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with my views of public policy without the slightest regard to the special surrounding of Utah or any Territorial bill whatever.

Mr. Call. My friend from Texas has no argument with me then on the subject of suffrage, for I am only considering how far it is proper for this Congress to say, not that polygamy is not an outrage, not that it is not a foul blot upon the civilization of any country, not that it is not in antagonism to those domestic relations which constitute in their full felicity and fruition the glory and the power of the State, nor that it is not inimical to our religion and Christianity as now developed, but whether or not this Congress, under our limitations of power, has the right to say that the women of Utah or the men of Utah shall not exercise their religion as they may think is right and proper, and that they shall be deprived of all political power in this country because of their entertainment of opinions upon this subject different from their own. That is the question; a proposition which I say is fatal to the preservation of the liberties of this country, and the principles which are the very foundation of them, made so by those eminent New England statesmen, who with the fathers of our country of old Virginia and the original thirteen colonies created our form of government and the Constitution and the principles on which it is based.

I say then, Mr. President, that no one will deny this principle of local authority, of State authority, of the capacity of the majority of the people within any designated political locality or State according to State boundaries or a Territory when sufficient population has gone there, the abstract principle of the capacity of the majority of the people in any given locality of sufficient extent to control and direct their domestic affairs, and that they alone are capable of regulating them, and that to the National Government power is given for different purposes and different objects. But the argument is that because it is so given, and because it is exclusive, it is therefore absolute, and may be exercised in conflict and denial of what? Of the essential principle that a majority of the people in any locality shall govern there as to objects of government not included in the national powers. This is the proposition, that because it is exclusive it may take away the very life-blood and the essential principle of your form of government, the capacity of the people, a majority of the people, in any locality to control and govern that class of political subjects, those domestic relations which by the Constitution are denied to the National Government to control and govern, not a case of necessity, but a case of full and implied political power.

It results from this proposition that certain subjects are the subjects of national power and State authority; certain others the subjects of local authority; that the classification of powers as to subjects or objects for its exercise is its essential feature, the withholding from the National Government power over the local affairs, the domestic relations, the religious belief of the people, or of power to punish them for crime as to these subjects.

The fact that the political divisions under this form of government were and are States and the National Government and Territories to become States, and that in the latter the temporary power of government must of necessity be in the national power, can not destroy or limit the principles on which this distribution of power has been made. Does it not result that there is no power in the National Government as power to prescribe laws over subjects of control which is not given to them over the domestic relations of a people except in the District of Columbia and the places ceded in the Territories where it is expressly given, and even there it must be exercised *sub modo*? Who will say that even in the District of Columbia this Congress can say that no Catholic shall be allowed to exercise political power? And yet the argument of the Senator from Vermont imperatively demands that this Congress to-day, because the authority is absolute and exclusive of the District of Columbia, may violate the constitutional inhibition in regard to an establishment of religion and the free exercise thereof, and make it a disqualification for political power and franchises here in this district. That is the argument, the proposition affirmed here:

Mr. Edmunds. The Senator is totally mistaken, he will pardon me for saying. I would no more vote for anything that would disqualify a Catholic than I would an Episcopalian, which I happen to be myself, or a red-haired man or a black-haired man. The simple proposition is that for the general good order of the United States and of that Territory it is better that for a little while the ladies should get out of the slavery of voting and be left alone. That is all there is to it.

Mr. Call. I agree entirely with the Senator from Vermont in that proposition, but I beg his pardon when he says that is all. In order to maintain the proposition of this bill that the ladies of Utah, as he terms them, shall get out of the right to vote at the present time, he proposes to attack all the essential principles of government and constitutional right. While he, I have no doubt, would not say that a Catholic or a Protestant should or should not because of his opinion exercise political power in this District, his argument does affirm it, because the connection between conclusion and cause can not be separated by mortal man.

Unquestionably if there is power here to say that a man who believes the Mormon Church is right, because of that wrong belief is guilty of such a state of political wrong that he may not exercise political power, when you come to judge of some man who entertains the opinion that the Catholic religion is right or the Protestant religion is right, so far as power is concerned you stand upon precisely the same ground.

If you can construct a state and mold and direct its political powers on the basis and for the object of excluding any religious or irreligious belief or practice, the government becomes one for the maintenance of certain forms of opinions or the proscription of others. It becomes one for an "establishment respecting religion" or for prohibiting the "free exercise thereof." Certainly no one will contend that "the Government of the United States is for the maintenance or prohibition of any form of opinion or action respecting religious or irreligious belief, or that the Government may prescribe certain modes of life for each person and impute crime and disability to them without hearing, trial, or conviction."

The government in the Territories must be temporary, and its powers must be exercised subject to the principles and theories of the Constitution, and subject to the theory of the capacity of the people to regulate and control their domestic affairs.

