

States had not a perfect right to pass a law prescribing the qualifications of voters in any Territory under the exclusive jurisdiction of the Government of the United States?

Mr. Call. Provided they do not prescribe such qualifications as are disqualifications, because of opinions or immoral acts of which they have not been convicted, and for temporary government in the Territories—and not in denial of their right of self-government or of the principles of government established by the Constitution.

Mr. Maxey. The Senator does not comprehend what I ask. If Congress can pass a law declaring that all persons over 21 years of age are qualified voters, have they not that right, to the exclusion of all other persons?

Mr. Call. They have.

Mr. Maxey. Suppose the law should declare that?

Mr. Call. It is perfectly competent for Congress to say that none but persons over 80 years should vote, but that would be impossible in practice. It would not be legitimate for Congress of the United States to say that boys of 21 years of age who believed that the Catholic Church was right should vote, or that the Protestant Church was right, or who believed that polygamy was right or that polygamy was wrong. Why? Because those are subjects which are committed by our form of government in the religious part to nobody but the domestic relations to the local government; and there is an absence of power in the Constitution of the United States and in the Government of the United States to prescribe what shall be the domestic relations of the people; and therefore as that power is absent you can not supply it for the Territories.

By analogy it belongs to the people, upon the principle that this Government is founded on the capacity of the majority of the people of every locality, as the competent and controlling power, to govern their domestic relations and their property and rights relative to each other. That is the principle of our Government. If it be true that the capacity of a majority of the people in the different localities is the life and principle of our Constitution, then Congress has no right to say that the majority of these people shall be disfranchised because of their opinions of this or that or the other kind. The Senator from Vermont and the Senator from Texas say to me, "But how of a state of war?" That upsets all theories. The strong hand of power knows no constitutional restraint; but that is not a case in point. The question here is whether because Congress in establishing a Territorial government may say that none but persons of 21 years of age shall vote, therefore they may say that commissioners shall deny to a majority of the people the right to vote—because in their opinion the majority are guilty of criminal practices—and to place the Government in the hands of a minority. Who will deny that the principle of this Government is the capacity of the majority of the people in every locality to determine their own domestic relations toward each other, such as marriage, such as the criminality of this, that, or the other act, or the propriety of this, that, or the other act? Will my friend from Texas show me the part of the Constitution which gives a right to discredit the capacity of a majority of the people to govern themselves in their own affairs?

Mr. Maxey. I will state to the Senator from Florida that every State prescribes the qualifications of its voters. It has a right to say that a woman may or may not vote; it has a right to say that a man convicted of murder shall not vote; it has a right to say the one who does not pay taxes shall not vote; it has a right to say that certain property qualifications shall exist, and some States do so. I am not speaking of the question of what they ought to do, but of the question of power. To-day there are States in the Union in which those who are 21 years of age, naturalized citizens of the United States, are not permitted to vote, and there are in other States men who because they can not read the Constitution are not permitted to vote. If the Government of the United States sees proper to say as a question of public policy that certain parties shall not vote in a Territory, have we not the power to do it?

Mr. Call. Undoubtedly so. But that is not the question; that does not reach the case. Beyond a doubt every State can, and by a ma-

jority of the people in conformity with its State laws, has a right to say who shall vote and who shall not vote, and at what age they shall vote, what qualifications there shall be on the suffrage, but it has not the power to say that men shall not vote if they are Catholics, or if they are Protestants, or if they entertain this, that, or the other religious belief.

Mr. Edmunds. This bill does not contain any such proposition.

Mr. Call. I beg my friend's pardon; that is all there is in this bill.

Mr. Edmunds. Point out the clause.

Mr. Call. I will endeavor to do so before I get through. That is the reason that it is a flagrant attack upon our religion and our Christianity, and the influence of the Christian minister and the efficiency of the Christian gospel—a flagrant assault. If it be true that the hand of legislation and power is needed to supplement the majesty of argument, of truth, of religion, and to crush out error, then our religion is a failure.

Mr. Logan. It depends on what we call Christianity; whether we call having ten wives Christianity!

