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A LEARNED LAWYER, ON  
UTAH AFFAIRS.

A LETTER from the eminent lawyer, George Ticknor Curtis, on the "Mormon" question, was filed with the Secretary of the Interior on the 1st of November, and has made considerable stir in the country. A synopsis telegraphed to some leading papers was copied a day or two ago by others, and commented upon from the meagre information conveyed in the dispatches. We preferred waiting until the whole document could be presented in our columns before making any remarks upon it, knowing too well that it is not safe to rely upon the incomplete reports of the remarks of prominent persons which often appear in print. We present the letter to our readers to-day, and surrender much of our space to its text.

It is a very strong and comprehensive paper. Careful reading will show, beyond doubt, that the assertion which has been made that it was prepared or inspired by leading "Mormons" is totally erroneous. The position taken by Mr. Curtis on the rights and powers of Congress over the Territories, is that which he has occupied for many years before the country, but the very opposite to that assumed by the "Mormon" people and their chiefs. That alone is sufficient to disprove the statement of anti-"Mormons" concerning its origin. It is clearly Mr. Curtis' own effort, embodying his own views and setting forth his own plans and propositions.

The letter from President John Taylor, quoted by the gentleman, should settle the fallacy about any contemplated exodus of the Latter-day Saints from Utah. It will give but cold comfort to the adventurers who have lotted on a general migration of the "Mormons" and a consequent harvest for those who have not done the planting; there will be no lot to freebooters, nor houses and lands to be sold for a song. This we have frequently affirmed in these columns, and it may be laid down for a fact that Salt Lake does not propose to become another Nauvoo. President Taylor's letter sets forth the "Mormon" position in emphatic, authoritative and unmistakable language.

Mr. Curtis very clearly explains the stand taken by the "Mormons" in regard to the promise which many good people think they ought to make, concerning future obedience to the law. He clearly shows that this implies something that under the circumstances no true MAN can make, and he effectually punctures the sophism that because the "Mormons" cannot give that promise, they are therefore in hostility and rebellion against the laws of the United States. In this connection the extraordinary and unprecedented rulings of the Utah courts, in order to entrap the "Mormons" and render it impossible for them to comply with requirements alleged to be demanded by the law, are laid bare as only an experienced and level-headed lawyer could expose them. A thorough acquaintance is exhibited with the course pursued towards men who have honestly endeavored to comply with the Edmunds law, but who nevertheless have been sentenced to severe penalties for its pretended infraction.

Here comes in the important question of what may and what may not be done by the civil power, in regard to acts purporting to be prompted by religious motives. Mr. Curtis takes the popular view of the powers of Congress over the Territories. This, we need not repeat, is the opposite of that held by the majority of the people of Utah. It is the reverse of the doctrine enunciated by the lamented jurist, Jeremiah Black, and which we believe to be correct and incontrovertible on a strict construction of the Constitution. But Mr. Curtis has the advantage of the support of leading statesmen of both political parties, and of a large majority at least of the Supreme Court of the United States. The ground they occupy, however, is that of expediency, and its stability is predicated more on account of its long establishment than on its inherent rightfulness. Congress, it is assumed, may legislate in all things directly for the Territories because it can, and the fundamental principle of republicanism that the consent of the governed is an essential to just government, is thrown aside to make way for the monarchial assumption of the sovereignty of Congress over the so-called "wards of the nation." Mr. Curtis on this question is consistent with his record, for he took this side of it as long ago as the trial of the celebrated Dred Scott case.

And here, we consider, is where the strength of the able writer's argument is displayed on a vital point to the people of Utah. While, not only admitting but declaring and supporting the powers of Congress to legislate on the marriage relation and all others, directly, for the Territories, he shows beyond rational dispute that those powers must be exercised within the limits of the Constitution. And he proves further that "Congress (or other civil authority) can constitutionally interdict or punish no conduct and no relation between individuals which is both dictated by a sense of religious duty and at the same time innocent in itself and its consequences."

This incontrovertible proposition he applies to the question at issue, that is, the right of a "Mormon" husband of several wives, married for eternity at a period beyond the limit of a probation for bigamy, to continue that relation without interference from the civil law, provided his association is not carnal and his cohabitation is not sexual. In other words, that if he supports, recognizes, and even dwells in the same house with them, but does not sustain those intimate relations which are generally understood by the term "cohabitation," the civil law has no right to interfere. And this for two reasons: first, that his religious belief requires him to sustain the relation, and second that there is nothing in that relation that is actually injurious to society. A man may dwell in the same house with any number of women, if his relations are no more than those described, as in thousands of instances where no marriage is assumed and the community suffers no injury. The judicial logic and peculiar morality which put men in prison for visiting and supporting two or more women without sexual relations, and accord perfect freedom to others who dwell in the same house with several strumpets with sexual relations, are briefly but pungently treated upon by Mr. Curtis.

