

## MINISTER PHELPS

ON THE LAW OF THE LAND—A LUCID  
LECTURE ON THE INVIOLENT  
OF HUMAN RIGHTS.

SALT LAKE CITY,  
February 5th, 1887.

Editor Deseret News:

A friend of mine handed me a copy of the Shepton Mallet Journal (an English paper), so that I could learn what was taking place in and around the place of my birth. After absorbing everything of interest to me about home, I found an account of a lecture or address delivered by Mr. Phelps, the American Minister to the Court of St. James, before the Edinburgh Philosophical Institution, on November 12, 1886, on the "Law of the Land," and I can assure you I was very much interested in the clear, and beautiful way he spoke on the subject, and the plain and forcible manner in which he lays down the principles and rules which should govern the making and the administration of the law.

Thinking that the address was well worth preserving in our records and that it would be read with interest by thousands of Americans and especially by the Latter-day Saints, I hope that you will be able to find room to print it entire in the News, and as the rules and principles laid down by Mr. Phelps are in striking contrast with the policy and conduct of this government towards the people of Utah, a review of his address by you and the application of the views of Mr. Phelps by his government towards the people of Utah, would show such a contrast to the policy pursued at present and for the last fifty years, that it would cause reasonable people who are acquainted with our past history to stop, ponder and hesitate before committing themselves to the continuance of such barbaric treatment and would result in such a revolution of feeling as to demand that the rights of the people of Utah should be respected as much as any other people. I am not informed as to the views and feelings of Mr. Phelps or his actions in public life toward the people of Utah, and therefore prefer to give him credit for being sincere in his statements, and that they were prompted by a heart that is honest and that like the Founders of this Republic, he would be willing to consecrate his life, his fortune and his sacred honor to the perpetuation of those principles, so that all could enjoy them (unpopular Mormons included). The impression forced itself upon me, however, that he was favoring the scheme of the "Grand Old Man" in his efforts for poor Ireland and was but echoing the sentiments expressed by Vice-President Hendricks some time ago on the same question, although I must confess that the "Minister" was far superior to the "Vice-President" both in fine feeling and expression, so that it was not so offensive to our cousins over the water. I must close, and in doing so I fervently hope that the Great and Grand Old Man, Mr. Gladstone, may be the means in the hands of Providence of successfully providing the way for the happy link of Ireland, that her long-delayed rights and privileges may be granted unto her as unto the most favored part of the British Empire, and that the jubilee celebration of good Queen Victoria may be a jubilee indeed by celebrating the liberty and freedom of Ireland; and may God grant that it will not be long before statesmen will arise in America who will consecrate their lives to the service of demanding and securing recognition of the merits of, and the granting of equal rights, liberties and privileges to the people of this distressed (Ireland in the United States) Territory of Utah. HISTORIOUS.

Following is the

## ADDRESS

above referred to. It was the first of the session of the Philosophical Institution. On the occasion Mr. J. B. Balfour, M. P., occupied the chair:

Mr. Phelps said—The theory upon which our system of government rests is that mankind possesses certain natural rights, usually described as those of life, liberty and property, indispensable to human freedom and happiness; that those rights are not derived from, but are antecedent to government, which is instituted for their maintenance as its first and principal object; the government can never be allowed, therefore, to infringe or disregard them, nor to fail to offer redress for their invasion, and when it ceases to respect and uphold them the obligation of allegiance terminates and the right of revolution begins. These constitutional principles are of perpetual duration and of perpetual authority because the natural rights they maintain are of perpetual obligation. No change of time or circumstance, no new discovery in political science, no modification of the forms of government can affect their validity or restrict their control. The principles of law which I have thus endeavored to state belong exclusively to the Anglo-Saxon race. In no other system that ever existed are they to be found. They are the distinctive characteristics of the common law of England, which is likewise the common law of the English-speaking race everywhere. They were the offspring of no man's creation, the product of no man's brain. Through centuries of vigorous Saxon life, through much oppression and

