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A MONTHLY PUBLICATION

No 10 LF 5089 June 1893

Religious liberty and the
Mormon Question



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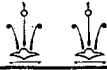
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“Polygamy is not only contrary to the earliest idea of marriage, but both the laws of nature and the experience of the world condemn it. As far as statistics reach, the sexes, at the marriageable age, maintain, on the whole, an equality, or a near approach to equality, of numbers; more males being born, and more females surviving the perils of early and middle life. In the higher races polygamy is almost unknown; elsewhere it cannot be indulged in to any great extent, unless men are killed off in war, while women are spared; or unless the rich and powerful have many wives, and the poorer classes of men lead lives of profligacy.

“Polygamy, again, makes men sensual, and fills the wives of the same men with jealousy and hatred towards each other. The idea of the family cannot be realized in the harem; and its inmates are often all but slaves, being first acquired by war or money.”

T. D. WOOLSEY,

In Schaff-Herzog Encyclopedia of Religious Knowledge.



RELIGIOUS LIBERTY AND THE MORMON QUESTION.

BY CALVIN P. BOLLMAN.

AN interesting question, and a very important one, too, has been raised in connection with the Sunday-law controversy. It is this: How can those who oppose Sunday laws on the ground that they are an infringement of religious liberty, consistently favor laws prohibiting polygamy, which the Mormons hold as a part of their religion? The answer is direct and easy: *The two things are unlike in every essential particular.* And yet some have been seriously perplexed over this matter. In both Arkansas and Tennessee, even courts of justice have held that the State has the same right to prohibit Sunday labor and business that it has to forbid plural marriages.

In support of this view of the case, it is urged that the Sabbath and marriage are both divine institutions, and that, therefore, the same rule should apply to both. It is true that marriage is a divine institution, but in a widely different sense from the Sabbath. The Sabbath is a divine institution, not only in the sense that it was sanctified by the Creator, but in the sense also that it is dependent solely upon divine revelation. And this revelation is something with which civil government can of right have nothing to do. For instance, the government of the United States has no more right to decide that the writings of Moses are of divine

authority than the Porte has to decide that the writings of Mohammed are divine, and therefore to be obeyed.

The nature of marriage has been so clearly set forth by another (Mr. A. F. Ballenger, of Chicago, an earnest advocate of true religious liberty), that with his permission, I adopt his words here : —

“Mutual aid and companionship are among the primary objects for which marriage was instituted (Gen. 2:18) ; hence marriage is clearly a social relation. Another primary object of the marriage relation is the propagation of the race. Gen. 1:23. But reproduction is wholly natural. Ps. 51:5 ; John 3:6. This argues the natural character of the marriage relation. It is dependent on natural conditions for its existence, and must end with mortality (Matt. 22 : 30 ; Rom. 7 : 2) ; hence is temporal and natural, not spiritual.

“That marriage was instituted by the Creator does not prove that it is a spiritual relation. God has instituted government, and commands men to be subject to ‘the powers that be.’ Rom. 13 : 1, 2. But our relation to governments, though they be ordained of God, is primarily civil.

“If marriage is a religious ordinance, only those are married who are religious or spiritual. But this principle would nullify all marriages between parties who reject religion, but who are faithful and happy in obedience to their marriage vows.

“Further ; if marriage is a religious relation, it must be a relation only within the *true* religion, thus confining legitimate marriages to *possessors* of the true religion, not merely the *professors* of it. In other words, if marriage were a religious, or spiritual relation, it would follow that all marital contracts between infidels, hypocrites, and all but the few who profess and possess the true religion, would be null and void. This is the position of the Church of Rome. ‘Marriage,’ says the Romish Church, ‘is purely religious. We are alone the possessors and guardians of the true religion. Hence all marriages not sanctified by the church are void.’ This is the logical and inevitable conclusion to which they arrive, and to which all *must* arrive, upon the assumption that marriage is a religious institution, or sacrament. This conclusion, with all its disastrous consequences, is embodied in a formal decree of the Catholic Church. (See records of the Decrees of the Council of Trent, November, 1563.)