The gentleman offers a clear exposition of the full meaning of the First Amendment of the Constitution. And in doing so he keeps within the bounds of the prevalent theory in regard to the right to legislate against polygamy even if it is enjoined by religion. The phrase, "Congress shall pass no law respecting an establishment of religion," he explains as a prohibition against any national religion or one supported by Federal authority. The phrase "nor prohibiting the free exercise thereof," he construes as forbidding Congress "to make a law which prevents individuals from carrying out in their lives those religious beliefs which dictate or lead to actions in no way injurious to society." This exposition we think is unanswerable. To limit the protection of law to mere freedom of belief, is to afford no protection at all. Belief is free, of itself and in the nature of things. It is the expression of that belief in word and act, that requires legal protection against bigotry and the power of majorities.

The question here arises, what is and what is not injurious to society? Mr. Curtis admits that polygamy may be forbidden by the civil law on that ground, thus assuming that it is necessarily injurious to society. We might take issue with him and contend that, under some conditions, it is positively beneficial to society. But leaving that as an open question (Mr. Curtis however considers it settled as against us) the right that is claimed to disavow the religious marital relationships which "Mormons" believe to be eternal, or to make them criminal by law, is clearly unconstitutional on Mr. Curtis' irrefutable construction.

The helpless position in which the people of Utah are placed, and its manifest injustice, in having no appeal from the absurd and unprecedented rulings of judges in whose election or appointment they have no voice, is portrayed in glowing colors. It is contended that in constituting the new offense of "unlawful cohabitation" Congress should either have defined its meaning, or provided for an appeal to the Supreme Court of the United States to obtain a competent and impartial judicial construction. And he demonstrates conclusively that the rulings of the Utah courts on this constructive offense are forced, unreasonable and outrageous perversions of justice.

Governor West's request for soldiers to assist in serving civil process and to prevent armed resistance to the laws, is handled vigorously but in polished style, and the nonsense of such a demand in the face of the Governor's own admission that there is not the least occasion for it, is made ludicrously apparent. The reason why the fifty prisoners in the Utah penitentiary respectfully declined to make the promise and accept the clemency kindly offered by the Governor, is set forth correctly and defended ably.

The Utah Commissioners are next treated to some deserved criticism, their gratuitous charges of "fanaticism" and "superstition" against the "Mormons" are promptly answered, and it is shown that even if they are true, Congress has no right to legislate against any people on such a hypothesis. The folly of their suggestions in regard to stopping "Mormon" immigration is also exhibited, and the wrong and impracticability of such laws as they ask for are established.

The able lawyer and author then makes some propositions for the settlement of the "Mormon" question which he considers within the purview of the General Government,

and competent to cure the evils in Utah complained of by the country. It is not our purpose to discuss them. We do not think it probable that they will be favorably entertained by the national authorities, because they are both rational in their character and humane in their intent. And they would have the effect of bursting to pieces the scheme to despoil and rob this Territory and to make of it, in the language of the brilliant writer, the Ireland of America. Whatever we may think about the value of these propositions, we accord to their author the most kindly purpose to an afflicted Territory, and a most earnest and patriotic desire to serve his country, promote its interests, preserve its policy and settled institutions, and save it from the calamities which are sure to come upon it in time as inevitable retribution, if the course commenced against a religious community is pursued to its logical and shameful ultimate.

We hope our readers will find time to read every word of Mr. Curtis' candid and clever letter to the Secretary of the Interior, and that it will secure the attention of every leading man in every branch of the National Government.

LETTER  
TO THE  
SECRETARY OF THE INTERIORON  
The Affairs of Utah, Polygamy,  
"Cohabitation," Etc.,BY  
GEORGE TICKNOR CURTIS.WASHINGTON, D. C.,  
November 1, 1886.TO THE HON. L. Q. C. LAMAR,  
Secretary of the Interior.

## INTRODUCTION.

SIR: No apology can be necessary for this communication, or for the public manner in which it is addressed to you. It concerns a matter of the utmost importance to the people of the United States, and to that portion of their affairs which is under your official charge. The recent report of Governor West, Territorial Governor of Utah, dated at Salt Lake City, and the last report of the "Utah Commissioners," both of them official documents addressed to the Secretary of the Interior, seem to me to call for examination and comment. They open the policy of this government towards the Mormons of Utah, as it has been pursued for the past few years, and they advocate measures of still greater severity in the same direction. I have felt prompted to give a great deal of attention to the measures pursued towards the Mormons of Utah, on account of the principles of civil and religious liberty involved; and I have given a great deal of study to the laws that have been enacted respecting them, and to the policy which is pursued towards them. Some of the convictions which entertain I desire respectfully to submit to you.

