[*Continued from page 5.*]

These instances are, I trust, sufficient to show that there exists in Congress no absolute power of unlimited legislation in the Territories. Congress has the right to dispose of and make all needful rules and regulations respecting the territory, in the singular, not Territories, and other property of the United States. That is the grant of power, and that is all of it. But this does not delegate to Congress the right to made any laws as applicable to the Territories or any rules or regulations for their government which violate the genius and spirit of our republican institutions, or which are prohibited to Congress by the Constitution; nor, indeed, any which are not within the scope of its delegated powers.

The language as applicable to the District of Columbia, etc., is very different and much more full and ample. That provision gives to Congress the power to exercise exclusive legislation in all cases whatsoever over such District, not exceeding ten miles square, as may by cession of the particular States and the acceptance of Congress become the seat of Government of the United States, and to exercise a like authority over all the places purchased, by consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings.

In the first case the language is, Congress may dispose of and make all needful rules and regulations concerning the territory (not Territories) and other property of the United States. In the last case, Congress may exercise exclusive legislation in all cases whatsoever.

The framers of the Constitutlon well understood the force and import of language, and it is very evident that they did not intend to confer power as plenary in the one case just quoted as they did in the other. In so far then as the right to legislate for the Territories is concerned, I am of the opinion Congress can rightfully exercise no power except such as is delegated to it by the Constitution. In the case of the District of Columbia and other places above mentioned, as the grant is plenary, Congress may exercise exclusive legislative powers and enact and enforce any law that is not in conflict with some prohibitory provisions of the Constitution.

The Supreme Court has held that the powers of the Territorial Legislature extend to all the rightful objects of legislation, subject to the restriction that their laws shall not be inconsistent with the laws and Constitution of the United States. (1 Peters 543.)

The test-oath prescribed by the constitution of Missouri during the war was similar to that prescribed under the act of March, 1882, as applicable to Utah in its disfranchisement, and was declared null and void by the Supreme Court of the United States, because it was a bill of pains and penalties, which neither the State nor the General Government had any right to pass.

I insist that Congress has no power in the Territories to pass any law violating these fundamental provisions of the Constitution. By Articles 9 and 10 of the Amendments to the Constitution, the rights not delegated to the Congress by the States in the Constitution are reserved to the States respectively or to the people. The reservation of them to the States respectively, speaking of them as organized bodies, would embrace a reservation to the people who composed the State. But as many of the people might not be inhabitants of a State, but might live on the territory belonging to the Government, the reservation is put in the alternative "to the States respectively or to the people." Therefore the reservation of powers not delegated, applied as well to the people of a Territory as to the people of the States.

Congress may go to the extent of the delegated powers in passing laws for the Territories or in punishing crime there; but it has no right to pass laws prohibited by imperative provisions of the Constitution. Nor has it the right to exceed the delegated powers in the enactment of laws for the government of the Territories. I deny that the power is anywhere delegated to Congress in the Constitntion to destroy local self-government as long practised in a Territory, or to destroy a republican form of government in a Territory, or to destroy the right of trial by jury which the Constitution declares shall be preserved. The accused is in every case entitled to a speedy and public trial by an impartial jury before any penalty or punishment or disability of any kind can be inflicted upon him.

Again, Congress is required by the Constitution to guarantee to each State a republican form of government. Will it be insisted by anyone that Congress has a right in a Territory belonging to the United States, inhabited by citizens of the United States, who are entitled to the protection guaranteed by the Constitution to citizens, to destroy a republican form of government, and to govern the Territory by commissions of military men, or civilians, or satraps, or provisional governors in an arbitrary, tyrannical, or unconstitutional manner, violative of the very first principles of republican government? The framers of the Constitution intended no such inconsistency as a guarantee of a republican form of government in the States and the destruction of republican government in the Territories.

If Congress has the power to destroy the Territorial government in Utah, and send commissioners, military dictators, or satraps to govern the Territory for five years, it has the same power to embrace in the same category all the territory belonging to the United States. And if it may govern any portion of it, it may govern all of it by a satrap. And if it may continue such government for a term of years there is no reason why, in its good pleasure, it may not continue it for one hundred years or five hundred, making the Territory a province to be plundered at will by the party in power.

