

## MINORITY REPORT

## OF THE UTAH COMMISSION.

Existing Laws Declared Sufficient.

## NO MORE LEGISLATION NEEDED

SOME FACTS IGNORED BY THE SIGNERS OF THE MAJORITY REPORT.

St. Louis, Mo., Sept. 29th, 1887.

SIR:

Concurring in part in the majority report of our associates, but dissenting from it in other parts, particularly as regards its general animus and tone and the propriety of introducing a theological discussion into a secular document, we deem it advisable, in order to a clear and distinct expression of our views, to submit this, our separate report.

Omitting the details of the commission's mode of procedure, which have been heretofore set forth, we proceed at once to such matters as are more interesting to the government and the public.

At the election held on the 3rd of November last for delegate to the 50th Congress, John T. Caine (Mormon) was elected by the following vote: Caine 19,605; William M. Ferry 2,810; William H. Dixon 34; scattering 34; total 22,483. At this election the women voted under the territorial law, which has since been repealed by Congress (March 3, 1887.)

Early in February of the present year the commission reassembled in Salt Lake City and prepared for certain municipal elections to be held in the spring.

The supplemental act of March 3, 1887, materially changed the law as to the qualifications of voters and officeholders; and the commission in pursuance of our former usage in like cases issued a "circular for the information of registration officers," which was transmitted to them throughout the Territory, the qualifications of voters being thus set forth:

"I. No polygamist, bigamist, or any person cohabiting with more than one woman, shall be entitled to register or vote at any election in this Territory; nor any person who has been convicted of the crime of incest, unlawful cohabitation, adultery, fornication, bigamy, or polygamy; nor any person who associates or cohabits polygamously with persons of the other sex; nor can any person register or vote who has not taken and subscribed the oath prescribed by the Twenty-fourth Section of the Act of Congress of March 3, 1887; nor can any woman register or vote.

"The Commission is of the opinion that the above specifications include all the disabilities to which electors are subject under the laws of Congress, and that no opinions which they may entertain upon questions of religion or church polity should be the subject of inquiry or exclusion of any elector."

The oath proposed as a condition for the registration of voters—following the language of the act of Congress as closely as possible, was formulated as follows:

Territory of Utah.

County of \_\_\_\_\_

I, \_\_\_\_\_ being duly sworn (or affirmed) depose and say that I am over twenty-one years of age; that I have resided in the Territory of Utah for six months last passed, and in this precinct for one month immediately preceding the date hereof; and that I am a native-born (or naturalized, as the case may be) citizen of the United States; that my full name is \_\_\_\_\_ that I am \_\_\_\_\_ years of age; that my place of business is \_\_\_\_\_ that I am a [single or] married man; that the name of my lawful wife is \_\_\_\_\_ and that I will support the constitution of the United States, and will faithfully obey the laws thereof, and especially will obey the Act of Congress approved March 22, 1882, entitled: "An Act to amend Section 555 of the Revised Statutes of the United States in reference to bigamy and for other purposes," approved March 22nd, 1882," in respect of the crimes in said act defined and forbidden, and that I will not, directly or indirectly, aid or abet, counsel or advise any other person to commit any of said crimes defined by Acts of Congress, as polygamy, bigamy, unlawful cohabitation, incest, adultery and fornication.

Although the person applying to have his name registered as a voter may have made the foregoing oath, yet if the registrar shall, for reasonable or probable cause, believe that the applicant is, in fact, a bigamist, polygamist or living in unlawful cohabitation, or a cohabiting or cohabiting polygamously with persons of the other sex, or has been convicted of bigamy, polygamy, unlawful cohabitation, incest, adultery or fornication, in our opinion, the registrar may require the applicant to make the following additional affidavit:

Territory of Utah.

County of \_\_\_\_\_

I, \_\_\_\_\_ further swear (or affirm) that I am not a bigamist, polygamist, or living in unlawful cohabitation, or associating or cohabiting polygamously with persons of the other sex; and that I have not been convicted of the crime of bigamy, polygamy, unlawful cohabitation, incest, adultery or fornication.

