ise. The virtues may be visited
ith penalties; justice, chastity
mperance and truth may be sent
o the penitentiary; swindling and
erjury may be legalized. Taking
he exceptional jurisprudence of
arta as a model, larceny may be-
me a merit, or following a more
cent precedent in the Congres
nal government of the South, you
n maintain the worst men in the
ghest offices, throw the reins loose
the neck of rapacity, make lep-
us fraud adored.

;—Place thieves
nd give them title, knee and approbation
ith senators on the bench.

If you have not only the right, but
e exclusive right, to do this it
ust be acknowledged that there is
o use for a local government; it is
erely in your way and accordingly
ou have already begun to abolish
. Agents appointed under your
ws have gone down with instruc-
ons to take possession of all the
lling places and registration offi-
s, and the people were expressly
rbidden to vote except by their
rmission and under their supervi-
on. They construed your law as a
l of pains and penalties, which
tainted the whole population, and
ey ordered every voter to be dis-
anchised who would not take an
purgatory oath that covered his
hole life. Another set of agents
sert that they have your direction
seize all the Territorial offices, and
tribute them as booty among the
emies of the people. One more
p, an easy and a short one, you
e much urged to take, and that is
send a commission upon them
th power, not only to supervise
em when they vote, and deprive
hom they please of the ballot, but
make and execute all laws on
ery subject, and to govern them
merally as an overseer might gov-
n a plantation of slaves.

Of course it is possible that the
rritory might be controlled justly,
sely, and moderately by the hire-
ngs of the Federal Government.
t the chances are a thousand to
e that they would act as persons
that situation have always acted:
press and plunder their subjects,
al their money, and tax their in-
stry to death. This might pro-
ke the resistance of the most pa-
nt people, and the first symptom
disorder would furnish a legal ex-
e for cutting them up root and
anch. Arbitrary rulers pardon
thing to the spirit of liberty.

Has Congress this exclusive power
legislation for a Territory? Or
es it belong to the people of the
rritory and to the representatives
om they have chosen to entrust
th it? I maintain that the
ht of local self-government is
unded on acknowledged prin-
ples of public law; it existed
fore this Government was
med, and the Constitution re-
ves it to the people of the Terri-
ies as distinctly as to the States.
Look at the practical case: citizens
a State or of several States leave
e place of their residence and go
t with their families to colonize
emselves on the public domain of
e Union, beyond the limits of any
ate. They buy the land and set-
upon it with the consent of the
neral Government, to which it
longed, whereby they became a
rate body detached from all
ers. Have they ceased to be
e? Did they leave their liberties
hind them? Have they not a na-
al right to regulate their daily
es and adjust their private rela
ns by such laws as they think
ll be most suitable to their condi-
n and best promote their interest?
s, they have, unless they are
ves; for the freedom of the com-
nity results necessarily from the
edom of the individuals that com.
e it.

do not assert that they can gov-
themselves in a way forbidden
the Federal Constitution or by
act of Congress passed in pursu-
thereof. The people of a State
nnot do that. What I do assert
hat Congress cannot legislate for
erritory on any subject-matter on
ich it cannot legislate for a State.
is furnishes an easy and infallible
t of constitutionality. If Congress
y regulate marriage and divorce
a State it may do so in a Territo-
If not, not.

t is true also, that the General
vernment may give the colonist
harter, and call it an act of incor-
ation or an organic law. This
s what the imperial government
England did for the several colo-
s that settled on its lands in Am-
ca. But the charter must be a
e one. If it abridges the liberty
the people to do as they please
out matters which concern nobody
e, it is void. Even if the colonists would consent, for a consideration, to accept an organic law imposing a restraint upon the right of self-government, they could throw it off as a nullity; for the birthright of a freeman is inalienable. I need not say that foreigners naturalized are on a level with native citizens.