Mr. Call. The worship of Almighty God, according to the dictates of every man's conscience, is religion. Christianity follows divine example, which refused to accept the aid of legions of angels with the sword, but confronted error with the persuasive argument of truth and the sublime example of the Savior upon the cross. That is Christianity and the Christian religion, and our form of government prohibits the exercise of any power by Congress respecting the establishment of religion or prohibiting the free exercise thereof. What does the Senator from Illinois understand to be the meaning of religion?

Mr. Logan. Allow me to call the Senator's attention to this: The bill does not propose to inquire into anybody's religion; it proposes to affect persons who are guilty of crime. It is against what is considered a crime. It does not prohibit anybody from enjoying his religion. If he believes that Joseph Smith was a prophet he has a right to believe it. It does not prohibit anybody from believing that, but we consider polygamy not religion, and not Christianity, but a crime.

Mr. Call. Suppose they do not, who is to judge?

Mr. Logan. We are to judge; we are the lawmakers, and we are the judges to-day as to whether polygamy is a crime or not when we undertake to legislate.

Mr. Call. If you will find anything in the Constitution of the United States directly or indirectly that sustains that statement, I will be glad to acknowledge my error.

Mr. Logan. I will say to the Senator that if the Catholic religion or any other religion taught murder, polygamy, arson, bribery, perjury, or any of the crimes that are known as felonies, we certainly should have power to legislate against the crime and against that which tended to the crime, without affecting what persons might believe as to a God or a Christ. That does not affect their belief; it only affects their acts; it affects their conduct; it strikes at the effect of their belief, not the belief itself.

Mr. Call. Now let us see if the Senator from Illinois is right. If he is right I am wrong. What is that provision which was read to-day which says that a man shall not exercise the right of suffrage if he is guilty of—what? Of polygamy. Or that a woman shall be deprived of it, a whole people because of their supposed polygamous opinions. Is that legislating for the punishment of a crime without trial, without hearing, without conviction, without evidence, upon the opinion of the Senator from Illinois stated here as a Member of Congress?

Mr. Logan. Has the Senator heard any statute read that went as far as he says?

Mr. Call. Yes, the statute of last year, and this bill of to-day.

Mr. Logan. I think the Senator is very much mistaken. Let him read it.

Mr. Call. There is no use for me to read it. If this bill does not deprive the men and women of the Territory or Utah of the right to vote because of their polygamous opinions, what is it—

Mr. Logan. That is a very different thing.

Mr. Call. Without conviction, but on the determination of certain commissioners without any judicial power, then I am wrong.

If the former act and this bill do not declare with the force of law

the rightful power of Congress to deprive a majority of three-fourths or four-fifths of a great number of people—numerous enough to be a Territory or State—of political rights because of opinions and practices disapproved by Congress, and place the entire government of that people in a small minority of other opinions and practices, then I am mistaken.

Mr. Logan. That is a very different proposition. The Senator said the statute read at the desk deprived them of the right to vote on account of their belief. I say there is no such law. It deprives them of the right to vote because they practice polygamy and bigamy, and they are deprived of it on that account, but not on account of their belief.

Mr. Call. It deprives them of that without any kind of evidence that they have done it, without any trial, without any hearing, without any conviction, and leaves them, without the constitutional process which guard and protect them from arbitrary deprivation of political or other rights to the opinions of the Senator from Illinois and the commissioners, to have or not to have political rights as they may choose. That is the reason why it does it, for the mere matter of belief; because it is without evidence and conviction, and in some of its provisions makes opinion or belief evidence of the alleged criminal practices; because it makes the political power of the state attack what is called the Mormon Church, and constructs a government, a political power on the basis of one religious belief, and in opposition to another because the other is injurious and violative of our social and religious ideas.

Mr. Logan. I will say to the Senator, so as to settle the question between him and me, that if a Senator lived in the city of Washington with five wives, openly and notoriously, I would vote to expel him from the Senate without any trial or conviction, on the ground that he was immoral and criminal before the civilized world. I would not want any judgment of a court.

