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MORMON PROBLEM

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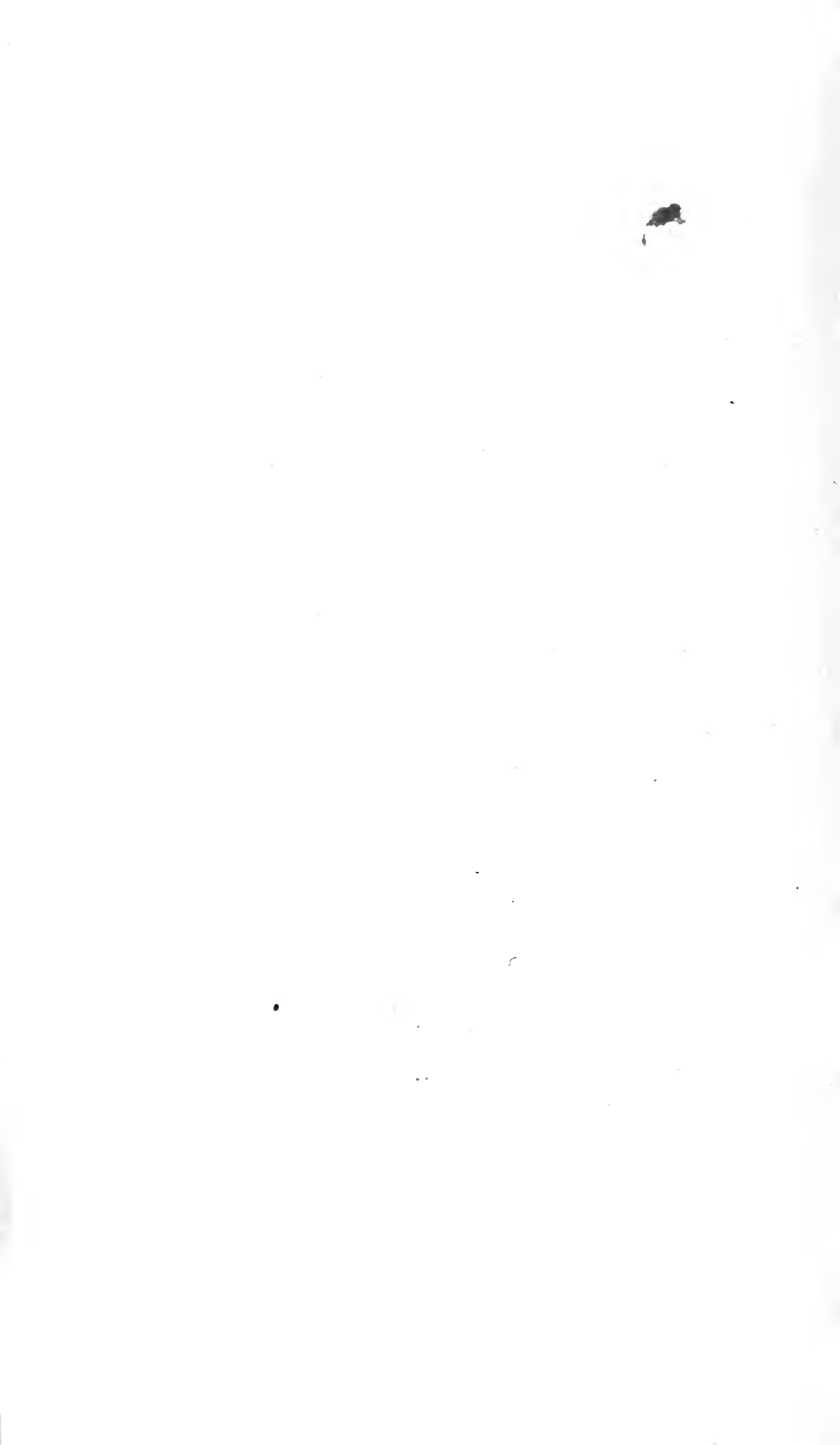

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THE MORMON PROBLEM.

A LETTER

TO

THE MASSACHUSETTS MEMBERS OF CONGRESS

ON

PLURAL MARRIAGE:

Its Morality and Lawfulness.

BY

A CITIZEN OF MASSACHUSETTS.

"We want a state of things which allows every man the largest liberty compatible with the liberty of every other man."—R. W. EMERSON, *in Fortune of the Republic.*

"Our churches represent only ignorance, bigotry, and tyranny, when they deal with human nature."—ANDREW JACKSON DAVIS.

BOSTON:
JAMES CAMPBELL.
1882.

ETHICS,

PHILOSOPHICAL AND POLITICAL.

"Coercive and arbitrary measures can never make a man moral, or inspire him with incentives to do right. Man's normal condition is freedom. . . . It is an impertinence to thrust one man's belief upon another for his direction. The passion to exercise dominion over another is diabolical. There is no goodness where liberty is interfered with."—PROF. ALEXANDER WILDER.

"Nothing is more sacred than human natural rights. No crime is more heinous than their violation. The Declaration of Independence asserted them. Revolutionary heroes suffered and died to protect them from invasion. The Constitution was ordained and established to secure them. Faithless, recreant to their oaths and their trusts, are public men who subordinate the prime objects of the Constitution to their personal or denominational religious preferences. Thereby they pervert justice, retard the general welfare, and abridge the blessings of liberty to the people of the United States and their posterity."—A. E GILES.

"Wherever the flag floats, wherever an American is found within the jurisdiction of the Republic, are those fundamental principles of liberty which are the inheritance of the race, and which, for greater safety, were enumerated in the Federal Constitution, as they are in the State Constitutions. They existed long before these written declarations of the public will, and will doubtless long survive them. Our ancestors did not claim representation in the British Parliament; but they did claim that they carried with them into every settlement, however distant or humble, the rights of Englishmen, and to those they made good their title. It is clear that, in like manner, every American, wherever he may go within the limits of his free country, carries with him the safeguards of American liberty. Congress cannot erect a mere despotism in Utah any more than it can erect one in New York. The property, the liberty, the family relations of citizens, cannot lawfully be placed at the mercy of a board of five men deriving their power from another man, in one place or the other."—NEW YORK SUN, *March 29, 1882.*

MARRIAGE.

MONOGAMY AND POLYGAMY

ON

THE BASIS OF DIVINE LAW, OF NATURAL LAW, AND OF CONSTITUTIONAL LAW.

AN OPEN LETTER

TO THE MASSACHUSETTS MEMBERS OF CONGRESS, BY ONE OF THEIR CONSTITUENTS, WITH OBSERVATIONS ON THE OPINION OF THE SUPREME COURT IN

Reynolds vs. *United States*, *98 U. S. Supreme Court Reports.*

BY

A CITIZEN OF MASSACHUSETTS.

Religious Freedom, not Persecution, solves the Mormon Problem.

JUSTICE vs. *INTOLERANCE.*

"And there arose on that day a great persecution against the church which was in Jerusalem." — ACTS viii. 1.

"The blood of the martyrs is the seed of the church." — TERTULLIAN.

BOSTON:
JAMES CAMPBELL.
1882.

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UNTOWARD circumstances have prevented the publication of this letter, which was written prior to the passage in Congress of the so-called Edmunds Bill, until the present time. Believing that in a republic only fair dealing — not oppression — can promote general peace, prosperity, and happiness, the writer, who has hitherto voted with the Republican party, views with abhorrence its proposed unjust and tortuous legislation in respect to the Mormons, and hopes that certain considerations in this letter, though late, are yet not too late to be of service in solving the Mormon problem.

APRIL 6, 1882.

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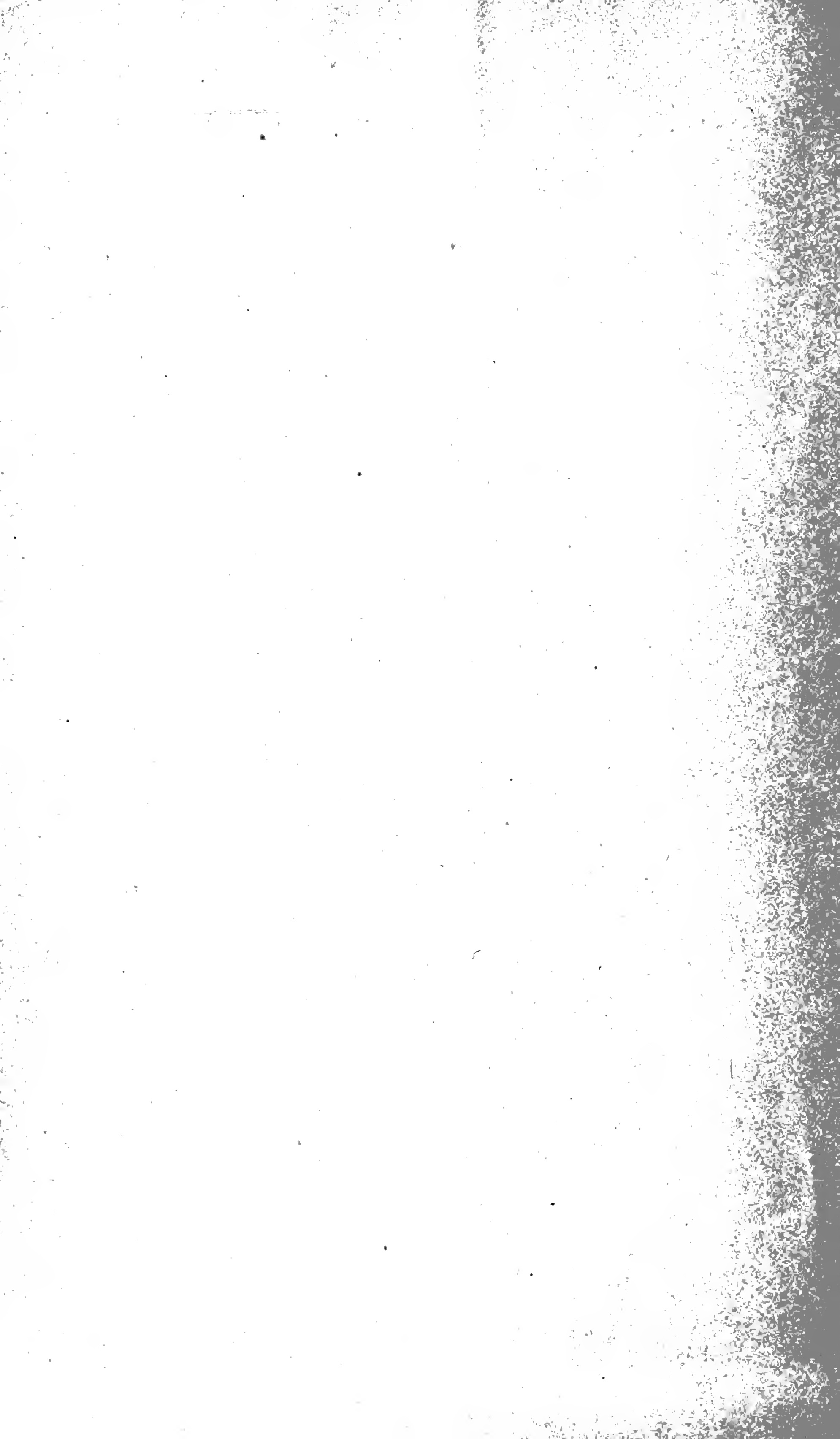
LETTER.



PART I.

To the Honorable HENRY L. DAWES, GEORGE F. HOAR, WILLIAM W. CRAPO, BENJAMIN W. HARRIS, AMBROSE A. RANNEY, LEOPOLD MORSE, SELWYN Z. BOWMAN, EBEN F. STONE, WILLIAM A. RUSSELL, JOHN W. CANDLER, WILLIAM W. RICE, AMASA NORCROSS, GEORGE D. ROBINSON, *Senators and Representatives of Massachusetts.*

Gentlemen, — To you in the Congress of the United States, representing Massachusetts, in which State I am a voter, and therefore one of your constituents, I desire to express some thoughts on the existing so-called Mormon problem. I address you in this open letter, rather than in a private one, hoping thereby to reach, besides your own, other candid and intelligent minds. Judging from items in newspapers and somewhat irritating articles in religious journals, one might at first glance infer that the whole nation was inflamed, with good reason, against the Mormons. But closer observation has led me to think that the excitement is a manufactured one; kindled and kept alive in the cities and larger towns, mostly by ministers, priests, and zealous members of sectarian churches. They denounce polygamy, a social and religious institution of the Mormons, as a "crime," an "evil," an "abomination," a "stigma," and use many other strong epithets and appellatives to express their detestation of the Latter-Day Saints and their peculiar marriage institution. But I have not yet seen any clear and candid arguments against the Mormons, or their polygamy, that justify the censures so profusely and ministerially showered upon them. Epithets, used as weapons of offence, dis-

close, unconsciously to themselves, the real character of those who utter them. They may be scandalous, leaping like demons from perturbed and angry passions, or they may be truthful and angelic in their origin, emitted from wisdom's sphere. A lavish use of opprobrious appellatives as surely, and sometimes more deeply injures him who utters them, than they harm the object to which they are applied. "That which proceedeth out of the mouth, this defileth the man," said the great Teacher of morals and religion, to the Pharisees and Scribes of his day. With these reflections there also comes to my mind the remark of an eminent living American, that "Ministers, as a rule, know but little of public affairs, and they always account for the actions of people they do not agree with, by attributing to them the lowest and basest motives. This," said he, "is the fault of the pulpit, always has been, and probably always will be." Believing that the existing and the prospective hostile legislation against the Mormons is unconstitutional and unjust, that it is un-American and persecutive, I respectfully and earnestly implore you representing Massachusetts, where

> "Freedom's battle once begun,
> Bequeathed by bleeding sire to son,
> Though baffled oft, is ever won," —

to heartily help those Mormons now struggling against great odds, for their own civil and religious liberty; help them, I urge, because thereby you help to maintain and defend the American, the natural, the human right to the free exercise of religion throughout the United States. Their cause is that of religious freedom. Whoever hesitates now in the battle, thereby shows that he does not understand the question in issue, or does not appreciate its importance. No welcome ever awaited the advent of any Christian sect into the world. Each and every one has been derided, or oppressed and persecuted, not so much by non-religionists, as by other sects of professing Christians, chiefly by their priests and officers. As now of Utah, so of the home of the Founder of

Christianity, it was doubtingly asked, "Can any good thing come out of Nazareth?" Roman Catholics persecuted Protestants, and the different sects of Protestants have persecuted each other, and attempted to strangle each successive sect at its birth. Driven by oppression from their native land to the stern and rock-bound coast of New England, not even through suffering brought to a perception of toleratiôn and soul-liberty, the Puritan Congregationalist persecuted the Quakers and the Baptists. At a later day, as the Universalists, the Shakers, the Methodists, and the Unitarians denominationalized, so each sect received its baptism of abuse, misrepresentation, or persecution, from the elder members of the Christian household of faith.

Not thus was it in the better days of certain pagan religions. The Greeks, besides welcoming many known gods, inscribed an altar "to the unknown god." The Romans built the Pantheon, sacred to many gods. Thereby they manifested not only toleration, but mutual respect for one another's religious beliefs. Directly contrary to brotherhood, sadly intolerant has been the Christian religion, as administered by its popes, its bishops, its priests, ministers, and preachers. Dungeons and gibbets, stakes, shackles, and flames, fines, imprisonments, and proscriptions, stand out vividly distinct upon its history. Hildreth the historian says, that "horror of toleration is an inherent and essential characteristic of every theocracy." Theocracy is the opposite of democracy. The author of "The Natural History of Fanaticism" mentions "*enthusiasm inflamed by hatred*" as the cause of this intolerance; but Rev. Dr. Francis Wayland, formerly President of Brown University in Providence, R.I., in his "Limitations of Human Responsibility," ascribes this "*atrocious wickedness*," for so he designates it, to mistake on the part of the persecutors as to the limits of their personal responsibility. Are not these intimations from wise and devout Christians as Dr. Wayland and Rev. Isaac Taylor were known to be, sufficient to induce the ministers, editors of religious papers, and other church-members now actively

instigating animosities, pains, and penalties against the Mormons, to consider, to reflect whether the fault may be — not in the Mormons, but in themselves, that they are persecutors? Will not you, honored Senators and Representatives of Massachusetts, consider whether the territory of the United States, extending from the Atlantic to the Pacific, from the frigid to the burning zone, may not be vast enough to contain, and the Constitution of the United States wisely interpreted (as Thomas Jefferson, James Madison, or Benjamin Franklin would have interpreted it) broad enough to secure justice and the blessings of civil and religious liberty not only for all Christians (the Mormons claim to be Christians), but for a great multitude which no man can number out of all tribes, peoples, and tongues, to dwell together in peace, provided that they do justice, and infringe not on one another's equal rights?

