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AN APPEAL FOR JUSTICE.

An Eminent Jurist on Utah Affairs.

JUDGE BLACK'S ADDRESS TO THE GOVERNMENT.

To the Secretary of the Interior.

Sir—It is my duty, representing the people of Utah Territory, to pray your intervention in their favor against certain grievances with which they are seriously threatened. I would have appealed directly to the President, whose duty it is to preserve, protect and defend the Constitution, and to see that the laws are faithfully executed. But he has gone away. In his absence I invoke the power he has delegated to you.

By the Act of Congress passed in 1882, it is provided that persons guilty of polygamy shall be punished by fine and imprisonment. The act of 1882 commonly known as the Edmunds bill, enlarged the definition of the offense and affixed disfranchisement as an additional penalty.

By the same law a Commission was established, with power to supervise the election of territorial officers. This they were commanded to do according to the existing laws of the Territory, which were not altered in any respect except in this: That all registration and election offices were declared vacant and the Commission was authorized to fill their places by appointees of their own.

The annual election for territorial offices was fixed by law for the 8th of August. It could not be lawfully held by the officers whom the people had previously chosen, and whom the Edmunds bill had displaced; and the Commissioners did not get to Utah or enter upon their duties until it was too late to make up the register and hold the election. So, therefore, there has been no election this year, and there can be none for territorial officers until August, 1883.

But it is well settled that the failure to elect on the 8th of August does not create a vacancy in any of the territorial offices. Not only the general rule of law, but a special statute provides against that, by declaring that all officers in Utah shall hold their places until their successors are duly chosen and qualified. The Federal Judges in Utah, knowing this very well, but desirous to enlarge the power of the Governor, wrote to some senator a letter, which was received just at the close of the session, in which they represented, not that the territorial offices would become vacant by the failure of the Commissioners to hold an election at the proper time, but that general disturbance and trouble were liable to be caused, good order endangered, and organized government put in serious jeopardy, unless Congress would provide for legal successors to all the present officers whose successors would have been chosen at the annual election. The letter was referred to the Judiciary committee, who did not at all understand its suggestion or its object. The Judges manifestly wanted an Act of Congress which would, in express terms, authorize the Governor to seize all the offices whether vacant or not, thrust out the incumbents chosen by the people, and fill their places with creatures of his own. The senators did not perceive this, and if they had, we are bound to presume that they would not have given their assent to anything so inhuman. But they believed that the failure to elect on the 8th of August would immediately make the offices vacant. Mr. Hoar acting as chairman of the committee, with the express concurrence of Mr. Bayard, announced in full Senate, that a time of absolute and total lawlessness would begin on the next Monday afterwards; that being the day on which the annual election should be held, but could not. They said, and made other senators believe, that on and after the day mentioned, there would not be a register of deeds, nor an Auditor, nor an Assessor, nor a collector, nor a constable in all the Territory. Not only were they utterly ignorant of the important legal fact that the incumbents held over until successors should be elected, but they had no knowledge or no recollection of the Edmunds law which they themselves had passed a few weeks before.

Mr. Hoar explained, doubtless in perfect good faith, that it was the *duty* of the commissioners under the law to provide *forthwith* for a *new election* of the territorial Legislature in a new way; and the new Legislature elected in the new way was to provide for a *new election of territorial officers*. When the interogatory was put to him, how long it would take to organize a new government by this process, he answered with great promptness: "Probably about two or three months." The whole of this statement from beginning to end was erroneous. The Edmunds law does not authorize a new election, or a new way of holding it, either for members of the Legislature or other officers. They are all to be elected together on the 8th of August, 1883. The Commissioners have no more authority to hold separate elections for legislative and ministerial officers, or to hold them in a new way, or at a different time, than they have to alter the election laws of Pennsylvania.

But under the influence of the false belief that the offices all become vacant on the 8th of August, and coupling that with the additional error, that in two or three months they could be restored to the agents of the people, the Senate was induced to let Mr. Hoar and Mr. Bayard have their way; and between them they patched up and passed an amendment to the appropriation bill declaring that the power to *appoint officers to fill vacancies caused by a failure to elect on the first Monday of August*, 1882, should be vested in the Governor of the Territory; but with this limitation: that no commission of his should last for more than eight months.

