given and also from Cooley on Constitutional Limitations, and the brief says:

It will be seen from the foregoing that all the authorities agree in sustaining the view that "the free exercise of religion" means more than mere opinion or belief, and that it may include "acts" and "practices" not prohibited by law. The constitutional inhibitions cited by Mr. Cooley apply as well to the legislative power of a Territory as to that of Congress, and they are both restrained within the limits of the Constitution. This Court has said: "No one, we presume, will contend that Congress can make any law in a Territory respecting the establishment of religion or the free exercise thereof." (19 How., 450.)

It will hardly be pretended that Congress could say a man should not vote in a Territory if he worshipped according to the forms and ceremonies of the Methodist Church, or those of any other church, nor because he was a member of any particular church that entertained a certain belief, nor because he held any particular opinion on religious subjects. Surely Congress could not do this without violating the provisions guaranteeing the right to the free exercise of religion. It has often been decided that Congress cannot do by indirection what it is not permitted to do directly.

This court has held that "deprivation of civil or political rights may be punishment," and if Congress should enact that a man otherwise qualified should not vote if he entertained a particular religious belief, or if he belonged to a church that entertained that belief, it would be punisnment prescribed for the purpose of coercing his action in respect of that as to which the Constitution guarantees him absolute freedom.

It is no answer to this to say that the creed or doctrines of this Church teach polygamy as a duty. It may never be practiced, notwithstanding the teachings, and if not practiced, the exclusion is only because of expressed opinion — expressed in speech or through the press—freedom as to both of which is guaranteed by the Constitution. He has a right to believe that polygamy is divinely ordained, that it was right in the patriarchal days and is no less right now; but this court says that he enjoys this right of opinion, subject to the right of the government to punish him if he puts that belief into practice. This is the extent to which you have said Congress can go and no further: If a man believes in polygamy and teaches it, or belongs to a church that teaches it, he is not to be punished or deprived of any privilege accorded to others because of that belief or teaching; he is only amenable to the law and liable to its penalties when he becomes guilty of the offense of bigamy or polygamy.

To disfranchise him when he has not committed any offence, simply because he belongs to a church that teaches bigamy and polygamy, and some of whose members practice it, is to punish him for the overt acts of other persons, over whom he could exercise no control. No one can be thus made responsible for the conduct of his associates, and to attempt it is an unwarranted exercise of arbitrary power.

We have already shown that if Congress cannot do this a Territorial legislature is equally restricted. But the Idaho act has said that a citizen who has not committed polygamy, or any other offence, and has done nothing more than to belong to the Mormon Church, which Church, as an organization, is alleged by this indictment to not ouly teach but "practice" polygamy, shall not vote or hold office.

An illustration will serve to show the vice of this enactment. It is a fact so well known that the Court may take judicial notice of it, that the vast majority of the members of this Church never were in the polygamous relation. A man who belongs to the Church and has exhibited every quality of good citizenship through a long and honorable life, finds himself disfranchised by this act, not because he has ever lived in polygamy, nor because he has committed any other offence, but solely because he belongs to this particular Church organization.

Children of monogamic parents are born in the Church and become members at an early age. A young man who has broken no law and who never had even one wife reaches the age of 21 years and presents himself for registration as a voter. This act denies him that right on the sole ground that he is a member of that Church. He was baptized at the age of eight years. If he continues to partake of the sacrament of the Lord's supper on the Sabbath day with his Mormon brethren he forfeits the elective franchise. Another example: A native born American citizen, who possesses all the qualifications of an elector, happens into a Mormon place of worship in Idaho. He hears a sermon on the first principles of the Gospel as taught by the evangelists, faith, repentance, baptism for the remission of sins and the laying on of hands for the gift of the Holy Ghost, but no mention is made of polygamy. He believes the principles taught and asks the Mormon Elder to baptize him. It is done. The man becomes a member of the Mormon church and thereby loses his franchise.

In these cases the "overt acts" which produce disfranchisement are the ordinance of baptism and partaking of the sacrament of the Lord's supper. To state the proposition is to demonstrate the absurdity of the claim that this legislation does not require a religious test or prohibit the free exercise of religion. Congress has never ventured so far in its legislation. The able men who have been dealing with the "vexed question" for years have not felt that such enactments could be justified. They are too arbitrary and too nearly akin to the persecutive measures of the dark ages to find advocates in the national legislature of a free country.

The brief then quotes from the debates in Congress on the Edmunds-Tucker bill and shows that Senator Edmunds and others deprecated the idea of interfering with "opinions, beliefs, faith, doctrine or worship," and counsel insist that because Congress only disfranchised actual polygamists is persuasive that it was as far as Congress deemed it had the power to go. This branch of the brief concludes as follows:

From the foregoing it conclusively appears that a man may entertain any religious opinion, belief, faith, or sentiment he chooses, and there is no civil power or authority that can in any way, directly or indirectly, restrain or interfere with that opinion, nor deprive him of any of the rights or privileges of citizenship because thereof.

It is equally clear that he may, in "the free exercise of his religion," worship "according to the dictates of his conscience," and perform such "acts," and engage in such "practices" as he may deem "most acceptable to his Creator," provided he commits no criminal offense. It is only when he has done an act in violation of peace and good order, which the law has declared to be criminal, that he can be punished or deprived of any right common to his fellow-citizens, and then he is not punished, or thus deprived, because of his opinion, but because of the commission of the act which has been forbidden by law.

It is not a crime, and in this country cannot be made a crime, to belong to any particular church, and this, as we shall hereafter see, even though it teach bigamy and polygamy. No legislative authority in the United States has ever attempted to make such a law. The full extent to which a statute might go would be to punish the act of bigamy or polygamy when committed.

The appellant, in "the free exercise of religion," was entitled to his membership in the Mormon church. He had committed no act forbidden by law. Therefore the provisions of the Idaho statute disfranchising and debarring him from office are unconstitutional and void.

II.

This Idaho Statute violates the XIVth Article of Amendment to the Constitution of the United States.

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny any person within its jurisdiction the equal protection of the laws.—Constitution, Article XIV, Amendments.

As this article is, in terms, an inhibition against the States, it may be contended that it does not apply to enactments by a Territorial legislature or by Congress. On this point our contention is that when that provision was placed in the Constitution it became a fundamental principle of government, and from that time forward there could be no legislation from any source, or by any legislative body within the jurisdiction of the United States, the effect of which would be to abridge the privileges or immunities of any citizen, or to deprive him of life, liberty, or property