





THE POLYGAMY QUESTION.

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SPEECH

OF

HON. ELI THAYER,

OF MASSACHUSETTS.

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Delivered in the House of Representatives, April 3, 1860.

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WASHINGTON, D. C.  
BUELL & BLANCHARD, PRINTERS.  
1860.



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Mr. THAYER. Mr. Speaker, it has become apparent, in the progress of this debate, that there is at least one question on which the representatives of all portions of the country may agree. Every member from every section of the Union is ready to assert the odious criminality of polygamy. It is encouraging, it is refreshing, to know that there is at least one subject on which there is no sectionalism, in relation to which we have not heard the Representatives of North Carolina boasting that their people are much better than those of Massachusetts, nor the Representatives of the State of New York boasting that their people are better than those of Mississippi.

There is really, now, one practical question before us for our decision; and, sir, in my remarks upon it, I shall not treat it as an abstraction. I shall not treat it as a figure of speech, nor as a legal technicality. Polygamy is an existing fact; and as an existing fact, while I agree with members from every part of the country in denouncing it, I will so act as to insure its most speedy extermination. Is this a fact, sir, which began to-day, or yesterday, or last week? I should suppose, from the zeal which is manifested here, that it never was heard of till the beginning of this session of Congress.

But, sir, some thirteen years ago, one Brigham Young, a shrewd and selfish and unscrupulous adventurer, led certain Mormons from Illinois, or from Missouri, across what was then called the great American desert, by a long and wearisome journey, to the basin of the Great Salt Lake. Poor, deluded, ignorant fanatics were his followers, who, from having no religion at all, had been captivated by the theories of Joe Smith, and had joined the ranks of the Latter Day Saints. From time to time, there have been accessions to their number. Year after year, they have come from Wales

and Scotland, from England and Germany, and from the States of this Confederacy. About two years ago, they attained their highest power. They are now declining in strength, harmony, and consolidation, and are diminishing in numbers. As a separate and peculiar community, they are doomed to speedy extinction. Congress has endured their increasing strength, and the insolence of their highest power, without action. Can we not possibly endure their decline and extermination, without this exhibition of paper authority and of spasmodic morality?

In the course of these thirteen years of Mormon history, we have had a Whig Administration, we have had two Democratic Administrations, and at one time, for one Congress, the Republicans had the organization of this House; and, sir, there never has been an act passed against this crime, to make it a penal offence. There it was, before the eyes of the country, before the world, and before Congress; but still no party, until this day, has taken the responsibility of proposing that it should be abolished by penal statute and by force of arms. Now there seems, as I said before, to be a feeling in this House, not known in the community at all, which could be accounted for only on the supposition that polygamy never was heard of till to-day. There is a spasm, sir, of morality, or a paroxysm, or a panic, or something that seems to impel certain men to feel the necessity of voting, and of voting *now*, against polygamy, at all hazards.

Mr. REAGAN. I desire to correct the gentleman on a point of fact. He is mistaken in supposing that nothing has ever been done upon this subject. I introduced a resolution during the last Congress, which was adopted by the House, referring the subject to the Judiciary Committee for inquiry.

Mr. THAYER. I said no act had been

passed. That was my assertion. And now, sir, there is most intense zeal manifested that something shall be voted—*voted*, not done—to exterminate polygamy in Utah. Worst of all, it appears that this act of voting would seem to satisfy some consciences, even though this very vote should prolong the existence of that iniquitous institution. It would seem to satisfy some consciences—I will not call them stupid, or sluggish, or dead—that they *voted* against polygamy. Sir, if the ability of these gentlemen to execute were equal to their zeal to enact, we might almost say that omnipotence would be one of their weaknesses. But it is not proposed to execute; and there is no party in this country to-day, and there has been no party in this country during the last thirteen years, that would dare to vote bayonets and revolvers to shoot or stab polygamy out of Brigham Young and his followers. What, sir, do the Judiciary Committee ask us to do? What claim do they present for our votes in favor of this bill? What is claimed? Why, that the Congress of the United States should make an expression of opinion, so that the world may know that the United States of America are really opposed to polygamy! Really opposed to polygamy! How much better, Mr. Speaker, we shall stand before the nations of the earth, when we shall have really shown them—that they may now be in doubt about—that we are *actually* opposed to polygamy! When we shall have shown it, not by doing anything against the iniquity, but by a solemn vote, recorded upon the journals of this House!

