

## MEMORIAL TO CONGRESS.

ADOPTED BY THE LEGISLATIVE ASSEMBLY OF THE TERRITORY OF UTAH, MARCH 13, 1884.

To the Honorable Senate and House of Representatives of the United States, in Congress assembled:

GENTLEMEN:—We, your memorialists, the Legislative Assembly of the Territory of Utah, respectfully represent that we have been elected by the people of this Territory, under the provisions of the act of Congress known as the Edmunds law, to represent them in the local Legislature; that we have, among other enactments, made provisions for the filling of the registration and election offices, as authorized by section 9 of that law, but our action has been rendered void by the refusal of the Governor to sign the bill; that in consequence of that refusal one object of the Edmunds law has been frustrated, and the interests of our constituents have been jeopardized; that other bills needful to the progress of this Territory have been nullified by the Governor; that measures have been introduced into your honorable body looking to extreme, and, as we consider, harsh and unjust action, towards the people of this Territory; that these measures have been prompted by untruthful statements made to your honorable body, and by a misunderstanding of the facts and of the political situation in this Territory. We therefore consider it a duty we owe to our constituents to memorialize your honorable body, and plainly, if briefly, explain to you the truth, and appeal to you for a full investigation, before any further steps are taken towards the curtailment of the liberties of a people who are famed throughout the world for many qualities that mark them as good citizens.

The pioneer settlers of the Territory of Utah, after traversing a wilderness of more than a thousand miles in extent, making the roads, building the bridges, and establishing ferries as necessity required, and having at the inception of their arduous journey given to the service of the government five hundred of their most active and able bodied men, who were called out to assist in fighting the battles of their country with Mexico, arrived in these valleys during the summer and fall of 1847. They at once unfurled the flag of our country to the breeze and took possession of the land, which was then a part of Mexico, in the name of the United States, and declaring their allegiance to this government, made immediate preparations to assume the responsibilities and acquire the privileges of Statehood under the auspices of the Federal Union.

This region was then considered by those who had the best opportunities of judging, unfit for the habitation of any but savages of the most degraded type, and in its settlement the people had to contend with the destruction of their crops by frosts, by insects, by drouth, and by the natural sterility of the soil, and to eke out a scanty subsistence upon thistle tops and wild roots. But by their persistent industry they redeemed the land from barrenness, introduced a system of irrigation which has been imitated with profit in surrounding places, and made possible the settlement of localities adjacent which were then considered worthless, but which are now flourishing States and Territories of the United States. They were the first to call the attention of Congress to the feasibility of constructing a transcontinental railroad, the line for which they trailed as they crossed the plains; they established the first printing press west of the Missouri River, organized the first express company and mail line connecting the wild west with the borders of civilization, stretched hundreds of miles of the first telegraph line, and afterwards aided in the building of the Pacific Railway that first bound the eastern to the western extremity of our common country.

Although applying for admission into the Union as a State at the same time as California, a Territorial government was given to Utah, while California, with no greater claims, was granted the privileges and rights of Statehood. But Utah did not murmur. The wise and republican policy was adopted of selecting from her resident citizens many of the officers appointed by the President and Senate, and under them, with the officers elected by the people, the Territory prospered and grew so rapidly in numbers, wealth and importance, as to attract the admiring attention of the world. Then the policy of the administration was changed, and strangers who had no interest in common with the people of Utah, were sent to occupy the prominent appointive offices. Among the evils entailed upon the Territory by imported officers were these: One Federal official absconded with the funds appropriated by Congress to pay the Territorial Legislature. A Federal Judge of notoriously immoral character and acts, finding Utah an uncongenial clime, deserted his post and returned to Washington with the false report that the Territory was in a state of rebellion, and that the records of his court, the Territorial library, and other public property had been destroyed. Without waiting to investigate these and other vile charges, the government fitted out and dispatched troops to quell the supposed rebellion. Many millions of public money was wasted in this needless expedition, and, after the rash step was taken beyond recall, a commission was sent to investigate, who discovered that the

whole movement was founded on falsehood, and subsequently the troops were withdrawn. The cost to the country, and the proofs of its folly, may be learned from the public records; but the cost to the people of Utah, and the trouble, vexation, loss of property and difficulties entailed upon them by this vexatious escapade are known only to those who endured them. An official investigation before, instead of after, the expedition, would have saved them much unjust suffering, and the country an immense amount of money, which was all needed in the civil war that followed.