Mr. Call. I do not propose to join issue with my friend from Illinois in regard to his morality or his sanctity or his better morals than others. I am free to say too that, without undertaking to burn every one who does not agree with me in my opinions, I am opposed to immorality everywhere, but I love the patient, the genuine disciple of Christ who, with the law of love, with intelligence with calm gentleness, attacks and extirpates error everywhere. I venerate and respect the priesthood and ministry of the Christian Church and good men everywhere; but I do not need to vaunt my morality. I can see the sinner or the Mormon live in this world, if the Almighty permits him, without wanting to put him to death, and I should never vote to put him out of the Senate of the United States because he was guilty of either a fault or a crime, without a calm judicial investigation in this tribunal, by a judgment made with all the forms and processes of law and in the orderly manner of judicial decision, and that is the difference between those who oppose this bill and those who favor it.

Mr. Logan. The difference is just this, if the Senator will allow me: I would vote to put him out of the Senate because of the fact that he committed a crime and it was a known fact and had been proven before a committee of the Senate, without any judgment of a court, without any conviction that would imprison him, without any conviction that would fine him; but on the fact being made evident to the Senate of the United States, I would vote to expel him. That is the difference between the Senator and myself. The Senator would want him to go before a court to be convicted, tried by a jury, and sentenced to the penitentiary before he would put him out; I would put him out before that. The difference between the Senator and me is that he would not punish the man nor deprive him of his rights from the known commission of a felony, but he would deprive him of his rights after he had gone to the penitentiary. After a man goes to the penitentiary it does not require any law to deprive him of his rights.

Mr. Hoar. Will the Senator from Florida allow me to put a question to the Senator from Illinois?

Mr. Call. With pleasure.

Mr. Hoar. In the case the Senator from Illinois supposes of a Senator, it would be the judgment of a court. In that case the Senator is a judge for the purpose of rendering the

judgment of expulsion from the Senate for good cause. On what ground does he base the exclusion in this bill of the women who are not found to be bigamists or polygamists or to have contracted this criminal tie?

Mr. Logan. Does the Senator ask me that question?

Mr. Hoar. Yes, sir.

Mr. Logan. I will answer it, or I will try to. In the first place, the Senator from Florida and I were discussing the proposition as to whether these people had been convicted of crime, and I made the statement that I would, without a conviction of crime before a court—

Mr. Hoar. I call the Senator's attention to this—

Mr. Logan. Let me go on. The Senator asked me first whether it would not be the judgment of a court of the character that he was speaking of in reference to punishing these people, where we acted to expel a man without conviction before a jury. It would be a different proposition. We expel him upon mere evidence that comes before a committee, or before the Senate, the same as the law of prohibition applicable to persons practicing polygamy in the Territories, where they are deprived of their rights on the same kind of evidence before the commission.

Mr. Hoar. I agree with the Senator.

Mr. Logan. That was the proposition between the Senator from Florida and myself. I say that under the power of Congress we have the right to do that, and the fact being demonstrated that men are guilty of crime, it does not require the judgment of a court. Then we agree on that.

Then the Senator from Massachusetts asks me why this proposition to exclude women from voting. In the first place, Congress has the right to do it. The Senator will agree to that, I think. It has the power at least. Having the power to do it and believing it is in the interest of good government, and in that direction in opposition to polygamy and the practice of polygamy, I vote for it for the reason as I said that I would vote for anything that was going in the direction of extirpating or destroying this infamy and slander against the people of this country.

Mr. Hoar. Of course I understand, and perfectly well, the opinions of those persons who think that women ought not to vote anywhere.

Mr. Logan. I have not said that.

Mr. Hoar. So I understand; but that is the opinion of probably a majority of this body and of the American people to-day, at any rate a large proportion; but I do not understand that this is put on that ground.

Mr. Logan. Not at all.

Mr. Hoar. Nobody proposes in this way and at this time to exercise our constitutional privileges of determining that it is not expedient that any Territory should permit women to vote, because if we did we should extend it to Wyoming and other Territories. Gentlemen therefore put it on the ground that the voting by women who not only have not been adjudged guilty of any criminal practice, but are not even supposed to entertain opinions which would lead them to exercise their votes in favor of any criminal practice, but by all women alike, is improper. The Senator from Vermont, like the rain of heaven, falls on the just and the unjust alike, with his penal statute.