Now, sir, I say that any such expression of sentiment is superfluous. There is no State in this Union that has not made polygamy a penal offence already; and what is the combined expression of the Representatives of these States, more than the individual expression of each of the States acting in its individual capacity? Do we, by this combined action, add anything to the force of all that separate action? Certainly not. The world understands now well enough that this country is opposed to polygamy, and it never will understand it any better by a vote of Congress, the whole effect of which will be to prolong the existence of that institution. Then, sir, as an expression of sentiment, this bill is superfluous. But more than that. It is urged by some as a penal statute. Will it be enforced? I say no; and I tell you that, should the bill pass, neither you nor I will ever live to see a party which will dare to vote money and instruct the President to use it in putting in operation and in enforcing the penal statute which this bill proposes.

Then, sir, what does it amount to? I say, as a penal statute it is powerless. I will not go into the argument now to show why it ought not to be enforced, or the cruelty of attempting to enforce it against these men, who never could understand why the bill was enacted.

I will not go into the argument about the expense of millions that it would cost this Government to enforce it; or that it would give the Mormons reason to charge that we have made use of persecution against them, driving them to the mountains and hunting them there like partridges, or that it would inevitably prolong the existence of the institution which it proposes to abolish. All these questions I pass by, for there is nobody here who claims that it is the purpose of any party to vote money or instructions to enforce this penal statute.

But, sir, it is said that the honor and authority of the United States must be vindicated. The honor and authority of the United States vindicated, indeed, by a law which its very framers admit is, from its very inception, a dead letter! Nobody here now dare stand up and pledge his party to enforce this law. I challenge any man of any party to do that. I claim that it is a sham *ab initio*; that it is a false pretence; and I never will vote for a sham or a false pretence, by whatever man or whatever party it may be brought into this House. I do not deal in such things, sir, especially upon practical questions like this now before us. The reasons that I have given are sufficient to govern my vote upon this bill, and that vote will be against it; that, as an expression of the moral sense of the country, it is superfluous; that, as a penal statute, it is powerless; that, as a vindication of the honor and authority of this Government, it is worse than futile; for it would bring both the honor and authority of the Government into ridicule and contempt.

Now, sir, if these are facts, and if that is the prospect before us, should this bill be elevated to the dignity of a law by our votes? Moral reformations should never be attempted by law, which can be accomplished without the aid of law. This would be true, even were the law proposed sure to effect the contemplated object, even if it were a law made and enforced by the political community where the offence existed. What excuse, then, can gentlemen give for a law like this, sure *not* to accomplish the object contemplated, made by a non-resident power, and intended never to be enforced?

Now, Mr. Speaker, let us inquire whether some act cannot be done which shall prove a perpetual and insurmountable barrier to the progress of this gigantic monstrosity. I am happy to be able to say that I believe that a solution—a peaceful, quiet, easy, natural, and practical solution—of this question is now within our reach. I am happy in the belief that the gold mines of Pike's Peak and the silver mines of Carson Valley do now furnish us a solution of this vexed question of polygamy. I have therefore proposed an amendment to this bill, that the Territory of Utah, together with a part of Kansas and Nebraska, shall be divided into two land districts, in such a way that

the Mormon people shall be divided nearly equally between the two.