Soon after the passage of the Act of March 3, it was a common belief among the Gentiles that the Mormons, generally, would not take the oath; but it soon became apparent that there was a general disposition among them to take

it. Thereupon the commission was waited on by a committee representing the "Liberals" or "Gentiles," requesting a modification of the oath by interpolating certain expletives and amplifications. The commission unanimously declined to accede to this request, for the reasons assigned in a written communication. [See Appendix, I.]

Quite a number of the Mormons, as well as the non-Mormon declined to take the oath; the latter, as we were officially informed, objecting to the clause concerning adultery and fornication.

The general result of the election of August 1st may be stated as follows: Of the 36 members of the Legislative Assembly, the Mormons elected 31, and the Gentiles 5. Of the territorial, county and precinct officers, a large majority of those elected are Mormons, none of whom, however, are living in polygamy.

In former official reports the commission several times expressed the opinion that the laws of Congress, in connection with other influences, were "setting strongly in the direction of reform" in Utah; and that at no distant day "this relic of Asiatic barbarism (polygamy) would be swept from the land." We have predicted from the beginning, that the legal discrimination in favor of the monogamous Mormons against the polygamists would sooner or later be attended with good results. Early in the present year we thought we discerned a disposition among the Mormons to give up the practice of polygamy; and we wish to add that we have used our official and personal influence to induce the Mormons to take such a step.

Early in June of the present year, we were gratified to learn that a general movement for the abrogation of polygamy was taking an organized form. The central committee of the "People's (Mormon) Party" published a call in the newspapers for mass meetings of the legal voters to be held in all the counties of the Territory, to select delegates to a convention to be held in Salt Lake City, June 30, 1887, for the purpose of adopting a State Constitution, and inviting all parties in the Territory to participate in those meetings. The other political parties in the Territory declined to participate in the movement.

The convention, with delegates from all or nearly all the counties in the Territory, met at the time and place designated and remained in session over a week. During their session the commission received a communication from them requesting us to take charge of the election for the adoption or rejection of the proposed constitution by the legal voters, at the general election to be held August 1st.

The commission responded by disclaiming any express legal authority to take any official action in the premises, "but considering the facts as represented, that said proposed constitution would contain a prohibition of the institution and practice of polygamy as well as a prohibition of the union of church and state—the suppression of polygamy being contemplated by the acts of Congress under which the commission is acting," we expressed a willingness "to recommend to the judges of election that they might receive all the ballots which should be cast by the qualified voters on said proposition, and deposit the same in separate boxes to be provided by the convention; and to canvass and make return of the same to such authority as the convention should provide."

This recommendation was printed in the form of a resolution and sent by the commission to the judges of election throughout the Territory, prefaced with the following preamble:

"Whereas, The prohibition of polygamy is the paramount object of the special legislation of Congress as applicable to Utah, we are of the opinion that when the great body of the legal voters of the Territory manifest a disposition to place themselves on record against polygamy, in whatsoever informal manner, they ought to be encouraged therein, the object of the government being not to destroy but to reform the Mormon people."

The convention concluded not to furnish the separate ballot boxes, but to rely on the judges of election, or some of them, to count the votes and make return of the election on the adoption or rejection of the proposed constitution. This was done in nearly all the voting precincts, and the result was:

For the constitution ..... 18,195 votes  
Against the constitution ..... 504 votes

But few of the Gentiles voted on this proposition, and of the 504 negative votes probably about one half were cast by Mormons. The total vote for members of the Legislative Assembly was about 16,500, of which the Gentiles cast about 3,500, so it appears that about 85 per cent. of the Mormon voters cast their ballots for the constitution.

In this connection, we wish to state that, in such action as the commission has taken in regard to the vote on this question, we expressly disclaim any purpose of interfering in the question of Statehood for Utah. But certainly, whether that Territory shall be admitted early, late, or never, a strong advanced position is gained, when the great mass of the people are induced, either in a regular or informal and unusual manner, to place themselves on record in opposition to polygamy.

The provisions of the proposed constitution of the "State of Utah" upon the question under consideration, are the following:

Section 3 [of Article I] There shall be no union of church and state, nor shall any church dominate the state."