Who will say that this Congress may establish a hereditary government in the Territory of Utah, and why not? Who will say that they may establish in perpetuity an aristocracy in the Territory of Utah, and why not? Where is the constitutional inhibition against putting the exercise of political power in the hands of one, two, three, four, or five persons? It is not to be found in the Constitution. It is to be found in the spirit and principles of the Constitution, which says the capacity of the majority of a people rendered eligible to the exercise of political suffrage by themselves and the principles of the Constitution shall control and determine all their domestic relations, and that the National Government shall operate and exercise power in a totally different sphere and for entirely different objects. That is the power that says that Congress shall not establish an aristocratic government or any form of hierarchical government in a Territory, but that the people alone shall determine this question and all questions of that class.

Mr. Logan. Will the Senator now, inasmuch as he and I want to understand each other, yield to me for a moment?

Mr. Call. Certainly.

Mr. Logan. I understand the argument of the Senator to establish in his mind the proposition. I do not concede the proposition at all that these people have the rights which belong to States and not to Territories. But take it for granted, for the argument, they have the right to regulate the domestic relations, as he calls them, does he claim that even if they have that right they have a right under the religious idea or claim to practice polygamy without subjecting themselves to punishment?

Mr. Call. Do you want to know my individual opinion on that subject?

Mr. Logan. No, but I want to know your legal opinion. You are

discussing this from a constitutional standpoint.

Mr. Call. I think that whoever constitute a majority of the State of Illinois, whether they are Mormons or Catholics or Protestants or polygamous people, have got the right to say whether polygamy or monogamy—I mean the political right or political power, not the moral, but the political power and right under our form of government, as contradistinguished from the religious right—to say whether it shall be lawful or unlawful.

Mr. Logan. We are not talking about Illinois. I do not want to go into that discussion. I am talking about Utah.

Mr. Call. Then I say that in Utah under our Constitution, the National Government has national powers. The people in the different States have the right and in spirit in the Territories to control their own affairs, and the power given to Congress to legislate in the Territories does not authorize them to violate the fundamental principles of the Constitution in other respects.

Mr. Logan. That does not answer the question at all. It is mere theory.

Mr. Call. What do you want to know?

Mr. Logan. Do you believe under your theory that if the people of Utah establish polygamy we have no right to punish it as a crime, because they believe under the form of religion that that is a part of their religion or Christianity, that it is no offense, no crime in their ideas, and that therefore they are exempt from punishment because that is their religious belief? Does the Senator say that?

Mr. Call. I have not said anything of that kind. I say as a matter of fact, as asserted in the different forms of State government, that polygamy is a crime, and almost all improper relations with more than one woman have been asserted by the legislation of this country, by the States that had the authority to do it, to be criminal.

Now, I assert that the Congress of the United States has, for temporary and necessary government in the Territories, power to say what shall constitute crime, and would be justified in saying that whatever public opinion in the different States had prescribed to be crime should be crime in the Territories; but as to the question of power, there is an absence of power on that subject, except as derived from the necessity for temporary government.

The Senator is aware of the long, able, and full debate respecting the power of Congress over the Territories, which has exhausted that subject. I will say to him that the right of Congress to make a law that if a man lives in polygamy, upon conviction of crime, he shall be punished, is a totally different thing from the right of Congress to declare by law that he shall be deprived of his right to vote and his political power, because he so lives or so thinks, without conviction and trial. The propositions on which our government is based and on which our system of society rests are a declaration by law of what acts shall constitute crime, hearing, trial and conviction by judicial power: Freedom of speech and thought and action, except when punished on conviction as crime; political power adjusted to the ends of protection of life and property and personal rights; the extirpation of error of opinion by free thought, argument and discussion by moral power; the restraint of immoral or criminal action by penal law applied by judicial power under the restraints of the Constitution to such acts when committed and not by a political or religious hierarchy proscribing opinion.

Mr. Logan. But the Senator is getting into a constitutional discussion now. The Senator has repeatedly insisted that the Catholic religion could be destroyed, the Episcopal Church, the Methodist Church, or any other Church destroyed by legislation if this principle was enacted into a law. That was the principle that was enunciated—that polygamy while a religious belief was at the same time a crime. The question I want the Senator to answer is whether or not he believes that any religious belief, no matter what it may be, excuses a man for committing that offense which is a violation of law?

Mr. Call. I answer that the law does not recognize any excuse or reason for disobedience. The question of the Senator is whether there is any obligation higher than the law, and this is a question as old as time and for which many men have

suffered martyrdom. In the eye of the law there can be no excuse; in the eye of religion and morality there may be. "Render unto Cæsar the things that are Cæsar's, and unto God the things that are God's."

For myself I do not think polygamy is right, law or no law. That would be my opinion. As to the degree of wrong, whether it is as bad as murder or false witness or the *malum in se* of the decalogue, that is the question for the Old Testament and the New Testament to decide. I think that our Christian religion has developed into a much more beautiful system than existed in the days of David and Solomon in respect to marriage; but I do not think they were necessarily great criminals or bad men because in their day under their circumstances they had different relations from ours. The question between the Senator from Illinois and myself is not that; the question is whether a commissioner in Illinois can go to a man or woman and say, "You are a polygamous man" or "You are a polygamous woman;" "you shall have no political power here;" and then he says to him, "I have never been tried, I have never been convicted; there is no evidence of it." You have no right under this Government to attach conditions to the exercise of political power for the purpose of having the effect of excluding from the Government or the body politic or the social system theories of belief or modes of individual life or action. Your theory and your declaration of organic law is equality of all men before the law, good and bad, religious and sacrilegious, Christian and infidel, atheist and theist—manhood suffrage is your boast.