I can never subscribe to the doctrine that citizens of the several States, who leave their homes in the States, and establish homes in the Territories, thereby lose their rights as citizens of the United States under the Constitution, or lose the protection the Constitution guarantees to them against arbitrary tyranny or oppression. Nor can I believe that Congress may rightfully in such case govern them outside of the Constitution, or that it may exercise despotic, arbitrary, or unlimited power over the people of the Territories. They are as much citizens of the United States as are the citizens of the several States, and they are as much entitled to exercise the rights guaranteed by the Constitution as any of the other citizens of the United States are. They have a right to all the protection that the nhibitory clauses of the Constitution throw between them and the exercise of arbitrary power, whether it is attempted to be exercised by Congress or any other department of Government.

The Government of Great Britain though a monarchy does not claim the right to exercise any such power over the English-speaking inhabitants of Great Britain or the British provinces. When the original thirteen States were provinces of Great Britain the people claimed the right of local self-government, and they resorted to revolution, and open resistance to the government, rather than submit to taxation without representation. By an attempt to exercise the very power that it is now proposed by some persons that the United States shall exercise over Utah, the British Government lost the provinces which at the end of the war became thirteen sovereign and independent States, which united and formed this great Government of ours. The power of local self-government lies at the very foundation of our system. The powers of the General Government are limited to the grant made by the States in the Constitution, and the citizens of the States and of the Territories of the Union are alike protected by the inhibitory clauses of the Constitution to which I have invited the attention of the Senate.

The proposition is a monstrous one, that the Government of the United States has the power to destroy local self-government as it has heretofore existed in the Territories, to subvert the principles of our republican system there, or to send irresponsible commissions, agents, or despots to insult, rob, and plunder the citizens of a Territory, whose constitutional rights are inalienable and should be protected wherever the flag floats over an American freeman. If such power exists it is the power of brute force, not of right, a power which no enlightened republic can afford to exercise over its citizens.

A few words about the practice and policy of the Government in its legislation in reference to the Territories may not be out of place here. After Virginia had ceded the northwestern territory to the Government of the United States, the Congress, in 1787, passed an ordinance for its government, in which it is provided that:

> The governor and judges, or a majority of them, shall adopt and publish in the district, such laws of the original States, criminal and civil, as may be necessary and best suited to the circumstances of the district, and report them to Congress from time to time; which laws shall be in force in the district until the organization of the General Assembly therein, unless disapproved by Congress; but afterward the Legislature shall have authority to alter them as they shall see fit.

In a subsequent part of the ordinance it is provided that—

> So soon as there shall be 5,000 free male inhabitants of full age in the district, upon giving proof thereof to the governor, they shall receive authority, with time and place, to elect representatives from their counties or townships to represent them in the General Assembly.

It then fixes the number of representatives at 1 to every 500 free male inhabitants until the number shall amount to 25, after which the proportion of representatives shall be regulated by the Legislature. It then prescribes the qualifications of representatives and voters. It also provides for filling vacancies, etc. This was the earliest act passed by Congress for the government of the Territory, and at that time it was called district and not Territory; and as you will readily see, Mr. President, the Congress provided for a republican form of government for the Territory, and for local self-government of the Territory, so far as the legislative functions were concerned. See Statutes at Large, volume 1, page 51.

By act of May 26, 1790, provision was made for the government of the territory of the United States south of the Ohio River, which the statute declared should be similar to that which was then exercised in the territory north of the Ohio. (Volume 1, page 123.)

As you see, Congress did not leave the governor and judges to legislate, but authorized them to select laws from those passed by the States for the Territory until it had sufficient inhabitants to enable it to elect a legislature, when it was to assume legislative functions; and the same rule was applicable to the territory south of the Ohio River.

Kentucky was part of Virginia, and with the consent of Virginia she formed herself into a State, and was admitted into the Union 1st of June, 1792.