During the struggle for the supremacy of the glorious Union to which the people of Utah have been ever attached, although no draft was made upon her sons for regular military service, because she was but a Territorial dependency, yet when called upon by the parent government for important aid, they responded in such a manner as to elicit the thanks of the President. Within twenty-four hours after a dispatch from President Lincoln was received, calling for men to protect the mail and government trains from the attacks of the wild tribes of the plains, a body of Utah militia were in the saddle armed and equipped for the fray, and moving en route for the scene of strife, where they performed signal service against the Indians, and protected many helpless traveling citizens who were on their way to the Pacific coast. Yet this very militia were forbidden in 1870 by proclamation of a Federal Governor to drill, muster or assemble for any purpose. In consequence of this arbitrary order, one that was in direct violation of a Constitutional provision, the citizens in the outlying settlements were exposed to the incursions of savage tribes, who were thus encouraged to make raids upon them because any organized assistance from the militia would be in violation of the Governor's proclamation. So far was this order carried into effect that the aid of Federal soldiers was invoked to prevent the marching of a company of militia in Salt Lake City, in a public celebration of the anniversary of American Independence.

During the period of this invasion of the Constitutional rights of citizens, a Chief Justice, newly appointed, joined with other officials in an attack upon the people to deprive them, under color of law, of rights vested in them by the Organic Act. In Washington City he proclaimed:

"The mission which God has called upon me to perform in Utah is as much above the duties of other courts and judges as the heavens are above the earth, and whenever or wherever I may find the local or Federal laws obstructing or interfering therewith, by God's blessing I shall trample them under my feet."

The result of his remarkable maladministration of justice was that attorneys refused to trust the cases of their clients for adjudication; the business routine of the various courts was entirely blocked and respectable American citizens languished in prison unable to secure trial, while criminals of the most notorious character were permitted to run at large. In many instances well known and worthy citizens were incarcerated merely on suspicion, and in others placed in durance vile on the testimony of men whose oath would not be taken in the most trivial civil case. Judicial chaos reigned supreme in a hitherto peaceful, quiet, and well ordered community.

The Supreme Court of the United States, after a full and complete investigation, reversed nearly all the decisions of the Federal courts in this Territory then rendered, the Chief Justice was removed, and order was again restored.

We refrain from enumerating many of the annoyances to which the people of Utah have been exposed through the overbearing and oppressive acts of imported officials, but must draw the attention of your honorable bodies to the course pursued by the present executive. From the first he has allied himself with a clique of adventurers, busy in stirring up mischief and circulating false rumors for the purpose of provoking ulterior measures that may result in their possible advantage. With nothing to lose and everything to gain, any turn of the wheel so long as it be in the direction of a revolution may bring up something to their pecuniary advantage. He has taken the stump in their interest, publicly insulted peaceable and respected citizens by untruthful allegations, and arrogated to himself extraordinary prerogatives. At the canvass for the election of 1880, he issued a certificate of election to his friend, the minority candidate, who received but 1,357 votes, while the candidate of the people received 18,568 votes. And the only excuse he could offer for this flagrant violation of his oath to uphold the law—the laws of Congress requiring the Governor to "declare elected the person having the greatest number of votes, and to issue a certificate accordingly"—was that the minority candidate was "the person who being a citizen had the greatest number of votes." He thus assumed both judicial and legislative powers. Judicial in passing upon the citizenship of a candidate who had served in Congress for several terms and whose citizenship had been acknowledged by that body which alone held the right to judge of the qualification of its members; and legislative in adding in the certificate to the law of Congress governing his duty the words "being a citizen." By this assumption and unlawful exercise of power he rendered

void the franchises of more than 18,000 citizens, representing the overwhelming majority of the population. We are here reminded of the striking words of the lamented Garfield:

"If in other lands it be high treason to compass the death of the king, it should be counted no less a crime here to strangle the sovereign power and stifle its voice."