In considering the Mormon problem, it should be known that many intelligent and unprejudiced persons who have visited and dwelt among the Mormons, for the special purpose of observing their social and religious institutions, their morals, industries, habits, and manner of life, have published the results of their observations, and their testimony is before the world. Much evidence might be given, but let that of one unusually intelligent and truthful witness here suffice as a fair sample of more that might be given. Capt. John Codman, widely known in Boston and New York as a traveller and a man of intelligence, independence, and integrity, in the small volume entitled "The Mormon Country," which he published some few years since, thus speaks of them and their religion: —

"I don't believe in their revelations, and God forbid that I should be understood as attempting to justify polygamy. But for all that, if I knew that the press, supposing it to notice this little book, would abuse me unmercifully, and if the 'forty thousand parson power' of all the pulpits should come down with its anathemas, I will say this: In all my voyages and travels about the world I never before passed three months in a community more industrious, honest in dealing among themselves and with others, quiet, inoffensive, loyal to government, temperate,

virtuous, and religious, than these Mormons. With all its impositions and absurdities, a religion which will produce results like these must have in it of good — something. Yes, a great deal."

Other travellers thither have given like testimony of the excellent moral habits and condition of the people. It has been said again and again, that among the Mormons there are no thefts, no bad debts, no insolvencies; no gambling, idleness, nor divorce ; no adultery, seduction, and abandonment; no fœticide, infanticide, nor prostitution. "A good tree," said the divine Author of Christianity, "cannot bring forth evil fruit, neither can a corrupt tree bring forth good fruit." "Therefore by their fruits ye shall know them." With this rule of Jesus for a criterion, no unprejudiced person can truthfully deny the goodness of the Mormon trees, or institutions which annually produce harvests of the good fruits mentioned by Capt. Codman and other travellers.

But it is said that polygamy is an "iniquity," "a monstrous evil," and "a stigma." Chancellor Howard Crosby, D.D., LL.D., in "The Independent" of March 10, 1881, recommended that "Utah should be dynamited. It is a stench-heap," said he, "and needs a brimstone cure." Was it a spirit from beneath, or above, that uttered such invectives, and animated him in giving such counsels? Jesus turned and rebuked James and John when they proposed to bid fire to come down from heaven and consume certain Samaritans, saying, "Ye know not of what manner of spirit ye are of."[1] Having been reared and educated amid evangelic influ-

[1] At a recent meeting in New York to protest against Russian persecution of the Jews, many of whom are polygamists, it is specially interesting to learn that Rev. Dr. Howard Crosby said, "It was a most marvellous thing that religious hatred was the most diabolical thing on the face of the earth." Would that he and his fellow-religionists would be no less tolerant to Mormons than to the Jews ; and that the Evangelical Alliance of the United States would remonstrate against the persecution of the Mormons for conscience' sake, as it has against that of the Jews, and pray the God of Abraham and Isaac and Jacob (all of whom were polygamists) that he will graciously so incline the hearts of the President, Senators, and Representatives of the United States, and all who make, interpret, and execute laws, that they may be restrained from imposing disabilities and oppressive restrictions upon the Mormons on account of their religious belief.

ences in New England, I naturally imbibed its religious and social opinions. I was taught, and believed, that monogamic marriage was the only Christian and the only proper marriage; that polygamy was unchristian and barbarous. As I had not carefully examined into the subject, by thoughtful study, or by travel and observation of polygamy where it existed, my opinions in respect to it were, of course, mere pre-judgments. They were judgments formed before knowledge of it had been acquired. In other words, they were prejudices. Thus I was prepossessed (as probably a large part of the American people are from like influences) in favor of monogamic marriage, and prejudiced against polygamy. Not so strong, however, was my prejudice as to call polygamy "odious;" certainly my taste and my judgment would have restrained me from designating it as a "stench-heap." But when, within the last few weeks, the persistent, universal, and vigorous efforts of ministers, priests, and church-people, to instigate persecution (which is a cruel and deceitful way of uprooting other religions, and to plant their own) against the Mormons and polygamy, attracted my attention, I resolved to rid myself of my pre-judgments or prejudices as much as possible, and candidly, without bias, to examine the Mormon question. Cicero says, "*Vulgus ex veritate pauca, ex opinione multa æstimat.*" I would, if possible, learn the truth of Mormonism, and not merely reiterate other persons' opinions about it. "He hears but half who hears one party only." Accordingly the first part of the Mormon problem for me to solve, was not, how to abolish polygamy, but whether polygamy is an "evil," an "abomination," a "stigma," and a "stench-heap," as is charged upon it by zealous ministers of Christian sects.

Accidentally or providentially, not many months since, while in the library of Brown University in Providence, R.I., I there saw a book entitled, "Thelypthora, or a Treatise on Female Ruin, in its Consequences, Prevention, and Remedy, considered on the basis of Divine Law, under the heads of Marriage, Whoredom, and Fornication, Adultery, Polygamy,

Divorce; with many other incidental matters, including an Examination of the Principles and Tendencies of Statute George II., c. 33, commonly called the Marriage Act," by Rev. Martin Madan, D.D., published in London, 1780. The work is in three volumes; and on the fly-leaf of its second volume, which had been presented to the library by Judge E. R. Potter, there was written in his handwriting and over his signature, as follows: viz., "*I wish the subject could be ventilated anew. Upon these matters the clergy seem to act like the goose who hid her head in the wall.* — E. R. POTTER."

Now, as I not long ago learned from certain ministers who are quite enthusiastic in the crusade against the Mormons,[1] and are equally zealous in their opposition to legislative divorce except for one cause, that they had never seen Dr. Madan's book (and they asked me for information respecting it and its author), it is possible, as the book is a somewhat scarce one in the United States, that other ministers and professional religious guides may not have studied it, and that your readings of it may not be fresh in your memories: I desire, therefore, herein to give some extracts from it, to show some of the opinions and arguments of a very learned, candid, and courageous minister, — one who had carefully studied his subject, and had arrived at conclusions different from those hitherto expressed in American religious journals. Perhaps a consideration of such extracts may serve to open the door to the ventilation wished for by Judge Potter.

Dr. Madan was chaplain of Lock Hospital and Asylum, — an institution founded 1747 by Rev. Thomas Scott, the biblical commentator, for the cure and reclamation of profligate persons, — and had, therefore, exceptionally good and large opportunities of learning from its inmates, the causes of their

[1] I have been credibly informed that many ministers in New England obtain the signatures of their *Sunday-school scholars* to petitions to Congress for hostile legislation against the Mormons. Two religious newspapers, edited by ministers, recently refused to me to publish articles asking toleration for the Mormons, their editors intimating that they felt they could not afford to.

fall. He was a brother of Rev. Dr. Spencer Madan, Bishop of Bristol and Peterborough, and was somewhat short of sixty years of age when he published his book. As I intend to give only, as it were, a clew to his general views and arguments, my extracts from his work must be few, short, and far-between. He writes: —

"The institution of marriage may be found in Gen. i. 28, 'Be fruitful, and multiply, and replenish the earth,' but the essence of it is in Gen. ii. 24: '*Et ad hœrebit in uxore sua, et erunt in carnem unam.*' Our translation, *shall cleave to his wife*, does not convey the idea of the Hebrew original. This is the one simple, divine ordinance, and the obligation resulting from it is *indissoluble*. Wherefore, saith Christ, 'what God hath joined together, let not man put asunder.' The same thing is expressed in Deut. xxii. 29, 'She shall be his woman,' or wife as we call it (*sa femme, Fr.*), because he hath humbled her, he may not put her away, all his days. . . . (Vol. ii., p. 136.)

"By polygamy I mean the having more than one wife at a time. It was this which was *allowed* of God, consequently *practised* by his people (Deut. xxii. 29, 19; Exod. xxi. 10)." (Vol. i., p. 75.)

From p. 269 to p. 273 of "Thelypthora," Dr. Madan gives a paradigm of the passages of the Old Testament recognizing and allowing polygamy, and on p. 273 remarks, "The conclusion of all which appears to be, that either we do not worship the same God which the Jews did, or the God we worship, does not disallow or disapprove polygamy.

"The true meaning of the word 'adultery' in Exod. xx. 14, — *Thou shalt not commit adultery*, — is to denote defilement of a *betrothed* or *married woman*." (Vol. i., p. 61.) "Nor is it used but where a married woman is concerned." (pp. 281, 383, note 2; vol. ii., 3, 219.)

"So far from Jesus Christ ever condemning *polygamy*, which, as a new law-giver, he is supposed to have done, he never mentioned it during the whole course of his ministry, but left it, as he did all other *moral* actions of men, upon the footing of that law under which he was made, and to which for us men, and for our salvation, he became subject and obedient unto death." (pp. 287, 288.)

"Josephus says it was the custom of the Jews to live with a plurality of wives, — the custom of their country, derived from their fathers." (p. 392.)

"A divorce which declares the nullity of a polygamous marriage is

not only without all foundation from God's word, but is an arraignment of the wisdom and holiness of God." (Vol. ii., p. 13.)

"Were a missionary to go into those countries where polygamy is allowed, and open his commission with declaring, that though polygamy was allowed under the law, yet Christ forbade it under the gospel, he would go with a lie in his right hand." (Vol ii., p. 81.)

"We may boast of our *monogamy*, and condemn polygamy: but there is not a nation under heaven where *polygamy* is more openly practised than in this Christian country; for, though a man can marry but one at a time, he may have as great a variety of women as he pleases without ever marrying at all. This is so inveterated by custom, that those laws of Heaven which were made to prevent it, seem to be totally forgotten." (Vol. ii., p. 85.)

"How polygamy became reprobated in the *Christian Church* is easily accounted for, when we consider how early the reprobation of *marriage* itself began to appear. The Gnostics condemned *marriage* in the most shocking terms, saying it was of the Devil. . . . Better people soon after condemned marriage as *unlawful* to *Christians*, and this under a wild notion of greater purity and perfection in keeping from all intercourse with the other sex. This opinion divided itself into many sects, and gave great trouble to the Church, before it was discountenanced. Still, second marriages were held *infamous*, and called no better than lawful whoredom. Nay, they were not ashamed to write that a man's first wife being dead, it was adultery, and not marriage, to take another. Amidst all this, polygamy must necessarily receive the severest anathema." (Vol. i., p. 275.)

"If women, taken by men already married, were not lawful wives in God's sight, then the issue must be illegitimate, and it would lead even to the bastardizing the Messiah himself. It is sufficient to prove one link in the chain of Christ's genealogy from David, faulty, to defeat all his title to the appellation of the Son of David, King of Israel. . . . For, Solomon the ancestor of Joseph, and Nathan the ancestor of Mary, through whom our Lord's line runs back to David, being the children of Bathsheba (whom, when David married, he had also other wives by whom he had children), must fail in their legitimacy." (Vol. ii., p. 15.)

"If God's word be the criterion of right and wrong, our laws have no more authority to say that a man shall not have two wives, than Popish laws have to say that a priest shall not have one." (Vol. ii., p. 69.)

"Our notions relative to the commerce of the sexes are by far more friendly to polygamy, than the Turkish system of polygamy is. A Turk may take one or more wives, but then they are kept in his harem as his inviolable property; no eye of a stranger can ever behold them; and they are maintained and provided for as liberally as the man's circumstances will permit. Whereas, among us, a man may take as many women as he

can seduce, and abandon them whenever he pleases; they can claim no property in him, nor he in them; he turns them out upon the *common* either to starve with hunger, or rot by prostitution. Had we, at the Reformation, adopted the law from Mount Sinai, instead of that from the Council of Trent, relative to marriage, such things could not exist." (Vol. ii., p. 84.)

"When we reflect on the *superstition* with regard to marriage, which has so long reigned in the Christian Church, and is so much interwoven with our laws, we may fear that it can never be destroyed without destroying the whole fabric of the laws that support it." (Vol. ii., p. 102.)

"By superstition, I mean a devotion which has no foundation in the revealed will of God, and either rests in the imagination of the party, or owes its sanction to some misinterpretation or ill-understanding of the revelation itself." (Vol. ii., p. 100.)

"It is a superstition which condemns polygamy, and persuades men to believe that our Saviour called it adultery." (Vol. ii., p. 151.)

"The ambition and avarice of the clergy in the Middle Ages laid the rest of the world under contribution in the business of marriage, made it into a sacrament, obscured the real essence and nature of it, and wrested it out of the hands of the civil power, as to the *outward* and public recognition of it, to secure it to themselves: after which a man and woman could not marry but for the emolument of the Church. A newly married couple were not suffered to live together for a given time, unless they paid the church for a dispensation. A man was not allowed *Christian* burial unless he bequeathed something to the Church. In short, a man could neither come into the world, continue in it, nor go out of it, without being laid under contribution by the clergy." (Alexander's "History of Women," vol. ii. p. 259; quoted in "Thelypthora," vol. ii., p. 165.)

"Whether superstition appear in the shape of a brazen image of an old man at Carthage, receiving infants into his arms, and letting them drop into a pit of fire, or of an old man made of flesh and blood at Rome, commanding people to renounce the evidence of their outward senses, or of a primitive father (Jerome) of the Christian Church, declaring against marriage as unlawful under the gospel, and that all the second marriages were only a more specious and decorous kind of adultery, or of grave and learned English statesmen enacting a law to put asunder whom God hath joined together, or of reverend divines, whether Popish or Protestant, maintaining that certain moral actions, such as polygamy, which God had allowed, and in some cases commanded under the law, are sinful under the gospel, *superstition* is still the minister of Satan, who is the god of this world." (Vol. ii., p. 183.)

"The Council of Trent decreed that, if any shall say that matrimony is not one of the seven sacraments instituted by Christ, and doth not confer grace, '*let him be accursed.*'" (Vol. ii., p. 238.)

"As *churchmen* increased in *power* and *wealth*, the love of both increased in every age, and *marriage* was entirely taken, as it were, out of God's hands, into the hands of *churchmen;* the Hebrew scriptures relative to the commerce of the sexes laid out of the case; and what *popes*, *councils*, *synods*, and human laws determined to be marriage, was marriage; what they determined to be whoredom and fornication, was so; what they determined to be *bastardy*, was bastardy; but what God had determined to be, or not to be, any of *these*, signified no more than if he had never determined any thing about the matter." (Vol. iii., pp. 261, 262.)

"That *polygamy* and *concubinage* were both dispensations of God, both modes of lawful and honorable marriage, is a proposition as clear as the Hebrew scriptures can make it. That polygamy and concubinary contracts are deemed by the Christians null and void, and stamped with the infamy of adultery and whoredom, is as certain as that the *canons* and decrees of the Church of Rome made them so. The consequences of the former were the preservation of female chastity, and the prevention of female ruin. The consequences of the latter have been and still are the destruction of thousands of both sexes, but more especially of the female, in this world and the next." (Vol. iii., pp. 278, 279.)