Tennessee having been ceded to the United States by North Carolina, was admitted into the Union with but little Territorial history.

The Territory of Mississippi was organized April 7, 1798, with the same privileges which the people of the Northwestern Territory enjoyed under the ordinance of 1787 except the provision as to slavery. By act of 10th of May, 1800, the right to elect representatives was provided for with property qualification. The property qualification was removed by act of October 25, 1814 (volume 3, page 143,) and it had representative government until its admission into the Union.

On the 3rd of March, 1817, the Territory of Alabama was organized from a portion of the Territory of Mississippi, and the representatives elected under the laws governing the Mississippi Territory who fell within in the Territory of Alabama were to continue as the legislative assembly of that State. The town of Saint Stephens was declared to be the seat of government for the Territory until it should be otherwise ordered by the Legislature thereof.

By act of April 20, 1802, the people of the eastern part of the Northwestern Territory were authorized, in a convention elected by the people, to form a State government preparatory to admission into the Union, with such name as they might adopt. The State of Ohio was thereupon organized as a State and admitted into the Union. (See volume 2, page 173.)

Having purchased the Territory of Louisiana from France, the President was authorized, by act of March 31, 1803, to take possession of it and to use any part of the Army and Navy necessary for that purpose. We had just purchased the Territory, the inhabitants were not friendly to the people of the United States and did not speak our language, hence it was necessary to use extraordinary means to take possesslon of the Territory and to form a government there. A Territorial government was established by act of March 26, 1804, which vested the legislative power in the governor and thirteen fit and discreet persons of the Territory, with the powers usually given in such cases. (Volume 2, page 284.)

A similar instance occurred in the case of the Territory of Florida. A hostile state of feeling had existed between the Spanish Government in Florida and the people of the United States for many years. Finally, the Government of the Uniied States purchased the Territory of Florida, and by the act of March 30, 1822, a Territorial government was established there, and, as the people were foreign and spoke a still different language, extraordinary means were deemed necessary in the government of the Territory, and the legislative power was vested in the governor and thirteen of the most fit and discreet persons in the Territory, to be called the legislative council, appointed annually by the President of the United States. There was also a short period when the Northwestern Territory was controlled by a governor and judges. But these were extraordinary occasions, at an early period of the Government, when there did not seem to be any fixed policy in reference to the organization and control of the Territories. But after the arbitrary government of the Territory of Florida had ceased we find no more instances of the application of such rules to any Territory, and for the last sixty years there has been no instance that has fallen under my observation where the right to elect the General Assembly and in most cases the local officers has been denied to a Territory.

The unbroken practice for more than half a century has been uniformly in favor of local self government so far as the election of the Legislative Assembly was concerned.

The Territories of Illinois, Indiana, Michigan, Mississippi and Alabama were given the same right of self-government which was secured to the people of the Northwestern Territory by the ordinance of 1787.

The State of Maine formed a part of the Territory of Massachusetts, and with the consent of Massachusetts formed an independent State and was admitted into the Union in 1820. (Volme 3, page 544.

The Territory of Arkansas was organized by act of March 2, 1815, and the legislative power was vested in a Legislature, to be elected by the people so soon as it was organized.

The Territory of Missouri was organized under an act of June 4, 1812. A governor, legislative council, and a house of representatives elected by the people had the legislative power. (See volume 2, page 744.) And by an act of April 27, 1816, the qualified voters were authorized also to choose the legislative council. (Volume 3, page 328.) There were other instances in the early unsettled period where the legislative council as well as the governor were appointed by the President, but the house of representatives was invariably elected by the people. These instances occurred when there was no settled policy applicable to the Territories. For the last half century, as a rule, the legislative council and house of representatives, and generally the local officers, have been elected by the people under the various acts providing for the organization of the respective Territories. This rule applied to the following Territories organized as hereafter stated:

Minnesota, by act of March 3, 1849, (Volume 9, pages 403, 404.)

New Mexico, act September 9, 1850. (volume 9, page 448.)

Nebraska, act May 30, 1854 (volume 10, page, 278.)