Now, sir, what are the facts about population? I come now to an argument which addresses itself directly to the judgment of the House—an argument not of theories, but of facts. The Mormons, by the best intelligence, by the highest authority I can get, are to-day about forty thousand people. I have it from officers of the United States army who have been in Utah during the last two years, and they assure me that not more than one-seventh of this population of Mormons are voters. What are the facts in relation to the population of the two proposed land districts? I have the opinion of the Delegates from Jefferson, Kansas, and Nebraska, and numerous others, that there are now within the limits of the proposed land district of Jefferson forty thousand men, and that there are at least in that district twenty thousand voters; and we have it from papers last received from California, that there are now in Carson Valley at least thirty thousand men, and not less than fifteen thousand voters. I believe there has been a rapidity of increase of population in these districts which has no parallel in the history of this country; not even in the case of California. Why, sir, at the rate of increase now going on, it is confidently expected that at the next session of Congress these people will come here with the right to be admitted as sovereign States. Then, sir, you may defeat the policy of these Mormons at once, by erecting these land districts, which have already more than five times the voters of the Mormon population, and which population is rapidly increasing, while the number of Mormon voters is diminishing. With this prospect before us, is there any risk that Mormonism will not be exterminated by local law, provided we pass this amendment, constituting the land districts proposed? Would not a *local law* be much better to accomplish the purpose than a law made by a non-resident power? I contend that the law of a non-resident power is only fit to be laughed at and despised. The true authority, in my judgment, and the only authority worthy of being regarded, is the law that is made, approved, and enforced, by the people where it is law.

That local law is what Mormonism, polygamy, or any other crime, cannot evade. This non-resident law may do very well as capital for politicians; it may do for political pretences and shams; but it never will do for practice. I am not disposed to spend any time now in showing this House the inextricable difficulties and complications this precedent would lead us into, if adopted. There is no end of them.

Do gentlemen propose that Congress shall follow up this mode of reforming all abuses that may occur upon the public lands of the United States? Shall we make laws against drunkenness, and profanity, and Sabbath-breaking, and larceny—in short, shall we make a com-

plete criminal code for our public lands, and establish a police and judicial force sufficient to arrest and convict and punish all offenders on this immense area? If this is to be our policy, then this bill proposes a good beginning. We shall probably have enough to do for some time to come, without attending at all to the legitimate purposes of the Government. Local law is the true remedy for these evils. The operation of such law, as contemplated in my amendment, will be sufficient for the speedy abolishment of polygamy.

Is it to be supposed that one hundred thousand miners at Pike's Peak, and the same number of miners at Carson Valley, without any women at all, will allow a monopoly of women at Salt Lake? [Laughter.] Sir, I do not agree with gentlemen who denounce these men in the Territories, these hardy pioneers, as men of no education, as men of no refinement, as men destitute of intelligence and moral power. I have never called them "runaways and outlaws." They are men of more vigor of body and of mind, of more heroism and enterprise, of more power of endurance, of more persistency, and of more character, than the people of the old States. They are also superior in intelligence to the average of the people in the old States. I doubt not, sir, that there are some educated men in Carson Valley, and some educated men in Pike's Peak; some who have read history, and some of them may have read Roman history. [Laughter.]

I feel perfectly secure, then, in the position that Mormonism and polygamy, and all things connected therewith, should be left to the local laws of the two land districts which I propose, by the action of Congress, to establish. Now, sir, is it safe to leave polygamy to the cure of a democracy? Is it safe to leave it to a republican form of government, made by the people themselves, in these two land districts? Every man acquainted with the history of the world knows that polygamy never has existed under a democratic or republican form of government. Every man who knows anything, even without reading history, would decide beforehand that it never could exist under such a form of government while the sexes continue to be equal in numbers. Wherever it has existed—in Turkey, in Arabia, among the chiefs of central Africa, or among the aborigines of America—it has always been protected by absolute military despotism. It can be sustained under no other system of government.

Then I hold that the argument is conclusive, that, by subjecting polygamy to the action of the democracy of these two land districts, it would most effectually put an end to it; and this is one reason why I shall vote for the amendment to the bill as I have proposed it.