He has on several occasions attempted to place in the local offices, for the purpose of controlling and disbursing the Territorial finances, irresponsible individuals who are the open enemies of the people. This he has done under a pretended construction of the Organic Act, but contrary to positive enactments of the Legislative Assembly signed by his predecessors, virtually sanctioned by Congress and deemed valid because of rulings rendered by the Supreme Court of the United States. He has, by an arbitrary exercise of the veto power, refused to sign bills enacted by the Legislature unless provisions were incorporated therein in harmony with his personal designs and in extension of his executive powers. Even the educational interests of the Territory have been hampered and obstructed by his tyranny and the Legislature have been prevented from appropriating the money of the people whom they represent, for university purposes, according to the public desire. He has endeavored to injure the people whose interests he should labor to subserve, by attempting to inflame the public mind in his official utterances and documents, and to influence your honorable body to take extreme measures towards this Territory, by which the extraordinary powers vested in the executive shall be enlarged to the extent of complete despotism. To further this object, his report to the Secretary of the Interior and his message to your memorialists were drawn up, containing many absolute falsehoods and misrepresentations and distortions of facts and conditions, against which we earnestly protest, and concerning which we desire and ask for impartial investigation.

It was in consequence of some of these inaccurate and specious statements that the act of Congress known as the Edmunds law was hurriedly passed, without full debate, to satisfy the clamor of the multitude raised without reason and prodded by calumny. Under the provisions of that law, many constitutional guarantees have been ignored and thousands of citizens have been deprived of vested rights, of that valuable property, the elective franchise which they had exercised for many years, without any process of law. This summary punishment was inflicted upon them without indictment and without trial, by the operation of a test oath which virtually made them witnesses against themselves, and which was *ex post facto* in its effects. This oath has been imposed upon the whole body of citizens without authority of law, being formulated by the Utah Commission, on whom no legislative powers were conferred by the Edmunds law, from which their authority is solely derived. It is as follows:

TERRITORY OF UTAH, }  
County of— } ss

I, \_\_\_\_\_, being first duly sworn, (or affirmed) depose and say, that I am over twenty-one years of age, and have resided in the Territory of Utah for six months, and in the precinct of \_\_\_\_\_ one month immediately preceding the date hereof, and (if a male) am a native born or naturalized (as the case may be) citizen of the United States, and a taxpayer in this Territory, (or, if a female) I am native born, or naturalized, or the wife, widow or daughter, (as the case may be) of a native born or naturalized citizen of the United States; and I do further solemnly swear (or affirm) that I am not a bigamist nor a polygamist; that I have not violated the laws of the United States prohibiting bigamy or polygamy; that I do not live or cohabit with more than one woman in the marriage relation, nor does any relation exist between me and any woman which has been entered into, or continued in violation of the said laws of the United States prohibiting bigamy or polygamy; (and if a woman) that I am not the wife of a polygamist, nor have I entered into any relation with any man in violation of the laws of the United States concerning polygamy or bigamy.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 188\_\_\_\_\_.

Registration Officer—Precinct.

Your honorable body will perceive that under this oath, while men who cohabit with more than one woman "in the marriage relation" are excluded from voting and holding office, persons who commit the most flagrant sexual crimes are permitted to exercise the elective franchise and are eligible for any official position, so long as their filthy acts are outside of the marriage relation. These words we submit are an interpolation, and are contrary to the language and intent of the Edmunds law. And they were first used by the present Executive of this Territory, who compelled every applicant for the office of notary public to take an oath containing that phrase, for the purpose of excluding polygamists and admitting libertines and notorious debauchees.