Kansas, by the same act (volume 10, pages 284 and 285.)

Territory of Washington, act March 3, 1853 (volume 10, page 172.)

Territory of Oregon, act August 14, 1849 (volume 9, page 323.)

Territory of Utah, act September 9, 1850 (volume 9, page 453.)

Territory of Nevada, act March 2, 1861 (volume 12, page 210.)

Territory of Colorado, act February 28, 1861 (volume 12, page 172.)

California, having formed a State government without Territorial pupilage, was admitted as a State September 9, 1850 (volume 9, page 452). The collection laws were extended over the Territory by an act of March 3, 1849 (volume 9, page 400); and in all these later instances, without exception, the right to elect their own General Assembly is given to the people of the Territory. The same is true of the remaining Territories of Dakota, Montana, Wyoming, Idaho and Arizona.

Now, let it be borne in mind that the Government invited emigrants from the different States into the Territories. By giving them lands for their homes and holding out other inducements it got them to occupy the Territories, and it established Territorial governments with the privileges already mentioned.

This has been an unbroken practice, as already stated, for more than fifty years, and thousands and tens of thousands of people have been induced to go into the Territories and settle by the well known policy of the government, and they have acquired rights there under the Constitution and laws which Congress has neither moral nor legal authority to take from them. They have acquired the right of local self-government so far as the election of their own members of the Legislature and their own local officers are concerned, and we have no moral right, after inducing them to go to the Territories, with the assurance that they would have the rights the acts of Congress gave, and which half a century's practice confirms, to abridge or destroy these rights.

Take, as an illustration, the Territory of Utah, at which the unfriendly legislation is aimed. The people of that Territory exposed themselves as those of few Territories ever have, and they endured an amount of suffering and privation that few people have ever been able to bear. They located in that distant wilderness, at the time a thousand miles from the nearest settlement in any of the States. Congress extended over them the laws of the United States and gave them a liberal Territoral government. Under it they have grown and prospered to a remarkable degree, and because there have been 12,000 persons found there who will not swear that they have at no time in their lives been guilty of bigamy or polygamy, it is proposed by members of Congress and others occupying high positions to destroy the government of Utah so far as its elective form is concerned, put it under a commission appointed by the President, deny to its people the right to elect their own members to the Legislature or their own local officers, deny them the right to elect a Territorial Delegate to Congress, which every Territory enjoys, put the feet of the power of this Government upon their necks and crush them because there have been found among them 12,000 men and women who will not take an illegal oath which has been tendered to them, and who are therefore presumed to be guilty of bigamy or polygamy.

If this unconstitutional and illegal action applied only to the guilty parties, there would be some pretext for the usurpation; but we punish 138,000 people who have not practised polygamy in order to make sure that we have punished 12,000 who are believed to be guilty of that offence. We not only tear down the Territorial government, but we expose the whole people of the Territory, the innocent as well as the guilty, to a system of government which will enable those in authority to rob and plunder the people at pleasure. And it must, I suppose, be understood by the people of Utah that they are to be governed by a commission or a satrap, until the population who have heretofore practised polygamy, and who are a small minority of the people, consent to abandon their plural-wife system, and adopt instead of it the system of prostitution, fœticide, and sexual impurity practised in other sections of the Union.

But they have another sin to atone for before they can be forgiven. The people of Utah for the last twenty years have felt that the Republican party in power has done them great injustice; consequently they are not as good Republicans as it is thought by some of the leaders of that party they ought to be. They must therefore consent to change their politics, at least to the extent of agreeing to be admitted into the Union as a Republican State, before the innocence of a large majority of the people will be considered by the political party in power sufficient to atone for the guilt of the minority.

The Utah Commission, in prescribing an oath for the voter, was careful not to interfere with the sexual privileges of non-Mormons in the Territory; consequently they require the voters to swear that they are not bigamists or polygamists, and that they do not cohabit with more than one woman in the marriage relation. If they do tney are denied the right to vote or hold office. But each inhabitant of Utah who has a wife and as many mistresses as he chooses to keep, if he does not claim that he keeps them *in the marriage relation*, has a perfect right to vote and hold office. It will therefore doubtless be required of the Mormons that they abandon their system of cohabiting with more than one woman "in the marriage relation" and adopt in its stead the system of one wife with such other indulgences outside of the marriage relation as they choose to practice.