But it may be inquired, why we do not organize the Territories of Jefferson and Nevada, instead of simply constituting them land districts; why we do not pass an organic act. Now, sir,

I am going to give my own views upon this subject; and I am going to say, for the amendment which I have proposed, that it neither affirms nor denies the power of Congress to legislate for the Territories. But while pursuing that course, I still hold my own views upon the subject; and if inquired of why I would not vote for a Territorial organization, my answer is ready: that I am opposed to the whole policy of organizing Territories by this Federal Government. I say here and now, that I will never vote—as I believe I have never voted in the past—to organize any Territory under this Government; neither would I acquire another foot of land to be governed by the Congress of the United States, or to be sold by the authority of this Government. The purposes of this Government are few and simple, as has been before said in this Hall. It is no part of the purpose for which this Government was organized, to exercise non-resident jurisdiction, or traffic in real estate; and therefore I am for getting rid of the nuisance, and of confining the Government to its legitimate purposes as soon as we can possibly do it. Therefore, again, I am opposed to the organization of any more Territories, and of inaugurating again the old policy of the Government, which has led to all the sectional quarrels which have existed, and now exist, between the States of the Union. I tell you, we cannot afford to spend the time of this nation in quarrelling about these provinces, which the Constitution does not know. The Constitution knows nothing less than a State; and why should we be forever quarrelling about Territories? Sir, I am so much a popular-sovereignty man, that I deny that Congress can, by an organic act, bestow sovereignty upon the people of a Territory.

Mr. SMITH, of Virginia. Let me ask the gentleman a question. The gentleman says that the Constitution does not recognise anything else than a State. Then, what does he think of that clause of the Constitution which gives to Congress the power to dispose of the territory and other property of the United States?

Mr. THAYER. I ought to have said, as a political community. The Constitution speaks of territory as property, as land; but, sir, as a political community it knows nothing less than a State. As a member of Congress, I would not be wiser than the Constitution. I am opposed even to granting permission to any Territory to make any laws, or to manage its own affairs in its own way. Why should the citizens of Maine and Connecticut, of Georgia and South Carolina, and the other States, insult their equals in the Territories by the favor of granting them permission, through Congress, to govern themselves? Is a man who was a citizen of Iowa yesterday, and is today an inhabitant of Nebraska, less than the equal of him who remains a citizen and inhabitant of Iowa? How and why is his right of

self-government impaired? No man can tell. If, then, he is the equal of any citizen of the States, it must be conceded that there is no occasion for the citizens of the States to graciously grant him equality of right.

No, sir; to grant permission to a Territory to make its own laws, implies authority which never rightfully existed in Congress. It implies the same authority as to command or to withhold permission. I will never vote such an insult to my fellow-citizens in a Territory. They are my equals in every right under this Government, and have just as good reason and authority to grant permission to their fellow-citizens in the States to govern themselves, as we in the States have to grant this permission by act of Congress to them.

Mr. SMITH, of Virginia. I want to ask another question. If Congress has no power over the territory of the United States, except as property—not as a political community—then Congress has no power over the people of a Territory.

Mr. THAYER. Exactly, sir. It may be that, under the construction of the Constitution which has obtained, Congress would really be decided to have the same right to govern the people that George III had to govern these colonies. I deny that it has now or ever had any moral right to govern American citizens in the Territories. To be explicit: if Congress has that right, where did it get it? Congress is the servant and not the king of the people. The people, Mr. Speaker, in this country, are king. There is no other. Nobody else has the attribute of sovereignty. If Congress can dispense sovereignty, certainly Congress has either acquired that sovereignty or has created it. Nobody believes that Congress creates sovereignty. If Congress acquired it, then when and where did it acquire it? Even the Church of Rome, absolute as is her authority, professes to give a reason for what she has and what she dispenses. When that church sells indulgences, she declares that she only sells the superabundant merit of the saints, so that men that are not as good as they ought to be, may have their deficiencies made up by men who are better than they need to be. [Laughter.] I would like to know where this superabundant sovereignty comes from, that Congress can dispense it. Only think what a reservoir of sovereignty this Congress must be, which has dispensed or pretends to have dispensed sovereignty to twenty sovereign States since the formation of this Government, and has never had any sovereignty itself, except what it must have acquired from the sovereign people of this country. The fact is, Congress has never bestowed sovereignty upon one of them. It has only relinquished the sovereignty which it has usurped and withheld.

No, sir, this thing is a mistake. It is worse—it is a fiction; it is a fallacy. The gentleman from Alabama, [Mr. CURRY] the other day,



wondered by what *hocus pocus*, by what legerdemain, that which is to-day public land becomes to-morrow a sovereignty. Public land does not become a sovereignty. Land never becomes a sovereignty. Men are the sovereigns.

