

## THE UTAH BILL IN THE SENATE.

## SPEECH OF SENATOR CALL.

Mr. Call. Mr. President, I am opposed to the amendment of the Senator from Missouri and in favor of striking out this section of the bill. I am opposed to it for the same reason that I am opposed to this bill, and I will take this occasion to submit a very few observations that I desire to put upon the record in regard to the bill itself.

As I understand the Constitution of the United States and our form of government, it is a government of personal rights, a government of religious freedom of opinion and action, and a government founded upon the principle of local self-government in all respects not confided expressly or by necessary implication to the National Government. At all times the right of legislation upon those things that concern the family relation, that concern the home, the security of the individual, the security of their houses and of private property, has been conceded to be within the province of local self-government. The distinction of the State governments means no more under our Constitution with all the sovereign right of legislation in regard to those things which concern local self-government, namely, freedom of religious thought and action, freedom of speech and freedom of the press, the right of personal security and private property.

It can not be questioned that this principle of local self-government is an underlying and fundamental principle of all our institutions, and that there is no power conceded to the National Government to take it away from any portion of the people, for it would be a strange rule of interpretation either of an agreement or a constitution that it should be so interpreted as to destroy the leading and essential objects for which it was created. Therefore the incidental power committed to Congress to make needful rules and regulations for the Territories has been more than once adjudicated by the highest tribunal of the country not to give the power to Congress to interfere with the individual and personal rights guaranteed by the Constitution to individuals in the Territories.

It is apparent, therefore, that there is no power in this Government, no rightful power to interfere with any of those personal rights, and that the power of local self-government except in those respects in which it is necessary to assert some constitutional provision, some necessary power of the National Government in the Territories, by analogy should be as it always has been, and as it now is excepting only this bill, or the Edmunds act confided to the people of the Territories.

Now, sir, I am opposed to interfering with this principle of self-government, because it is the foundation of our institutions. There is no prescription in the Constitution that the people of any particular locality are alone fitted for government, and that the right to control their domestic institutions shall belong to them and not to others, but, on the contrary, the principle of our form of government is the capacity of the people for self-government; and whatever legislation shall deny the capacity of the people for self-government is a denial of the principles of the Constitution and an insertion that our political institutions are placed on a false foundation. The District of Columbia and the places ceded by the States of the United States are the only territory over which the Constitution confers on the United States the exclusive power of government, and there it can not be doubted that the powers of government must be exercised subject to the fundamental principles of civil and religious liberty guaranteed by the Constitution to all citizens of the United States.

We propose by this amendment to take away from the people of the Territories the right to legislate through their Territorial Legislature in regard to their own local and personal interests and institutions. Having invested them with this power, we now propose to deprive them of it and to invest the entire power of government over them not in Congress, not in President, but in Commissioners. We have already taken away from all the women of that Territory and leave it to the women of other Territories. Without expressing any opinion on the subject of woman suffrage. I regard this legislation as entirely wrong.

Mr. Farley. That is the original bill.

Mr. Call. What does the Senator mean by that?

Mr. Farley. The original bill takes female suffrage away in Utah.

Mr. Call. The Senator refers, I suppose, to the act of 1882, known as the Edmunds bill. That right having been acquired by them under the original act, we now propose to take it away from them. Whether it was given by an act of Congress or whether it was given by an act of the Territorial Legislature, it has been accepted by them and acted upon by them, and it therefore now derives precisely the same force as if it had originally enacted by them. If they desire to have it done away with and you are acting upon any petition of the women of Utah, that is another question.

But Congress is now asserting practically, in whatever form it may be, the right to speak for them, to control the suffrage against the wishes of the people of the Territory, to disfranchise a part because of their form of religion and to enfranchise another part be-

cause of their form of religion; and the bill as it stands has precisely this effect, and the amendment of the Senator from Missouri extends this disfranchisement of women to all the Territories and the District of Columbia, without reference to the will of the people in these Territories. The conditions of suffrage belong to the States, and if the people of a Territory wish to prescribe the conditions of suffrage for themselves, so long as it is consistent with republican government I can see no reason why Congress should interfere.