violence, through the rise and fall of kingdoms and wars and tumults innumerable, the great idea that underlies free government slowly ripened into perfection. It found its first definite and permanent expression in Magna Charta, and became the foundation of English law, to distinguish it thenceforth from all other law, and to conduct the people to whom it belonged and their descendants to a prosperity which the world had not seen before. I do not mean to say that under no other system of government are the personal rights maintained. They may be upheld to a greater or less extent, and possibly to the full extent, under others. A wise and humane despot might promulgate a code of laws which should afford as complete security to these rights while it lasted as the law of England does. But under no other theory than ours can they be assured of a complete or permanent protection. In governments based upon different principles, personal rights, so far as they exist, are derived from the governing power, and may therefore at any time be abridged or taken away by it. Human experience has shown that rights which are thus conferred are sooner or later lost. It is only when they are conceded to be inviolable and when the observance of them by government becomes the condition of its existence that they ever can be permanently safe. There is still another branch of the constitutional law which is practically unchangeable in its character. In the protection of the cardinal rights it has been found that certain political institutions and certain judicial principles and processes are necessary. The division of government into three independent branches—the executive, the legislative and the judicial; representation in Parliament; the maintenance of courts of equal justice; the writ of *habeas corpus*; the trial by jury—these and other principal features in the administration of civil authority are not of themselves essential to human enjoyment. They are only so many devices shown by experience as well as by reason to be indispensable to the just protection of the rights that are essential. The fundamental law divides, therefore, into two branches: the principles that define human rights and the machinery established for their security. Upon this foundation of constitutional principles is reared that other portion of the general structure of the common law which I have referred to as the law that is subject to change. It is deduced from these principles by their gradual application to the multifarious and various relations of the individual to his fellows and to the community. As civilization becomes more exigent, society more artificial, industry and business more various and complicated, and property more intricate in its forms and titles, the simple principles in which law has its origin required to be developed and extended. New relations sprang up, new regulations became necessary, fresh remedies had to be sought for. To meet these requirements the law constantly advances and is perfectly adequate. All law that is worth anything comes by growth, not by arbitrary creation. It arises out of an increasing and ever-varying necessity. Its movement is constant, sometimes in the wrong direction it is true, but in the long run generally in the right direction. When law ceases to grow, society ceases to advance. It would be an interesting topic, but outside the line of my remarks, to trace more particularly the nature of the growth of the body of the common law from its root and foundation—the law of the land. Out of it arise numberless legal rights, changeable in their character, more or less important and desirable, not absolutely necessary. They are all only provisions for carrying out, in the multifarious relations of life, liberty and property, in the liberal acceptance of those terms. The province of the general body of the law in its vast elaboration of detail is only to increase the security, to diminish the interruptions, to improve, and the enjoyment of those fundamental and indispensable rights. When this is accomplished the power and province of civil authority are exhausted. Human law can do no more for man. All that remains to make life happy and prosperous must come, under Providence from personal conduct and exertion for which the field is thus open and protected. I have thus been elementary and, I fear, at the same time wearisome in order to point out as clearly as I can just what it is that the law of the land secures, and to emphasize the distinction between constitutional rights and merely legal rights—the first underlying government and not to be infringed by its power; the latter derived from government, held subject at all times to its action and liable to be modified or withdrawn. The line which divides these two classes of rights is the one which defines and limits the power of the majority. In respect to merely legal rights that power is ultimately supreme. If convenience, hardship, or injustice result from its exercise they can only be corrected through the law-making power itself; but over constitutional rights the popular voice has no control. Majorities are but an agency of government, which in all its agencies is subject to constitutional limits. It is the failure clearly to observe this distinction that is at the bottom of some movements I shall refer to hereafter. What, then, is civil liberty and what is free government? We know that we enjoy them, but after all what do they