Sec. 12 [of Art. XV.] Bigamy and poly-

gamy being considered incompatible with a "republican form of government," each of them is hereby forbidden and declared a misdemeanor.

Any person who shall violate this section shall, on conviction in the court, be punished by a fine of not more than one thousand dollars and imprisonment for a term of not less than six months nor more than three years, in the discretion of the court. This section shall be construed as operative without the aid of legislation, and the offenses prohibited by this section shall not be barred by any statute of limitation within three years after the commission of the offense; nor shall the power of pardon extend thereto until such pardon shall be approved by the President of the United States.

Art. XVI.—AMENDMENTS. Sec. 1. Any amendment or amendments to this constitution, if agreed to by a majority of all the members elected to each of the two houses of the legislature, shall be entered on their respective journals, with the yeas and nays taken thereon, and referred to the legislature then next to be elected, and shall be published for three months next preceding the time of such election, and if, in the legislature then elected as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the legislature to submit such proposed amendment or amendments to the people, in such manner and at such time as the legislature shall prescribe, and if the people shall approve and ratify such amendment or amendments, by a majority of the qualified electors voting thereon, such amendment or amendments shall become a part of the constitution. Provided, That Section 12 of Article XV shall not be amended, revised, or in any way changed, until any amendment, revision, or change as proposed therein shall, in addition to the requirements of the provisions of this article, be reported to the Congress of the United States and shall be by Congress approved and ratified, and such approval and ratification be proclaimed by the President of the United States, and if not so ratified and proclaimed said section shall remain perpetual.

Many of the Gentiles in Utah claim that this anti-polygamy movement among the Mormons is "all a sham." But we do not think so. After careful and impartial investigation and consideration, our conclusion is, that, whatever may be their motives, and whether they are influenced by choice or necessity, the generality of the monogamous Mormons (who are more than three-fourths of the Mormon population) have deliberately and wisely resolved that their highest earthly interests, the prosperity and happiness of themselves and their posterity, and the avoidance of the odium which attaches to them throughout the civilized world, demand that polygamy shall be abolished.

The Mormons have been led to believe that if the practice of polygamy shall actually and in good faith be abolished, Congress will no further pursue them with hostile legislation, and that their religious faith will not be the subject of legal animadversion or discrimination. If the premises are granted, (namely, the bona fide abrogation of polygamy) their conclusion is impregnable upon well settled principles and precedents.

The Supreme Court of the United States has declared that "Laws are made for the government of actions, and while they cannot interfere with mere religious belief," they may with practices. Congress cannot pass a law for the government of the territories which shall prohibit the free exercise of religion. The first amendment to the constitution expressly forbids such legislation. Religious freedom is guaranteed everywhere throughout the United States so far as Congressional interference is concerned. [8 Otto, 145]

Madison says sententiously: "Religion, or the duty we owe to the Creator, is not within the province of civil government."

Jefferson says: "Believing that religion is a matter which lies solely between man and his God; and that he owes account to none other for his faith or his worship; that the legislative powers of the government reach actions only and not opinions, I contemplate with solemn reverence that act of the whole American people which declares that their legislature should make no law respecting an establishment of religion or prohibiting the free exercise thereof." [8 Jefferson's Works, 113]

Upon the passage of the Act of March 3, 1887, similar views were expressed by distinguished senators from Vermont and Kansas.

Acting upon these fundamental canons, and in accordance with the acts of Congress, the commission has from time to time, in official reports and otherwise, assured the Mormon people that the government of the United States had no design to coerce them concerning their church membership or their religious opinions; and that all that was required, and all that could rightfully be required, was, that they should come within the laws and abandon the practice of polygamy. For example, in the commission's first annual report, of November 17, 1882, it said: "the legislation of Congress as we understand it is not enacted against the religion of any portion of the people of this territory. The law under which we are acting is directed against the crime of polygamy."

In its report of October 30, 1883, it said that "by abstaining from the polygamic relation, they [the Mormons] will enjoy all the political rights of American citizens."

In its last annual report (Sep. 21, 1886) the following language was employed: "We recognize the obligation of the government of the United States to protect the personal and property rights of the Mormon people and to deal with them as equals before the law, yet it is equally the duty of the government to punish crime."