I am opposed to this entire bill, and I am opposed to it because it is an attack upon the principles of the Christian religion; because it ignores and denies the power of our system of civilization and of morals to overcome error, whether secular or religious; because it proposes to revive the practices of the Dark Ages, and to substitute for the freedom of the press, for the power of religious thought, for the teaching of the gospel the sword of civil justice, the power of the secular arm, the force of criminal law to punish thought and create opinions by law. That has been tried in all times. The history of the world is full of it and full of its lamentable failures. It is a proposition to substitute for all the instrumentalities of our free civilization the power of the State, the punitive power of criminal law, the confiscatory power of the law, and it proposes to do it not only in defiance of the principles of our Constitution, but of the very letter of the Constitution.

I am opposed to this bill because it asserts and assumes the principle that it is competent and lawful for Congress to prescribe in the form of law that the citizen of a Territory shall live in polygamy or shall not live in polygamy, and I assert it to be a logical proposition that if Congress has the power to prescribe the condition of social life it may prescribe either polygamy or monogamy. Now, I will go to any length or to any extent within the limit of our constitutional power in the punishment of polygamy as an offense against the social order of a community—a Territory. I make no complaint of that. But I would myself vote in analogy to the laws of the States and to the general current of public opinion of this country, that in the organization of a Territory its law should make polygamy a criminal offense and making war upon the opinions, upon the belief, upon the religious sentiments of a people.

While I would not prescribe as the cardinal law of that Territory, until it had become a State, that its system of social life should be in conformity to that which prevails throughout this country, to the social order of the States; while I would indict and punish offenders against the law, I would not seek as this bill does to make war upon the opinion, upon a sect, upon a religion; for Senators may discriminate as they please, but the fact is broadly prominent that when our Constitution was adopted providing that there should be no law respecting any establishment of religion nor any act of Congress prohibiting the free exercise thereof, the Mohammedan religion prevailed over a great part of the world. It had been a power well known throughout all Europe for hundreds of years; and the Mohammedan religion was a polygamous religion. It was known to the founders of our Constitution that as between the Christian and the other religions of the earth the doctrine of monogamy and polygamy were contradicting features, that while the one, monogamy, characterized our order of social life, the other has had as its essential characteristic the contrary, or polygamy. Therefore it can not be supposed that the founders of this Government and the makers of this Constitution in using the term "religion" did not contemplate it in the broad sense as the opinion or belief which men had in regard to divine or supernatural powers and the "exercise of religion" as the mode of life, the observances which they believed were necessary or proper in the observance of that religion.

It can not be assumed, therefore, that in making this Constitution and using the term "religion" and the "free exercise thereof" the founders of the Government did not intend to forbid Congress from legislating upon that subject. It is equally manifest that it was intended to refer to the States the power to prescribe the social relations, the domestic relations of the people, and the order of social life, and however sovereign may be the powers of Congress to make "needful rules and regulations over the territory of the United States," it has never contemplated that these should concern the form or religious belief or actions of the people, or should deny to them the principles on which the Constitution is formed, and while, therefore, from the necessity of the case Congress must legislate on the organic law of a Territory, prescribing the condition of the social order and may prescribe that polygamy shall be a crime, they have no right to deprive the people of that Territory of the right of self-government in order that it may be punished.

An now, sir, what have we here? We have not a bill proposing to punish polygamy as an offense against social order, but we have a bill proposing to destroy a sect because it believes and teaches polygamy. We have an enactment proposing to destroy a religious sect, because, as the act and the precedent act known as the Edmunds bill affirm, they are the teachers of polygamy. Now, let us see, Mr. President.

SEC. 10. That the laws enacted by the

Legislative Assembly of the Territory of Utah conferring jurisdiction upon probate courts, or the judges thereof or any of them, in said Territory, other than in respect of the estates of deceased persons and in respect of the guardianship of the persons and property of infants, and in respect of the persons and property of persons not of sound mind, are hereby disapproved and annulled.

SEC. 10. That the laws enacted by the Legislative Assembly of the Territory of Utah which provide for or recognize the capacity of illegitimate children to inherit or to be entitled to any distributive share in the estate of the father of such illegitimate child are hereby disapproved, and annulled; and no illegitimate child shall hereafter be entitled to inherit from his or her father or to receive any distributive share in the estate of his or her father.