In the course of the past summer I had occasion, in writing to President Taylor, the head of the Mormon Church, to ask a certain question, and to request him to allow me, in case I should find it necessary, to publish his answer. I received from him, under the date of August 3, 1886, a letter, from which I now, with his permission, make an extract that is, I think, deserving of the serious attention of all who are concerned in administering the Federal Government, and more especially of the Secretary of the Interior. You will perceive, sir, that the answer was given most directly and plainly, and that it came from one who is entitled to speak the sentiments and feelings of the Mormon people of Utah. He gives to the imputation of disloyalty just the denial that was to be expected from him. The reason why I put to him the question which he answered was because I have long foreseen, from the spirit that prevails among the non-Mormons of that Territory, and from the tendencies that are manifested in Congress to allow of measures dictated by that spirit, that the time may not be distant, if it has not already come, when an attempt will be made to force upon the Mormons the alternative that I suggested. The following is Mr. Taylor's answer:

## PRESIDENT TAYLOR'S REPLY.

"The question which you propound, as to what we contemplate doing in case we are driven to the wall, and have the alternative presented to us of a surrender of our religious convictions and our civil rights, or another exodus, is one that we can freely answer. We may find it convenient to form colonies outside the boundaries of the United States. But we have never contemplated such a movement as an exodus en masse from these Mountain Valleys. The gathering of the people together is one of our fundamental doctrines, and this continent is the place upon which we are commanded to gather. Our future is indissolubly connected with this land. We have had many suggestions about moving on to islands and other places;

but such a movement for us is entirely out of the question. Having these views, where could we move to as a body? Notwithstanding the many slanders circulated concerning our loyalty, we are profoundly attached to our Republic. We believe that it was founded by the Almighty through chosen instruments, and that the men who framed the Constitution were inspired of God in their labor in framing that instrument. All the liberty that we, or any other reasonable being can ask, can be enjoyed under that great charter, when its guarantees are properly observed. If, with the hope of destroying us, our fellow-citizens continue to trample upon our rights, guaranteed by that instrument, we must continue to bear it as patiently and heroically as we can, doing all in our power to protest against these wrongs, and to obtain our rights in the courts of our country, and trusting in our God for that deliverance which He has never failed to give us in the past, and which He has promised us for the future. Our destiny is interwoven with the Republic of the United States. For upwards of half a century, we have been led to expect that such attacks as we now witness would be made upon us, and that the people in power would attempt our destruction as a Church and a community. We have expected, also, that the day would yet come, when it would fall to us to uphold the Constitution and constitutional government in this country. We fully believe that this high honor is in store for us, and we are sustained in the midst of our present persecutions by the consciousness that there is a divine providence in all that is taking place, and that our God will so control events that we, as a people, shall be purified and His purposes be brought to pass through the events that are now taking place.

"Much more might be said upon this subject, but from the above you will learn our views sufficiently to form an idea of our position. We cannot surrender our principles, nor yield our religious convictions; but shall contend for our rights as American citizens in such strength and ability to do so. We shall do this, not for ourselves alone, but for humanity, that the principles of civil and religious liberty may be fully maintained on this great American continent."

## CONVICTIONS AND CIVIL AND RELIGIOUS RIGHTS.

From this extract it will be apparent how deep are the religious convictions of these people. We may call such convictions fanaticism. We may deride the idea of their being specially commanded by the Almighty to gather on this continent, and their being guided by a special Providence, as an absurd assumption. It matters not what we think of their beliefs. The question for the statesman—for the people and Government of the United States—is what these Mormons believe, and not what we believe. Of their sincerity it would be idle to entertain a doubt. If they believe themselves to have been inspired by God to hold certain religious opinions, they do no more than many other Christians do who regard the framers of our Constitution as inspired in their labor of framing that instrument. In dealing with those whom he choose to consider as "fanatics" the very first and the very last thing to be remembered by any government is, that what is called religious fanaticism is a great force; that in many ages of the world it has caused men and women to meet any extremity of suffering rather than surrender their religious convictions. This tenacity of the human soul, by which it adheres to conscientious religious beliefs, challenges, or ought to challenge, the respect of rulers in any country, and more especially in this; and it has been because it has not always been respected, and because what is now foolishly advocated as "the stamping-out" process has been resorted to, that religious persecution has left so many dark and lamentable records on the pages of history. Our own history is stained by more than one such record. This affords no reason why the civil power should not prohibit a practice that is injurious to the welfare of society, although that practice is, by those who follow it, founded on and dictated by a sincere religious belief. But it affords ample reason for a careful discrimination between that which the civil power may and that which it may not rightfully punish or control by the hand of the law. This depends in our country upon the limitations imposed by constitutional provisions upon the authority of Government.