It is easy to perceive that this amounts to nothing. It confines the Governor's power of appointment to cases in which *vacancies* have been *caused* by a failure to elect: No vacancies have been, or can legally, be, created by that cause. It follows that this effort to take away from the people and their agents the administration of their local affairs is an abortion. I ought to add that the Hoar amendment before its final passage was well understood to be mere *brutum fulmen*. Mr. Blackburn was a member of the conference committee on the appropriation bill, and he stated on the floor of the House that every member of that committee had agreed that it could not be so construed as to give the Governor a power of appointment to any office in which the people's incumbent was holding over, and had a right to hold over, until his successor was elected and qualified. For that reason and for that alone it was not stricken out. It is clear beyond possible doubt that the Hoar amendment did not bring the much coveted power within the grasp of the Governor.

But the enemies of popular government in Utah are not willing to give it up so. I am instructed by my clients there that the Governor within a few days past has by proclamation made one hundred and four appointments to various offices which the present incumbents, chosen by the people will not yield up without a contest. I presume he intends to carry his point by force unless you forbid him. If he succeeds, he and the small anti-popular faction that backs him will possess themselves of unlimited authority, which they will use for the foulest purposes. They will seize all the offices as their lawful prey, put the people under their feet and trample the life out of society. Owning every assessor and collector of taxes, and every custodian of the public money, and being at the same time masters of the whole police—the county magistrates, sheriffs and constables—they will revel in plunder. It will not cost their ingenuity an effort nor their conscience a pang, to burden the Territory with debt, sell the bonds, put the proceeds in their own pockets, and tax labor to death for their payment. Not public property alone, but the lands and goods of individuals will be taken to gorge the rapacity of false and illegitimate rulers. Peculiar circumstances not found in any other territory may be, and are already, set up as excuses for robbing the churches. To justify them, acts of oppression, the privacy of families in their most sacred relations, their kitchens and their bed-chambers, will be exposed and misrepresented by eaves-droppers and lying relators. If the people tamely submit, they will be cuffed and insulted for cowardice; if they resist, the tyrants will cut them up, root and branch.

A vulgar despotism like that would be a measureless calamity to any community upon which it might be imposed; to Utah it would be fatal. The inhabitants are nearly all agriculturists or gardeners. Thirty-five years ago they settled in that valley, which was then a mere desert, so hopelessly barren that Col. Bridger, who knew it well offered a thousand dollars for the first bushel of wheat it would produce. But a system of irrigation, admirably organized, established by enormous labor and maintained by incessant vigilance, together with steady and skilful cultivation, has converted that desolate waste into a goodly land of rich fields, abundant harvests and thriving towns. The industry that produced these surprising results was carefully protected and adjusted to the situation by wise laws which the people framed for themselves. If you take from them the right of local self-government, you will blight all this prosperity in a single season. Utah is now rich and her people are living in comfort; but she cannot stand what South Carolina did; there is no "ten years of good stealing" there.

You may think it unfair to anticipate such gross misconduct from men who have not yet been guilty. We do not condemn them in advance. We are only exercising a prudent vigilance; we refuse to trust them with power which we think it certain they will abuse. We take it for granted that they will act after their kind. It is shown by universal experience that agents of an imperial government sent upon the people of an outlying province to administer their local affairs uniformly plunder and oppress them. You need not go back to the proconsular government of Rome or the satrapies of Turkey, Ireland has proved it by seven hundred years of suffering. Our colonial forefathers asserted the same fact in the Declaration of Independence.

In our own very recent history that kind of rule has been extensively tried and always with results which no decent person can think of without shame and indignation. No man, whatever his previous habits or character, is fit to be trusted with such authority; corruption in those circumstances seems to be a necessity of human nature. In the great horde of thieves that overran the South under the auspices of the federal administration some were not without fair reputations at home. It is for these reasons a proposition now accepted as true by all thinking men in this country that the refusal of local self-government to the people of any State or Territory is the denial of every thing else which is honest or just.

In case the Territorial offices be taken out of the peoples hands, and the whole control of their local affairs given to the inimical faction, the chances of honest government will be rendered hopeless by the operation of the universal rule already mentioned. But if any special cause could aggravate their despair, it might be found in the fact that the leader of their enemies is, to be, and is the same Governor who less than a year ago signalized his contempt for law, justice and truth by deliberately certifying the election of a candidate for delegate to Congress whom he and all men know to be defeated by a majority of *fourteen to one*. It is wrong to speak evil of dignities, but I will not affect to have confidence in the man who did this thing. Those who have a taste for such tricks may think as they please.