SEC. 12. That the acts of the Legislative Assembly of Utah incorporating, continuing, or providing for the corporation known as the Church of Jesus Christ of Latter-Day Saints, and the ordinance of the so-called general assembly of the State of Deseret incorporating the Church of Jesus Christ of Latter-Day Saints, so far as the same may now have legal force and validity, are hereby disapproved and annulled, so far as the same may preclude the appointment by the United States of certain trustees of said corporation as is hereinafter provided.

Here is a direct enactment respecting "an establishment of religion," intended to "prohibit the free exercise thereof," not to punish the act of polygamy, but to punish and destroy a sect. It is a bill to make war upon opinion, a bill to create opinion by act of Congress, to declare by law what religion shall be and what it shall not be. If this Congress may declare that this, that, or the other form of religion is not true religion, it is equally competent for the next Congress to declare that the Presbyterian religion, the Protestant religion, the Baptist religion, the Methodist religion is not true religion, or that the Catholic religion is not true religion. It may prescribe upon the logic and the authority of this bill in every Territory and in the District of Columbia, and so far as the power of this Government extends, what is and what is not religion, and declare that to be religion which Congress shall declare to be so, for it can not be denied that this bill is not a bill to punish polygamy, but it is a bill to destroy a particular sect, a bill to destroy certain opinions, a bill to revive the practice of the Dark Ages and to bring the power of the secular arm of the state to affect public opinion and change that opinion which we say and believe is not a correct religious opinion.

But Mr. President, the bill does not stop there. Under the pretense of confiscating the property of corporations in excess of \$50,000, prescribed in the organic law of the land, what does it do? The great hierarchy of the Catholic Church, with her vast power for good, with her vast institutions of practical charity, with her great conservative influence which she possesses and which she is exercising for the welfare of mankind, possesses a hundred times the property of this corporation, throughout all the States, in the Territories, and in the District of Columbia, while the great Protestant organization, contributing so much to the civilization of the world and upholding its great charities, possess a hundred times the property of this corporation in the Territories and in the District of Columbia, and it is held by their trustees and by individuals for them. Under the pretense of destroying the property of corporations in excess of \$50,000 in the Territory of Utah, the bill provides for the confiscation of the religious property of the Mormons, and leaves the other untouched. And it provides that the United States shall appoint trustees for the remainder of the property of the Mormon Church; and the people of this religion shall have no control over their own property—their own churches, their own houses of worship. What is the reason for this discrimination? Can it be denied that it is because Congress says we have decided that the Mormon religion is a false religion, and teaches polygamy, and our people are opposed to its teachings; and therefore we declare it to be a false religion; and will proscribe it and persecute and punish its adherents, and extirpate it by law?

Mr. Brown. Will the Senator from Florida allow me to interrupt him a moment?

Mr. Call. Certainly.

Mr. Brown. I will state to the Senator from Florida in that connection that I find by looking to the public statutes of Massachusetts that they permit the holding of church buildings by the Catholic Church, no matter how valuable they are; there is no limit; and then each parish may own \$100,000 of property besides.

Mr. Call. I say it is manifest that the purpose of this bill is not an honest attempt to deprive corporations of property in excess of \$50,000, but its purpose is to destroy the Mormon religion, the Mormon Church, the Mormon faith.

Now, sir, I am opposed to the bill, first, because it is an effort to establish a form of religious belief by act of Congress; second, because it is violative of the great and essential principle of all our civil institutions, Federal and state, that is, freedom of thought, freedom of religious opinion; because it substitutes an inferior power for the Divine power, for the religion of Christ, the power of the law; the state in the establishment of religion; of social order to take the place of the Catholics, the Baptists, the Methodists, the Presbyterians, to take the place of the influences of every religion, because it is violating the very civilization upon which this Government rests and its underlying principles.

Now, Mr. President, this bill proposes to confiscate and take away the property of this sect, this church, this body of men professing religious opinions, however erroneous, however idolatrous, however pagan they may be (and as a Christian I am opposed to it as much and as far as others), because of their opinions, and to apply it arbitrarily to public schools, without their consent and without just compensation to them, on the pretense that the act of 1862 provided that real estate in excess of \$50,000 held by any religious corporation should escheat and be forfeited to the United States—real estate held by any religious corporation in this Territory over and above \$50,000. If it be the policy of the law that no corporation shall own more than \$50,000 in real estate, and it is intended merely to enforce this, why is it necessary to deprive them of that property? Why not require them to sell their property in excess of \$50,000 and convert it into something other than real estate and apply the money to other uses? Can it be denied that this is confiscation, without trial, without fault, on the ground of an alleged public policy, but in fact a law respecting an establishment of religion and for the purpose of "prohibiting the free exercise of such religion?" Can it be denied that this is taking private property, not for a public use, but without a public use and without any compensation?

