theology students for exclusion.[278] Refusal to fund religious training, the Court observed, was "far milder" than restrictions on religious practices that have been held to offend the Free Exercise Clause.[279]

***The Mormon and Jehovah's Witnesses Cases.***—The Court's first encounter with free exercise claims occurred in a series of cases in which the Federal Government and the territories moved against the Mormons because of their practice of polygamy. Actual prosecutions and convictions for bigamy presented little problem for the Court, as it could distinguish between beliefs and acts.[280] But the presence of large numbers of Mormons in some of the territories made convictions for bigamy difficult to obtain, and in 1882 Congress enacted a statute that barred "bigamists," "polygamists," and "any person cohabiting with more than one woman" from voting or serving on juries. The Court sustained the law, even as applied to persons entering the state prior to enactment of the original law prohibiting bigamy and to persons as to whom the statute of limitations had run.[281]

Subsequently, an act of a territorial legislature that required a prospective voter not only to swear that he was not a bigamist or polygamist but also that "I am not a member of any order, organization or association which teaches, advises, counsels or encourages its members, devotees or any other person to commit the crime of bigamy or polygamy . . . or which practices bigamy, polygamy or plural or celestial marriage as a doctrinal rite of such organization; that I do not and will not, publicly or privately, or in any manner whatever teach, advise, counsel or encourage any person to commit the crime of bigamy or polygamy . . . ," was upheld in an opinion that condemned plural marriage and its advocacy as equal evils.[282] And, finally, the Court sustained the revocation of the charter of

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[278] 540 U.S. at 720–21. Excluding theology students but not students training for other professions was permissible, the Court explained, because "[t]raining someone to lead a congregation is an essentially religious endeavor," and the Constitution's special treatment of religion finds "no counterpart with respect to other callings or professions." Id. at 721.

[279] 540 U.S. at 720–21 (distinguishing Church of the Lukumi Babalu Aye v. City of Hialeah, 508 U.S. 520 (1993) (law aimed at restricting ritual of a single religious group); McDaniel v. Paty, 435 U.S. 618 (1978) (law denying ministers the right to serve as delegates to a constitutional convention); and Sherbert v. Verner, 374 U.S. 398 (1963) (among the cases prohibiting denial of benefits to Sabbatarians)).

[280] Reynolds v. United States, 98 U.S. 145 (1879); *cf.* Cleveland v. United States, 329 U.S. 14 (1946) (no religious-belief defense to Mann Act prosecution for transporting a woman across state line for the "immoral purpose" of polygamy).

[281] Murphy v. Ramsey, 114 U.S. 15 (1885).

[282] Davis v. Beason, 133 U.S. 333 (1890). "Bigamy and polygamy are crimes by the laws of all civilized and Christian countries. . . . To call their advocacy a tenet of religion is to offend the common sense of mankind. If they are crimes, then to