they have, in most cases, failed to take sufficient and significant action. Although a number of theories have been offered as to “why”—some legal, others a combination of policy and culture—the impact on the unprotected is extraordinary. It has been suggested that the lack of action is predicated on an insufficient basis for introducing informants into FLDS compounds; others have argued that county prosecutors were hesitant—even if evidence was admissible—because of an underlying empathy with the community based on geographical proximity and political considerations.

While state courts have acted in the spirit of Smith, this action is not a truly meaningful test. Rather, the fundamental point of inquiry is whether prosecutors (local and federal) have been sufficiently aggressive in enforcing the law through criminal prosecutions. Available numbers suggest that the policy—historically—

85 The Juvenile Court Act of 1996, U.C.A. 1953 § 78A-6-105(1)(a) defines “[a]buse” as “(i) non-accidental harm of a child; (ii) threatened harm of a child; (iii) sexual exploitation; or (iv) sexual abuse.” § 78A-6-105(25)(a) defines neglect, in relevant part, as “(i) abandonment of a child . . . ; (ii) failure or refusal of a parent, guardian, or custodian to provide proper or necessary subsistence, education, or medical care, or any other care necessary for the child’s health, safety, morals or well-being . . . .”
has been to largely turn a blind eye to the endangerment of children. That is, the fundamental failure has not been in the judiciary (Smith articulated a clear limit on the practice of religion), but rather the failure to protect the otherwise unprotected reflects a fundamental law enforcement and prosecutorial unwillingness to aggressively, consistently and uniformly bring the wrongdoer before the courts.

While the criminal law paradigm requires probable cause it is equally true that the state has a constitutional obligation and responsibility. In practical terms, the state is constitutionally required to infiltrate FLDS communities when the matter of child brides and lost boys is a matter of public knowledge. Protecting the endangered is a state responsibility and obligation. While it is constitutional for states to make laws that may slightly infringe on religion, taking children away from their parents because of religious beliefs is a tougher legal subject.

In Wisconsin v. Yoder, the Supreme Court “held that the First and Fourteenth Amendments prevent a state from compelling Amish parents to cause their children, [who have graduated from the eighth grade], to attend formal high school to age sixteen.” Under Yoder, the “power of the parent . . . may be subject to limitation . . . if it appears that parental decisions will jeopardize the health or safety of the child, or have a potential for significant social burdens.” In Santosky v. Kramer, the Supreme Court held that under the Fourteenth Amendment’s Due Process Clause the state must support its allegations with “at least clear and convincing evidence” before terminating parental rights.

There are at least two categories of private interests at stake in parental rights termination proceedings: the fundamental liberty interest of the parents in the care and custody of their children, and the parents’ and children’s shared interest in preventing an “erroneous termination” of their natural relationship. “Consequently, courts could consider both the parents’ and the children’s rights when determining the state’s burden of proof at the best interests stage.”

The lack of aggressiveness to enforce the law in protecting children has left girls and boys similarly unprotected. While the state has failed to protect child brides it has also failed to take action regarding the abandonment of the “lost boys.” However, in comparison to the sexual abuse suffered by girls living in the closed and isolated community it may be easier to prosecute those responsible for the neglect of boys who no longer live in that community as they have been, literally, forced to leave.

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87 Id. at 233-24.
89 Id. at 753.
90 Id. at 760.
B. Forced Marriage of Daughters

Adolescent girls are the best known victims of polygamy in the FLDS community as they are forced to marry significantly older, married men. These girls lack a meaningful choice in deciding whether to get married; they have been taught the world outside their community is evil. Furthermore, avoiding the marriage by leaving is extraordinarily difficult as FLDS communities are physically isolated, making escape nearly impossible. By example: Jane Kingston was forced by her father, Daniel Kingston, to marry her uncle sixteen years her senior, and therefore became his fifteenth wife.\footnote{Leti Volpp, Blaming Culture for Bad Behavior, 12 Yale J.L. & Human. 89, 100 (2000) (all three are FLDS members).} When Jane tried to escape the marriage, her father captured her and beat her until she was unconscious.\footnote{Id.} When she woke up from the beating, Jane walked seven miles to a gas station and called 9-1-1.\footnote{Sigman, supra note 28, at 179.} While Jane’s uncle, David Ortell Kingston, was charged and convicted of incest and unlawful sexual conduct with a minor, he was not charged with bigamy.\footnote{Id. at 180.}