Another consideration makes their prospect still worse. For reasons which I need not enumerate or analyse here, the Mormon people are intensely disliked in most of the States. Any outrage upon their civil rights or any injury to their persons or property, no matter how perfidious, will be hailed with sincere delight in every quarter of the country by some persons of influence and high standing; and multitudes of scurvey politicians, who care nothing about it, will join in the acclamation of applause for the sake of the capital they can make by it. It is hard to tell what a spurious government thus encouraged may not do.

The constitution and the laws are the gospel of the weak. These people have no other resource; I beseech you to give them protection.

It needs only that you tell the Governor to give up his lawless enterprise. Instruct him that the Hoar amendment is not a bill of pains and penalties; that neither that nor any other law will justify his contemplated usurpation; and that he must therefore confine himself to his proper duties and leave the people in possession of their just rights. For his sake perhaps it would be well to go a little further, and let him know that each individual detruded from his office will have a clear right of action for the wrong; and if he or his appointee by his command shall violently seize the public money, the act will come within the legal definition of.

There is another branch of the subject with which I am compelled to trouble you.

The act of 1862 punishes polygamy by imprisonment in the penitentiary, and the act of 1882 adds the penalty of disfranchisement—that is to say, declares that any person guilty of that offense shall be incapable of voting or holding office. The Mormon people regarded these laws as a crusade against their religion because plural marriages are allowed and, in some cases, enjoined as a duty by what they sincerely believe to be a revelation from God. The civil government, however, insisted that it was injurious to society and ought to be punished as a crime without regard to the convictions of the party committing it. Perhaps there was an argument on both sides but it was a conflict which the civil authorities had a right to determine. Congress and the Supreme Court did settle it by declaring it to be a public offence which they had jurisdiction to punish. There was an end of that controversy. Another one arose: Some persons thought that the law (constitutional though it was) had a harsh savor of persecution about it. Men living in Utah were to suffer a long confinement in the penitentiary for doing what that community with almost perfect unanimty believed to be divinely authorized, and what affected the moral or material interests of nobody except themselves; and this law was made by a legislative body sitting two thousand miles away, composed of entire strangers, and in which the people concerned was not represented by a single vote. It did look hard undoubtedly. But that did not touch its validity; the jurisdiction being conceded the measure of the punishment could not be questioned; if Congress could fine a man six cents it could put him to death.

While Congress did not think proper to punish the offense capitally they certainly held the opinion that fine and imprisonment were altogether too merciful, and therefore they superadded the penalty of entire and perpetual disfranchisement, perfect deprivation of all political rights, total disability to vote or hold any office whatever either in Utah or elsewhere, under the United States or under any territory which was civil death and infamy besides. It is vain for the Utah people to complain of this as cruel and impolitic. I fully agree that Congress had constitutional power to annex this punishment, severe and degrading as it is, either to polygamy or to any other offense.

But had they a right to inflict it for past offences as for future offences without legal conviction. If I had the voice of a thousand trumphets, I would answer *No* as loudly as I could. Mr. Edmunds, who framed the act of 1882, did not stultify himself by proposing to give it a retrosctive effect, nor did any member of either house express the belief that citizens could be punished by disfranchisement, or in any other way, without trial by judge and jury. They all knew better. When they declared in Sec. 8—that a polygamist should not vote or hold office they simply ment that a person thereafter guilty of polygamy should, upon legal conviction, be deprived of his civic rights. To suppose that they ment anything else would be charging Congress with a wilful violation of the Constitution which its members take an oath to support, and it is a well established rule of interpretation that such perjurious wickedness shall never be imputed to the legislative department, unless the evil intent be expressed in words so plain that no other construction is possible.

If you have not watched the current of these proceedings you will be astonished to learn that the Commissioners of their own mere notion, without the sanction of Congress, and in the teeth of the constitution, have invented a test oath and assumed the power to disfranchise all who refuse to take it. They went there with absolutely no authority but to hold the election according to existing law. But they have enacted laws entirely new under which they propose to adjudge men guilty without a trial and punish them without mercy.

Unlike the Governor these were men from whom better things might have been expected. Five gentlemen of high character could hardly be found in the Union. I assured my clients in Utah that they might be implicitly relied on to do the simple duty assigned them, of holding the elections honestly, fairly to all parties, and faithfully according to the laws of the Territory. Yet this in brief is what they have done:

With all the solemnity of a Supreme Legislature they command the registration officers of every precinct to strike from the list of voters every citizen who refuses to swear that he is innocent of polygamy and to place none on the list who will not undergo the same expurgatory process. I give you herewith a printed copy of the Rules and call your special attention to No. 2. By a subsequent circular they expressly direct their subordinates to go back as far as 1862 and put the penalty of disfranchisement upon all who cannot stand the test, or will not subject themselves to it.