"Dr. Alexander, in his 'History of Women,' vol. ii., p. 236, referring to Deut. xxii., 28, 29, asks, 'Was it possible to devise a law that more strongly protected female chastity?' It certainly was not possible; and the abolition of this law is equally ruinous to the female sex, and an insult to God, who so graciously consulted their security and protection. This is best accounted for, by considering that our present *system* of law, with respect to the commerce of the sexes, has, in a great measure been handed down to us from the *Church of Rome*,—that the *churchmen thereof, in former ages*, had the framing and fashioning of matters as they pleased,—that, as all marriage was forbidden them, they took special care to make themselves amends by keeping those laws out of sight, which, had they been retained, must have sadly interrupted their monstrous debaucheries, as well with regard to virgins as married women, which were often carried to such length as we should scarcely credit, were we not assured of them by the most authentic records. Had the law of *Lev.* xx. 10 been retained, the churchmen could not very safely have defiled *other men's wives;* and, as they could not take any woman for their *own*, the law of *Exod.* xxii. 16, and *Deut.* xxii. 28, 29, could not possibly be obeyed, therefore it was expedient for them to leave them out of their system. They now, from long disuse, have sunk into oblivion; and perhaps there are thousands of those who call themselves *Christians*, who do not recollect that there are such laws as these in the Bible. . . . Well might our blessed Lord say, 'that which is highly esteemed among men is an abomination in the sight of God.'" (Vol. ii., pp. 31–33.)

"After all the rout that has been made about *polygamy* and concubinage

in the Christian Church, the only real and substantial difference between the ancient *Jews* and *Christians* is this: The former took a plurality of women whom they maintained, protected, and provided for, agreeably to God's word; the *latter* take a plurality of women, and turn them out to *ruin* and destruction, not only against God's word, but against every principle of justice and humanity. Or, in other words, the Jew took as many as he could *maintain;* the Christian *ruins* as many as he can debauch." (Vol. iii., p. 279.)

"The grand question to be tried is, whether a system filled with *obligation* and *responsibility* of MEN to WOMEN, and WOMEN to MEN, even unto death itself, and that established by INFINITE WISDOM, is not better calculated to prevent the ruin of the female sex, with all its horrid consequences, both to the public and individuals, than a system of *human contrivance*, where neither *obligation* nor *responsibility*, either of MEN to WOMEN or of WOMEN to MEN, in instances of the most important concern to BOTH, but more especially to the weaker sex." (Vol. ii., p. 1.)

"To vindicate the lawfulness of polygamy, is, as the world is now constituted, to act as a good citizen of the world, by vindicating the natural privileges and necessary rights of mankind; and it is at the same time to act as a sincere believer in Divine Revelation, to set forth openly and without disguise that heavenly system by which those rights are established and secured. To vindicate also that universal law, which had the good of the WHOLE for its object; to show that its wisdom and beneficence are too vast to be confined to a single people, or a single period of particular dispensation; to free it from the obscurities which monks and priests and other enthusiasts and fanatics have involved it in, to the distress and destruction of millions, — is a task reserved alone for those who, for the sake of truth, are willing to sacrifice their ease and reputation, to the malevolence of ignorance and prejudice." (Vol. i., p. 296.)

"I have written 'Thelypthora' *pro bono publico*, for the public good, to check the overflowing of adultery and prostitution, to establish the means of doing this, on the basis of divine law, to set forth that law as revealed in the Bible, to contend for its wisdom, holiness, purity and justice." (Vol. iii., p. 399.)

"In 1530, June 10, the College of Bologna determined that the marriage law in the book of Leviticus, being a part of the law of nations, as well as the law of Moses and of God, is binding on the whole Christian Church as well as infidels, and therefore gave their decision against the legality of Henry's marriage with Catherine of Aragon." (MUNSELL'S *Every-day Book of History and Chronology*, p. 220.)

If the subject of marriage in its monogamic and polygamic forms is to be ventilated anew, as Judge Potter desired it

might be, and as the religious persecution now commenced against the Mormons makes necessary that it should be, other views on the same subject than those of clergymen alone, ought to be known: I will therefore here transcribe some of the sentiments of Lord Bolingbroke, that eminent statesman and philosophical essayist of the seventeenth century, to whom Pope addressed his "Essay on Man,"—

> "Awake, my St. John! leave all meaner things
> To low ambition and the pride of kings."

"Polygamy has always prevailed, and still prevails generally, if not universally, as a reasonable indulgence to mankind. . . . Polygamy was allowed by the Mosaical law, and was authorized by God himself. . . . The prohibition of polygamy is not only a prohibition of what Nature permits in the fullest manner, but of what she requires for the reparation of states exhausted by wars, by plagues, and other calamities. The prohibition is absurd, and the imposition [of monogamy] arbitrary." (V. BOLINGBROKE'S *Works*, pp. 160–163.)

"The imposition [of monogamy] is very ancient,—as ancient in Greece as Cecrops; and if it was the most perfect state [of marriage, as many assert] there is reason for wonder how the most perfect kind came to be established by an uninspired law-giver among the nations, whilst the least perfect kind [polygamy] had been established by Moses, the messenger and prophet of God, among his chosen people." (pp. 163, 164.)

"The Athenians decreed, after their city had been depopulated by war and sickness, that every citizen might have, to increase the number of children, a second wife. . . . Socrates took advantage of this decree, which set aside the law of Cecrops; and he despised with a great elevation of mind those who criticised his conduct, and threw reproaches against him. This famous missionary of natural religion and law declared by this action, that polygamy was against neither, and that the law of Cecrops had forbid what they allowed." (p. 165, quoted from DIOGENES LAERTIUS, *Vita Socrates.*)

"The reasons that determined the law-givers of Greece and Rome and some few other states, to forbid a plurality of wives, which was permitted in almost all countries, may have been such as these: Polygamy would create large families; and large families, a greater expense than could be borne by men who were reduced to live in cities. Monogamy was a sort of sumptuary law, because men were not permitted to marry more women than they were able to maintain. Another reason, DIONYSIUS HALICARNASSUS (Lib. ii. 24, 25 *b*) speaks with great encomium of

a law that Romulus made, by an entire participation of all his possessions and of his religious rites. These sacred nuptials were celebrated by a solemn sacrifice, and the eating together of a consecrated barley-cake. The effect of the law and of this religious ceremony was such, that during five hundred and twenty years there was no instance of a divorce at Rome; not that there was any prohibition of divorce, as some have imagined. Thus, by the intervention of the priesthood, monogamy became a religious, as well as a civil, institution." (pp. 166, 167.)

"But of all the reasons which may account for the prevalence of monogamic marriages, divorces constitute the principal and most effectual. With them, monogamy may be thought a reasonable institution; without them, it is an absurd, unnatural, and cruel institution. It crosses the intention of nature doubly, as it stands in opposition to the most effectual means of multiplying the human species, and as it forbids the sole expedient by which this evil can be lessened in any degree, and the intention of nature can be in many cases at all carried on." (pp. 167, 168.)

Prepossessions are preconceived opinions favorable to any special matter under consideration. An opinion is not knowledge, but is a thought between knowledge and ignorance. Prepossessions in respect to monogamic marriage, are thoughts in favor of it, acquired previously to knowledge or examination of it. Prejudices are judgments against whatever matter may be under consideration, formed prior to any certain knowledge, or examination of that matter. Prejudices in respect to polygamy, are unfavorable opinions towards it, entertained without actual knowledge or examination of it. As one's ignorance of a matter is dispelled before the light of knowledge shed upon it, his enmity subsides, and candor takes its place.

"The seas are quiet when the winds give o'er:
So calm are we when passions are no more."

We read that Saul, an intense religionist and conservator of the ancient faith, breathed out threatening and slaughter against the disciples of the Lord, and, being exceedingly mad, persecuted them even unto foreign cities. But, receiving more light on the matter, his prejudices subsided, and he became one of their warmest friends.

So in respect to polygamic marriages. It has sometimes

so happened that very intelligent religious men, yes, Congregationalists and Baptist ministers, brought up with all the prejudices of Americans and the bluest bigotry of New Englanders against polygamy, upon becoming better acquainted with it in lands where it exists, and among people who practise it, have discovered excellences and advantages in it, that they had never previously surmised, and for the information of their fellow-countrymen, they have not been afraid to say so. Honor to such men for their candor and courage, and to all fearless advocates of any truth, popular or unpopular, under heaven! Rev. David O. Allen, missionary of the American Board of Missions for twenty-five years in India, in his book entitled "India, Ancient and Modern," published in Boston, 1856, thus speaks of polygamy:—

"There has been a disposition in this country [i. e., United States] to judge of polygamy as it exists among Jews, Mohammedans, and Hindoos, with great severity. Now, if polygamy was not morally wrong, if the custom even had the Divine approbation, among the Jews of old, . . . it is not intrinsically and morally wrong as it exists among the Jews, Mohammedans, and Hindoos; and, if not wrong among them, then the continuance of the relation after they become Christians cannot be morally wrong." (p. 604.)

"Some persons in this country [United States] appear to be of the opinion that polygamy, being contrary to the Christian dispensation, and contrary, as they think, to the well-being of families, must be classed, wherever found, with theft, adultery, murder, etc.; and that people in any country who have entered into this state, must have as clearly seen and known that they were doing wrong, as if they had been violating any of the Ten Commandments. But such were not the views of pious Jews in ancient time: nor are such the views of Jews in modern times, when they can live in countries where they can follow their own usages and laws. Indeed, so far from viewing polygamy as morally wrong, they not unfrequently take a second and a third wife with much reluctance, and from a painful sense of duty, to perpetuate their name, their family, and their inheritance. . . . Now, what shall be done to such persons when they give credible evidence of personal piety, and seek admission into the Christian Church? . . . My opinion is, that the general practice in missions in such cases will be as follows . . . he will be permitted to retain his marital connection with all his wives; whether he may or may not cohabit with his different wives, will be left, I believe, entirely to him and to them according to their views of duty." (pp. 553, 554.)

The Calcutta Missionary Conference, consisting of missionaries of the different societies, which probably included all denominations except Roman Catholic, . . . were unanimous in the following opinions:—

"1. It is in accordance with the spirit of the Bible, and the practice of the Protestant Church, to consider the STATE as the proper fountain of legislation in all civil questions affecting marriage and divorce."

"2. The Bible, being the true standard of morals, ought to be consulted in every thing which it contains on the subjects of marriage and divorce, and nothing determined contrary to its general principles."

"3. Heathen and Mohammedan marriages and divorces, recognized by the laws of the country, are to be held valid."

"5. If a convert, becoming a Christian, has married more wives than one . . . he shall be permitted to keep them all." (pp 601, 602.)

"Polygamy is practised in India among the Hindoos, the Mohammedans, the Zoroastrians, and the Jews. It is allowed and recognized by the Institutes of Menu, by the Koran, by the Zenda Vesta, and, the Jews believe, by their Scriptures, the Old Testament. It is recognized in all the courts of India, native and English. The laws of the British Parliament recognize polygamy among all these classes, where the marriage connection has been formed according to the principles of their religion, and to their established laws and usages. The marriage of a Hindoo or a Mohammedan with his second or third wife is just as valid, and as legally binding, as his marriage with his first wife, just as valid as any Christian's in the Church of England" (p. 551.)

In 1869 "The History and Philosophy of Marriage, or Polygamy and Monogamy compared by a Christian Philanthropist," was published in Boston, and another edition in the year 1875. The author of it — he is a Baptist minister — says that he is a native of New England, was brought up a strict Puritan, graduated from college expecting to become a missionary; but his health broke down, and he went to India in the employ of a Boston house there, having an extensive business. In India he lived many years; and since then, "having seen all the continents of the globe, and many islands of the sea, and having observed human society in every climate and in every social condition, I have returned," he says, "to my native land, an older and I hope a wiser man." (p. 16.) He says he has investigated the whole subject of marriage for

many years, including monogamy and polygamy, and has "become convinced that polygamy is not always an immorality; that if the prejudices of modern Christians are opposed to the social system which their ancient brethren, the earliest saints and patriarchs, practised in the good old days of Bible truth and pastoral simplicity," he believes "that these prejudices are neither natural nor inveterate, but that they have been induced by the corrupted Christianity of the mediæval priesthood, and that they will be removed when Christian people become better informed; and if it be necessary for me," he says, "to sacrifice my own ease and my own credit in attempting to remove them, I shall only suffer the common lot of all reformers before me. . . . Truth dreads no scrutiny, shields herself behind no breastwork of established custom or of respectable authority, but proudly stands upon her own merits. I will not despair," he continues, "therefore, of gaining the attention of every lover of truth, while I attempt to develop and demonstrate the laws of God and of Nature upon the important subjects of love and marriage, and to apply those laws to the two systems of monogamy and polygamy." (pp. 23–25.) As the book is in the market, this letter need not contain more extracts from it.

Truth is mental light. Ignorance is mental darkness. John Robinson told the Pilgrim Fathers, upon their departure from Holland, that he was very confident that the Lord had more truth yet to break forth out of his Holy Word. Into the open minds of honest, unprejudiced persons, more truth from every object in nature, and from every human institution, is gradually received.

Within a few days two letters, each incidentally touching the Mormon question, have come unsolicited and unexpectedly to me. The extracts from them which I here introduce are published without the knowledge of their authors. But though I think that the pertinency and value of their remarks justify this use of them, I do not feel at liberty to mention the names of the writers. One is a professor of medicine, and author of philosophical and historical books of repute, in a large city. Thus he writes:—

"So far as I speak, it shall be for freedom I detest oppression everywhere. I want mankind pure and happy. This can never be, so long as some exercise dominion over the lives and hearts of others. Even now France is freer than America, and Russia is taking larger strides towards popular rights. . . . Whatever we may think of polygamy, it is the world's practice. Europe has it at this day in her morganatic marriages, and her rich men's mistresses. Martin Luther sanctioned it by distinct approval. Roman popes have given dispensations for it. The Bible, in neither Testament, whispers a disapproval, even by torture.

"So long as women outnumber the men,[1] and yet have the same rights and necessities in single as in married life, if they are desirous to accept the place of second wife in preference to personal isolation, they are the sole rightful judges in the matter.

"Every monogamous country is a land of harlots. Poverty as well as passion compel it. It is ill, I know, to be a less-loved wife; but it is a condition of life. In every family, certain children are less loved. In our cities, one-seventh of the women live by prostitution. I do not see any harm to let them have specific relations with the men who associate with them, as offset against the present sexual vagrancy.

"In the Buchanan administration, the Mormons offered, for the sake of peace, to remove to New Guinea, if the United States Government would convey them. But 'strict construction' prevented, and a policy was adopted to make them and others exasperated all the time, but nothing effected. It is an issue between brothels and bigamy."

The other letter is from a Mormon. Such a person having knowledge, is better qualified than one not a Mormon (other things being equal) to express an opinion of the benefits or disadvantages of their system. He writes: —

[1] In the State of Massachusetts there are about one hundred thousand more females than there are males. If every man in the State had a wife, there would remain thousands of women without husbands. The desire for maternity is natural, on the part of most, if not of all women of nubile age and normal development. "Give me children, or I die," was the despairing cry of Rachel to her husband Jacob (Gen. xxx. 1). Every one of these thousands of unmarried females is entitled, under the Constitution of the State, to the enjoyment of her natural right to motherhood. Yet the statutes of the State enact imprisonment or fine to such ones as avail themselves of their natural right to motherhood without the intervention of an husband of their own. In such cases, the judicial upholders of those statutes, and the officials who enforce them, are, in my opinion, morally and essentially more criminal than are their victims. "The Scribes and Pharisees sit on Moses' seat . . . they bind heavy burdens, and grievous to be borne, and lay them on men's shoulders"(Matt. xxxiii. 2, 4). "Woe unto you lawyers also! for ye lade men with burdens grievous to be borne" (Luke xi. 46).

