to disfranchise a citizen because he was a cripple, or because physically deformed, or because he had red hair, would be void in every free country.

Or, coming somewhat nearer to the case at bar, a statute which disfranchised a member of the "Society of Friends" merely because he was a member of that society, and because such society holds and teaches that all resorts to war are wrong, would be held, by the universal judgment of free countries, to be void. It would be so held, not merely because of its invasion of that religious liberty which is secured by the constitutions and bills of rights of all free and elective governments, but also because such a law is so grossly unequal, so arbitrary and unjust as to put it outside of the province of legislation.

Apply, now, these general principles of law to the case at bar, and in so doing, keep carefully in mind those other accepted principles of constitutional law to which we have already pointed, to wit:

One, that disfranchisement cannot be based on mere *beliefs*, religious or otherwise, as distinguished from *acts*.

Another, that such disfranchisement cannot be based on the observance of the practices of one's religion, when these do not involve crime against the State.

Still another, that in the case at bar, the act which the statute of Idaho makes a cause of disfranchisement is *not* that the appellant's church was not a "religious" society within the sense of the word "religion," as found in the first article of the amendment to the Constitution; nor that the appellant either believed in or practiced, or inculcated the practice of, any offense against the State, unless, indeed, his said membership constituted, *per se*, such inculcation.

These indisputable points being carefully remembered, it results, that if this statute is to be sustained as a valid one, then it must be because it is competent for the legislature to disfranchise a citizen for the mere fact that some of his church associates believe in a practice made criminal by law.

If such a companionship, or such a membership, can be made the sole ground for disfranchisement, then, manifestly, the legislature can just as well make any other mere companionship, or association, with persons who believe or who teach doctrines, some of which are forbidden by law, to be the sole ground of disfranchisement.

This becomes self-evident, because this indictment does not allege that the appellant was guilty of any crime—that he believed in any criminal practice, or that a person could not belong to said Church without believing in or practicing or inculcating such forbidden practices. On the contrary, the indictment only shows that he was a member of a Church where the practice of polygamy was held as a duty.

Hence, as already remarked, if this law can be sustained, it must be because that it is competent for the legislature to ordain that any citizen, although in all respects innocent and pure and intelligent, and qualified to exercise the elective franchise equally with the most eminent in the State, may be disfranchised merely because he belongs to a society or a club, or a traveling party, or a church, wherein are admitted those who hold or teach certain practices regarded by the law as criminal.

If the legislature may ordain that no man shall vote who has for his companions in the Church those holding such principles, then, surely, it is equally competent for the legislature to prohibit a man from voting who has for his associates, in any *other* form of organization, or any *other* companionship, people holding the same principles.

It seems to us, and we therefore submit, that if such act of companionship can be seized upon by the legislature and made the ground for disfranchising the citizen, then there is nothing that cannot be made the ground of such disfranchisement, and the citizen is left, in this regard, subject to the mere caprice of the legislative will, and liable to its exercise of arbitrary and despotic power.

Could it be that one man, if he taught polygamy as a Christian duty, could be disfranchised because of such teaching? Hardly. If one man could not, neither could a dozen, nor a hundred, nor any other number. Could an association composed of such men, associated for the purpose of promulgating such a doctrine, be declared an unlawful or criminal association? That could not be. If it could, then an association of liquor sellers could be made a criminal organization for teaching that laws forbidding the sale of liquors are wrong, and should be repealed.

If such things as those can be declared criminal, then any association of citizens for the purpose of opposing legislation which declares anything an offense not *malum in se* could be dissolved as being hostile to good government, and its members punished by disfranchisement.

The logical consequences of such a doctrine must condemn it. But suppose another case; that there is an ecclesiastical association, a church, that has for its creed the following:

Here follow the Articles of Faith of the Church of Jesus Christ of Latter-day Saints.

This is the religious creed of the Church of Jesus Christ of Latter-day Saints, or Mormon Church, and is introduced here for the purpose of showing that this Church is not an organization or association for the mere purpose of or devoted to teaching polygamy, but is a teacher of principles and doctrines that must commend themselves to all Christian people, and therefore it clearly comes within the provisions of the first article of amendment to the Constitution, and is entitled to its protection.

But returning to our supposed case, let us assume that, in addition to the creed, there is taught the doctrine that polygamy is a duty, as averred in the indictment, could such a church be declared to be a criminal organization, and could a member of that church be disfranchised because of his membership in it? If a man can be legally disfranchised for membership in that church that door is wide open for the destruction of religious freedom.

To say that a man shall be disfranchised, because of the fact that he belongs to the Church, is only evading the real reason, and attempting by an artifice to escape from and to set at naught principles that are of the very essence of our system of government. It goes much deeper than mere membership, and reaches to and attempts coercion in the matter of opinion. Against such an assault we most earnestly protest. It is an insidious method of invading the sacred domain of conscience and striking down the safeguards of religious liberty.

The great jurist, Jeremiah S. Black, in relation to religious tests for holding office, used this expressive language:

"There shall be no religious test as a qualification for holding office. Make what other test you please. Exclude a man, if you like, for his political sentiments, or his moral conduct, for his wealth or his poverty, for his youth or his age; make war on him for the color of his hair, the length of his legs, or the shape of his nose, but let him alone about his religion; that is consecrated ground; that is a point on which the Constitution has refused to trust you with one particle of power; and wisely, too; for mortal men are not fit to be trusted with such power; they have never had it without abusing it.—(Black's Essays and Speeches, 54.)

The brief concludes as follows:

These words may be aptly applied to making religious opinions or church membership a cause or test of qualification as a voter, and their truth is abundantly attested by the history of religious persecution, from the fiery ordeal of Abraham to the hanging of the Quakers in Boston. (See 4 Blackstone's Commentaries, and "Chandler's History of Persecution.")

With these suggestions, we leave the case and this most important question, involving the liberties of thousands of American citizens, in the keeping of the Court.

FRANKLIN S. RICHARDS,
JEREMIAH M. WILSON,
SAMUEL SHELLABARGER,
For Appellant.

Eating Before Sleeping.—Dr. W. Washburn, in a note on the subject of "Eating Before Sleeping," in the *Medical Record*, says: "Now, there is really no excuse for the old prejudice, and we are only able to sleep well without first eating (especially if hungry) by long training against nature. For is it not a fact that the stomach requires more blood during the period of digestion, and what more natural, then, than that the blood must be drawn from the brain, as it is the most vascular organ of the body, and during sleep less blood is required in the brain? Hence digestion should aid sleep, and sleep aid digestion."