This is a Bill of pains and penalties to visit whole classes of people with a frightful punishment. It was enacted by the Commissioners themselves without other authority than their own arbitrary will. It deprives their victims of rights as sacred as those of life or property. The Commissioners had no more right to pass such a decree than they had to order that every Mormon in the Territory should be shot or straugled. Indeed the massacre at Glencoe commanded by William the Third for delay in taking a test oath closely resembled this case in every point and circumstance, except that it was death there and only disfranchisement here. That was more cruel in degree, but this is worse in principle, because it is done in defiance of a constitutional interdict.

No such outrage can be legally prepetrated in this country. Congress is utterly powerless to do it in the territories or in the District of Columbia for all its "exclusive jurisdiction." It would be void if inscribed in the Constitution of a Sovereign State as you will see if you look at *Guinness vs. Missouri* in 4. Wallace.

This measure is not merely an Act of Attainder or Bill of pain and panalties and therefore unconstitutional. It violates the fundamental law by inflicting punishment without trial—a degrading and infamous punishment—consisting in deprivation of the most important right that a citizen has—entailing the loss of his caste in society and reducing him to the condition of a mere Pariah denying him the privilege to participate with his fellow citizens in managing their common concerns, promoting their joint interests and guarding their equal rights. The injury is aggravated in the present case by the fact that it weakens, and no doubt is intended to weaken, the people in the desperate struggle which they are now making for civil liberty and honest government.

Besides this it is *ex post facto* in its operation. The registering and election officers are required to extend the inquisition over twenty years of every man and every woman's previous life, hold all to be guilty who do not furnish the demanded proofs of their innocence, and thereupon adjudge them to suffer a punishment which no law annexed to their offences at the time they were committed. It was not until March, 1882, that Congress declared polygamy punishable by incapacity to vote or hold office. But here is a rule which inflicts these infamous disqualifications for all acts done as early as 1862.

All test oaths for a purpose like this as for any punitive purpose are odious, unjust and unconstitutional.

They presume the whole population guilty of some crime, and this presumption is to be repelled only by an expurgatory oath of each individual. This reverses those rules of evidence which lie at the foundation of civil liberty, and which by our constitution are unchangeable. The presumption is that all men are innocent and you cannot make them swear away your false imputation of guilt to get clear of the penalty.

No man is bound to testify against himself. You cannot command him to swear in his own case, and tell him beforehand, that if he does not obey, you will take his silence as a confession of guilt. You cannot put his conscience to the rack any more than you can break his body on the wheel.

If these principles be sound they devote the conduct of the Utah Commissioners to utter condemnation. They are sound. When I tell you that, I speak by the book and according to the law of laws. It is so written in the constitution and so expounded by the highest judicial authorities. If you doubt it look at *Calden vs. Bull*—look at *Fletcher vs. Pack*—or to save trouble read the exhaustive discussion and the conclusive determination of the whole subject in the *Test Oath Cases* which you will find reported in 4 Wallace.

Of course I do not suspect the integrity of the commissioners. But it is not easy to believe that men of their ability could make a mere blunder of this magnitude. It is rather bad for them that the Governor should be making his unprincipled raid upon the people just at the time when the Commission was planning to deprive them of their only defence. If there was no concert between them the coincidence was serious as well as unfortunate. Perhaps the true explanation is that these gentlemen partaking of a sentiment popular in some places have concluded that Mormons have "no rights which a white man is bound to respect." Good men reason that law is not made for Mormons; they are not included in the provisions which the constitution makes for others; where there is no law there can be no transgression; therefore you may deal with them as foully as you please. It is, at all events, perfectly certain that these outrages on public justice would not be tolerated for a minute if any but Mormons were the victims. To try this let us suppose a case or two.

The concubinage of whites and blacks is a beastly and pernicious offence, degrading to one race and corrupting to the other. It prevails to such an extent that your political metropolis is filled with hybrids, of whom hardly one in a thousand is the offspring of a legal marriage. It might be punished much more severely than it is now. If the political piety of Congress should happen to take that direction, it could provide that all persons indulging in this brutal practice should not only suffer fine and imprisonment, but should be incapable of holding office or voting under the United States in the District of Columbia or elsewhere. Would a commission under that law drive from the polls or turn out of office every man who refused to swear that he had no criminal relations with a negro for twenty years? Such abominable injustice would horrify even those "Bloodhounds of Zion" who are now giving tongue on the trail of the Mormons.