You, Mr. Secretary, will not be likely to impute to me any disposition to set up the religious convictions of men in opposition to the law of the land. I have had too extensive and too close an observation of the fallacy of the so-called Higher Law to be for one moment misled by that specious doctrine. I lived and acted through the whole of that period when men of all grades of intellect deluded themselves with the idea that what they considered the law of God absolved them from obeying the laws regularly enacted by human authority; when men who aspired to be, and who supposed themselves to be, statesmen, and were so considered, toyed and coqueted with the doctrine of the supposed Higher Law, and thereby contributed their influence to debauch the public mind and to uproot the foundations of civil obedience. In that long warfare be-

tween truth and error I bore my part, always maintaining that there is but one measure of the duty of the citizen, namely, to obey the law as enacted by competent authority, whatever his convictions of the moral rightfulness of that law, and to seek redress or relief from its requirements in the courts. It was because multitudes would not see this, but insisted that their interpretation of the law of God absolved them from obeying human laws which they did not like, that a confusion of ideas respecting civil obligation largely contributed to bring about the state of things in certain regions of our land that preceded our civil war.

But this is not the attitude of the Mormons. They are not believers in the Higher Law as a means of absolving them from obedience to the law of the land. Whoever imputes this to them makes a great mistake. All they ask of us is that in the interpretation and administration of our laws we shall not violate their religious freedom and trench upon their rights of conscience. That we have hitherto suffered our laws to be so interpreted and administered as to violate their religious freedom and trench upon their rights of conscience I shall make plain beyond peradventure. I shall show that Mr. Taylor is entirely right in anticipating that he and his fellow-believers will be forced to become the champions of civil and religious liberty in this country if there is not a change of policy; that this is not an attitude in which they will affect to stand for the purpose of enacting the part of pretended martyrs, but that it is one in which they will inevitably be placed if we go on as we have begun, and that at the same time there is no necessity for such an issue.

The following passage from the report of Governor West calls for a somewhat extended comment:

"The all-absorbing question in this Territory, dominating all others, horribly affecting its prosperity, impeding its advancement, and disturbing the quiet and happiness of its people, and the one question of the utmost concern and solicitude to the whole country, is the attitude of defiance assumed and maintained by the Mormon people, who probably are five-sixths of the whole population, to the law of Congress for the suppression of polygamy, known as the 'Edmunds law.' In all questions affecting the Mormon Church and people, the polygamous and monogamous Mormons make common cause, stand together, and are united. They maintain publicly through their leaders and teachers, in their houses of worship, through their press and privately in social and business circles, that the law is unjust, an interference with and a denial to them of that religious freedom guaranteed to all by the Constitution; of their right and religious duty to continue in violation of the law their polygamous relations, and they deny the authority of Congress to regulate and interpose any restrictions as to their marital relations; that the obedience which they owe and will cheerfully render to a power higher than any earthly power compels them to exercise their religious rights and privileges in the place of and in violation of the law; that they are prepared to, and will if required of them, sacrifice their personal comfort, their property, suffer indefinite imprisonment, and surrender life itself rather than yield and promise obedience to the law and forego the privileges they claim. The Government can have and hold but one position towards this people, which is of easy statement: Its authority must be respected, its laws must be obeyed."

I have italicized some of the language of this sweeping statement in order to direct attention specially to some of its charges. The very serious indictment which the Governor brings against 150,000 people contains the following charges:

1. That the Mormon people, five-sixths of the whole population of Utah, are in "an attitude of defiance" to a statute of the United States passed "for the suppression of Polygamy."
2. That they maintain everywhere and at all times that this law is "unjust," "an interference with and a denial to them of that religious freedom guaranteed to all by the Constitution."
3. That "they deny the authority of Congress to regulate and interpose any restrictions as to the marital relations."
4. That they set up their convictions of a law higher and more sacred than human law as the ground for refusing to promise obedience to the law of the land and for suffering imprisonment and even death itself rather than forego "the privileges [which] they claim."

I deny the justice [and truth] of this accusation in every one of its specifications. I repel the charge that the Mormons are in an attitude of defiance to the law for the suppression of polygamy. I deny that they are believers in the Higher Law as a source from which they can claim peculiar "privileges" or immunity from the consequences of what is made an offense by the law of the land. I shall now proceed to prove that the Governor has, unintentionally, no doubt, misrepresented them; that his misrepresentation is a consequence of his having overlooked the distinction between what they admit the civil power can and what they claim it cannot require of them.

GOVERNOR WEST'S REPORT—THE  
PROMISE BUSINESS.

In order to make this clear, I must now quote two other paragraphs from his report which follow immediately after that above given:

"In the year 1884 a determined move was inaugurated for the enforcement of the law against polygamy, and since that time the Territorial officers of Federal appointment charged with the duty have been and continue vigilant and diligent in their efforts to that end. The district and supreme courts have been open and promptly disposing of business before them. While vigor has