"Permit me to say a few words here respecting the attitude of myself and my co-religionists upon the Mormon question. Had sensualism been the object of our system of plural marriage, we could have gratified that in a much cheaper and popular way than by marrying women, and taking upon us the care and responsibility of families; and, under the attacks and pressure to which we have been subjected, we could easily (had that been the prompting motive) have seized these attacks as a sufficient excuse for turning off these wives and children, and relieving ourselves from much that is now heaped upon us. But I am proud of the loyalty and high sense of honor of the men. No member of the church has taken the first step towards relieving himself of this obligation which he and his wife entered into as solemnly binding upon them both. They may be imprisoned and killed; but that many at least are prepared for. We sincerely believe that the Almighty has commanded this system for the redemption of the race. The prevalent system of marriage is a failure. Under it both men and women feel themselves forced to commit acts which the laws make crimes. Woman, being the weaker, is the great sufferer. Thousands upon thousands of them are crushed under the weight of what is called a splendid civilization. Lecky, an opponent of plural marriage, describes in his 'European Morals' at what sacrifices the purity of the monogamic family circle is preserved. A reform is demanded. No reform in such a system can be effected without sacrifices; even blood has been shed to accomplish less than this. Not that we believe plural marriage should become universal. There are many who are unfit to have one wife; besides the equality of numbers between the sexes is not in favor of plural marriage being general. But we desire to make sexual crime impossible, or as nearly so as possible. If men desire women, let them bear all the consequences, — marry them, and support the offspring. Let them observe the physiological laws, which even the brutes observe, and have no commerce during gestation. Then we shall have a race with better control of their passions; and not, as now, too frequently born with unbridled lusts engendered, while in a pre-natal state, by the excesses of their parents. Every woman has the right, though frequently deprived of it by law, to be a wife and a mother. In the large Atlantic cities, of the morals of which I hear much but know little, I doubt not there are hundreds of women who would only be too glad to be recognized publicly as legitimate wives, if it were not unpopular, rather than to be secret mistresses."

Thoughtful and good men of every country, through all ages, have cogitated profoundly, and differed widely, on religion, social order, and society, and on each and every one of the principles that enter into these matters. Some such

thinkers and their writings have comforted religiously, and strengthened mentally, certain minds which in those writings have found relishing spiritual aliment. To such ones the writings and their authors have been a savor from life unto life. But it is also grievously true, that to multitudes of other persons, everywhere, and through all time, they have been a savor from death unto death. Theologic differences and persecutions have wrought woes unnumbered unto innumerable myriads of honest men, women, and children. What terrible spectres of cruelty appear in one's mind at the mention of the Inquisition, or of Smithfield where martyrs were burned, or of Salem where witches were hung; or of *odium theologicum* (theological hatred), a hatred by theologians and ministers of one sect towards those of another, that surpasses all other rancor under heaven, possibly equalled by that of devils damned in hell. It is shocking to many lovers of peace, truth, justice, and freedom, that in the nineteenth century, and in the United States of America, prosecutions, imprisonments, and fines are to be inflicted, in the name of law and order, and under the supposed sanction of religion, upon thousands of good men and women acknowledged to be honest, upright, industrious citizens in all their ways of life and labor. Cannot this portentous mockery, sure to be regarded by posterity as the crowning disgrace of the existing religion and civilization of our country, be dispelled? Scrutinize the principles that are supposed to justify such severity. Compare them with the eternal standards of truth and justice. It is true that some of the religious practices of the Mormons do offend the opinions and prejudices of other social circles and religious sects. Polygamic marriage, which among the Mormons is a civil and religious institution, as circumcision is with the Jews, is distasteful to many good and worthy people in certain other parts of the United States. But it is said that it is more than distasteful; it is insisted that polygamy violates a law, a statute of the United States, and is therefore a "crime." Ministers, editors of religious papers, often make this charge, and have thereby inflamed the feel-

ings of their audiences against the Mormons. This charge ought to be sifted.

Is every violation of a Congressional or State statute a crime, and is every such violator a criminal? Were the men who came forth unharmed from Nebuchadnezzar's burning fiery furnace, criminals, because they violated his decree? Was Daniel a criminal in not obeying an established statute of King Darius? It was charged against Socrates, that he corrupted the youth; against Jesus, that he blasphemed. The charges being proved to the satisfaction of their judges, both of these teachers and exemplars of morality and religion died the deaths of criminals. Was Roger Williams a criminal in maintaining, as he did, "that any thing short of unlimited toleration for all religious systems was detestable persecution"? For it he was banished: an act that disgraced Massachusetts, and honored Rhode Island, into whose territory he was welcomed. Were the founders of our Republic criminals, or patriots, in resisting and violating as they did certain laws of the English Parliament? Are the Mormons to be adjudged criminals if they do not obey Sect. 5,352 of the Revised Statutes of the United States, which statute makes every married person who marries another in a Territory or other place over which the United States have jurisdiction, guilty of bigamy and punishable by fine and imprisonment? All these questions can be clearly answered. A distinct conception of the nature of "human rights" and of *human crimes* answers the question, and solves the Mormon problem.

First, What is the nature of human rights? I conceive it to be a power, a capacity in human beings, of acquiring or receiving sensations, emotions, mental and spiritual influences. This power or capacity is born in human beings, not derived from church or state, is a part of their nature, and hence is natural. Exercised in their normal direction, these powers and capacities are *rights*, because they are in the lines, the *right* lines, or direction of nature. Hence the normal exercise of human powers or capacities, in acquiring or re-

ceiving sensations, emotions, mental, spiritual, and perhaps other influences, constitute natural *human rights.* It is not right for any legislature to abridge them, except so far as it may be necessary to prevent their possessor from infringing on the corresponding equal rights of other persons. An act of a sovereign, or of a legislature to curtail natural human rights, except for that purpose, is itself a crime, and its promoters are criminals. Hence, Nebuchadnezzar, King Darius, the judges of Socrates and of Jesus, the colonial authorities of Massachusetts, and the English ministries, were criminals, not their victims.

An ancient moralist said[1] that it was "philosophy which taught the rights of man, which are the basis of human society." Rev. Dr. Mark Hopkins inquires[2] "whether rights are not among the most underlying general and powerful of our principles of action? What will a man fight for, sooner than for his rights? What but his rights ought he to fight for? Our conception of these comes in connection with every active principle.

"Among the first, if not the very first, of our moral ideas is that of a right to ourselves; that is, of a right to use every power we have for its appropriate ends; and, when that right is interfered with, our nature is stirred to its lowest depths." Rev. Dr. Francis Wayland says,[3] "By the constitution under which the Creator has placed us, the rights of man are as truly rights, as the rights of God. The violation of the rights of man, is as truly a violation of right as the violation of the rights of God." Hence the special — perhaps the exclusive — province of human legislation is to ascertain and to protect the *natural rights* of men, women, and children. To infringe upon, much more by legislation practically to make useless, those rights, except to protect the same rights of other persons from invasion, is a crime fraught with unnumbered and direful woes to the State that permits

[1] Cicero's Tusculum Questions.

[2] On Peace of Conscience. Boston Monday Lecture 1880-81, p. 103.

[3] Limitations of Human Responsibility, p. 56.

or acquiesces in such legislation. A subsequent part of this letter will show that to establish human rights, to protect people in their possession of them, and in the enjoyment of the blessings of liberty, was the prime object constantly held in view by the framers of the Constitution of the United States.

Human crimes are violations, by one or more human beings, of the *natural rights* in person or property, of another, or other human beings. They are injuries, wrongs, hurts, harms, troubles, vexations, or annoyance, inflicted, yes, perpetrated (often with a supposed good purpose in view), by one or more individuals upon another person. It is important to notice that it is the violation by one party of *another* party's rights that constitute a "crime." The hurts and harms that a person inflicts on himself are not "crimes;" they may be accidents or vices, but are not "crimes." Intoxication is not a crime: it is a vice. It lacks the essential element which constitutes crime: that element is an intentional *violation of another person's rights*, without sufficient reason for such violation. To protect natural rights, to guard them from invasion, is the only rightful plea for controlling another person's rights of person, property, or liberty. Legislators can rightfully enact laws against crimes, but not against vices. Legislation against crimes, proceeds on the principle of self-protection, which is a law of nature; for it is instinctive for a person to attempt to defend himself against injury. Kindness, arguments, and persuasions, not punitive methods, are the only ones that can be rightfully used to reform vicious persons. Their rights of protection against injustice and violence, are just as sacred to them, as are the rights of virtuous men against injustice and violence to them. An invasion of one's right of self-protection, is just as truly a crime when perpetrated against a vicious man, as when it is committed against a virtuous man. In truth, it is by so much a greater crime when done by a legislature or a congress than when done by an individual, as there is more power in such bodies to execute their purposes, than there is in an individual.

The plural marriages of the Mormons, if there be no force nor fraud used in effecting or maintaining them, do not violate the rights in person or property of other people, or of any person: they are not overt or "open acts against peace and good order." They are not in opposition to his social duties; but are, on the contrary, in the performance of what the parties to them most religiously believe to be their social duties. A marriage is a civil contract between a man and a woman for social purposes. The parties thereto have each one a natural right to enter into such contract, if thereby they violate no other person's rights. In the case of a proposed second marriage of the same man and another woman, no person, so far as I can see, can reasonably object to it, unless it be the first wife. If she do not object, much more if she favor the proposed second marriage, I do not see any reasonable objection to it. It may not be to my taste, nor to your taste: but we are not parties to it; our tastes ought not to control other independent persons' marriage preferences. It certainly is against our prejudices. But prejudices are subtle enemies. They enslave and dwarf every person who entertains them. As I have said, the parties to a proposed second marriage have a natural right to enter into such contract, if thereby they violate no other person's rights. No other person, or legislature is rightfully entitled to oppose, or remonstrate against it, otherwise than by moral means. Force or fraud authorized or employed against any of the married parties, is itself a crime. Legislators who authorize it are, in my opinion, greater criminals, than are the ignorant, poverty-stricken, or money-making officials who execute their statutes.

In my younger days I was a Baptist; for twenty-five years was a member of a Baptist church. Some of the principles of the Baptists are especially dear to me. Sorry am I, that in the existing mad uproar against the Latter-Day Saints, (for so the Mormons call themselves) certain Baptist ministers and editors have not learned, or perhaps have forgotten, the principle of "unlimited toleration for all religious systems," promulged by Roger Williams and President Way

land, — bright and shining lights that they were, of that denomination. Roger Williams wrote,[1] —

"There goes many a ship to sea, with many hundred souls in one ship, whose weal and woe is common, and is a true picture of a commonwealth, or a human combination, or society. It hath fallen out sometimes, that both Papists and Protestants, Jews and Turks, may be embarked in one ship; upon which supposal I affirm that all the liberty of conscience that ever I pleaded for turns upon these two hinges: that none of the Papists, Protestants, Jews, or Turks be forced to come to the ship's prayers, nor compelled from their own particular prayer or worship."

Let it not be forgotten, nor misapprehended that Mormon plural marriages are, by the parties to them, revered and held as sacred a part of their worship, as circumcision is by the Jews, or immersion or sprinkling is by Baptists and Congregationalists, or as celibacy is by the Shakers and by the Roman Catholic priesthood. If a ship (in Roger Williams's day a ship was of only some few hundred tons burden) could carry hundreds of Papists, Protestants, Jews, and Turks on a long voyage (the voyage of life to most of us is but a short one) without internal religious strifes, simply by these different sects and nationalities mutually abstaining from persecution of one another, then certainly it is not impossible in the vast territory of the United States (where each State is at liberty, without let, hinderance, or other restraint than moral ones, to establish monogamy, polygamy, or any other marriage institution that the people of each State may respectively desire) for Americans of all creeds, modes of faith, and republican social institutions, to dwell together in peace, harmony, and prosperity, if they will abstain from persecution or violation of one another's natural rights.

"In my Father's house are many mansions." For aught I know to the contrary, Jesus may have prepared, among those many mansions, a place for the Mormons.

Dr. Wayland, in the section on "Persecution on account of Religious Opinions," in his "Limitations of Human Re-

[1] Knowles's Memoir of Roger Williams, p. 279.

sponsibility," states principles for the right regulation of human conduct, which, applied to the Mormon problem, will, with peace and justice to all parties, sects, and denominations, surely and honorably solve it. Those principles are that we are not responsible for the religious opinions or practices of our fellow-men, and, whatever be our physical power, we cannot rightfully use it to the detriment of our neighbor, to accomplish any good whatever, if he does not infringe upon our rights. "My brother," he says, "may be in error; but he has the same right to propagate his error that I have to propagate my truth. To use any other weapons against him than arguments is persecution, and shows a selfish disposition to invade the rights of our neighbors. The weapons of Christian warfare are *not* carnal, but simply truth and righteousness.

These principles, unswervingly adhered to, will solve, to the satisfaction of every person who acts upon them, the Mormon problem, all temperance, prohibition, and divorce questions, and other enigmas that sometimes perplex legislators, judges, ministers, and other intelligent and conscientious people.

Proximus ardet Ucalegon. If the Mormon house of worship be destroyed, whose house will next burn ?

PART II.

CONSTITUTIONAL ARGUMENT.

PLEASE permit me, Gentlemen of Massachusetts, now to ask your attention to the case of Reynolds *vs.* United States (98 United States Reports, Supreme Court), argued and adjudged in the Supreme Court, October term, 1878, in which case Mr. Chief Justice Waite delivered the opinion of the court.

You know (for some, if not all of you are lawyers) that certain cases in law books are called leading cases; perhaps (I hope it is) because, amid the conflicts of human selfish interests and prejudices, they allure to brighter worlds, and lead the way to the eternal principles of truth and justice. Such was the Sommersett negro case, in which, amid the prejudices, and social and monetary influences which clouded it, Lord Mansfield discerned human rights, and secured freedom to a slave. Coming time may reveal whether the Reynolds case will be classed among leading cases, or overruled cases, — whether, in the galaxy of luminous, just decisions, that of Chief Justice Waite's will be, as Lord Mansfield's was, a guiding star. No other considerations than love of liberty, truth, and justice, and regard for the good name and permanent best interests of our country, have led me to examine the Reynolds case, and address this letter to you. I find that in it are involved not only Mormon interests, but the American, the human right of all men to the free exercise of religion. As violations of this right have

not unfrequently kindled animosities and wars, it seems to me that this case has not, either in the court or elsewhere, attracted the attention nor received the discussion which its importance merits. In what I may say, I wish it understood that I desire to be merely an *amicus curiæ;* certainly I am not a partisan.

In this case the charge was that the plaintiff in error, having a wife living, married another, and thereby violated Sect. 5,352 of the Revised Statutes of the United States, which statute makes every married person who marries another in a Territory or other place over which the United States have exclusive jurisdiction, guilty of bigamy, and punishable by fine and imprisonment. To this charge it was answered that that statute is unconstitutional, because it is contrary to, and violates Article I. of Amendments to the Constitution, which amendment declares that Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. The Supreme Court of the United States have decided that the statute is constitutional and valid; and it is popularly supposed that that decision settles the matter But "let us consider the reason of the case, for nothing is law that is not reason."

The opinion of the court was delivered by Mr. Chief Justice Waite. It is one of the excellences of a people's government, that the acts of its legislators and the decisions of its judges, are open to the examination and criticism of every citizen. Of this privilege, or rather *blessing of liberty*, resulting from the constitutional right of *freedom of speech* and *press*, I wish to avail myself, and shall therefore here examine and comment on certain parts of that opinion.

Most gratifying to every lover of civil and religious liberty is its declaration that "Congress cannot pass a law for the government of the Territories, which shall prohibit the free exercise of religion. The first amendment to the Constitution expressly forbids such legislation. Religious freedom is guaranteed everywhere throughout the United States, so far as Congressional interference is concerned. The question

to be determined," says the court, "is whether the law now under consideration [i.e., Sect. 5,352] "comes within this prohibition."

"The word 'religion,'" the court continues, "is not defined in the Constitution. We must go elsewhere, therefore, to ascertain its meaning; and nowhere more appropriately, we think, than to the history of the times in the midst of which the provision was adopted. The precise point of the inquiry is, what is the religious freedom which has been guaranteed?" (p. 162.)