exactly consist in? Civil liberty is simply the enjoyment of the fundamental rights in their full extent, and free government is the government, appropriate in form, that secures their permanent protection to all men alike, not by a security dependent upon the will of the government power but by one inherent in the government itself and co-extensive with its existence. It is a very common mistake to suppose that the freedom of government consists in its form and not in its substance, in the means that should maintain freedom rather than in freedom itself. Forms of government of whatever sort are only forms. The true test is not in the nature of the machinery, but in the result that comes of it at last. The machinery in and of itself is only a perpetual burden. We should gladly dispense with it if human nature was good enough to do without it. It is but a means, not an end, that a form of government, in which the ultimate power is in the people, is necessary. The maintenance of freedom is true; that such governments are necessarily free is not true. They have been usually free, because they have not been perverted from their purpose, not because it is impossible that they should be. The opposite to free government is arbitrary power. That might be administered by a despot or by a class. Of a despotism there is at this day and in our race no danger; of attempt at establishing class government, there is danger. When in any form of popular government equal protection of the fundamental rights of all of them ceases, that Government, though its form remains, is no longer free, and becomes an ordinary authority unjustly exercised by one class over another. Invasion of the right of property defeats the equality of the law. Equality of rights is ordained of God. Inequality of condition is equally ordained. The one may be temporarily broken down, the other can never be overcome. It has pleased Providence to accord to but few the capacity to accumulate or to preserve property to any great extent. It is a beneficial provision that the mass of mankind must live by their industry. It is a blessing and not a curse that by the sweat of the brow we shall eat bread. It would be an unhappy world if amusement were the sole employment of its inhabitants. Inequality of acquisition there always has been and always must be under whatever condition of government. The principle of law therefore which secures to every man his own, while it maintains equal rights, cannot prevent most unequal results. It is a grave error to believe that invasion of the right of property is for the benefit of the poor. The result is precisely the reverse. No property can be safe when once the general security that protects all alike is lost. It is a delusion to imagine that it can be impaired to a certain extent and maintained for the residue, that it may be made the subject of a discriminating protection on the limits of moral justice at the will of the governing power. There can be no middle ground. Either the title to lawful property must be universally protected, or it ceases to be protected at all. That it is not the few, but the many, who are most largely benefited by the protection of the right of property has been strikingly demonstrated in the history of the United States. Under the American Constitution, as I shall point out hereafter, extraordinary safeguards have been devised which have thus far rendered the protection absolute and certain. The result has been the most general distribution of property and the largest individual prosperity that have ever been known in civilized life. The glory of America has been well said to be in the homes of its people. Millions of those homes, the property of their occupiers held in a security of tenure hitherto unquestionable, stretch across the continent from sea to sea. It is true that under the same equal protection the millionaire enjoys and increases his accumulations, sometimes ill-gotten, sometimes ill-spent. But to assail him by impairing the general security to property that the Constitution affords would be like trying to stay the rain from heaven because it falls upon the just as well as upon the unjust, or like impugning the beneficence of the Almighty because under its impartial rule the wicked man still flourishes in his time. No demagogue, no self-seeker, no man who follows for a reward, has ever struck an effectual blow for liberty or has advanced the cause of human freedom a single step. The name of liberty is always in the mouths of such men, but they are its enemies, not its friends. They have retarded and disgraced it, but they have never done it any good; they are only camp followers, not soldiers, in the great march destined, we hope, to overcome the world. Liberty everywhere always has been maintained by the best class of its subjects—I use the term in no conventional sense. I understand the best class to be that which is composed of the best people. They may be found in the peerage; they may rise from humble life—their distinction is in quality, not in rank. It was the best class of Americans who took up the great quarrel on the far side of the Atlantic, carried through the American revolution, ordained and set fast the Constitution of the United States, and have upheld it ever since. It is in that class everywhere in all countries, under all free systems of government that the law of the land, which is liberty, must find its defenders. There always will be and there always