“While maintaining that marriage is, primarily, a civil relation, we would not be understood as excluding from it the benign influences of pure and undefiled religion. The blessings of religion ought to be taken, not only into the marriage relation, but into every relation of life, social and civil.”

But while the Bible itself shows marriage to be a social, and hence, a civil relation, it does not follow that civil government should take cognizance of divine revelation in order to determine its nature and the duty of the State to regulate it. Marriage is, as we have seen, a voluntary compact between persons of opposite sex for the purpose of companionship and procreation ; and though a divine institution, that is, a relation ordained by the Creator, it is, as before remarked, divine in a sense entirely different from the Sabbath ; namely, the Creator made man such a being, and endowed him with such a nature, that he is instinctively drawn into the marriage bond. The inherent sense of man informs him that marriage is one of the objects of life. It is a natural relation, not, like the Sabbath, dependent upon revelation for its very existence. The Sabbath has reference solely to God, and man's relation to him ; marriage pertains wholly to the relations which nature teaches that the Creator designed should exist between man and woman for companionship and the perpetuation of the species. From this purpose of marriage, as revealed in nature, John Locke deduces the following proposition :—

“ The end of conjunction between male and female, being not barely procreation, but the continuation of the species, this conjunction betwixt male and female ought to last, even after procreation, so long as is necessary to the support and nourishment of the young ones, who are to be sustained by those who got them, till they are able to shift for themselves. . . . Wherein one cannot but admire the wisdom of the great Creator, who, having given man foresight and an ability to lay up for the future as well as to support present necessity, hath made it necessary that the society of man and wife should be more lasting than of male and female among other creatures.”

It is thus apparent that we are not dependent upon revelation to know the mutual obligations involved in the marriage relation. Marriage is for all mankind ; therefore the Creator has written the law that should govern it in the great book of nature, as well as in the Volume of his revealed will. And

not only has God not made man dependent upon revelation for a knowledge of social duties, but he has in many ways separated, not only in revelation, but in nature, between duties that man owes to him, and the duties which every one owes to his fellow-men; and a just regard for human rights demands that this distinction be respected.

The reason of this distinction between the duties which men owe to God and the duties that they owe to one another is so evident that it needs only to be pointed out to be apparent to every one. God is the great moral governor. To him every soul is responsible. To him every free moral agent must give account. To permit any power whatever to come between the individual and God, would destroy individual responsibility to God. For if it were the province of the State to enforce the law of God, the individual would naturally seek to know, not the will of God, but the will of the State. The effect would be to put the State in the place of God. And it would be the same with any other power.

This argument ought to appeal to every Christian, for such feel within themselves that they could never consent that any power whatever should come between themselves and Him whom they worship. And it should appeal none the less strongly to the unbeliever because of its evident justice. The author of the "Rights of Man," one of the best known infidel writers of any age, makes a somewhat similar argument, thus:—

"Toleration is not the *opposite* of intolerance, but a counterfeit of it. . . . The one assumes the right of withholding liberty of conscience, and the other of granting it. . . . Man worships not himself, but his Maker; and the liberty of conscience that he claims, is not for the service of himself, but of his God. In this case, therefore, we must necessarily have the associated idea of two beings; the mortal who renders worship, and the immortal Being who is worshiped. Toleration, therefore, places itself, not between man and man, nor between church and church, nor between one denomination of religion and another, but between God and man, between the being who worships and the Being who is worshiped; and by the same

act of assumed authority by which it tolerates man to pay his worship, it presumptuously and blasphemously sets up itself to tolerate the Almighty to receive it."

Thus, both Christians and infidels acknowledge that any power which interposes itself between man and God, infringes the natural liberty of the soul, and usurps a prerogative of God himself. If, therefore, the Sabbath is a religious institution, it is beyond the right of men to regulate its observance in any manner whatever. What, then, is the nature of the Sabbath?