The court, after briefly alluding to ancient Virginia controversies arising from taxation for support of particular sects, etc., refers to a "Memorial and Remonstrance," prepared by Mr. Madison, in which he demonstrated "that religion, or the duty we owe the 'Creator,' was not within the cognizance of civil government;" also to an act "for establishing religious freedom," drawn by Mr. Jefferson: "In the preamble of this act" [12 Hening, Stat. 84],[1] the court says "religious freedom is defined;" and, after a recital that "to suffer the civil magistrate to intrude his powers into the field of opinion, and to restrain the professions or propagation of principles on supposition of their ill tendency, is a dangerous fallacy which at once destroys all religious liberty," it is declared "that it is time enough, for the rightful purposes of civil government, for its officers to interfere, when principles break out into overt actions against peace and good order." "In these two sentences," says the Supreme Court, "is found the true distinction between what properly belongs to the church and what to the state."

Is "religion" or "religious freedom" to be cabin'd, cribb'd, confin'd, bound in any verbal definition? Are only such citizens to be protected from Congressional interference with their religious freedom, as believe religion to be "the duty we owe the Creator"? Has Congress the constitutional power to prohibit the free exercise of their religion to citizens who believe, with Thomas Paine, that "the world

[1] See act in the Appendix.

is my country, to do good my religion;" or who believe with that servant of God and of the Lord Jesus Christ, the epistle-writer James, that pure and undefiled religion is to visit the fatherless and widows in their affliction, and to keep one's self unspotted from the world; or to other citizens, who do justly, love mercy, and walk humbly, each one before his own God, which the prophet Micah declared was good, and the only thing Jehovah required of man?

Possibly the word "religion" was not defined in the Constitution, because the word has as many meanings as there are minds that think upon it. It is too broad, too high, too profound, too variform, too subtile, too spiritual, to be comprehended in any network of words. Definition of religion is limitation, restriction, circumscription of religion. Definitions of religion therefore, only include states, or establish certain parts or phases of religion, and thereby exclude other parts or phases of it. Definition of religion is therefore both "an establishment of religion" and a "prohibiting the free exercise thereof," respecting which the Constitution expressly declares Congress shall make no law. . . . The court, although it says that "religious freedom" is defined in the act draughted by Mr. Jefferson, does not mention that definition in its opinion; and on examination of the act I have not found it. The reader may examine it, in the Appendix of this pamphlet.

But here I would inquire, is the meaning of "the word religion" to be found in "the history of the times in the midst of which the provision [i.e., first amendment to the Constitution] was adopted"? The question of the constitutional power of Congress to legislate in respect to marriage, and the social relations of the people in the Territories of the United States, was for the first time brought before the Supreme Court in this case. What the country expected of that court, and what it needs at the present time, when sectarian madness rules the hour, and pygmies are perched on Alps, is a luminous judicial interpretation of the scope, design, and breadth of "the religious freedom granted by

the Constitution." Such an exposition, based on the eternal principles of truth, *justice*, and *liberty;* breaking church shackles from the soul, as the Sommersett negro case broke the slaveholder's manacles from his body, would have made it a leading case fit to be published beside that one which made illustrious Lord Mansfield's name. But the court, still groping for the meaning of "the word religion," amid historic records, narrates that a little more than a year after the passage of Jefferson's statute in the Virginia House of Delegates, the Convention met which prepared the Constitution of the United States, but failed to include in it an express declaration insuring the freedom of religion. Subsequently, at the first session of the first Congress, the first amendment to the Constitution was proposed by Mr. Madison, and adopted. Mr. Jefferson afterwards, in reply to an address to him by a committee of the Danbury Baptist Association (8 Jefferson's Works, 113), said, "Believing with you, that religion is a matter which lies solely between man and his God; that he owes account to none other for his faith or his worship; that the legislative powers of the Government reach actions only, and not opinions, — I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should make 'no law respecting an establishment of religion, or prohibiting the free exercise thereof,' thus building a wall of separation between Church and State. Adhering to this expression of the supreme will of the nation, in behalf of the rights of conscience, I shall see with sincere satisfaction the progress of those sentiments which tend to restore man *to all his natural rights;* convinced that he has no natural right in opposition to his social duties." "Coming as this does," says the Supreme Court, "from an acknowledged leader of the advocates of the measure, it may be accepted almost as an authoritative declaration of the scope and effect of the amendment thus secured. Congress was deprived of all legislative power over mere opinion, but was left free to reach actions which were in violation of social duties or subversive of good order." (p. 164.)

Thus much of what the court say of the first amendment, under the light thrown upon it by Messrs. Jefferson and Madison who originated and proposed it. It was an amendment to the Constitution.

But now, senators and representatives of Massachusetts, it is chiefly and all-important to bear in mind, and your candid attention is most earnestly solicited, for the right determination of the whole case hinges upon it, — that the expressed and only purpose for which the Constitution was ordained and established, so far as the special matter (viz., respecting an establishment of religion, or prohibiting the free exercise thereof) now under consideration is concerned, was "to establish justice, and secure the blessings of liberty." This is the purpose stated in the preamble, that sets forth the intent of the Constitution. All the seven articles of the Constitution, with their various sections, are merely means and modes of carrying into execution the purposes and objects stated in the preamble, and ought to be interpreted by, and in accordance with the exact and specific objects and purposes therein stated. "The aim and object of an instrument is *essential* in construing it," says Lieber in his "Legal and Political Hermeneutics" (p. 143). The preamble of the Constitution was adopted *as a solemn promulgation of a fundamental fact vital to the character and operations of the government*, says Mr. Justice Story in his "Commentaries on the Constitution" (sect. 463). That preamble as a key opens the meaning of the First Article of the Amendments.

The aim and object of the Constitution was to secure the *blessings of* LIBERTY to each and every person of the United States then living, and to each and every one of their posterity. The *blessings of liberty* in every department of human thought and action, without any restriction of *liberty* whatever, with no possible limitation of that *liberty*, provided that it did not work injustice to any other person (for to *establish justice* was another object and aim, mentioned in the preamble), were to be secured to each and every one of the people

of the United States, and to each and every one of their posterity. It was to secure the blessings of *liberty* in politics, in trade, in action, in speculation, in religion, and in every other conceivable sphere of mind and matter that human beings can engage in, with the single limitation of doing injustice to no one, that the Constitution was ordained and established. Its purpose was not merely to secure fragments of liberty, such as popes, bishops, ministers, kings, and princes might permit or dole out to the people, that they were to possess. No! the representatives of the United States in their Declaration of Independence declared that all men were created equal, and were endowed with the right, among other rights, of the pursuit of happiness. Illumined by this light from the Declaration of Independence, it is clear that the purpose, object, end, and aim of the Constitution was to secure to the people of the United States and their posterity, to each and every one of them individually, all the blessings of universal liberty in his pursuit of happiness, with no limitation or restriction whatever, save the single one of not doing injustice to any one. Constitutionally, therefore, every American is a free man with liberty to do all that he may wish to do in his pursuit of his individual and social happiness, provided that he do not injustice to any person. This liberty declared, and limited by avoidance of injustice to any one (for "to establish justice" was another purpose mentioned in the preamble) coincides in meaning with the first principle of ethical science stated by Herbert Spencer in his "Social Statics, or the Conditions essential to Human Happiness" (p. 121); viz., that "every man has freedom to do all that he wills, provided he infringes not the equal freedom of any other man," a principle which he declares to be "a law of right social relationships." Constitutional liberty and the principle of ethical science are but echoes of the whole doctrine of justice, which Justinian centuries ago thus stated in his "Institutes" (i. 1, 3): *Juris præcepta sunt hæc, honeste vivere, alterum non lædere, suum cuique tribuere.* (To live honestly, to hurt nobody, to render to every one

his due.)[1] "Truth is the summit of being," says Emerson. "Justice is the application of it in affairs." No better policy can guide any political administration and party in power, than to do justice to all classes and conditions of men, especially to the oppressed. The Mormons now suffer from Sect. 5,352 of the United States Revised Statutes, purposely enacted to hurt them, which therefore violates the above second principle of justice.

Now, when the Supreme Court say that Congress "was left free to reach actions which were in violation of social duties, or subversive of good order," in my judgment, — and I desire to speak with proper deference, — it says what the Constitution has not authorized it to say. A man's social duties grow out of his capabilities and his natural rights. His natural rights do not spring from his social duties, but are inherent in and essential to him as being a man. He can perform his social duties, only as he has capacities for their performance, and by being left in the full and unrestrained possession and enjoyment of all his natural rights. It may be a man's and a woman's social duty to attend dancing-parties and prayer-meetings. But whether it is a duty thus to do, they must decide for themselves. It is their exclusive right to decide it. Any statute of Congress compelling such attendance under pains and penalties, or any court's interpretation of the Constitution, or of such statute, to the effect that, not attending such dancing-parties or prayer-meetings, they thereby violated social duties, or subverted good order, would be an infringement of their natural rights, and would be an act of despotism on the part of Congress, or of usurpation on the part of the court making such interpretation. Equally despotic would be the legislative statute, and equally perverting would be the court's interpretation, which would restrain the man and

[1] Spencer's First Principle of Ethical Science, and Justinian's Epitome of Justice, harmonize well with Confucius's Reciprocity, or Rule of Practice for all one's life : "What you do not want done to yourself, do not do to others;" and with the precept, "Whatsoever ye would that men should do unto you even so do ye also unto them," which Jesus said is the law and the prophets.

woman from attending such dancing-parties or prayer-meetings, provided that by such attendance they did injustice to no one.

The Constitution does not, either in words or by implication, allude to "social relations, social obligations and duties." It may be a social duty for me to enlarge my circle of acquaintances, to reciprocate friendly offices, and to help on Christian missions, or infidel sciences, as I may prefer; but they are not legal duties, required of me by the Constitution. The Congress or the court that assumes to coerce me in "social relations, social obligations and duties," or to restrain me in the exercise of them, where I do injustice to no one, transcends its constitutional powers, and becomes a despot. The assumption of the court, that the American Government is necessarily required to deal with the "social relations and social obligations and duties" of the people, is a subtle and an enormous absorption of undelegated power, and is one that should attract the attention of all Americans interested in preserving free institutions and the "*blessings of liberty.*"

Not less unconstitutional and indefensible is the Supreme Court's selection of the words "good order," as a criterion of the legislative power of Congress over the actions and *natural rights* of the people. The words "social deeds" and "good order" have no exact, precise, and legal meaning. They are indefinite expressions. Their meanings shift and vary, and are as many and as diverse as are the sects, partisans, and people that all over the world, use these words. "Order reigns in Warsaw," was the official proclamation, when the capital city of the Poles was crushed beneath the feet of the Russian despot. But it was oppression and slavery of the Poles, which was interpreted as "order" by the Czar. By the evidence of the Mormons, and of many other competent and credible witnesses, "social duties" are as well performed, and as "good order" exists, among the Mormons in Utah as in any one of the United States. The particular kind of "social duties," and the particular kind

of "good order," which Congress seeks to enforce upon and among the Mormons, is as destructive of their human rights and of their blessings of liberty, as the ukase of the Czar was to the rights and liberties of the Poles. "Social duties and good order" are words not in the Constitution. Its framers put therein other words, with exact and definite meaning; those words are "justice" and "liberty." "*To establish justice*, and *secure the blessings of liberty to ourselves and our posterity*," was the declared purpose, object, end, and aim of the Constitution. The words "social duties and good order" are unwarranted, injected interpolations, and utterly subvert the meaning of that instrument. They open the door to unlimited arbitrary legislation, and are in direct conflict with that amendment to the Constitution which declares "that Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

Therefore I regard the opinion of the Supreme Court, that Congress was left free to reach actions which were in violation of "social duties or subversive of good order" (said actions being just), as a violation of the fundamental principles of the Constitution, and a usurpation by which the court abridges the "*blessings of liberty*" to the people.

The court proceeds, and says, "Polygamy has always been odious among the northern and western nations of Europe; and, until the establishment of the Mormon church, was almost exclusively a feature of the life of Asiatic and of African people. From the earliest history of England polygamy has been treated as an offence against society. After the establishment of the ecclesiastical courts, and until the time of James I., it was punished through the establishment of those tribunals."

To this I answer, what the court here says may all be true, and yet it is not a sound argument, warranted by the Constitution, against the Mormon church or its polygamy. Not only has polygamy been "odious," but so has democracy been "odious" among the northern and western nations of

Europe; but that is no good argument why democracy should not exist in the United States. Whether a matter or an institution is odious or not odious, is a question of taste, and not of *natural rights. De gustibus non est disputandum* (there is no disputing about tastes), is a maxim applicable as well in legal discussion, as in social conventionalities. Therefore the opinion of the northern and western nations of Europe as to the good or bad taste of polygamy, is not pertinent in ascertaining the Constitutional or "natural rights" of the Mormons.

Neither because "polygamy has been treated as an offence against society" in England, and been punished in its "ecclesiastical courts," does it follow that it should be so treated in the United States. The political *status* of society in England is radically different from the constitutional *status* of society in the United States. In England, it has developed from a monarchical and an aristocratic form of government, and partakes of the characteristics of such governments, and the English people have only such rights as have been conceded or granted to them by their government. In the United States, society springs from democratic sources, and the people here possess all their *natural rights* except such, and so much concession of them to the National Government, as it was necessary for it to possess in order "to establish justice." It is confusion of thought on the part of the court, to confound, as one and the same thing, such utterly different political states of society, as that of England, and that of the United States, and to reason, that, because "from the earliest history of England, polygamy has been treated as an offence against society," therefore in the United States it should also be treated as an offence against society.

Neither does the fact that English ecclesiastical courts punished polygamy add weight to the opinion of the court. The Constitution does not recognize, and knows nothing of, "ecclesiastical courts." To escape from them, from their barbarities and absurdities, was one purpose of the early settlers of the colonies, and of the framers of the Constitution.

Therefore ecclesiastical opinions and punishments of English polygamists, are of no assistance in ascertaining *the natural and constitutional rights* of Mormons, and cannot rightfully be resorted to, as affording any constitutional prohibition of the free exercise of their religion, or the exercise of their natural rights. The court continues its argument, and after reciting that the statute of 1 James I. (c. 11), punishing polygamy, had been re-enacted in the colonies, after the passage of the act establishing religious freedom, and after the convention of Virginia had recommended as an amendment to the Constitution of the United States, the declaration in a bill of rights that "all men have an equal, natural, and unalienable right to the free exercise of religion according to the dictates of conscience," mentions as a significant fact that on the 8th of December, 1788, the legislature of that State substantially enacted the statute of James I. because, as recited in the preamble, "it hath been doubted whether bigamy or polygamy be punishable by the laws of this Commonwealth." "From that day to this," continues the court, "we think it may safely be said there has never been a time in any State of the Union when polygamy has not been an offence against society, cognizable by the civil courts, and punishable with more or less severity. In the face of all this evidence, it is impossible to believe that the constitutional guaranty of religious freedom was intended to prohibit legislation in respect to this most important feature of social life."

The first answer to this reasoning of the Chief Justice that occurs to me, is the same offered by Mr. Justice Field, for not concurring with the majority of the court in relation to the admissibility of certain testimony offered in said case: viz., "the authorities cited by the Chief Justice, to sustain its admissibility, seem to me to establish conclusively the exact reverse."

For, the General Assembly of Virginia which enacted the act for establishing religious freedom in 1784-85 (12 Henings, Stat. 84), as if foreboding the possibility of succeeding assemblies attempting to narrow its operations, in their said

act declared "that the rights hereby asserted" (viz., that of religious freedom) "are of the natural rights of mankind, and that if any act shall be hereafter passed to repeal the present, or to narrow its operations, such act will be an infringement of natural right."