As Congress cannot give, so it cannot withhold the blessing of popular government in a Territory. But the legislation now proposed in addition to that already passed would blacken the character of the Federal Government with an act of cruel perfidy. The charter you gave to Utah was in full accordance with the broad principles of American liberty. You organized for them a free territorial government, put into their hands all the machinery that was needed to carry it on; the ballot to be used under regulations of their own; officers chosen by themselves to administer their local affairs, collect the taxes, and take charge of their money, and a legislature representing them, responsible to them, clothed with exclusive power to make their laws and to alter them from time to time as experience might show to be just and expedient. Gilding your invitation with this offer of free government; you attracted people from every State and from all parts of the civilized world, whose industry scattered plenty over that barren region and made the desert bloom like a garden. Now you are urged to break treacherously in upon their security—supersede the laws which they approve by others which are odious to them; make their legislation a mockery by declaring that yours is exclusive; drive out the officers in whom they confide, and fill their places with raging and rapacious enemies; take away their right of suffrage, and with it all chance of peaceable redress; break down the whole structure of territorial government, under which you promised to give them a permanent shelter. Would not this be a case of Punic faith? Apart from all question of constitutional morality, the conduct of the wrecker who burns false lights to mislead the vessel he wishes to plunder, does not seem to me more perfidious. If it has the same appearance to you, it will be swept away with the scorn it deserves But let us keep to the point of law.

The relations of the colonies to Great Britain were precisely the same as those which exist between what we call the Territories and the General Government of the United States. By the public law of the world the colonies had the right of local self-government. The imperial Parliament, omnipotent at home, was utterly without power to legislate on the domestic affairs of any community settled upon crown lands sold or given to them on this side of the Atlantic. This freedom was not only asserted by the colonists, but for more than a century they were allowed to enjoy it without disturbance. The exclusiveness of their right to legislate for themselves, the extent to which it was exercised, and the range of subjects it embraced are known to all who have read their history.

In those days the doctrine of perfect religious freedom was unknown; it was regarded as a proper function of the civil authority to punish whatever it deemed false theology. This power, like others, belonged to the colonies. When heretics, proscribed in England by the laws in force there, fled beyond the sea and organized a colony, they not only escaped persecution, but acquired the right to persecute others. By some of the colonies this power was much abused; but the Parliament could not interfere to prevent it. The King sent Lord Baltimore and a large body of his retainers to Virginia with a grant of land and a letter to the colonial authorities, requesting that he might not be molested on account of his religion. The colonial legislature resented this as an interference with their established right of self-government, and replied to the King that if Lord Baltimore practised the Catholic religion within their territory he must submit to such penalties as they chose to inflict. The royal mandate was withdrawn; Lord Baltimore was moved above the Potomac, where he and his friends erected a colony of their own, and that colony excited the disgust of Parliament and the indignation of Virginia by tolerating all kinds of religion.

I mention these things to show that self-government in its broadest sense was claimed by and conceded to the colonies. Then home rule extended to matters of religion as it did to all other affairs within the scope of the civil authority. Here and now the conflict between Federal power and the rights of a State or Territory could not take that shape, inasmuch as legislation on such subjects is excepted forever out of the power of all government.

But suppose by a stretch of your imagination that Parliament, led by some ultra Tory, had undertaken to prescribe what family relations should exist in a particular colony, provide the severest penalties to enforce the regulations by penalties in direct conflict with the popular sense of duty and against pre-existing laws, customs and opinions. What would history have said about such a Parliament? But suppose, further, that the same Parliament, to remove impediments from the way of its act, broke down all the free institutions of the colony, forbade trial by jury unless the jury was packed, disfranchised the legal voters, prevented elections that were not supervised by agents of the ministry, ordered the expulsion of all officers already chosen, and replaced them by avowed enemies with power to tax and cheat them at will. Could such measures as these against any of the colonies have found one unprejudiced and honest defender in the world?

In fact and in truth nothing nearly so atrocious was proposed or attempted. The stamp act, the tax upon tea, the prohibition of certain manufactures, the Boston port bill, and other restrictions upon trade were trifles in comparison. But they reached the vitals of civil liberty simply because they denied the principle of perfect home rule in the colonies; they asserted a jurisdiction in Parliament which was inconsistent with the right of the colonies to govern themselves in matters which affected their own rights, interests and feelings. Therefore those measures kindled a blaze of indignation in every colony. All true men in America pledged their lives, their fortunes, and their sacred honors to "throw off the shackles of usurped control," and in the outcome they did "hew them link from link." The friends of liberty in England sided with patriots here. Burke and Fox made the defensive sophistry of ministers contemptible, Chatham declared that if Americans submitted they would become slaves themselves, and fit instruments to enslave others. "I rejoice," said he "that America resisted."