In its "circular for the information of registration officers," issued in March,

1887, after enumerating all the disqualifications of voters under the law, it added: "that no opinions which they (the Mormons) may entertain upon questions of religion or church polity should be the subject of inquiry or exclusion from the polls;" and the Edmunds act of 1882 declares that no person shall be excluded from the polls on account of any opinion he may entertain on the subject of polygamy or bigamy if he is otherwise eligible to vote.

Having received information that some of the registration officers were disregarding the principle thus settled and repeatedly announced, they were promptly removed from office by the unanimous vote of all the members of the commission.

After such assurances have been held out to the Mormon people by the Supreme Court of the United States, by those eminent statesmen who championed the anti-polygamy legislation in Congress, and by the commission, representing no party or faction, but the government of the United States; now, while the great mass of the Mormon people are making an effort for the abandonment of the practice of polygamy, we are asked to recommend further legislation of a hostile and aggressive character, almost if not entirely destructive of local self-government, thereby inflicting punishment on the innocent as well as the guilty. Our answer is, we cannot do so; we decline to advise Congress to inflict punishment by disfranchising any portion of the people of Utah on account of their religious or irreligious opinions.

In Utah there are persons of multirious religious creeds, some with no religious belief at all. Some prominent and enterprising citizens believe in the revelations of the Old Testament and reject those recorded in the New; while a large majority of the people of the Territory profess a belief in the Old Testament, the New Testament and diverse modern "revelations" besides. Those who accept the revelations of the Bible are divided into many separate church organizations by reason of diverse interpretations. Then, in the close of the most enlightened century in the tide of time, shall we invoke legal coercion over the consciences of men and resort to the pains and penalties inflicted in former times for recalcancy, non-conformity, apostasy and heresy?

In this age the world moves; and even religious fanatics must keep pace with progress. The Utah of to-day is not, and never can be again, what it was when Brigham Young, as prophet, seer and revelator, dominated over his devoted followers, isolated from all the world, in the secluded valleys of the Rocky Mountains; nor, in our opinion, can that fading and dissolving spectre of the past be justly or properly invoked as an excitant to legislation proscriptive of religious opinion. The railroad and the telegraph, free speech and a free press, are there now. Schools and colleges and churches of many denominations are found in all parts of the Territory. The people are no longer isolated, but are now in communication with all the world; and Salt Lake City is one of the most cosmopolitan places on the continent, a resort for tourists, savants, statesmen and scholars from abroad. Under such circumstances it is not morally impossible that Utah shall ever again become subject to that church domination and oppression which are now imputed, by some persons, as an existing reality against the "Mormon hierarchy."

Churches and creeds are subject to the laws of evolution, and Mormonism must yield to the inexorable logic of civilization. Polygamists must go, and its abrogation will sooner or later be an accomplished fact. Other objectionable features are gradually giving way; and we are thoroughly satisfied that whatever the federal authorities can rightfully accomplish in the way of reform can be done without resorting to the total overthrow of local self-government.

Polygamous marriages in Utah are becoming less frequent, as will hereinafter be shown. No polygamist votes, holds office or sits on a jury. The mass of the Mormons have taken the test oath and voted against polygamy. The conclusion is that the present laws of Congress are working successfully, that there is no necessity of resorting to un-American plans of government, and that if, as we apprehend, the object of the government is to reform and not to destroy the Mormon people, they should be encouraged and not spurned in their efforts for the abrogation of polygamy and for reform.

During the last two years and a half, there has been no relaxation in the enforcement of the laws for the suppression of polygamy. During that period there have been about three hundred convictions to the Penitentiary for offenses against those laws, which, notwithstanding the signs of reform, should continue to be enforced against all persons violating them; no step backward should be tolerated; at the same time the innocent should be protected.