Mr. Logan. If the Senator will allow me I will give my reason why I vote for this, although it excludes Gentile women.

Mr. Hoar. I want to know if that is not violating the principle the Senator avowed in his colloquy with the Senator from Florida?

Mr. Logan. Not at all. I vote for this although it does apply to Gentile women, because there is no one in the Territory of Utah to-day, in my judgment, that has been opposed to polygamy and works against it but what would give up the right of suffrage to see that power destroyed, and the only way you can destroy it is to destroy the political power they exercise, either the men or the women.

Mr. Hoar. Then it seems to me that the Senator from Illinois does avow the principle which is my objection to the bill, that we have the right, not speaking now of the legal power, but speaking of the only principles on which we are bound to exercise that power, to deprive persons by reason of the opinion which it is supposed will govern their vote, of a public right without those persons having committed any act whatever which is a violation of law.

Mr. Logan. No, sir; no such thing is announced in this bill or in this section that is proposed to be made into a law. It declares that the women shall not have the right of suffrage in the Territory. I may have one reason for voting for that and the Senator may have another. When you come to destroy a principle you can not destroy it by what you or I might say, but it must be in the act itself. We do not destroy or attack any principles. So far as that is concerned we follow the right that belongs to Congress, and you may exercise it for one reason and I for another. It is purely a question of motive.

Mr. Call. I must resume the floor. The Presiding officer (Mr. Morgan in the chair). The Senator from Florida is entitled to the floor.

Mr. Call. When I left the discussion I was endeavoring to point out to the Senator from Illinois that the great objection to this bill was that it declared that our form of government was an absolute failure, not only in saying that men should be proscribed politically for opinions respecting matters of religion, however wrong; that they should be deprived of political power, incapacitated from any part in the Government, and that it should be done without trial, without conviction; that the right of being eligible to the exercise of the suffrage should be taken away from them upon the opinion of certain legal consequences which the Constitution requires to be the result of criminal acts should attach to them, and that before trial and before conviction they should be thus disfranchised and deprived of any part in the power of the Government; that a whole community should by this arbitrary power be turned over to the government of a minority.

The Senator from Illinois cited the instance of a Senator who might be expelled; but it is not necessary that I should stop to answer that, for that is a special power under the Constitution and for a special purpose, and in its nature a judicial power and to be exercised by those charged with it in judicial forms and in the manner of judicial procedure and under the checks and limitations of judicial procedure. But let us go on. I say the government of the United States by the Constitution is a government of States with sole and exclusive power over the domestic relations of their people. Who denies that? The principle of this government is sole and exclusive power in the local governments known as States over this question, with power in the National Government over foreign affairs and the relations of the States with each other and their foreign and interstate commerce.

Admit that fact to be so; admit that the whole superstructure and power of these great institutions of ours are contained within these definitions, national power for national objects, State or local power for local objects, where, then, in the Constitution of the United States will be found even the semblance of plausibility for an assertion that this National Government because it has exclusive power in the Territories has power to prescribe those relations and exercise that authority over vast tracts of country with hundreds of thousands of people, in denial of the wishes of a majority of that people and the laws made by them for the government of their own institutions. Is it because of the technical idea that they have not been declared complete political communities in the sense of the law? Does that affect the spirit and the purpose of the division of power contained in the Constitution? Let us see if we are left to mere arbitrary assertion on this subject. There are modes of reasoning, and even the honorable and eminent Senator from Vermont, whose reputation extends throughout the country, is not emancipated from the laws of reason and the propositions of religion and truth. No man is.

Mr. Maxey. May I interrupt the Senator for a moment? That is the exact point before the Senate, a motion to strike out the section which says:

That it shall not be lawful for any female to vote at any election hereafter held in the Territory of Utah for any public purpose whatever, and no such vote shall be received or counted or given effect in any manner whatever; and any and every act of the Governor and Legislative Assembly of the Territory of Utah, providing for or allowing the registration or voting of females is hereby annulled.

That is all there is of it. Now, I state to the Senator from Florida that I would vote for that section

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