Although there is no doubt that many underage girls, such as Jane, are forced into marriage with much older men, prosecuting the crime is difficult because of significant evidentiary barriers. First, the key witnesses usually have no interest in aiding the prosecution as children are taught that authorities are not to be trusted and if they cooperate by testifying, they could be placed in foster care.\footnote{Id. at 180.} Girls have been taught that the outside world is evil; there is no one safe for them to turn to when they do not want to enter into a marriage. Furthermore, because of the remote physical location of these communities, the victim must go to extreme lengths to escape the abuse, as Jane did by walking seven miles to seek help after being beaten unconscious. In addition, typically only the first marriage of a polygamist is recorded with the state; thus, the state has no paper trail of the other marriages. Finally, as the FLDS community is located on both sides of the Utah-Arizona border, prosecutors have difficulty proving in which state the abuse occurred and, thus, are hard pressed to determine the appropriate jurisdiction for prosecution purposes.\footnote{Emily J. Duncan, The Positive Effects of Legalizing Polygamy: “Love is a Many Splendored Thing,” 15 Duke J. Gender L. & Pol’y 315, 324 (2008).}

C. The Lost Boys

Over 1,000 male children between the ages of thirteen and twenty-three have left the FLDS community, typically by being banished and becoming a “Lost
as polygamy unavoidably leads to a shortage of girls and a surplus of boys. Critics of the FLDS maintain that the boys, known as the “Lost Boys,” are kicked out of the community so that older, established men have less competition for the young wives. The community tells the boys that they are being banished for not meeting the rigorous FLDS religious standards.

Once expelled, the boys are not allowed contact with their former community. The Church forbids parents from visiting their banished sons, and violating the rule can result in eviction from their Church-owned homes. This means that the boys have no emotional and financial support from their former communities and they suddenly find themselves in the outside world, which they have been taught is “evil.” Furthermore, “most have no money, no real education and nowhere to live.” Not surprisingly, many of the boys turn to drugs and alcohol. Often as many as twenty boys will band together and find an apartment, but the lack of adult supervision facilitates their involvement in criminal behavior, including the underage use of alcohol, drugs and smoking.

Although there are state laws preventing child abandonment and neglect, Utah and Arizona authorities have yet to systematically enforce them. Additionally, authorities have not sought child support from FLDS members who abandon their sons. Similar to the prosecution of sexual abuse, prosecution against parents for child abandonment has evidentiary challenges primarily because the Lost Boys are largely unwilling to testify against their parents. According to the Utah Attorney General, Mark Shurtleff, “the kids don’t want their parents prosecuted; they want us to get the number one bad guy—Warren Jeffs. He is chiefly responsible for kicking out these boys.”

However, in 2006 a group of six lost boys filed a landmark suit against Warren Jeffs and the FLDS for “unlawful activity, fraud, and breach of fiduciary duty, and civil conspiracy.” The suit alleged that the boys were kicked out of the community so that it would be easier for the older men to marry the younger girls, because without the boys there would be less competition. The suit was settled

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99 Borger, supra note 1.
100 Id.
101 Id.
103 New Frontiers for Families, supra note 101.
104 Sigman, supra note 28, at 184.
105 Kelly, supra note 2.
106 Sigman, supra note 28, at 182 (citing Complaint, Ream v. Jeffs, No. 040918237 (Utah Dist. Ct. Aug. 27, 2004)).
107 Id.
outside of court, and the ‘lost boys’ received $250,000 for housing, education and other assistance to help boys who leave the FLDS community.\textsuperscript{108}

In 2006, Utah Governor Jon Huntsman signed House Bill 30, also known as “The Lost Boys Law,” which allows minors to petition to district court judges on their own behalf for emancipation.\textsuperscript{109} The Lost Boys, and other homeless youth face numerous hurdles to survive because of the fact that they are minors. Everyday concerns, such as signing leases, and receiving health care are difficult for this population as legally they are minors and cannot represent themselves.\textsuperscript{110} While the effects remain to be seen, the bill is undoubtedly represents an effort to facilitate the Lost Boys’ integration into society.

V. RECOMMENDATIONS: CIVIL SOCIETY OR RELIGIOUS SOCIETY?

Membership and participation in civil democratic society explicitly demands that citizens respect the rule of law as supreme. According to the logic of Rousseau, as citizens of a society we are all signatories to the social contract; in essence, we give up any truly absolute rights for the safety and comfort that government can provide. We agree to be subject to laws and regulations imposed by a civil society including regulations on religion, regardless of the fact that we typically consider religious rights to be absolute.