The original Sabbath is a memorial of creation. It was instituted for that purpose, and its intelligent observance is a recognition of God as the Creator of the heavens and the earth, and as the Saviour of men. It is the sign of what Jesus Christ is to those who believe in him — a sign of what Christ is in creation and in redemption. It is, therefore, wholly religious. Its observance is entirely of faith. It does not pertain to our duties to our fellow-men, and a failure to keep it imposes no burden on the State. It pertains solely to our recognition of God, and any attempt to enforce its observance by civil law is a usurpation of a prerogative of God.

Likewise, Sunday, the day now generally kept, is religious; it is observed, confessedly, though erroneously, as a memorial of the resurrection of Christ. Its significance is, therefore, wholly religious, and its observance or non-observance concerns not the State.

Thus, viewed either from the standpoint of the seventh or the first day, the keeping of a weekly rest has reference to the recognition of God as the proper object of worship. Therefore to require such observance upon any pretext whatever, is to require the observance of a religious institution, and to interpose the civil power between the individual and his Creator.

Moreover, if the State had the right to require the observance of the Sabbath, or of a Sabbath, it would of neces-

sity have also the right to say in what that observance should consist; and all would be in duty bound to obey its mandates, under penalty, - not only of the civil law but of the divine law as well; for to disobey would be not only crime against the State, but sin against God. Thus, not the perfect, unchanging law of God, but the imperfect, ever-changing law of man would be the standard by which men would be judged, not only in earthly courts, but in the court of heaven. The conclusion is therefore unavoidable that the State has no right whatever to enact laws of any kind in reference to Sabbath observance, for to do so is not only to exact from man an unwilling religious service, but it is to blasphemously assume to say that God shall accept that service. For if God has given man authority to exact a certain service in his behalf, it is obvious that he must accept that which is exacted by his authority.

But when we turn to the subject of marriage, we find that it is entirely different. Marriage, as has been shown, is the union of man and woman as husband and wife, for natural ends, indicated by natural law. It relates wholly to mankind and to this life, and is, therefore, properly a subject of human legislation; because, as we shall see, the conservation of human rights demands that the safeguards of civil law be thrown around it.

It is true that any violation of the marriage compact is sin; but that is not the reason it is properly regulated by civil law. Murder is also sin; but that is not the reason the State punishes the murderer. The State punishes the murderer solely for the protection of life. The State knows no malice, and does not punish for revenge, but only to prevent repeated homicides by the same individual, and to deter others from following his example. Likewise, the State properly regulates marriage *only because civil justice requires it*. That is, the State regulates marriage because the rights of the contracting parties, the rights of their offspring, and the rights of the com-

munity, demand that this bond, voluntarily assumed, be not lightly broken. The very purpose for which governments are organized is to guarantee to every citizen his natural rights; and certainly the rights which belong to, and grow out of, the marriage relation are natural rights; for, as has been shown, the relation itself is natural.

The Declaration of Independence declares that "men are endowed by their Creator with certain unalienable rights," and that "to secure these rights, governments are instituted among men." An inalienable right is a natural right, a right that even though it may not be exercised, cannot be surrendered so that it would cease to be a right. An inalienable or natural right, may not be exercised for a time, or despotic power may invade it; but justice confirms it, nevertheless, and just government will guarantee it. "Life, liberty, and the pursuit of happiness" are inalienable rights. A man may throw away his life, or he may sell himself into slavery, or he may bind himself not to seek happiness; but the State can in justice sanction none of these transactions. It must guard the liberty of its citizens. And it is a contradiction of terms to say that "a man may be free not to be free." For were the State to sanction a permanent surrender of individual, personal liberty, the one making such a surrender would, after he had made it, have no more choice in the matter; and there can be no liberty without freedom of choice.

It may be objected, however, that the State cannot be regarded as sanctioning everything that it does not forbid. That is true of some things, but in the matter of contracts it is not, and cannot be true. A contract must be either legal or illegal. If legal, that is, according to law, either party to it may invoke the power of the State to enforce it upon the other party; but if illegal, or not according to law, it is void, and the courts will so decree. It follows that the State must, in effect, either sanction or refuse to sanction,

every contract of whatever nature, because every contract must be either sanctioned or disallowed by the law; and what the law does, the State does, for the law is only the expression of the will of the State.