The Commission who, usurping legislative functions, enacted this test oath, were, by the provisions of the Edmunds law, authorized to remain in office until the Legislative Assembly should provide for the registration and election offices made vacant by the law

and subject to the appointing power of the Commission. Your memorialists respectfully represent that they have provided for the filling of those offices, and have passed an election law, as they believe, in full conformity to the Edmunds law and other acts of Congress, and incorporating the oath here annexed to be taken by all applicants for registration, in order to exercise the elective franchise:

TERRITORY OF UTAH, }  
County of— } ss

I, \_\_\_\_\_, being first duly sworn, depose and say, that I am a citizen of the United States; (or) I have declared on oath, before a competent court of record, my intention to become a citizen of the United States, and have taken an oath to support the Constitution and Government of the United States (as the case may be); I am over twenty-one years of age; I have resided in the Territory of Utah six months and in the precinct of \_\_\_\_\_ thirty days next preceding the date hereof, and am not disqualified as a voter by any law of the United States or of the Territory of Utah.

Subscribed and sworn to before me, this \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_\_.

Assessor.

By \_\_\_\_\_ Deputy Assessor.

This bill, a copy of which is herewith presented, was vetoed by Governor Murray. Your memorialists claim that it is strictly conformable to the laws of the United States, and a measure needful to the present interests of the Territory, and that if the provision extending the elective franchise to persons not fully clothed with the habiliments of citizenship was objectionable, it might have been expunged without impairing the remainder of the bill. And yet it is in accord with Section 1860 of the Revised Statutes of the United States, which confers power upon the Territories thus to extend the franchise. The oath presented in the bill is free from the immoral and the unlawful features of the test oath enacted by the Commissioners, but was too comprehensive for the Governor, as it would exclude from the privileges of voting, and consequently of local office-holding, all persons who are disqualified by any law of Congress or of the Territory. By vetoing the bill, the Governor has defeated the intention of your honorable body to dispense with the services of the Utah Commission, so soon as the conduct of elections was placed in the hands of non-polygamist officers appointed under the local laws. The evident object of this veto is to continue the Commissioners in office, and to provoke additional congressional legislation by which the small political liberty yet left to the citizens of this Territory may be yet further diminished and his gubernatorial domination may be extended.

Another instance of his arbitrary exercise of the veto power is the contemptuous manner in which he treated the bill passed by your memorialists, apportioning the representation of the Territory. In the Governor's message to the Legislature, he recommended a new apportionment, "giving to each locality having the necessary population, the right to choose its own members." Your memorialists promptly passed a bill apportioning the representation according to the population of the various districts. This was returned to the Legislature unapproved, with the statement by the Governor, that "the census of 1880 entitles every 12,000 of population to one representative in the Council, and every 6,000 of population to one representative in the House of Representatives." The message closed with the following paragraph:

"If the Legislature will pass an act apportioning the Territory into twelve Council districts and twenty-four Representative districts, as near as may be upon the foregoing basis, where each councilor and representative is to be voted for separately, I will be pleased to approve the same."

Another bill was drawn up in exact conformity to the Governor's suggestion and promise, a copy of which is presented herewith; it passed both houses of the Assembly and was duly forwarded to him for signature. But he forfeited his pledged agreement and treated the bill with the contempt of utter silence, neither approving nor rejecting it; and such is the dependent condition of the Territory of Utah that it does not need the absolute veto of the Governor to render void an act passed by the people's elected representatives, but his neglect to sign it is more mighty than the combined labors of thirty-six legislators chosen by ballot to express the popular will. The object of this insulting treatment of the Legislature was, without doubt, to leave the way open for the passage of a measure now before your honorable body, giving the Governor alone the right to make the apportionment of the representation, although a very good law for this purpose passed in 1880, and signed by his immediate predecessor, is now upon the Territorial statute book, and there is no real necessity for any radical change.