In a larger view, polygamy is adjudged by the most enlightened nations to be a manifold evil. It is the parent of caprice, cruelty and license. It enervates the male and degrades the female. Socially, politically and physically, it is corrupting and deteriorating. Despotism in the family, it is the prototype of despotism in the government. It largely accounts for the differing characteristic of the Asiatic and European; for the indolence and feebleness of the one, and the energy and enterprise of the other. Inferiority

is its badge. In the armed contests of rival civilizations, alike in ancient Greece and modern India, it encumbered to the superiority of monogamy. Is it at variance with the divine economy in that, originally God created but one man and one woman, Adam and Eve, each as the only partner in wedlock of the other. Logically and as a consequence, it is irreconcilable to the idea of the marriage covenant as practiced and revered by the masterful Teuton, Celt and Anglo-Saxon. That covenant runs in these comprehensive and searching words:

"Wilt thou have this woman to be thy wedded wife, to live together after God's ordinance in the holy estate of matrimony? Wilt thou love her, comfort her, honor her, and keep her in sickness and health; and forsaking all others keep thee unto her, so long as ye both shall live?"

Recognizing polygamy to be an evil and a bane, Congress has, from time to time, enacted laws to eradicate it from Utah. One of them, known as the "Edmunds law," approved March 22d, 1882, "re-enacted and extended the provisions of those of earlier date. It declares polygamy a crime, defines the same and punishes its commission by a fine not exceeding \$500, and imprisonment not exceeding five years; declares cohabitation by the man with more than one woman a misdemeanor, punishable by fine of not more than \$300, or by imprisonment for not more than six months, or by both in the discretion of the court, and allows a joinder of counts for polygamy and unlawful cohabitation in the same information or indictment;

Disqualifies any person from serving as a juror in any prosecution for polygamy or unlawful cohabitation who is, or has been, living in the practice of bigamy, polygamy or unlawful cohabitation with more than one woman, or who believes it right for a man to have more than one living and undivorced wife at the same time, or who believes it right to live in the practice of cohabitation with more than one woman, upon his being challenged for any such cause;

Authorizes the President to grant absolute or limited or conditional amnesty to offenders against any such previously enacted laws;

Legitimizes the issue of polygamous marriages solemnized according to the ceremonies of the Mormon sect, who were born before the first day of January, 1883;

Disqualifies any polygamist, or other person cohabiting with more than one woman, from voting at any election, or for election or appointment to any office or place of trust, honor or emolument.

The last law on this subject, known as the "Edmunds-Tucker Act," which took effect on the 3d day of March, 1887, is supplemental to the act of 1882, and is more comprehensive in its scope. It makes the lawful husband or wife (if consenting to testify) a competent witness in any examination, inquest or prosecution, touching the other, under a statute of the United States forbidding any of the above-named offenses, except as to communications between each other deemed confidential at common law;

Waives the original process of subpoena and authorizes an attachment for witnesses in any such criminal proceeding, upon cause shown by oath or affirmation;

Prescribes the rule determining the degrees of consanguinity, denounces incest, adultery and fornication, and prescribes the punishment therefor;

Vests the commissioners who are or may be appointed by the Supreme or District Courts in the territory, with the same powers and jurisdiction of justices of the peace in the territory, under the laws thereof; it also confers on such commissioners the same powers conferred by law on commissioners appointed by Circuit Courts of the United States;

Requires every ceremony of marriage performed in the territory to be signed by the parties thereto, and by every officer, priest or other person taking part therein; and that the same when thus authenticated shall be filed in the office of the probate court of the proper county for record, and that the record thereof shall remain subject to inspection, and enforces the requirement by inflicting fine or imprisonment or both upon any willful violation thereof;

Incapacitates every illegitimate child in the territory, to take or receive by inheritance, the estate or any part of the estate of his or her father, save such of them as shall have been born within twelve months after the passage of the act, or are legitimated by the act of 1882;

Dissolves the corporations known respectively as the "Perpetual Emigration Fund Company" and "the Church of Jesus Christ of Latter-day Saints," makes their renewal unlawful, and forfeits and escheats their property to the United States, subject to certain limitations and exceptions;

Regulates the right of dower; makes the judges of the probate courts appointable by the President, by and with the advice and consent of the Senate; abolishes female suffrage; requires the Governor, and Secretary of the Territory, together with the Utah Commission, to redistrict the same, and to apportion the representation in the Legislative Assembly according to the numbers of the people in the Territory, (exclusive of untaxed Indians and other non-citizens,) and the number of the members of the present Legislative Assembly, respectively;