should be political parties in a free country. There will never fail to be found room enough for a wide and sincere difference of opinion on the questions arising between them. But the law of the land is not the property of any party nor the just subject of party dispute. All parties meet on it and start from it as a common ground, and all are equally interested in its preservation. What free government should do in her multifarious exigencies and emergencies of the national life is often a grave question. Whether free governments should continue to exist can never be a question in the British or American mind. Nothing likely to occur at this day in any such government is so much to be dreaded and so necessary to be resisted as movements like those I have referred to towards the organization of parties upon class lines, and the marshaling of one class to make war upon another. Political parties hitherto have been composed of all classes; divisions have been upon the lines of opinion and not upon those of condition. It is only recently that these movements have been seriously set on foot in various directions, and especially in America. If started in one free country they endanger all. I have tried to point out how dangerous to free government such a warfare must be if allowed to go on to its legitimate conclusion. It is not merely the fortune of the conflict that is to be feared, it is the conflict itself. It is the shortest and most direct road to the resumption of the reign of arbitrary power. The man who inaugurates or encourages such a warfare is a greater enemy to liberty than if he attempted to set up the worst form of despotism with which humanity was ever afflicted. It is idle to expect Utopian results. The varying lot of humanity can never be equalized. The poor will be always with us. But perhaps in the ripening fruits of the large philanthropy, that broader and more generous brotherhood which, taking account of human frailty and human sorrow, shall try to lessen the inequalities of life by raising from below not by pulling down from above, to obliterate in some measure those distinctions that do not mark a difference, and to strengthen the security of rights by diminishing the temptation to attack them, may yet be seen—I cannot believe it visionary to think so—not the least beneficent of the gracious harvests that have been generated upon the land by the law of the land. (Loud cheers.)

On the motion of the Lord Provost, a cordial vote of thanks was awarded to his Excellency for his address.

## WASHINGTON.

But Little News of Interest—The Conference Committee—Tucker's Speech Not in Active Demand—The Women's Convention—The President Asked to Veto the Bill, Etc.

News' Special Correspondent.

WASHINGTON, Jan. 29, 1887.

So far as Utah is concerned there is a dearth of news this week. There seems to be a good deal of anxiety and interest over the failure of the conference committee to take action on the Tucker-Edmunds bill. Senator Edmunds, chairman of the Senate conference committee, has, it is understood, been almost too busy to take up the matter. Until a vote was reached a few days ago, his time had been largely occupied with the vexed and important subject of American and English fisheries and that is no sooner disposed of than the Bell telephone case comes up before the Supreme Court; in this, it is understood, he is engaged as counsel. His time has, therefore, been pretty well occupied. Two meetings of the conference committee have been had but nothing was accomplished at either, from which it is presumed a difference exists. A further meeting may take place any day. The whole affair is in a very

## UNCERTAIN CONDITION,

and outside of those immediately concerned, there does not seem to be the slightest interest in the matter.

Every day develops more clearly the fact that Mr. Tucker has made no capital out of his new venture. Not a single paper of any importance can be found which endorses the proposed legislation, and while some few have made remarks of a personally complimentary nature, his conduct in crowding through the legislation against Utah has certainly failed to call for the plaudits of the country. Perhaps this is the reason why the correspondent of the *Tribune* offers the disgraced veteran so much disgusting flattery. It is generally recognized by the American people, and by men in political power, who are vehement in the opposition to polygamy, and determined upon its destruction, that men with the veneering qualities which Tucker has displayed can not be trusted. Summer-sault statesmen do not make reliable judges, and for a judgeship it is that the soul of J. R. Tucker doth ardently yearn.

The subscription list for the speech has been worked for all it was worth, but it did not amount to much. I am informed that Delegate Calve has applications pouring in from all parts of the country for copies of his speech. It has attracted the widest attention, and is simply unanswerable.