As State courts sometimes declare statutes which contravene the principles of their State Constitutions, to be void and of no effect, so I believe that a Supreme Court imbued with the views of the Virginia Assembly of 1784–85, or of the liberal-minded patriots that framed the Constitution of the United States, would have nullified Sect. 5,352 of the United States Revised Statutes, and any statute of a similar character, when judicially brought before it; and the case itself would have been a leading case, because its decision would have rested, not on selfish, sectarian, and conflicting opinions, but on the eternal and universally acknowledged principles of truth and JUSTICE.

II. Please reconsider the several parts "of all this evidence," in whose face the court say, "it is impossible to believe that the constitutional guaranty of religious freedom was intended to prohibit legislation in respect to [polygamy] this most important feature of social life." These parts are (1) A declaration in a bill for establishing religious freedom, passed in the Virginia House of Delegates, 1785, "that it is time enough, for the rightful purposes of civil government, for its officers to interfere, when principles break out into overt acts against peace and good order." The answer to this piece of evidence is, that Mormon polygamy is *not* in its nature or manifestation an act against peace and good order. Mormon polygamists are as orderly and as peaceable as, perhaps more so than, are celibates or monogamists. An act of Congress declaring polygamy to be a crime or an overt act against peace and good order, or a court's interpretation of it as such, appears to me to be, in scriptural phrase, *framing mischief by a law.*

(2) The second piece of evidence is a remark in Mr. Jefferson's reply to a committee of the Danbury Baptist Asso-

ciation, that "man has no natural right in opposition to his social duties." The answer is that Mormons, in entering into plural marriage, are not *opposing*, but are performing what they most sincerely believe to be both a social and a religious duty.

(3) "Polygamy has always been odious among the northern and western nations of Europe." This argument has herein already been answered, and, in my opinion, is worthless.

(4) "Ecclesiastical courts in England had cognizance of polygamy, and punished it." The answer is, that ecclesiastical courts never acquired jurisdiction in this country. Their action in England, therefore, is of no legal efficacy in determining whether or not Congress had jurisdiction in respect to polygamy.

(5) "Local statutes in England and in certain American colonies cognized and punished it." The answer is, that such statutes, being *local*, were not operative beyond the limits of the localities whose people enacted them, and cannot rightfully be used to restrict or punish persons in another locality.

(6) That "there never has been a time in any State of the Union when polygamy has not been an offence against society, cognizable by the civil courts, and punishable with more or less severity." The answer is, that the statutes in any State of the Union punishing polygamy have been *local*, and are of no legal efficacy beyond the limits of such State, and cannot be legally applied to govern the people of another State or Territory, in their marriage relations; nor can State statutes enacted to restrain religious freedom, rightfully be quoted in opposition to Article I. of Additions to, and Amendments of the Constitution of the United States, which amendment declares that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." If Congressional or State statutes can be cited as authority in opposition to the solemnly ordained fundamental and established purposes and provisions of the Constitution of the United States, then these latter are of no legal efficacy.

The above six arguments or pieces of evidence may be acceptable to a pope, or to a Calvin; but I cannot think they would have been satisfactory to George Washington, Thomas Jefferson, or to Paine, or to Franklin, or to Abner Kneeland, or to Theodore Parker, or that they will be conclusive to multitudes of intelligent living Americans. A rod of six broken twigs, or a staff of six rotten strands, will not comfort a traveller when he walks amid doubts and shadows through a dark valley of decision; he then may fear great evil.

But the court, perhaps not perfectly satisfied with the evidence whose hexagonal face made it "impossible for the court to believe that the constitutional guaranty of religious freedom was intended to prohibit legislation in respect to polygamy," attacks the question from another, a political point of view, and, with re-enforcements, argues that "marriage, while from its very nature a sacred obligation, is nevertheless in most civilized nations a civil contract, and usually regulated by law." Herein is one assumption and two statements. One is, that marriage is a sacred obligation. Is that so? It was made a sacrament at the Council of Trent, in words which Rev. Dr. Madan thus translates: "If any shall say that matrimony is not one of the seven sacraments instituted by Christ, and doth not confer grace, let him be accursed."[1]

During the conflict in England between Church and State, from time of Henry VIII. and subsequently, marriage was treated in the courts only as a civil obligation or contract. But ever since then the Church, the religious party and their sympathizers, in England and the United States, have endeavored to re-invest it with a sacred character. The remark of the court that it is a "sacred obligation" shows that their sympathies are with the Church party. The Reformers treated it as a purely civil obligation or contract. Martin Luther ("Table Talk," p. 306) said, "Matrimonial questions

[1] Equally unjust and maledictive appears to me to be Sect. 5,352 of United States Revised Statutes, which, in effect, declares: Let every married man or woman in a Territory who married another be fined not more than five hundred dollars, or imprisoned not more than five years.

are temporal things pertaining to temporal magistrates. I advise that ministers interfere not in them." As for myself, I believe that every real obligation is so far sacred, that it ought to be honorably and strictly, if not generously performed.

The remark of the court that "marriage is in most civilized countries a civil contract and usually regulated by law," proceeds upon erroneous assumption that the constitutional government of the United States is the same in principle as that of governments "in most civilized nations," whereas it is their exact opposite. The American idea or principle of government, is that each and every citizen is possessed of *natural rights*, inherent in and born with him; that he has *liberty* to exercise and enjoy all his natural rights in the pursuit of his individual or social happiness, without permission or hinderance from any person or government whatsoever, provided that he do not thereby do injustice to any one. But the preamble of the Constitution limits his liberty by declaring another of its proposed objects, viz., "to establish justice." Therefore, subject to the limitation of doing no injustice, every citizen in the Territories is constitutionally secured in the blessed liberty to do whatever he may please to do, in order to attain his individual or social happiness. The blissful, but not an iniquitous freedom, of enjoying all one's natural rights, is, as I believe, what was intended by the framers of the Constitution, in the phrase "blessings of liberty" in its preamble. But the idea or principle of government, "in most civilized nations" (thus phrased by the court), is the *feudal* idea that "might makes right." Such governments have been more or less despotic in their administration of public affairs, because *they are despotisms*. Accordingly the people "in most civilized nations" have enjoyed only such rights as have been doled out or allowed to them by their rulers. The idea of *natural rights*, inherent in, and belonging to, every man, woman, and child, because he or she is a man, woman, or child, is the American, not the feudal principle. The court, not recognizing this momen-

tous, essential, and never-to-be-forgotten difference between the principle of government "in most civilized nations," and the American principle of government, purposely, or otherwise, but certainly erroneously, takes the feudal principle as its premise or basis of argument, and thereby arrives at its despotic and un-American decision. It goes upon the assumption that the administrative officers of the United States government, rule or govern the people, as the English Parliament rules the Irish people; whereas theoretically and constitutionally the American administrative officers are the servants, not the rulers, of the people, and should take especial care that the rights of the people are not abridged, or in other words, that the Commonwealth receive no detriment.

Prior to the Reformation, popes, bishops, priests, in their synods and councils, made decrees, and ordained and established marriage laws, to which "most civilized nations" submitted. As before stated, the Council of Trent decreed that if any shall say that matrimony is not one of the seven sacraments, instituted by Christ, and doth not confer grace, *let him be accursed.* In 1530 the College of Bologne determined that the Levitical marriage law was binding on infidels as well as on members of the Christian Church. But Henry VIII., being refused divorce by the Pope, divorced himself from Catherine of Aragon, married Anne Boleyn, and thus opened the way to the Reformation in England and to the civil liberties now enjoyed by Protestants.

"In most civilized nations" marriage (in some being a sacrament, and in other nations a civil contract) is "usually regulated by law," because their rulers in accordance with the feudal principle made the law, and the people, having no liberty of choice in the matter, were compelled to submit to the law. But in each and every one of the United States marriage has been regulated by the people of the respective States, because the people in each State make its laws. At the present time, this very year, it is within the legal and constitutional power of the people of each and every State of the Union, to ordain monogamy, polygamy, or either one or

both of these modes of social life, as the legal marriage for the people of their respective States. Congress has no constitutional power to legislate for or against such action. Any law that it might enact to punish polygamy in any State would be usurpation on the part of Congress. It would be a robbery of the rights of the people, by the servants of the people. If prompted thereto by so-called religious considerations, such action from such motives would prove that, that religion preferred robbery to justice; and, if enforced by legal process, would also show that it preferred violence, and its own domination, to peace, equality, and liberty to the people to enjoy their *natural rights.*

The court reasoning from its erroneous assumption that the constitutional government of the United States is, in its nature and fundamental principle, identical with the nature and principles of governments, "in most civilized nations," a latent and fatal fallacy pervading and poisoning every part of the court's opinion, says that upon marriage, "society may be said to be built, and out of its fruits spring social relations and social obligations and duties with which government is necessarily required to deal." These certainly are matters with which despotic government, and the governments of "most civilized nations," have dealt. But, as I believe, the United States Government, keeping itself and acting, within the preamble and the purview of the Constitution, has no right to deal with "the social relations and social obligations and duties" of the people. These are rights and matters retained by the people, and are not delegated to the United States.[1]

The Roman Catholic Church, more or less theocratic in its supposed origin, and compulsive in its methods, has persistently and for ages endeavored to regulate and control marriage, and other social relations, not only among its adherents, but wherever else the wide world over, it could exercise power. By terrible maledictions and severe penalties, it sought to establish monogamic marriage as the only legal

[1] IX. and X. Amendments.

and sacred connubial relation, and by like severity it endeavored to suppress polygamic marriages. Allusions in the preceding pages have touched upon its moral results, and its profits to the Church and its ministers.

But notwithstanding the stupendous efforts during eighteen hundred years of that parent church, and of other churches, which from it as their source have taken their exclusive, legal monogamic system, notwithstanding their united efforts to uproot or suppress polygamic marriages,—another social system "built" upon polygamic basis has existed, and now is in Asia, Africa, and certain parts of Europe. As demonstrated by Rev. Dr. Madan, and other authors herein cited, both monogamic and polygamic marriages existed among the Hebrews. It is a fact worthy of special observation, that the Virgin Mother worshipped by Roman Catholics, as the mother of God, was a Hebrew maiden and that He

> "whose blessed feet
> Which fourteen hundred years ago were nailed,
> For our advantage, on the bitter cross,"—

now worshipped by most Protestants as the Son of God, was a child of Israel. Both Mary and Jesus were born, grew up, were educated, and lived their lives, amid society whose "religious beliefs" and "practices," whose "social relations" and "social obligations and duties," not simply tolerated, but were themselves the "fruits" of, the monogamic system and of the polygamic system of marriage, coeval and co-existing in their native land. The English Government in India now deals with the sacred and social relations and social obligations and duties springing from polygamic marriages as justly and impartially as with those generated by monogamic marriages.

The next argument of the court in its second assault on the Mormon problem is in these words: viz., "In fact, according as monogamous or polygamous marriages are allowed, do we find the principles on which the government of the people to a greater or less extent rests. . . . Professor Lieber

says polygamy leads to the patriarchal principle, which when applied to large communities fetters the people in stationary despotism, while that principle cannot long exist in connection with monogamy. Chancellor Kent observes that this remark is equally striking and profound."

Four answers to, or comments on this new argument, adduced by the court, may fairly be made: —

(1) The first is, that the statement is an allegation of what it declares to be "fact," which in truth is mere assertion. It is simply the court's opinion on a social question, and not on a legal question. The opinion of the court on legal questions is supposed for the time being to settle them. But only truth and justice can finally settle any question. Moreover, the Supreme Court has no constitutional power to settle social questions. Individual members of the court may have opinions on social questions, and may differ in those opinions as widely as other good citizens are apt to differ on the same matters. Their united opinion on any social matter, which does not involve a legal question, is of no more authority, and is no more binding on the people of the United States, than is the united opinion of an equal number of other intelligent gentlemen. Therefore the opinion of the Supreme Court on the social effects of polygamy is not pertinent to the case, and is of no legal authority.

(2) Another answer is furnished by the statement itself of Professor Lieber, that polygamy cannot long exist in connection with monogamy. If that be a truth, then let there be no legislation favoring or discouraging either polygamy or monogamy; but let polygamy cease to exist, simply and because (as Professor Lieber and Chancellor Kent perhaps mean in their remarks) the moral and social influences of monogamy will necessitate the exit of polygamy. That is the American, the constitutional, the moral, the Christ-like and apostolic mode of getting rid of a supposed evil. Compulsion is a feudal, a barbarous, a brutal mode, frequently if not always generating and entailing other and perhaps greater evils.

(3) Moreover, if Sect. 5,352 of the United States Revised Statutes, and the decision of the Supreme Court thereon, are passively and permanently submitted to, as law, by the people of the United States, that submission of the people will be evidence that monogamy, no less than polygamy, leads to the patriarchal principle (monogamous legislators and judges becoming the patriarchs), and, applied to large communities, fetters the people in stationary despotism.

(4) The remark of Professor Lieber may have been a true inference from polygamy as it existed in Asiatic countries where the government was despotic, and the women were slaves. But it should be remembered that Sect. 4 of Article IV. of the Constitution provides that "the United States shall guarantee to every State in the Union a republican form of government." This constitutional provision, applied to Utah, makes any argument, drawn from the social or political effects of Asiatic polygamy, inapplicable to Mormon plural marriage; and that it is not conclusive, is further proved by a remark of Lady Duffus Hardy in her recent book, "*Through Cities and Prairie-lands*" (p. 123).

"There is a wide difference between the Mohammedan and the Mormon — the two polygamic nations. Whereas the former keep the women in a state of slavery, idleness, and ignorance, the Mormons give their women every possible advantage of education, and permit, nay, encourage, them to take their part in the world's work, and in the management of affairs generally."

The court's next observation is, that "an exceptional colony of polygamists under an exceptional leadership may sometimes exist without appearing to disturb the social condition of the people who surround it; but there cannot be a doubt, that, unless restricted by some form of constitution, it is within the legitimate scope and power of every civil government to determine whether polygamy or monogamy shall be the law of social life under its dominion."

Manifestly, this exceptional colony of polygamists, here alluded to by the court, — a community which does not disturb the social condition of the people who surround it, and

whose own social condition, as the preceding evidence of Capt. Codman and other witnesses proves, is peaceful, thrifty, and moral, though, in its marriage system, not accordant with the prejudice, or, as Rev. Dr. Madan calls it, the *superstition*, of other sects,—is the Mormon people. The court's concession of the tranquillity of Mormon social order seems to me (as other authorities in this case cited by the Chief Justice did to Justice Field) to establish conclusively the exact reverse of the decision to which the court arrived. The question is not whether it is within the legitimate scope of the powers of "every civil government," but whether it is within the legitimate, that is the constitutional, scope of the power of the United States Government. Her government differs from every other civil government (now or ever, in all time, ever existing in the wide world over) in being *restricted* by a written *form of constitution* ordained and established to establish justice, and *secure the blessings of liberty* to the people of the United States, and the people are constitutionally under only its dominion. As I have had occasion hereinbefore to say, so again I insist, the reasoning of the Court in this discussion throughout, proceeds upon an erroneous conception of the relative positions of the government and of the people. Congress, and the executive and judicial powers of the United States, constitutionally are not governors to rule the people, but are simply their servants, to aid in establishing justice and securing the blessings of liberty to the people. Athens, Sparta, Rome, Carthage, and the people of many other states, lost their liberties partly through their religious superstition, and partly through the cupidity and lust of power of their officials. Very calamitous will it be for lovers of justice and liberty, if the United States of America be another victim.