It can not be denied that this confiscation of the property of this religious sect, this spiritual hierarchy as it is called, because they teach certain objectionable and dangerous opinions as we think, is intended to extirpate them as a sect. That is the object; it is an open and undisguised war upon an establishment of religion; it is an attempt to create opinion by law; it is an attempt to substitute the secular arm of the state for the instrumentalities of Christ, who said unto Peter, according to the Gospel of Saint Matthew, "Put up again thy sword into his place; for all they that take the sword shall perish with the sword. Thinkest thou that I can not now pray to my Father, and He shall presently give me more than twelve legions of angels." And from that day to this there has been no moral reform, there has been no triumph of Christianity, there has been no progress of civilization, there has been no permanent establishment of the monogamic order of life in the place of polygamy except by the power of the ministry, of moral persuasion, of intellectual progress, of the priest, of the press, the preacher, the teacher, the scientist, and yet we are asked in this bill to disregard entirely these ministries, to return to the practices of the Dark Ages, and to attempt to substitute the power of legislation and confiscatory punitive enactment to suppress an error of opinion, an error of belief, a superstition. Sir, I think that this bill is utterly indefensible. I think it is a perpetuation of polygamy.

I desire before closing the brief remarks which I have made to submit a few quotations from the early history of the Christian religion, of the monogamic order of life on this subject. I read from Gibbon's Decline and Fall of the Roman Empire a history of this same enactment, the same bill we have now before us, this same policy of bringing the secular arm of the state to advance the purposes of religion, the same policy of punitive and confiscatory laws, it matters not whether it is by blood or lesser penalties, the same principle of teaching religion and morality and good order by suppressing particular sects who entertain certain opinions, the same public policy of subjugating human thought and will and religious opinion by punitive enactments, of declaring by law what is and what is not religion, and what men shall and shall not believe by either the direct precepts of the law or its indirect effect. I read Gibbon's Decline and Fall of the Roman Empire. Speaking of the reign of Justinian, the historian says:

The Samaritans of Palestine were a motley race, an ambiguous sect, rejected as Jews by the Pagans, by the Jews as schismatics, and by the Christians as idolaters. The \* \* \* cross had already been planted on their holy mount of Garizim, but the persecution of Justinian offered only the alternative of baptism or rebellion. They chose the latter; under the standard of a desperate leader they rose in arms and retaliated their wrongs on the lives, the property and the temples of a defenceless people. The Samaritans were finally subdued by the regular forces of the East; 20,000 were slain, 20,000 were sold by the Arabs to the infidels of Persia and India, and the remains of that unhappy nation atoned for the crime of treason by the sin of hypocrisy. It has been computed that 100,000 Roman subjects were extirpated in the Samaritan war, which converted the once fruitful province into a desolate and smoking wilderness. But in the creed of Justinian, the guilt of murder could not be applied to the slaughter of unbelievers; and he piously labored to establish with fire and sword the unity of the Christian faith.

But yet we see, Mr. President, that from that time to this, as we shall see in another paragraph of this work, this act closed the progress of the Christian religion, prevented the establishment of the order of monogamy which we are seeking to establish, and gave that country and its races to polygamy from that day to this.

Again, in another place, the historian says:

A Jesuit, Alphonso Mendez, the Catholic patriarch of Ethiopia, accepted in the name of Urban VIII the homage and abjuration of his penitent. "I confess," said the emperor on his knees "I confess that the Pope is the vicar of Christ, the successor of St. Peter, and the sovereign of the world. To him I swear true obedience, and at his feet I offer my person and kingdom." A similar

oath was repeated by his son, his brother, the clergy, the nobles, and even the ladies of the court; the Latin patriarch was invested with honors and wealth, and his missionaries erected their churches or citadels in the most convenient stations of the empire. The Jesuits themselves deplored the fatal indiscretion of their chief, who forgot the mildness of the gospel and the policy of his order to introduce with hasty violence the liturgy of Rome and the inquisition of Portugal. He condemned the ancient practice of circumcision, which health rather than superstition had first invented in the climate of Ethiopia. A new baptism, a new ordination, was inflicted on the natives; and they trembled with horror when the most holy of the dead were torn from their graves, when the most illustrious of the living were excommunicated by a foreign priest.