Of course two parties may enter into an illegal contract which affects only themselves, and which involves the commission of no crime, and the State enters no protest. But if either party to such a contract wishes to be freed from it, the State sets him free. In like manner, the State does not compel any man to exercise his natural rights. If one throws away his life, the State cannot restore it to him, but it does not for that reason countenance suicide. And if one should sell himself as a slave, or agree to forego the pursuit of happiness, the State would refuse its sanction. Those rights would still be his, and whenever he saw fit to resume their exercise, the State would guarantee him the right to do so. That the Creator has endowed man with these rights is a self-evident truth, and the inherent sense of justice implanted in the human breast assents to the proposition that no man can be justly deprived of his natural rights except as punishment for crime—and then only for the conservation of the rights of others.

The application of this principle to the marriage relation has been so clearly shown by Mr. Ballenger, that again I adopt his words:—

“The husband, by taking the second wife, invades the right of the first wife to the undivided companionship of a husband. To say that both women voluntarily accept the relation, does not place the matter beyond the jurisdiction of civil government, because the government cannot sanction the invasion of natural rights, even though the parties are agreed. It may be objected that because the government cannot *sanction* a practice, it does not follow that it must *prohibit* it. It is true that the government cannot be regarded as sanctioning a practice by not prohibiting it, when the practice does not come within its jurisdiction. But since the practice of polygamy has been proved to be a violation of natural rights, the very thing

which governments are established to prevent, it comes within the rightful jurisdiction of civil government, and a failure to prohibit it is to give it legal sanction. *The absence of law prohibiting a practice, when that practice comes within the jurisdiction of civil government, is to give the practice the sanction and protection of government.* To illustrate : A government has no law against murder. A man is murdered, and his friends bring the murderer before the authorities for punishment ; but the parties are told that the State has no law against murder, and the order is given that the murderer be set at liberty. By this the government sanctions the act of murder. A failure to prohibit the act makes the government responsible for it.

“Thus it is with the invasion of the right of the first wife by her husband’s taking other wives. A failure on the part of the government to prohibit it, gives the act the sanction of the government ; and having, by its failure to prohibit the act, given legal sanction to it, it cannot contradict itself by declaring the marriage illegal at some subsequent time, in order to secure to the woman her rights. The law ought, therefore, to prohibit polygamy, that it may be faithful to its duty of securing to all its citizens their natural rights.”

Marriage carries with it certain rights which are just as sacred and inviolable as any of the rights with which God has endowed man. The Creator has ordained that every man may “have his own wife, and every woman her own husband.” These words are revelation. But inasmuch as Thomas Paine makes a similar argument in his “Rights of Man,” and bases it upon Gen. 1 : 26, 27, the author of this paper may possibly be pardoned for using the words of the apostle Paul, even in the discussion of a civil question, especially, when, as in this case, they so aptly express a truth which is so evident that it must be accepted, whether one believes in revelation or not. Paine’s argument is that “the Mosaic account of creation, whether taken as divine authority, or merely historical, is fully up to this point, the unity or equality of man. ‘And God said, Let us make man in our image, after our likeness. . . . So God created man in his own image, in the image of God created he him ; male and female created he them.’” “The distinc-

tion of sex is pointed out," says Paine, "but no other distinction is even implied. If this be not divine authority, it is at least historical authority, and shows that the equality of man, so far from being a modern doctrine, is one of the oldest upon record."

The framers of the Declaration of Independence likewise recognized the same principle when they set forth as a *self-evident* truth the proposition that "all men are created equal," and that they are "endowed with certain unalienable rights." Here the word "men" is generic, and includes women; it follows that they have just the same natural rights that men have. Thus, reasoning from a purely secular standpoint, we must conclude that if every man has a right to his own wife, every woman has a right to her own husband; for their rights are equal. Therefore the man who is willing that his wife should take one or more additional husbands, is the only man who can, with even a shadow of consistency, defend the taking of more than one wife. Polygyny (a plurality of wives) has its root in the assumed inferiority of woman; it cannot live for a moment in the atmosphere of equal rights.