Moreover, let it here be remarked, that the only power over the Territories granted to Congress by the Constitution, is the power mentioned in Sect. 2 of Article IV.; viz., "Congress shall have power to dispose of and make all needful rules and regulations respecting the *territory* or *other property*

belonging to the United States." That section gives power to Congress to dispose of the territory; that is, to sell it, give or cede it away, or otherwise dispose of it, treating it exclusively as *property*, "and to make needful rules or regulations respecting it," regarding it, however, as *property*, and as nothing more than *property*. That section confers no power on Congress to make rules or regulations respecting the *people* of the Territories. The Constitution left the *people* of the Territories, as it did the people of the States, free to establish their own system of society, and to develop their own social relations and obligations and duties. As confirmatory of this view, let it be observed that, in the ordinance of Congress of July 13, 1787, *for the government of the territory of the United States north-west of the river Ohio*, it was declared to be an article of compact between the original States, and the people and States in said territory, a fundamental principle to remain forever unalterable, that "no person, demeaning himself in a peaceable and orderly manner, should ever be molested on account of his mode of worship or religious sentiments." (II. Kent's Com., p. 35, note.)

The Supreme Court next considers "whether those who make polygamy a part of their religion are excepted from the operation of the statute." It argues that if they are excepted, "then those who do not make polygamy a part of their religious belief may be found guilty, and punished, while those who do must be acquitted, and go free. This would be introducing a new element into criminal law. Laws are made for the government of actions, and, while they cannot interfere with mere religious belief and opinions, they may with practices."

This reasoning of the court and the statute itself proceeds on assumption and premises identical with those of despots and feudal nobles in their arguments to justify their tyrannies and oppressions of their dependants. It does not rest on, and is not deduced from, the American premise that the people have *natural rights*, and alone are the source of all political power.

A remark of Mr. Jefferson which the court recited, but did not emphasize, was, that he should see with sincere satisfaction the progress of those sentiments which tend to restore man to *all his natural rights*." The word "restore" here used, implies that previously, in Mr. Jefferson's opinion, man had been deprived of *all his natural rights*. True it was, the people had been robbed of them by priests, nobles, and the feudal law, — the prime principle of which law, that might makes right, the Supreme Court now takes as the ground of its argument to despoil the Mormons of their religious freedom. Good heavens! What profound disappointment and blank despair would pervade his democratic soul, were Jefferson to read this opinion of the Supreme Court! By the Constitution, the people of the United States and their posterity, each and every individual of them, is to be secured in the blessing and the liberty of doing whatever he may please to do, provided that he do not thereby do injustice to any other person. Constitutionally, therefore, neither "those who make polygamy a part of their religion," nor those who do not make polygamy a part of their religious belief, "may be found guilty and punished," provided that by their polygamy they have not done injustice to any other person or persons. Constitutionally, therefore, "this would" not "be introducing a new element into criminal law." Constitutionally, therefore, "laws can be made for the government of actions," but only of such "actions" as do injustice to any person or persons. All other laws of Congress are, therefore, unwarranted by the Constitution; and they may not constitutionally interfere, either with religious belief, opinions, or practices, if such beliefs, opinions, or practices do not do injustice to any person or persons.

The Supreme Court next, on the supposition "that one believed that human sacrifices were a necessary part of religious worship," asks, "Would it be seriously contended that the civil government under which he lived could not interfere to prevent a sacrifice? Or, if a wife religiously believed it was her duty to burn herself upon the funeral-pile of her dead

husband, would it be beyond the power of civil government to prevent her carrying her belief into practice?"

To these questions, the answers arising from the principles of the Constitution are as follows: viz., 1. In the supposed human sacrifice, if injustice were to be done to the proposed victim, or if he did not voluntarily consent to the sacrifice, then in the Territories, the civil government of the United States could constitutionally interfere to prevent a sacrifice. 2. If a wife of lawful age and of sound and disposing mind and memory, religiously believed it to be her duty, and desired, to burn herself upon the funeral-pile of her dead husband, and by such act did no injustice to any other person or persons, then in the Territories it would be beyond the constitutional power of the United-States Government, to prevent her carrying her belief into practice.

The court then proceed to argue, that to permit a man to excuse his practice of plural marriage because of his religious belief "would be to make the professed doctrines of religious belief, superior to the law of the land, and, in effect, to permit every citizen to become a law unto himself." To this I answer that it was exactly this consequence and this result that the provisions of the Constitution were, in my opinion, designed to attain to and accomplish: in order that the doctrines of religious belief, might be (as the history of Bible worthies and of many Christian martyrs shows they have been) superior to the *unjust* laws of the land; and that every citizen might become a law to himself, provided that such religious belief and his law to himself did no injustice to any person. Of such law — but not of *unjust* statutes, enacted and repealed from year to year, tumultuous as the waves and shifting as sand — it may be said, in the memorable words of Hooker, "Of Law there can be no less acknowledged than that her seat is the bosom of God, her voice the harmony of the world. All things in heaven and earth do her homage; the very least as feeling her care, and the greatest as not exempted from her power." "Government could exist only in name under such circumstances," adds the Supreme Court;

to which the answer is, that government is best that governs least. To minimize to the utmost, governmental powers, simply undertaking "to establish justice" (for "domestic tranquillity" and "the general welfare," the other declared purposes of the preamble, would follow as necessary consequences when *justice* was established), and *to secure the blessings of liberty* to the people, was the declared purpose, object, intention, end, aim, and view of the Constitution. Any interpretation or construction of that instrument, that enlarges the powers of Congress beyond the powers delegated to it by the Constitution is, in my opinion, injustice, and robs the people of the States, and especially the people of the Territories, of their *natural rights* and liberties. If legislative powers had been granted (by express words or necessary implication) to, and vested in Congress, to establish monogamy or polygamy, or both of these systems, and to control or regulate the "social relations and social obligations and duties" thence springing as the "fruits" of marriage, I can readily believe Sect. 5,352 of United States Revised Statutes to be a legitimate act of that granted power. At present I consider the decision of the court upon it as illegitimate issue, begotten by the union of usurped legislative power, and judicial acquiescence.

The court in closing its opinion of this part of the case says, "The breaking of the law is a crime." In my opinion, this statement is too broad—too sweeping. The breaking of *just* law is crime, but the enacting of *unjust* law is also crime, and the enforcing of unjust law is also crime, for both one and the other, violate natural, essential, inalienable human rights. Such rights, congresses, legislatures, and human governments cannot create, and if abridged or violated, except for the single purpose of maintaining justice, the violators themselves are criminals.

No wonder that when legislative bodies and judges make no discrimination between just statutes and unjust ones, but acknowledge and enforce each and all of them as *law*, that eminent lawyers contemn the system, and its profession. Said Henry F. Durant, known to some of you, gentlemen of

Massachusetts, as a very successful lawyer in Boston about twenty years ago, afterwards as the founder of Wellesley Female College,—said he, after his retirement from law practice, to his friend Col. Thomas W. Higginson,[1] "Law is the most narrowing and the most degrading of all professions. All human law is a system of fossilized injustice, and the habitual study of it only demoralizes." "But," said Mr. Higginson, wishing to draw him out, "law has been called the noblest of the human sciences." "That is utter nonsense!" he exclaimed; "there is not enough of thought or principle in our whole system of law to occupy a man of intellect for an hour; all the rest is mere chicanery and injustice."

Not wholly at variance with this opinion was that of Rufus Choate, who said,[2] "The law—to be a good lawyer is no more than to be a good carpenter. It is a knack,—simply running a machine."

I wish it to be distinctly understood, and I here assert it with all possible emphasis, that I do not advocate polygamy nor the Mormon religion. I advocate it no more, and no less, than I would advocate the Roman Catholic, or any sect of the Protestant religion under like circumstances. I oppose persecution of the Mormons, as I would oppose persecution of the Roman Catholics, or of any Protestant sect. I oppose Sect. 5,352 of the Revised Statutes of the United States just as much as, and no more than, I would oppose any law of Congress respecting an establishment of religion, or prohibiting the free exercise thereof to any existing or any future sect of religionists. The Mormon bugbear which frightens many people is polygamy. Evidence in this letter shows that monogamic marriage is sometimes accompanied by sore evils both to married and unmarried persons. Intelligent, conscientious Mormons say that the prevalent system of marriage is a failure in civilized nations, that a reform is demanded, and that there is an excess of the female above the male population, and that every woman has a right to be a wife

[1] See Boston Commonwealth, Oct. 22, 1881.

[2] S. G. Brown's Works of Rufus Choate, vol. i., p. 304.

and a mother. Having suffered persecution in New York, Ohio, Missouri, and Illinois, more than thirty years ago they emigrated to Great Salt Lake Valley, and there amid its barren wastes, a thousand miles and more from their oppressors, made their homes and reared their temple. After the way which their persecutors call a "crime," "an evil," an "abomination," a "stigma," and a "stench-heap," so worship they the God of their fathers, believing all things which are written in the law and the prophets.

No one has found them stirring up crowds, neither in Christian churches nor Hebrew synagogues. They have hope toward God, together with Christian and Jews, of a better life beyond the grave. In their ways of life and labor, they are quiet, inoffensive, loyal to the government, temperate, virtuous, and religious. "Liberty," said Buckle, "is the one thing most essential to the right development of individuals, and the real grandeur of nations. It is the product of knowledge, when knowledge advances in a healthy and regular manner; but if, under certain unhappy circumstances, it is opposed by what seems to be knowledge, then, in God's name, let knowledge perish and liberty be preserved." Liberty is not a means to an end, but is an end in itself. Unlimited liberty is the *natural* and inalienable right of every human being, so long and so far as he does not trespass on the co-ordinate rights and liberties of others.

> "For always in thine eyes, O Liberty!
> Shines that high light whereby the world is saved;
> And, though thou slay us, we will trust in thee."

Believing, as I sincerely do, that that part of the opinion of the Supreme Court considered in this letter, is utterly at variance with the declared purpose, end, object, scope, and principles of the Constitution, and is subversive of justice and the blessings of liberty, and that Sect. 5,352 of the Revised Statutes of the United States and the judgment of the Supreme Court in said case do prohibit the free exercise of religion to the Mormons, and thereby operate hurt, loss,

harm, damage, and other injustice to the Mormons, I ask of you gentlemen of Massachusetts, to use efforts to repeal that section and all other unjust and unconstitutional acts in the United States statute-book.

I am honestly and courteously yours, for truth and justice and liberty,

A CITIZEN OF MASSACHUSETTS.

FEBRUARY, 1882.

PART III.

APPENDIX.

I. Citations justifying Polygamy.
II. Dr. Franklin's Apologue, or Lesson of Religious Toleration.
III. Laws of Virginia, October, 1785, 10th of Commonwealth, Cap. XXXIV. An Act for Establishing Religious Freedom.
IV. Text of so much of Chief Justice Waite's Opinion as relates to the Defence of Religious Belief or Duty.

Many ancient lovers of wisdom, and religious writers, justify polygamy. Limited space allows reference to only a few of them.

"*When God permits a thing in certain cases, and to certain persons, or in regard to certain nations, it may be inferred, that the thing permitted is not evil in its own nature.*"[1]

My space will not permit me to give at length his interesting argument upon this proposition; but his logical conclusion is that "polygamy, therefore, is not in its own nature evil and unlawful." In another place[2] he says, "But it cannot thence be inferred that the thing [polygamy] is evil in itself, according to the law of nature."

Theodoret says[3] "that in Abraham's time polygamy was forbidden neither by the law of nature, nor by any written law."

St. Ambrose, speaking of polygamy, says, "That God, in the terrestrial paradise, approved of the marriage of one with one; but without condemning the contrary practice." He then proceeds

[1] Grotius, B. I., c. ii., sect. 17. [2] B. II., c. v., sect. 9.
[3] Quæst. XLVII., in Genes.

to quote Sarah's request to Abraham concerning Hagar, and Abraham's response thereto.[1]

St. Chrysostom, speaking of Sarah, says, "She endeavored to comfort her husband under her barrenness, with children by her handmaid, for such things were not then forbidden." [2]

In another treatise [3] the same Father says, "Nay, more: the law permitted a man to have two wives at the same time; in short, great indulgence was granted in those and other particulars."

St. Augustine says, "It is objected against Jacob, that he had four wives." To which he answers, "which, when a custom, was not a crime." [4]

In another of his writings he speaks of the custom of having several wives at the same time as "an innocent thing," *inculpabilis consuetudo*, [5] and observes that "it was prohibited by no law." [6]

There is another authority more recent, and, because of its author, will be of weight to unprejudiced citizens. John Adams, the second President of the United States, and one of the most illustrious founders of the Government, wrote a letter to Thomas Jefferson, under date of May 16, 1822, in which he speaks of religious liberty in these words: [7] —

"I do not like the late resurrection of the Jesuits. They have a general now in Russia, in correspondence with the Jesuits in the United States, who are more numerous than everybody knows. Shall we not have swarms of them here? In as many shapes and disguises as ever a king of the Gypsies — Bamfield Morecarew, himself assumed? In the shape of printers, editors, writers, schoolmasters, etc. I have lately read Pascal's letter over again, and four volumes of the history of the Jesuits. If ever any congregation of men could merit eternal perdition on earth and in hell, according to these historians, though, like Pascal, true Catholics, it is this company of Loyola. Our system, however, of

[1] Lib. I., *De Abraham*, Cap. IV. Gratian has inserted this passage, and another to the same purpose, in the *Canon Law*, Caus. XXXII., Quæst. IV., C. III.

[2] Hom. in Genes.

[3] On Virginity, Cap. XLIV.

[4] Lib. XXII., *contra* Faustum, Cap. XLVII.

[5] De Doctr. Christ., Lib. III., Cap. XII.

[6] De Civit. Dei, Lib. XVI., Cap. XXXVIII.

[7] Works of Jeff., vol. vi., p. 604.

religious liberty must afford them an asylum. But if they do not put the purity of our elections to a severe trial, it will be a wonder."

His prejudices against the Jesuits were as strong as those of the most bitter Mormon-hater can be against the people of Utah; but how strong his sense of justice upon the point of religious freedom! They might merit eternal perdition on earth and in hell, "but our system of religious liberty must afford them an asylum." These were the sentiments of a statesman and true lover of liberty, who subordinated prejudice to principle.

ABRAHAM AND THE STRANGER: A LESSON OF RELIGIOUS TOLERATION.

BY BENJAMIN FRANKLIN.

1. And it came to pass after these things that Abraham sat in the door of his tent about the going down of the sun.

2. And behold a man, bowed with age, came from the way of the wilderness, leaning on a staff.

3. And Abraham arose, and met him, and said unto him, "Turn in, I pray thee, and wash thy feet, and tarry all night, and thou shalt arise early on the morrow, and go on thy way."

4. But the man said, "Nay, for I will abide under this tree."

5. And Abraham pressed him greatly; so he turned, and they went into the tent, and Abraham baked unleavened bread, and they did eat.

6. And when Abraham saw that the man blessed not God, he said unto him, "Wherefore dost thou not worship the most high God, Creator of heaven and earth?"

7. And the man answered and said, "I do not worship the God thou speakest of, neither do I call upon his name; for I have made to myself a god which abideth alway in mine house, and provideth me with all things."

8. And Abraham's zeal was kindled against the man, and he arose, and fell upon him, and drove him forth with blows into the wilderness.

9. And at midnight God called unto Abraham, saying, "Abraham, where is the stranger?"

10. And Abraham answered and said, "Lord, he would not worship thee, neither would he call upon thy name; therefore have I driven him out from before my face into the wilderness."

11. And God said, "Have I borne with him these hundred ninety and eight years, and nourished him, notwithstanding his rebellion against me; and couldst not thou, that art thyself a sinner, bear with him one night?"

12. And Abraham said, "Let not the anger of the Lord wax hot against his servant; lo, I have sinned; forgive me, I pray thee."

13. And Abraham arose, and went forth into the wilderness, and sought diligently for the man, and found him, and returned with him to the tent; and, when he had entreated him kindly, he sent him away on the morrow with gifts.

LAWS OF VIRGINIA, OCTOBER, 1785, 10TH OF COMMONWEALTH, CAP. XXXIV.

AN ACT FOR ESTABLISHING RELIGIOUS FREEDOM.