If there is unoccupied public land to-day, and to-morrow there is a sovereignty upon it, I assure you that somebody has gone there—some citizen, who is himself so much above property that he alone is of more importance than all the public land that this Government ever did or ever will possess. He, sir, is the sovereign; and you disrobe him of his sovereignty because he has crossed a line and gone into a Territory. By what power, by what law, Congress being his servant—by what law can it be done? By just as good authority your coachman, sir, might put on your coat and hat, and command you to get upon the box and take the whip in hand, while he takes a seat inside the carriage.

But, sir, if the possession of land confers sovereignty, and if the sale of land implies the power to govern, I would like to know whether the selling of the products of the land does not give the right to govern the buyers? I would like to know whether the doctrine that the party, whether the Government or an individual, who sells land, thereby acquires the right to govern the purchasers of the land, is any more ridiculous than the assumption that the grain dealer who sells corn, the product of the land, thereby acquires the right to govern his customers?

Such a grain dealer as this was Pharaoh, who bought his people with corn. When the years of famine had rendered the land unproductive, and therefore worthless, the basis of absolute sovereignty was changed from land to the products of the land. Sovereignty just as much attaches, and with just as good right, to the one as to the other. The assumption that it belongs to either, or to the owner of either, on account of possession, or of sale, is simply ridiculous.

Land is nothing but property. The fiction, that the possession of land gives sovereignty, and the right to govern people who are upon it, is a part of the old feudal system. We have everywhere connected with the fibers of this Government some of the relics of ancient tyranny. When William the Conqueror invaded and subdued England, he proclaimed that the fee of all the land on the island was in himself, and he parcelled it out amongst his retainers. Holding possession of the land, he then proclaimed that all the men who lived upon it were his slaves. And from the old feudal system we derive this ancient, this fallacious idea, that the possession of land by this Government gives it the power to govern anybody who shall buy the land. I have no sympathy with any such thing. I detest it now, and I shall detest it always, and use my influence against it.

Mr. Speaker, while I advocate these views,

the amendment I propose commits no man who may vote for it to them; for that amendment neither affirms nor denies the power of Congress to legislate hereafter for these land districts which are thereby constituted. I hope I have succeeded in showing that the bill which is proposed will not accomplish the purpose which it professes to have in view. I hope I have succeeded in showing that we are able, by a natural and effective method, to accomplish these results. I might have spoken of the complications which this territorial policy is ever imposing upon the Government, and of the dangerous consolidation of power to which these complications inevitably lead. A Republic never can successfully govern provinces. Whenever it has attempted to do it, the history of the world has shown that it has not only failed, but it has been overthrown by that policy. The policy of acquiring and of governing provinces creates a necessity for an army and a navy. It is to make the President of the United States, to all intents and purposes, a king; and I am, therefore, for abolishing this policy as soon as may be.

You remember, sir, that it was upon this very mission of acquiring and governing provinces, that Julius Cæsar had been in Gaul, when, returning, he crossed the Rubicon with his army, and overthrew the liberties of his country.

Similar to that has been the history of every Republic which has attempted to exercise non-resident jurisdiction—that has attempted to acquire and govern provincial dependencies. While I am willing to annex sovereignties at the right time, I protest against the acquisition of territory, to be governed or sold by Congress. I am for simplifying the operations of the Government in respect to the Territories. We have the land to sell. Let us provide for selling it; but beyond that I would not recommend action. Let the people take care of themselves. They are the sovereigns. Congress is their servant.

Mr. THAYER proposed the following amendment to the bill of the Judiciary Committee—to strike out all after the enacting clause, and insert as follows:

“That all the public lands lying within the following boundaries shall constitute a land district, to be called the Jefferson land district: beginning at a point in the Territory of Nebraska where the twenty-fifth meridian west from Washington crosses the forty-second parallel of north latitude; thence due west by the southern boundary of Washington Territory to the point where the Bear river makes its lower crossing of the southern boundary of Washington Territory; thence by said river southward to the Great Salt Lake; thence by the eastern shore of said lake to the mouth of the River Jordan; thence by the River Jordan southward to Utah lake; thence by the western shore of said lake to the mouth of

' Salt creek ; thence by a line due south to the northern boundary of New Mexico ; thence by the northern boundary of New Mexico and of the Indian territory to said twenty-fifth meridian ; thence north to the place of beginning.