But while marriage is the natural right of all mankind, it cannot, under ordinary circumstances, be imposed upon any person as a duty which he owes to his fellow-men. The natural right to have a wife or a husband may not be exercised because the individual does not choose to exercise it; or the right to continue in that relation may even be forfeited by violation of the marriage contract, just as life or liberty may be forfeited by crime; but it cannot be taken away by another. Neither can the State properly sanction (and in such a case to permit is to sanction) any agreement or conflicting relation that would tend to invade or destroy that right. Polygamy, or plurality of either wives or husbands, does necessarily invade that right; therefore, the State cannot sanction it, but is in duty bound to prohibit it.

It is urged, however, by some that the State should permit polygamy when those who engage in it do so from choice. But it has already been shown that a plurality of wives or of husbands involves a surrender of natural rights, to which the State cannot become a party, because by so doing, it would be estopped from guaranteeing those rights should they be subsequently claimed. But even leaving all this out of the question, it is evident that the State must refuse to permit polygamy, in justice to those who, having married in good faith, have never given such consent; and who, were the State to permit or legalize the relation, might be coerced into a consent sufficient to meet the technical demands of any law that could be framed in regard to the matter, but coming very far short of that perfect liberty of action and equality of rights sought to be guaranteed by the law.

It may be true that in this country a majority of women whose husbands have taken other wives, have given their consent; but because of the perfect equality of human rights, the State must refuse its sanction. Justice says that the husband belongs to the first wife; she may at any time assert her exclusive rights as the only wife of her husband, and that her children are the only legitimate children of her husband; and the State must sustain her claim and vindicate her rights. But this it could not do if in the meantime it had given its sanction to a conflicting relation.

Again: to permit plural marriages in any part of the nation would be to invalidate to a certain extent every marriage contract in every State. No woman would be legally secure in the possession of a whole husband; for any man by going into that State or Territory in which polygamy was permitted could take one or more additional wives, and the woman who had married him in good faith would have no redress. Thus, viewed from any possible standpoint, it is seen that the State must prohibit polygamy in every case, or else fail of the very

object for which governments are instituted among men, namely, the preservation of natural rights.

But there is still another element that enters into this question: The State must regulate marriage, because in its very nature it affects not only those who enter into that relation, but the entire community as well. Marriage imposes upon those who enter it, certain obligations, and they must not be permitted to escape those responsibilities, for if they do, the burdens which they should bear will fall upon others. Ordinarily, marriage means offspring, and it is clearly the duty of those who bring children into the world, to support them till they are able to care for themselves. If they fail, or refuse to perform this duty, they thereby throw the burden upon the State; which is only to compel others to be taxed for the support of their children; and to pay for their negligence. To protect the community from the imposition of this burden, the State rightly insists that marriage shall not be transient, but permanent; and that it shall be so regulated that there shall be no question as to the paternity of the children. It is therefore not only the undeniable *right* but the bounden *duty* of the State to regulate marriages.

This is not true of Sabbath-keeping; for one man's failure to keep the Sabbath does not deprive another of that privilege; neither does it burden the State. This is practically admitted by even the most zealous advocates of what they are pleased to term a "civil Sunday law." In answering the question, "Should there not be a law to protect the Jew in the observance of his Sabbath?" Rev. W. F. Crafts well says, "It is not sufficiently emphasized that the Jew is left absolutely free to observe the seventh day. He can close his shop; he can refuse to work." This is true; but it is no more true of the Jew and the seventh day than it is of the Sunday-keeper and the first day.