Again: There are many who think that, not polygamy, but drunkenness is the great evil of the present day. They hope to make you all teetotal temperance men; and to that end they would disfranchise every one who makes or sells, or drinks beer or wine or whiskey. If they succeed, can an inquisitorial commission force down your throats an oath that you have not touched, tasted or handled the unclean thing for a quarter of a century?

But worse than drunkenness or negro concubinage is this foul crime of election frauds and false returns. Compared to that, polygamy, even as anti-Mormons paint it, is an act of white robed innocence. It ought to be punished by total and perpetual disfranchisement. May the time be hastened when all who are guilty of it shall take the penal consequences in the form of expulsion from the polling places of the people and banishment from all offices of honor, trust or profit. But let not the majesty of justice be lowered by an *ex post facto* law, or a test oath to circumvent our great politicians, grievous as their past offences may have been.

There is another thing which well deserves to be visited in the same way. High placed men tax the salaries of their subordinates to keep themselves in power. The inferior officer, the contractor, and the laborer are made mere instruments for drawing money from the treasury and putting it into a fund which manufactures popular judgment and corrupts elections. It is the worst form that public robbery has ever assumed. It is money twice cursed in the way it is taken and in the purpose for which it is used. It is already prohibited by law, but still it goes on; and it will never stop until the offenders are disfranchised—"a consummation most devoutly to be wished." But the thought cannot be endured of treating them as we treat the Mormons; catching them with a test oath which reacts back like the terrible hind hand of a gorrilla. Would our great leaders like the alternative of losing their offices and their votes on the one hand, or swearing on the other, that they never violated the law against political assessments or evaded it by getting members of Congress to do the prohibited thing in their stead and for their benefit?

By the common law the penal codes of American States and the Federal Union disfranchisement is now, and always has been, one of the punishments for felonies and for certain misdemeanors which come within the description of the *crimen falsi*. With regard to these offences all citizens are in precisely the same legal situation as that in which the Edmunds law places polygamists. Can a board of election officers tender a test oath to every elector and make him swear before he votes that he has never been guilty, as principal, accomplice or accessory, in any felony, forgery or conspiracy? If so, what principle of constitutional liberty saves us, which will not protect the citizens of Utah from a similar inquisition?

I am not speaking of consequences but of laws and principles. Perhaps it may turn out to be a gratuitous insult to the constitution and the people. The number of those who cannot conscientiously take the oath is known to be very small in comparison to the whole population. But there may be many others who will refuse to vote at an election so unlawfully conducted. The whole effect of this and other devices may be to return some enemy of the people as delegate to Congress who will exercise all his power in favor of measures to oppress and destroy them.

That is my argument. Now hear my prayer. Remove those unfaithful Commissioners unless they immediately retrace their steps and betake themselves to the path which the law and the Constitution have traced for them.

J. S. BLACK.

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PLUMBER, TINNER,
Steam and Gasfitter.
In consequence of the increasing public interest in Sanitary measures, I have, after examination, adopted the Rules and Regulations of the New York City Board of Health as to Sewerage and Ventilation Pipes and Appointments, and hereby invite the citizens of Salt Lake City and Territory to examine my
LARGE STOCK OF PLUMBING GOODS
AMONG WHICH WILL BE FOUND THE FOLLOWING SPECIALTIES, VIZ.

Hellyer's Water Closet Apparatus,
Hellyer's Artisan Hopper Closets
The Alexandra Sanitary Closet,
The Jennings' London Closet,
And Bowers' Patent Sewer Gas Trap.
I AM ALSO SOLE AGENT IN THIS TERRITORY FOR THE
Warner's Low Pressure Steam Heating Apparatus,
Fire on the Hearth Stoves, Grates and Mantels,
Backus Water Motor,
New Otto Silent Gas Engine,
Garry Iron Roofing.
I carry in STOCK the Largest assortment in Utah of Tinners, Plumbers, Gas and Steam Fitters' material, and I am prepared to lay Water Pipes on Short Notice, and
AT THE LOWEST PRICES.
Have also on hand and in Stock, Eight different sizes of RUMSEY'S Pitcher, Lift and Force Pumps, Iron Pipe, Lead Pipe and Sheet Lead.
ALL WORK DONE WITH DISPATCH AND SATISFACTION GUARANTEED.
69. MAIN STREET, SALT LAKE CITY.