When they have consented to do this, and adopt the more popular mode against which there is no such popular clamor as exists against polygamy, and when they have declared themselves in favor of the Republican party, their many sins will doubtless be forgiven by the high priests of the party, and they will be remarkably proper people to trust with the delicate and responsible duties of self-government. In other words, if they will only change the name, and resort to the same practices under a different name, and will sacrifice their political opinions and join the party in power, they will be embraced as brethren, and they will no longer be proscribed, and made the victims of popular vengeance.

The Utah Commission report about 150,000 people in the Territory. Of this number there are 40,000 non-Mormons, leaving about 110,000 Mormons. Of this number about 12,000, male and female, as the women vote there, declined to take the oath, and are set down as practising polygamy. As the oath applies to all their past lives it is fair to infer that not more than 12,000 now living have ever engaged in this pernicious practice; and probably many of the 12,000 refused to swear that they were not polygamists or bigamists, not that they had practiced polygamy, but because they approved it.

There are over fifty millions of people in the United States; and there are probably twenty times as many persons practising prostitution, or illegal sexual intercourse, in the other parts of the Union as the whole number who practice it in Utah. Many of the features of its practice in the other States and Territories, including fœticide, illegal divorce &c., are quite as revolting or more so than in Utah. It is assumed in the other parts of the Union, where a greatly larger number of persons practice sexual impurity than the whole number of Mormon polygamists, that polygamy must be put down at any cost. It is certainly a matter of great importance that polygamy, prostitution, fœticide, and illegal divorce, whether practised in Utah or in any other part of the United States should be put down. And if we have it in our power by constitutional means to accomplish that end no one would be more rejoiced than I. But having taken a solemn oath to support the Constitution of the United States, I cannot as a Senator vote for a measure which I am satisfied is a plain violation of the Constitution to crush out polygamy, or to accomplish any other object. And we would do well to bear in mind that if the Congress of the United States disregards and violates the Constitution of the United States in its eager haste to crush a sect but a little over one hundred thousand strong, the result of the precedent may be the crushing out of one sect after another, until it ends in the complete overthrow of the liberties of fifty millions of people, who are expected to applaud our efforts to crush the Mormons without regard to constitutional difficulties or constitutional obligations.

No matter what the popular applause may be on the one hand or the popular condemnation on the other, I will join in no hue and cry against any sect that requires me to vote for measures in open violation of the fundamental law of the land. And we would do well to bear in mind that an illegal persecution of any sect always excites sympathy for the persecuted and greatly increases its numbers. The late Alexander H. Stephens, of Georgia, when asked what would be the effect of the Edmunds bill on Mormonism, replied, "The effect will be to make more Mormons."

But I may be asked, "What means can we adopt to destroy this great evil in Utah?" I reply we can not do it by passing unconstitutional laws, or adopting illegal or unconstitutional means, or by striking down republican government in the Territory.

The Christian churches of this country spend hundreds of thousands of dollars every year sending missionaries to foreign lands where polygamy is practised. In India and China alone more than 500,000,000 of people practice or acquiesce in the practice of polygamy. And yet the Christian churches are not discouraged, but they send missionaries there, hoping finally to convert the whole mass of the people. Why, then, should we not send missionaries to Utah where only about 12,000 people practice and a little over 100,000 people believe in polygamy? If the Christian churches are willing to make the effort to convert 500,000,000 of polygamists in the East, why should they not with less effort convert 100,000 within the limits of our own land? If the first task is within the range of possibility, what is there to discourage us from the smaller undertaking? There are a great many people in Utah who might be converted by the proper effort. They are our neighbors, our fellow-citizens. Shall we give them up as reprobates, and make no effort to save them, and join in a crusade to crush them? They speak our language, they are within easy reach. Why give them up and turn to the heathen of other