The Senator from Illinois says that in the name of Congress, in the name of the Christian religion, speaking for the people of this country and this Government, we can say, "You are a polygamous man or woman, and you shall have no part in the control of this country; your property shall be governed and taken by men I appoint; you shall not vote. That is the question, whether the Senator from Illinois is right under our form of government in saying to those men or women, without trial, without conviction, you shall be deprived of your part and parcel in the government of this country because you believe that polygamy is right and because you have practiced it?"

Mr. Logan. Then I should like to ask the Senator if his theory is correct what would he think of a law passed by Congress, applicable to a Territory which declared that no persons except white men should be voters in that Territory?

Mr. Call. I will tell him what I think about it. I think that in the days of slavery, for which the Senator and his fathers were quite as responsible as I, in a Territory where a majority of the people held that kind of property and maintained that kind of property and maintained that kind of institution, it was a very proper thing to do as the people in the States did. I think now, when all men have become free, it would be a very wrong thing to do.

Mr. Logan. I am speaking of it as a constitutional question, not a question whether it is right now morally or was wrong then morally, but as to the power of Congress. If they had the power then to declare that no person should vote in a Territory except a white man, that certainly did not include white women. I should like to know where Congress has lost this power to-day to declare that women shall not vote.

Mr. Call. I have not said that Congress has lost the power to do it. Congress exercises *ex necessitate* the power of government in the Territories. Upon principle, upon argument, it has no right to do it after they become sufficiently numerous under the principle of self government to direct their own affairs, and whatever power Congress exercises in the Territories must be exercised in conformity to the principles of our Constitution and our forms of civil liberty. Its power is not absolute, but qualified and restrained by the political principles on which our Government is based and by the constitutional limitations on all its grants of power.

In regard to the institution of slavery, that was held to be property; therefore as property under the protection of the Constitution they had a right to demand that such laws should be passed. I have never acquiesced myself in that theory entirely. I have always believed that

the right of the people to local self-government should control this question whether they were sufficiently numerous to exercise powers of government in the Territories. I admit that for great public considerations it might be advisable, and in this case would probably control my judgment to some extent, to create Territorial government in denial even of the right of the people to self-government in that locality; but I would never extend that so far as to say that the constitutional limitations intended for their personal protection, their immunity against punishment without judicial trial and judicial conviction, without a fair and not a suborned and perjured jury, without jurors fairly selected; I could never consent that they should be deprived of political power without those processes applied to them. If you want to do it, let it be done in a constitutional way, by declaring by law that it is a crime, and by direct indictment, trial and conviction before an impartial court and jury—not by organizing a political hierarchy for the proscription of these opinions and practices and overcoming the Mormon religious hierarchy by a political hierarchy.

The government in the Territory must be temporary, but its powers must be exercised subject to the theory of the Constitution, subject to the theory of the capacity of the people to regulate and control their domestic affairs.

Again, the Constitution says: "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." What is religion in the sense of the Constitution? Long and bloody wars have been maintained to prove that one religion was not a true religion and that another was. The history of mankind is replete with instances of this kind. What is religion? The Catholics and the Protestants have each denied that the beliefs and principles of the other were religion; the Trinitarians and Unitarians contest and have always contested with each other's claim to the title.

Is it or is it not one of the "immunities or privileges" of a citizen under the Constitution to believe what his own mind, judgment, and conscience prescribe to him in regard to obligations and to religious belief, and can Congress "prohibit the free exercise" of this belief, and say what shall be and what shall not be religion to him except when it becomes a crime, except when with the power of government it has prescribed a certain act (as having two wives) to be criminal, and indicted, tried, and convicted of it? Can Congress say what shall be and what shall not be religion or religious belief?

The assault which the Senator from Vermont and his bill makes on the Christian religion, and the disparagement and reflection which the measure makes on the Christian ministers and the agencies and instrumentalities of the church, the great organized body of the disciples and followers of Christ of every form, is quite as serious as that which it makes on the Constitution and popular government. Can any man deny that the Christian religion claims and gives the right of judgment and proclaims its power to influence and control the judgments and opinions and conscience of men by the weight and power of the church, of the pulpit, of argument and reason of the ministry of the Christian church in all its different forms by the agency of good men where its power is moral suasion, and where it does not seek to attack forms of religious belief as such, but to prove their error and convince the judgment and conscience of a better way and a better life?

They do not ask Congress to make any law respecting the establishment of religion or prohibiting the free exercise thereof according to each man's judgment and conscience. They do not ask the Congress of the United States to make this political assault upon the polygamous condition of the people of Utah as a matter of Christian faith and Christian principle. They know that the instrumentalities of the gospel and the Christian religion are ample and abundant for that purpose. They know that if it is to be prescribed as crime it must be treated as crime and not by saying that all the principles of our Government as to capacity of a people for self-government shall be set aside, not by saying that three commissioners shall arbitrarily disfranchise or deny political power to a majority of a large, populous, and industrious community, and