## THE WOMAN'S CONVENTION.

The Woman's National Suffrage Convention concluded a three days' session here this week. It was a time of

unusual interest, and the fact that sixteen Senators of the United States voted for a sixteenth amendment to the United States Constitution conferring the franchise on woman, demonstrates the growing sentiment in favor of the movement. The only opposition offered to the bill which passed the House Jan. 12, save that made by Mr. Caine and Mr. Bennett, was that it abolished woman suffrage in Utah; yet these opponents all swallowed it that they might glut their appetite for more vicious measures against the Mormons. Mr. Tucker has no friend in the women, for they have put themselves on record against the bill, because of this anti-suffrage feature. Among the resolutions adopted during the session was the following, which met with unanimous approval:

Whereas, On the vote in the United States Senate to admit Washington Territory as a State, thirteen Senators voted to deprive the women of the proposed State of the elective franchise;

Whereas, The anti-polygamy bills framed by both Houses of Congress provide for the disfranchisement of non-polygamous women of Utah, and

Whereas, The women thus sought to be disfranchised have been for years in the peaceable exercise of the ballot, and no charge is made against them of any crime by reason of which they should lose their vested rights; therefore,

Resolved, That this association recognizes in these measures a disregard of individual rights which is dangerous to the liberties of all, and while rejoicing in the majority vote by which the women of Washington Territory were protected, we would urge upon Congress that the rights of women of Utah should be equally sacred; since to establish the precedent that the ballot may be taken away threatens the permanency of our republican form of government.

A committee was also appointed to call on the President and request him to

## VETO THE BILL

In the event of its being presented to him. Miss Lillie D. Blake, of New York, was made the chairman, with authority to appoint her own committee. They visited the President on Friday, at 2 o'clock, just prior to the general reception, and were received in one of the small private parlors. Miss Blake presented the memorial with a few remarks, and was followed by Mrs. May Wright Sewell, of Indiana; Mrs. Clara B. Colby, of Nebraska, and Mrs. Mary Seymour Howell, of New York. President Cleveland said he would give the memorial careful consideration, and regarded it as a serious matter to disfranchise any class. The following is

## THE MEMORIAL:

To the President of the United States: The National Woman Suffrage Association, through this committee, respectfully present to you a protest against that clause of the anti-polygamy measure passed by Congress which, whether in the Edmunds bill of the Senate, or the Tucker substitute of the House, disfranchises the non-polygamous women of Utah.

The clause relating to the disfranchisement of women has no bearing on the general merits of the end sought to be attained by the measure, since Mormon men are the majority of the voters in the Territory.

The non-polygamous women in Utah have committed no crime. Disfranchisement is reserved by the United States government for arch traitors.

Justice forbids that such a penalty should be inflicted on

## INNOCENT WOMEN.

Now, polygamous Mormon women and the Christian women of Utah being thus disfranchised—the former for their opinions, and the latter for the opinions of the former—a precedent is established subversive of the fundamental principles of government and threatening the security of all citizens.

If Congress deems it necessary to disfranchise citizens because of injurious beliefs, discrimination between sexes is manifestly unjust.

It has been held by the foremost statesmen of the nation that the right of suffrage once exercised becomes a vested right which cannot be taken away.

Graiz Brown once said in the Senate of the United States that if an idea that suffrage could be taken away at pleasure once crystallized in the minds of the people, it would "ring the death-knell of American liberty."

Mr. Vest, of Missouri, on the 23th day of this month, said, on the floor of the Senate: "Suffrage once given can

## NEVER BE TAKEN AWAY.

Legislatures and conventions may do everything else, they never can do that. When any particular class or portion of the community is once invested with this privilege it is fixed, accomplished, and eternal."

Thus every argument for justice, equal legislation, and the safety of our republican form of government calls for the defeat of this clause.

We, therefore, respectfully urge you, as guardians of the rights of all American citizens, to veto any measure coming before you which disfranchises the women of Utah.

This has been a big social week. The Kermes, or dance of the nations, for three nights at the New National, drew out all the fashionable people and was a magnificent spectacle. John T.