PREAMBLE I. *Whereas*, Almighty God hath created the mind free; that all attempts to influence it by temporal punishments or burthens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the Holy Author of our religion, who being Lord both of body and mind, yet chose not to propagate it by coercions on either, as was in his Almighty power to do; that the impious presumption of legislators and rulers, civil as well as ecclesiastical, who, being themselves but fallible and uninspired men, have assumed dominion over the faith of others, setting up their own opinions and modes of thinking as the only true and infallible, and as such endeavoring to impose them on others, hath established and maintained false religions over the greatest part of the world, and through all time; that to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves is sinful and tyrannical; that even the forcing him to support this or

that teacher of his own religious persuasion, is depriving him of the comfortable liberty of giving his contribution to the particular pastor whose morals he would make his pattern, and whose powers he feels most persuasive to righteousness, and is withdrawing from the ministry those temporary rewards, which, proceeding from an approbation of their personal conduct, are an additional incitement to earnest and unremitting labors for the instruction of mankind; that our civil rights have no dependence on our religious opinions any more than our opinions in physics or geometry; that therefore the proscribing any citizen as unworthy the public confidence, by laying upon him an incapacity of being called to offices of trust and emolument, unless he profess this or that religious opinion, is depriving him injuriously of those privileges and advantages to which in common with his fellow-citizens he has a natural right; that it tends only to corrupt the principles of that religion it is meant to encourage, by bribing with a monopoly of worldly honors and emoluments, those who will externally profess and conform to it; that though these indeed are criminal who do not withstand such temptation, yet neither are those innocent who lay the bait in their way; that to suffer the civil magistrate to intrude his powers into the field of opinion, and to restrain the profession or propagation of principles on supposition of their ill tendency, is a dangerous fallacy, which at once destroys all religious liberty, because he, being of course judge of that tendency, will make his opinions the rule of judgment, and approve or condemn the sentiments of others only as they shall square with or differ from his own; that it is time enough, for the rightful purposes of civil government, for its officers to interfere, when principles break out into overt acts against PEACE and good order; and, finally, that truth is great and will prevail if left to herself, that she is the proper and sufficient antagonist to error, and has nothing to fear from the conflict, unless by human interpretation disarmed of her natural weapons, free argument and debate, errors ceasing to be dangerous when it is permitted freely to contradict them.

II. *Be it enacted by the General Assembly*, That no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burdened in his body or goods, nor shall otherwise suffer on ac-

count of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinion in matters of religion, and that the same shall nowise diminish, enlarge, or affect their civil capacities.

III. And, though we well know that this assembly, elected by the people for the ordinary purposes of legislation only, have no power to restrain the acts of succeeding assemblies, constituted with powers equal to our own, and therefore to declare this act to be irrevocable would be of no effect in law; yet we are free to declare, and do declare, that the rights hereby asserted are of the natural rights of mankind, and that if any act shall be hereafter passed to repeal the present, or to narrow its operations, such act will be an infringement of natural rights.

12 Hening's Statutes at Large, pp. 84–86.

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TEXT OF SO MUCH OF CHIEF JUSTICE WAITE'S OPINION IN REYNOLDS *vs.* UNITED STATES, 98 SUPREME COURT U. S. REPORTS, AS DISCUSSES ART. I. OF ADDITIONS AND AMENDMENTS TO THE CONSTITUTION, WHICH ARTICLE DECLARES THAT "CONGRESS SHALL MAKE NO LAW RESPECTING AN ESTABLISHMENT OF RELIGION, OR PROHIBITING THE FREE EXERCISE THEREOF, OR ABRIDGING THE FREEDOM OF SPEECH OR OF THE PRESS."

5. As to the defence of religious belief or duty.

On the trial, the plaintiff in error, the accused, proved that at the time of his alleged second marriage he was, and for many years before had been, a member of the Church of Jesus Christ of Latter-Day Saints, commonly called the Mormon Church, and a believer in its doctrines; that it was an accepted doctrine of that church, "that it was the duty of male members of said church, circumstances permitting, to practise polygamy; . . . that this duty was enjoined by different books which the members of said church believed to be of divine origin, and among others the Holy Bible, and also that the members of the church believed that the practice of polygamy was directly enjoined upon the male members thereof by the Almighty God, in a revelation to Joseph Smith, the founder and prophet of said church; that the failing or refusing to practise polygamy by such male members of said church, when circum-

stances would admit, would be punished, and that the penalty for such failure and refusal would be damnation in the life to come." He also proved "that he had received permission from the recognized authorities in said church to enter into polygamous marriages; . . . that Daniel H. Wells, one having authority in said church to perform the marriage ceremony, married the said defendant on or about the time the crime is alleged to have been committed, to some woman by the name of Schofield, and that such marriage ceremony was performed under and pursuant to the doctrines of said church."

Upon this proof he asked the court to instruct the jury that if they found from the evidence that he "was married as charged — if he was married — in pursuance of and in conformity with what he believed at the time to be a religious duty, that the verdict must be not guilty." This request was refused, and the court did charge "that there must have been a criminal intent, but that if the defendant, under the influence of a religious belief that it was right — under an inspiration, if you please, that it was right — deliberately married a second time, having a first wife living, the want of consciousness of evil intent — the want of understanding on his part that he was committing a crime — did not excuse him; but the law inexorably in such cases implies the criminal intent."

Upon this charge, and refusal to charge, the question is raised whether religious belief can be accepted as a justification of an overt act made criminal by the law of the land. The inquiry is not as to the power of Congress to prescribe criminal laws for the Territories, but as to the guilt of one who knowingly violates a law which has been properly enacted, if he entertains a religious belief that the law is wrong.

Congress cannot pass a law for the government of the Territories which shall prohibit the free exercise of religion. The first amendment to the Constitution expressly forbids such legislation. Religious freedom is guaranteed everywhere throughout the United States, so far as Congressional interference is concerned. The question to be determined is whether the law now under consideration comes within this prohibition.

The word "religion" is not defined in the Constitution. We must go elsewhere, therefore, to ascertain its meaning, and nowhere more appropriately, we think, than to the history of the

times in the midst of which the provision was adopted. The precise point of the inquiry is, what is the religious freedom which has been guaranteed?

Before the adoption of the Constitution attempts were made in some of the Colonies and States to legislate, not only in respect to the establishment of religion, but in respect to its doctrines and precepts as well. The people were taxed against their will for the support of religion, and sometimes for the support of particular sects to whose tenets they could not and did not subscribe. Punishments were prescribed for a failure to attend upon public worship, and sometimes for entertaining heretical opinions. The controversy upon this general subject was animated in many of the States, but seemed at last to culminate in Virginia. In 1784 the house of delegates of that State, having under consideration "a bill establishing provision for teachers of the Christian religion," postponed it until the next session, and directed that the bill be published and distributed, and that the people be requested "to signify their opinion respecting "the adoption of such a bill at the next session of assembly."

This brought out a determined opposition. Amongst others, Mr. Madison prepared a "Memorial and Remonstrance," which was widely circulated and signed, and in which he demonstrated "that religion, or the duty we owe the Creator," was not within the cognizance of civil government. (Semple's Virginia Baptists, Appendix.) At the next session the proposed bill was not only defeated, but another "for establishing religious freedom," draughted by Mr. Jefferson (1 Jeff. Works, 45; 2 Howison's Hist. of Va., 298), passed. In the preamble of this act (12 Hening's Stat., 84) religious freedom is defined; and after a recital "that to suffer the civil magistrate to intrude his powers into the field of opinion, and to restrain the profession or propagation of principles on supposition of their ill tendency, is a dangerous fallacy which at once destroys all religious liberty," it is declared "that it is time enough, for the rightful purposes of civil government, for its officers to interfere, when principles break out into overt acts against peace and good order." In these two sentences is found the true distinction between what properly belongs to the Church and what to the State.

In a little more than a year after the passage of this statute,

the convention met which prepared the Constitution of the United States. Of this convention Mr. Jefferson was not a member, he being absent as minister to France. As soon as he saw the draught of the Constitution proposed for adoption, he, in a letter to a friend, expressed his disappointment at the absence of an express declaration insuring the freedom of religion (2 Jeff. Works, 355), but was willing to accept it as it was, trusting that the good sense and honest intentions of the people would bring about the necessary alterations (1 Jeff. Works, 79). Five of the States, while adopting the Constitution, proposed amendments. Three, New Hampshire, New York, and Virginia, included in one form or another a declaration of religious freedom in the changes they desired to have made, as did also North Carolina, where the Convention at first declined to ratify the Constitution until the proposed amendments were acted upon. Accordingly at the first session of the first Congress the amendment now under consideration was proposed, with others, by Mr. Madison. It met the views of the advocates of religious freedom, and was adopted. Mr. Jefferson afterwards, in reply to an address to him by a committee of the Danbury Baptist Association (8 Jeff. Works, 113), took occasion to say, "Believing with you, that religion is a matter which lies solely between a man and his God, that he owes account to none other for his faith or his worship, that the legislative powers of the Government reach actions only, and not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should 'make no law respecting an establishment of religion, or prohibiting the free exercise thereof,' thus building a wall of separation between Church and State. Adhering to this expression of the supreme will of the nation in behalf of the rights of conscience, I shall see with sincere satisfaction the progress of those sentiments which tend to restore man to all his natural rights, convinced he has no natural right in opposition to his social duties." Coming as this does from an acknowledged leader of the advocates of the measure, it may be accepted almost as an authoritative declaration of the scope and effect of the amendment thus secured. Congress was deprived of all legislative power over mere opinion, but was left free to reach actions which were in violation of social duties or subversive of good order.

Polygamy has always been odious among the northern and western nations of Europe, and, until the establishment of the Mormon church, almost exclusively a feature of the life of Asiatic and African people. At common law the second marriage was always void (2 Kent's Com., 79), and from the earliest history of England polygamy has been treated as an offence against society. After the establishment of the ecclesiastical courts, and until the time of James I., it was punished through the instrumentality of those tribunals, not merely because ecclesiastical rights had been violated, but because, upon the separation of the ecclesiastical courts from the civil, the ecclesiastical were supposed to be the most appropriate for the trial of matrimonial causes, and offences against the rights of marriage, just as they were for testamentary causes, and the settlement of the estates of deceased persons.

By the statute of 1 James I., chap. 11, the offence, if committed in England or Wales, was made punishable in the civil courts, and the penalty was death. As this statute was limited in its operation to England and Wales, it was at a very early period re-enacted, generally with some modifications, in all the colonies. In connection with the case we are now considering, it is a significant fact, that on the 8th of December, 1788, after the passage of the act establishing religious freedom, and after the convention of Virginia had recommended, as an amendment to the Constitution of the United States, the declaration in a bill of rights, that "all men have an equal, natural, and unalienable right to the free exercise of religion, according to the dictates of conscience," the legislature of that State substantially enacted the statute of James I., death penalty included, because, as recited in the preamble, "it hath been doubted whether bigamy or polygamy be punishable by the laws of this Commonwealth." (12 Hening's Stat., 691.) From that day to this, we think it may safely be said, there never has been a time in any State of the Union when polygamy has not been an offence against society, cognizable by the civil courts, and punishable with more or less severity. In the face of all this evidence, it is impossible to believe that the constitutional guaranty of religious freedom was intended to prohibit legislation in respect to this most important feature of social life. Marriage, while from its very nature a sacred obligation, is nevertheless, in most

civilized nations, a civil contract, and usually regulated by law.[1] Upon it society may be said to be built, and out of its fruits spring social relations and social obligations and duties, with which government is necessarily required to deal. In fact, according as monogamous or polygamous marriages are allowed, do we find the principles on which the government of the people, to a greater or less extent, rests. Professor Lieber says polygamy leads to the patriarchal principle, which, when applied to large communities, fetters the people in stationary despotism, while that principle cannot long exist in connection with monogamy. Chancellor Kent observes that this remark is equally striking and profound. (2 Kent's Com., 81, note *e*.) An exceptional colony of polygamists, under an exceptional leadership, may sometimes exist for a time without appearing to disturb the social condition of the people who surround it; but there cannot be a doubt that, unless restricted by some form of constitution, it is within the legitimate scope of the power of every civil government to determine whether polygamy or monogamy shall be the law of social life under its dominion.

In our opinion, the statute immediately under consideration is within the legislative power of Congress. It is constitutional and valid as prescribing a rule of action for all those residing in the Territories, and in places over which the United States have exclusive control. This being so, the only question which remains is, whether those who make polygamy a part of their religion are excepted from the operation of the statute. If they are, then those who do not make polygamy a part of their religious belief may be found guilty and punished; while those who do must be acquitted and go free. This would be introducing a new element into criminal law. Laws are made for the government of actions, and, while they cannot interfere with mere religious belief and opinions, they may with practices. Suppose one religiously believed that human sacrifices were a necessary part of religious worship, would it be seriously contended that the civil government under which he lived could not interfere to prevent a sacrifice? Or, if a wife religiously believed it was her duty to burn herself

[1] In all Catholic countries marriage is a sacrament, and its obligation a religious one, so that marriage in certain countries and among certain people. and among the Mormons, is a religious institution. — *Note by author.*

upon the funeral pile of her dead husband, would it be beyond the power of the civil government to prevent her carrying her belief into practice?

So here, as a law of the organization of society, under the exclusive dominion of the United States, it has been prescribed that plural marriages shall not be allowed. Can a man excuse his practices to the contrary because of his religious belief? To permit this, would be to make the professed doctrines of religious belief superior to the law of the land; and, in effect, to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances.

A criminal intent is a necessary element of crime, but every man is presumed to intend the necessary and legitimate consequences of what he knowingly does. Here the accused knew that he had been once married, and that his first wife was living. He also knew that his second marriage was forbidden by law. When, therefore, he married the second time, he is presumed to have intended to break the law. And the breaking of the law is the crime. Every act necessary to constitute the crime was knowingly done, and the crime therefore was knowingly committed. Ignorance of a fact may sometimes be taken as evidence of a want of criminal intent, but not ignorance of the law. The only defence of the accused in this case is his belief that the law ought not to have been enacted. It matters not that his belief was a part of his professed religion, it was still belief, and belief only.

In Regina *v.* Wagstaff (10 Cox Crim. Cases, 531), the parents of a sick child, who omitted to call in medical attendance because of their religious belief that what they did for its cure would be effective, were held not to be guilty of man-slaughter, while it was said the contrary would have been the result if the child had actually been starved to death by the parents under the notion that it was their religious duty to abstain from giving it food. But when the offence consists of a positive act, which is knowingly done, it would be dangerous to hold that the offender might escape punishment because he religiously believed the law which he had broken ought never to have been made. No case, we believe, can be found that has gone so far.

6. As to that part of the charge which directed the attention of the jury to the consequences of polygamy.

The passage complained of is as follows: "I think it not improper, in the discharge of your duties in this case, that you should consider what are to be the consequences to the innocent victims of this delusion. As this contest goes on they multiply, and there are pure-minded women, and there are innocent children—innocent in a sense even beyond the degree of the innocence of childhood itself. These are to be the sufferers; and as jurors fail to do their duty, and as these cases come up in the Territory of Utah, just so do these victims multiply and spread themselves over the land."

While every appeal by the court to the passions or the prejudices of a jury should be promptly rebuked, and while it is the imperative duty of a reviewing court to take care that wrong is not done in this way, we see no just cause for complaint in this case. Congress, in 1862 (12 Stat., 501), saw fit to make bigamy a crime in the Territories. This was done because of the evil consequences that were supposed to flow from plural marriages. All the court did was to call the attention of the jury to the peculiar character of the crime for which the accused was on trial, and to remind them of the duty they had to perform. There was no appeal to the passions; no instigation of prejudice. Upon the showing made by the accused himself, he was guilty of a violation of the law under which he had been indicted, and the effort of the court seems to have been, not to withdraw the minds of the jury from the issues to be tried, but to bring them to it; not to make them partial, but to keep them impartial.

Upon a careful consideration of the whole case, we are satisfied that no error was committed by the court below, and the judgment is consequently affirmed.