Your memorialists submit that the political situation in Utah is this: Four-fifths of the voting population, after excluding all who have been disqualified by the rulings of the Utah Commission and their extreme construction of the Edmunds law, belong to what is called the People's party, and represent at least eighty per cent. of the entire population of this Territory. The other portion chiefly belong to what is called the Liberal party. The great fault of the majority seems to be, that

they select persons from among themselves to represent them and manage their local affairs. No person who has ever lived in the practice of polygamy is now permitted to vote or hold any office, therefore there can be no legal reason offered why the great majority of the voting citizens should not choose their local officers from among their own number. The only portion of the Territorial government under the control of the people is the Legislature, with the addition of a few ministerial officers to handle the funds raised by local taxation under the Territorial laws. The judicial and executive departments are in the entire control of the national government, and all such offices are filled by national appointment. These, with other officials under Federal authority, including nearly all the postmasters, are numbered with the "Liberal" party, which, though in so small a minority, aims at the control of the only portion of the local government left to the people. And because the great body of the citizens refuse to accept the nominees of the minority, the proposition is made to abolish the Legislature, whose members are elected by the people, and establish in its stead a commission appointed by the President and Senate of the United States, and thus sweep away from the Territory the last vestige of republican government. It should be remembered that to-day the law-making department, elected by the people, is at the mercy of the appointed executive in the enactment of any law. The Governor holds the power of absolute veto, and no two-thirds or even unanimous vote of the Legislature avails against his individual dictum or simple indisposition to append to a bill his signature; at the same time your honorable body exercises the power not only to disapprove of any local enactment which the Governor may feel inclined to sign, but also to legislate directly for the Territory. So while the local Legislature cannot enact any law without the consent of the Governor and the approval of Congress, laws can be and are enacted by Congress without any voice or consent of the people who are to be governed by them. We respectfully ask if this is not sufficient national control and supervision over the only shred of political power left to the large body of American citizens who compose the voting population of this Territory.

We respectfully submit that the bills now pending in Congress in reference to Utah, are manifestly unjust and altogether unnecessary, to say nothing of their utter incompatibility with the spirit and letter of the Constitution of the United States. Not only is no good and sufficient reason advanced for the substitution of a legislative commission for the Legislative Assembly of Utah, but the measure would be without precedent in the history of our country. The Territory northwest of the Ohio was not governed in any such arbitrary manner as is proposed in these bills, but guaranties for local self government were given, to take effect when the then sparsely settled districts should contain inhabitants numbering but a small proportion of the present population of the Territory of Utah. There is no parallel between the case of any other section of the country which has been temporarily governed by persons appointed by the President and Senate of the United States, and that of Utah, an organized Territory, which has held and exercised the right to enact its own laws for the last thirty-four years. The District of Columbia is not to be compared with a Territory organized for the very purpose of preparing it for the dignity and responsibilities of Statehood, to which the District wherein is the seat of national government, and over which Congress has "exclusive jurisdiction," can never attain. And we respectfully submit that, as it cannot now be alleged, that polygamists make the laws, or vote into office the members of the Legislature of Utah, the only pretext upon which such measures as the appointment of a legislative commission is founded is that the overwhelming majority of the voting citizens will not select men to represent them from the small minority which now monopolizes the offices in the gift of the national government; in other words, that because the majority will not vote as desired by the minority, the should not be allowed to vote at all. This is a true statement of the fact stripped of the specious sophistries which are so generally thrown around it.

That this extraordinary measure would be considered, abroad as well as at home, to be despotic and subversive of the rights of citizens, your memorialists cite to your honorable body the cases of Jamaica and Canada, when similar propositions were made in relation to those colonies before the British Parliament. In 1839, Jamaica resisted certain direct legislation by the home government, and considering that their legislative rights had been trampled upon by this interference of the British Parliament, the Colonial Assembly passed a resolution that it would abstain from the exercise of its legislative functions, except for the purpose of maintaining the public credit, until the obnoxious acts should be repealed, and the members of the assembly "be left to the free exercise of their inherent rights as British subjects." A protest was forwarded to Great Britain, which was considered insulting to the Crown and Parliament. A bill was introduced "to suspend the existing constitution of the island for a limited number of years," and to provide that during that interval its legislative functions should not be exercised "except by the Governor and Council alone." But this, although