In the defense of their religion and liberty, the Abyssinians rose in arms, with desperate but unsuccessful zeal. Five rebellions were extinguished in the blood of the insurgents; two abunas were slain in battle, whose legions were slaughtered in the field, or suffocated in their caverns; and neither merit, nor rank, nor sex could save from an ignominious death the enemies of Rome. But the victorious monarch was finally subdued by the constancy of the nation of his mother, of his son, and of his most faithful friends. Segued listened to the voice of pity, of reason, perhaps of fear; and he edict of liberty of conscience instantly revealed the tyranny and weakness of the Jesuits. On the death of his father, he expelled the Latin patriarch, and restored to the wishes of the nation the faith and the discipline of Egypt. The monophysite churches resounded with a song of triumph, "that the sheep of Ethiopia were now delivered from the hyenas of the West;" and the gates of that solitary land were forever shut against the arts, science, and the fanaticism of Europe.

Mr. President, history repeats itself. From that day to this—I challenge denial of the assertion—no moral reform, no religious institution, no permanent form of religious opinion has ever been maintained by the power of legislation alone. The Christian religion owes its success and the monogamic order which is the foundation of our state is the result of moral suasion, or intellectual culture, of religious teaching by the Methodists, the Baptists, the Presbyterians, and the Catholics, the preachers of all churches, the teacher and the press. It is a power of the Christian religion, as you can not enforce, you can not create opinion, whether secular or religious by law. It is treason to the principle of our Government to attempt it. It is a violation of all the traditions of our history. It is a wrong to that freedom of opinion of speech and of the press and of thought which is the efficient cause of our great progress and which after an eventful struggle of many centuries, between the social order of monogamy which has been developed under the law of Christian polygamy under the Mohammedan Oriental life, has given in these later centuries signal triumph to our civilization, our relation of one wife and one husband, and made it the foundation of the social order of the great nations of the world.

Mr. President, if I had the power, legislation upon this subject I would enforce by such punitive laws as are customary and within the scope of our Constitution the punishment of offenses against the established social order of polygamous marriage; but should carefully endeavor not to make war upon a sect, upon an opinion. I should send the preachers of the Christian Church to combat and overcome it. I should send the gospel of Christ there, with His great commission, "Go ye into all the world and preach the gospel to every creature; and if this thing be not within the power of Christ's religion, if it can not be assailed by the influences of civilization, if it is stronger than that there is no power in confiscating or punitive laws that can destroy it. But sir, I have an abiding faith in the power of the Christian religion. Its triumphs have been for 1,800 years, and they have ever been when its followers adhered to the doctrine of the Savior: "He who takes the sword shall perish by the sword."

It is philosophically true that freedom of thought, freedom of the press, religious teaching, that charity which covereth a multitude of faults, can not come in contact with uneconomical laws, with uneconomical institutions with error of opinion, religious or secular, without triumphing over them, and we need not destroy the principles of a government of over 50,000,000 people and substitute the principles and practices of the Dark Ages because a few misguided people in the Territory of Utah are following upon the old and forbidden paths of centuries ago. We need not refuse to acknowledge the facts which these statistics disclose: the absence of crime, their sobriety, their contentedness, their wonderful industrial success, the excellence of their public schools; the absence of prostitution as it exist in our great cities; the innocence of children, and the absence of poverty and want. However great may be our detestation of polygamy, let us recognize the power of a Christian civilization to overcome it by the aid of these very virtues which even in a polygamous community are possible only because of the light and influence of our Christian civilization, and which will surely make polygamy disappear in the further development of these people under the influence of a public opinion and a public policy adverse to it, unless we unwisely give to it the force and energy which persecution and severe laws will create.

Sir, the Mohammedan religion, which for five hundred years seemed to be upon the very verge of overcoming Christianity with fire and sword and a development of human intellect inferior to no nation of that time or