If there be anything fixed, established, and undeniable as a proposition of public law, it is the natural right of a free community like Utah to govern itself. It is impossible for a member of Congress not to know that the success of our revolution was an acknowledged triumph of that principle. English and American supporters of Lord North's ministry may have been conscientious in their opposition to this doctrine, and upright statesmen may dissent from it now; but it is not easy to see how any man can believe in the rightfulness of these aggressions upon Utah, except for reasons which would have made him a Tory if he had lived in the time of the revolution.

I have said that these people have a natural right to govern themselves; but I admit that this natural right may be abridged by fundamental arrangement. That is to say, the right of legislation for a Territory upon some subjects or all may be taken away from the people and vested in Congress by the Federal Constitution. Would it not be a shocking surprise to discover in that instrument a provision so hostile to the liberty for which they had fought and toiled for seven years? You will find upon looking at the Constitution that it is not there.

But the unlimited sway which the power of exclusive legislation would give, has at different times in our history been much desired by members of Congress and by friends of theirs who cast their covetous eyes on offices and property, which did not belong to them. Before the industry of Utah had made it rich enough to be worth robbing, the notion was started that if the Southern States could be reduced to the condition of Territories, the absolute domination of Congress over them through the instrumentality of carpet-baggers and bayonets would become constitutional. Therefore the first step was to declare that the State governments did not legally exist; the States were said to be Territories, and, as a consequence supposed to be at the mercy of Congress.

Mr. Thaddeus Stevens, the great leader and driver of that day, who ruled Congress with a sway that was boundless, thought it best in the beginning to assure his followers that the Constitution had given to Congress this power over the Territories. To prove it he showed them the following provision:

"The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory and other property of the United States, and nothing in this Constitution shall be so construed as to prejudice any claims of the United States or of any particular State."

That this expressed nothing, and meant nothing, and granted nothing to Congress, except the power to exercise for the General Government its purely proprietary rights over the land and goods it possessed, whether lying within the States or outside of them, was so perfectly manifest that Mr. Stevens became disgusted with his own argument; he freely expressed his profound contempt for it, and for all who pretended to believe it. Having drawn them into it by his glozing speech, his fierce invective lashed them out again; and he so "chastised them with the valor of his tongue," that they feared to speak of scruples any more. He did not, because he could not, furnish them any other pretence to stand upon; and he told them plainly and frankly that he would not stultify himself by professing to think his measure constitutional. "This," said he, "is legislation outside of the Constitution." It was passed, and Congress inaugurated the reign of the thief and the kidnapper by an acknowledged usurpation.

The outrages upon liberty in Utah are not grounded on the theory which Mr. Stephens exploded. It is not now pretended that the forcible rupture of private relation, seizure of ballot boxes, disfranchisement of voters, expulsion of territorial officers are needful rules and regulations for the disposal or use of Federal property. "The Edmunds' bill," (which could not have been drawn by the Senator of that name) assumes and expresses the assumption in unequivocal words that *the United States have exclusive jurisdiction in a Territory*. This is much worse than the other; it is not merely a false construction of the Constitution, it is an attempt to put into the Constitution what is not there.

When a man who knows anything about American institutions asserts that the United States have exclusive jurisdiction in a particular place, he means to say that the Constitution has given to the Federal Legislature and Executive the sole authority to make and enforce all laws in all cases for and against all persons in that place. There are places in which this omnipotent and exclusive power is given to Congress, but to say that it extends to Utah or any other Territory is simply false. Look at the Constitution and see for yourselves. Among the enumerated powers of Congress, is this—

"To exercise exclusive legislation in all cases whatsoever over such District (not exceeding ten miles square) as may by cession of particular States and the acceptance of Congress become the seat of Government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be for the erection of forts, magazines, arsenals, dockyards, and other needful buildings."