"Sec. 2. *And be it further enacted*, That the second land district shall be called the Nevada land district, and shall embrace all the public lands contained in the following boundaries, to wit : commencing at the southwest corner of the Jefferson land district ; thence west with the northern boundary line of New Mexico to the eastern boundary of the State of California ; thence north by the eastern boundary line of the State of California to its intersection with the southern boundary of the State of Oregon ; thence east to the northwestern corner of the Jefferson land district at the crossing of Bear river ; thence south with the western boundary of the said Jefferson district to the place of beginning.

"Sec. 3. *And be it further enacted*, That the people of each of the land districts above described shall be entitled to one Delegate in Congress, who shall receive the same compensation and enjoy the same privileges as a Delegate from a Territory ; and that so much of said Jefferson land district as is now within the limits of the Territories of Kansas and Nebraska shall be, and is hereby, excluded from the operation of the act organizing the Territories of Kansas and Nebraska.

"Sec. 4. *And be it further enacted*, That the President of the United States shall be, and he is hereby, authorized to appoint, by and with the advice and consent of the Senate, a Surveyor General for the land districts above described, whose office shall be located at such place as the President of the United States shall from time to time direct, and whose duties, powers, obligations, responsibilities, and compensation, shall be the same as those of the Surveyor General of Kansas and Nebraska Territories, and who shall be allowed the same amount for office rent, fuel, incidental expenses, and clerk hire, as is allowed to the Surveyor General of Kansas and Nebraska.

"Sec. 5. *And be it further enacted*, That said Surveyor General shall cause the necessary surveys to be made in said land districts, of standard meridian, base, and parallel lines, and the township and subdivisional lines, under such rules and regulations as shall be prescribed by the Commissioner of the General Land Office.

"Sec. 6. *And be it further enacted*, That the

' said land districts shall be subject to the operation of the pre-emption act of the fourth of October, eighteen hundred and forty-one, whether settled upon before or after the survey ; and in all cases where the settlement was made before the survey, the settler shall file his declaration within three months after the survey is made and returned ; and that the provisions of the act of May twenty-three, eighteen hundred and forty-four, concerning town sites, shall apply to town sites in the said land districts.

"Sec. 7. *And be it further enacted*, That when the lands in said districts shall have been surveyed, under the direction of the Government of the United States, preparatory to bringing the same into market, sections sixteen and thirty-six, in each township in said land districts, shall be, and the same are hereby, reserved for the purpose of being applied to schools in said land districts, and in the States hereafter to be erected out of the same.

"Sec. 8. *And be it further enacted*, That when the lands in said districts shall be surveyed, as aforesaid, a quantity of land equal to two townships shall be, and the same is hereby, reserved for the establishment of a university in each of said land districts, and in the States hereafter to be created out of the same, to be selected, under the direction of the Legislatures, in legal subdivisions of not less than one half section.

"Sec. 9. *And be it further enacted*, That the President be, and he is hereby, authorized to appoint, by and with the advice and consent of the Senate, or during the recess thereof, and until the end of the next session after such appointment, a register and receiver for the district of Jefferson, who shall be required to reside at the site of the land office, which is hereby located at Denver City ; and a register and receiver for the district of Nevada, who shall be required to reside at the site of the land office, which is hereby located at Genoa, and shall be subject to the same laws and entitled to the same compensation as is or may hereafter be prescribed by law in relation to other registers and receivers.

"Sec. 10. *And be it further enacted*, That the act entitled ' An act to establish a Territorial Government for Utah,' approved ninth of September, one thousand eight hundred and fifty, is hereby repealed.

"Sec. 11. *And be it further enacted*, That this act shall take effect from and after the first day of July, in the year of our Lord one thousand eight hundred and sixty."