That is not to minimize the importance, relevance or centrality of religion in the lives of untold millions. We simply must recognize that civil society is a society whose essence is civil law rather than religious law. Some people of faith—particularly those for whom religion is the essence of their temporal existence—may find this perspective objectionable. However, civil society cannot endure if religious law is found to be supreme to state law.

Civil society owes an obligation to protect its otherwise unprotected; particularly children who are its most vulnerable members. Religious belief and conduct cannot be used as justification for placing children at risk; government, law enforcement and the general public cannot allow religion to hide behind a cloak of “religious immunity.” The focus of a religious extremist is single-minded dedication and devotion to serving his God. Based on innumerable conversations with terrorists and members of the intelligence community alike, I have written elsewhere of the extraordinary hardships imposed on wanted terrorists. I have come to the conclusion that those hardships, when understood in the context of the terrorists serving their God, are both explainable and tolerable. While difficult, these hardships are not nearly as foreboding as the alternative, according to their

\textsuperscript{108} Simon & Townsend, \textit{supra} note 105.


worldview as they believe it. For them it is better to incur physical discomfort than
to incur the wrath of God.

Where does that leave the secular State? Precisely because of the absolutism
of the religious extremist, the state has no choice but to respond accordingly.
Perhaps the fundamental weakness of my argument is that I am suggesting that the
State restrict the rights of citizens. Perhaps society in response to the examples
discussed above—in order to protect the unprotected—may have no choice but to
consistently and aggressively monitor and prosecute religious extremists who
endanger their children. The specific danger posed by religious extremists not only
justifies but actually demands that law enforcement and prosecutors fundamentally
re-articulate their approach to child endangerment in a religious paradigm.

VI. CONCLUSION

To suggest that the judiciary (state or federal) is acting in the spirit of Smith
is, at best, only “half the battle” with respect to child brides and lost boys. Both
require government protection and intervention. The traditional argument that
prosecution is difficult as witnesses are hesitant to come forward can be addressed
by an aggressive information (intelligence/source based) policy similar to
concerted law enforcement efforts with respect to those involved in the
manufacturing and supplying of illegal drugs. The danger presented by religious
extremists to their internal community requires the immediate adoption of this
aggressive policy. While there is an undeniable (and understandable) difficulty in
calculating and protecting against their parents and community (akin, perhaps, to children who are victims of sexual abuse committed
by a parent or family member), the state’s obligation to protect the otherwise
unprotected requires that intelligence gathering be aggressive. This is particularly
the case when relevant state agencies cannot plead “ignorance” with respect to the

111 “In an effort to achieve a ‘drug free society,’ the United States Government
approaches its national drug problem through criminal sanctions for the possession,
manufacture, sale, transport, and distribution of illegal drugs in the United States; the
establishment of a complex law enforcement apparatus at both the federal and state levels
with the purpose of reducing drug availability, increasing drug prices, and reducing drug
use in America; and the development of drug use prevention and treatment programs that
seek to stop drug use and heal drug users.” Margarita Mercado Echegaray, Note, Drug
Prohibition in America: Federal Drug Policy and its Consequences, 75 REV. JUR. U.P.R.
1215, 1273 (2006).

112 According to the Supreme Court, child abuse is “one of the most difficult crimes to
detect and prosecute, in large part because there are often no witnesses except the victim.”
Pennsylvania v. Ritchie, 480 U.S. 39, 60 (1987). Most often, the abuse is not reported
because it takes place in the family setting and children do not understand what is
happening, fear retribution if they report it, as well as other adult family members failing to
specific endangerment to which FLDS children are subjected in their internal communities (compounds).

Intelligence gathering is an arduous, complicated process that requires patience, resources and determination. By analogy it is the “heart and soul” of counterterrorism; for without intelligence gathering and analysis the state is largely unable to operationally engage terrorists. In the same vein, intelligence gathering is required to begin assembling the requisite “jig-saw puzzle” required to directly and aggressively respond to child abuse conducted in the name of a religious paradigm. Just as the immunity that society had historically granted to the family, with respect to domestic violence and abuse, has largely been negated, the immunity granted religion must be immediately rescinded.

This is particularly the case when children are at risk, for that is a primary responsibility of civil society. It is the essence of the social contract so eloquently articulated by Rousseau. While courts are increasingly intolerant, (in accordance with Smith) the true test moving forward is how law enforcement and prosecutors will address this issue. If the common interest is preserving rights, liberties and protections of societies otherwise unprotected, then this concrete policy recommendation will begin the process of enabling society to fulfill that obligation.