But while the State *must*, in justice to those who look to it for protection, regulate marriage, and decide to what ex-

tent it shall regulate it, this decision must depend only upon the rights of the citizen, and the best interests of the State. The requirements of the divine law cannot enter into it at all, so far as the State is concerned ; and this, not because that law is not wise and just, but because the State cannot become a judge of that law. The State must of necessity confine itself to things purely civil ; and where civil justice is done the divine law will never be contravened.

But some may say, that while the State must of course regulate marriage, and may properly prohibit polygamy in general, it should make an exception in favor of those who, from religious motives, desire to practice it. But it has already been shown that the State cannot, if faithful to its trust, permit plural marriages even among those who are agreed that such relations are proper. Were the State to make any such exception as this, it would afford opportunity for every man who wished to abandon his first wife, to practically do so simply by making a profession of Mormonism. He could then take as many wives as he saw fit, and might subsequently retain or renounce his new religion according to his own convenience. With polygamy legalized in any State or Territory, no woman in the United States would be legally secure in her marital rights.

The truth of this proposition was demonstrated in hundreds of cases while polygamy was in vogue in Utah. In relating her experience when told by her husband that he was going into polygamy, Orson Pratt's first wife, who married with no thought of such a thing, said : —

“I could say nothing. Dazed, as white as a ghost, as motionless as a statue, I frightened my husband. ‘What is the matter?’ he asked. I was speechless. He gave me water. Still I made no answer. Then taking me in his arms, he laid me on the bed, and through the night I said not a word. I was heartbroken, and had I then died, I should have been spared a world of misery.

“On my father's death I inherited a little property, the proceeds of which were expended in outfits for the plains. My money not only

bought my wagon but the wagons of Mr. Pratt's other wives, whom I never saw except when Mr. Pratt brought them into my tent to sleep. You start at the thought. Do n't you think a woman's sensibilities must be tolerably dull to endure such possibilities? Ah, it is hell on earth. Why, I'd go out and sit in the cold and snow, rather than occupy my tent while those women were in it. Believe me when I tell you that the knowledge of one's husband frequenting the society of improper women, is nothing compared with the daily agony produced by polygamy."

Certainly such a system has no claims to exemption upon any grounds, for it is necessarily the foe of natural rights. To make an exception in the cases of those who make polygamy a part of their religion would still be to leave unprotected the very ones who most need protection, as in the case of Mrs. Pratt. Besides, such an exception would only be to favor one class above another *for religious reasons*, and that would not be just; for laws should operate alike upon all. It would be manifestly unjust to imprison a "Gentile" for doing that which the Mormon is freely permitted to practice. And such laws would speedily bring all laws into contempt, and make government an impossibility. It follows that if the State permits the Mormon to have more than one wife, it must grant the same privilege to the "Gentile;" and if it permits polygyny, it must in justice permit polyandry also. But this would cause utter confusion in families, and certainly burden the State with the care of numerous wards, whom it would have to supply, not only with subsistence, but even with family names, as their paternity would be in doubt. And this would at one step plunge the State into absolute paternalism. Indeed the whole system of polygamy is inseparable from paternalism in government, which in itself, is opposed to every true idea of civil government.

It is clear from these considerations, (1) That while marriage and the Sabbath are both divine institutions, they are essentially different in this, that whereas the Sabbath is dependent for its very existence upon revelation, and relates solely to the recognition of God as an object of worship,

marriage is natural, and relates wholly to the proper relations of men and women to each other, and to society ; (2) That for civil government to regulate Sabbath-keeping would tend to destroy moral responsibility to God, and that, without in the least benefiting man ; while on the other hand, for government not to regulate marriage would be to neglect the very work for which governments are instituted, namely, the securing of human rights ; (3) That while the neglect or refusal of people to keep a Sabbath does not impose financial or any other burdens upon the State, the practice of polygamy must inevitably burden the State with numerous wards of unknown paternity.

The unavoidable conclusion is, that while polygamy is an invasion of natural rights, destructive of the very idea of civil government, ruinous to genuine civilization, and therefore to be prohibited to all alike, the State has no right either to require or to forbid Sabbath-keeping.

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