There is the only grant of exclusive jurisdiction that can be found in the instrument. It is plainly intended to and does cover the District of Columbia. The authority is granted with equal clearness over the places occupied by the forts, arsenals, magazines, and dockyards; but does it say that it may be exercised in the Territories? No; "it is not so nominated in the bond."

This is no point of interpretation, strict or loose. Whether the Constitution grants or does not grant the power of exclusive legislation over the Territories to Congress, is a question of fact to be determined by mere inspection. The ocular proof that no such grant is there cannot be overcome or in the slightest degree weakened by any kind of construction, however smart, much less can the omission be supplied by a bald interpolation.

If the power is not given to Congress in and by the Constitution, then Congress has it not at all. This is a government of enumerated powers. It is part of the instrument itself that powers not granted are reserved.

Nobody has ever been mad enough to say that such laws as these against Utah could be enforced against a State? Why? Because the Constitution gives Congress no jurisdiction or authority to pass them. But it does give exactly the same power of legislation over a State as over a Territory. The right of freemen to be exempt from the scourge of the central power is, therefore, as well secured in one as in the other.

The powers not granted to the United States are reserved to the States respectively or to the people, and the enumeration of particular rights expressly retained does not disparage or deny others on which the instrument is silent. This being the express rule, it will hardly be asserted that the power now in question is not reserved. To whom is it reserved? To the States respectively where there are States, or in a Territory where no State government exists, there it is reserved to the people. The reservation is as clear and express in one case as in the other. In both the power of local self-government rests and remains where it was placed by God and nature, since it was not removed by the Constitution and lodged elsewhere.

The General Government is a political corporation, with powers defined in its charter. Outside of the charter all its acts are void, as would be the similar acts of any other corporation. Suppose the directors of the Illinois Central Railroad Company, out of their pious regard for the moral and spiritual welfare of Chicago, would pass a law to reform the licentiousness, gambling, drunkenness, and other vices there supposed to be practised, imposing penalties of fine, imprisonment, and disfranchisement upon all prostitutes and keepers of disorderly houses, would anybody be bound by their statutes? Yet their power to pass them and enforce them would be just as good as yours to do the same thing, either for Illinois or Utah.

There are other objections to this legislation against Utah. It is not only *unconstitutional*, but *anti*constitutional. It assumes a power not granted, and then commands it to be enforced by means flatly prohibited. Let me call your special attention to some of them.

I. Trial by jury means by a jury of the country, the peers of the party, selected impartially from the general population, so as to represent a fair average of the public understanding and moral sense. That is the kind of jury that every man is entitled to have who pleads not guilty, and puts himself on God and the country for trial. That is the meaning of the word jury as used in the decrees of Alfred, the statutes of Edward the Confessor, Magna Charta, the Petition of Rights, the Bill of Rights, and the American Constitution. In that sense it is used by all English-speaking peoples, and with that sense attached to it the institution has been adopted by other nations. The right of trial by jury is withheld by the Edmunds law or given in a mutilated form, which makes it hardly better than a military commission, "organized to convict."

The body of the population believe as matter of moral and religious sentiment that polygamy is at least so far right that a law which makes it a penal offence is unjust and impolitic. The anti-popular faction, composing about one-twentieth, justify their machinations against the others by expressing a most violent antipathy to that particular feature of the prevailing doctrine which permits of plural marriages.

That is their religion, their politics, their business, their law; they carry it into everything; to them it is piety and patriotism; it stands in the place of faith, hope, and charity; from among them, hardly numerous enough to be called a minority, the act of Congress arranges that the jury shall be exclusively made up; the country, the body of the people is not to be represented at all.

A juror may be questioned on his oath whether "he believes it right for a man to to have more than one living and undivorced wife at the same time, or to live in the practice of cohabiting with more than one woman?" If he refuses to answer, or answers in the affirmative, he is conclusively presumed to be one of the people, and must be rejected; but if he replies "No," he has spoken the watchword of the inimical faction, and he is admitted, because his ascertained hostility to the party accused and all his class may be relied upon as an element of his verdict.

All officers concerned in a trial under this law are required to sift out the panel, and see that no one

(*Continued on page 76.*)