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of 1817, that "every such Delegate shall have a seat in the House of Representatives, with the right to debate but not to vote," Congress intended, even at that early day, in anticipation of the unprecedented an anomalous social and political condition likely to arise in this particular case, to preserve to the House, when the duly elected Delegate, as in this case, presented himself at the bar for admission, the unembarrassed authority to receive or reject him, as its constitutional duty to so govern the Territory as to fit it for admission as a State might seem to require, is a question worthy, perhaps, of consideration.

But again, in considering the act of 1850 according to the settled rules of construction, section 14 must in any event be construed, as was insisted by the gentleman from Tennessee, as qualified by the subsequent section 16, declaring—

That the Constitution and laws of the United States are hereby extended over and declared to be in force in said Territory of Utah, so far as the same or any provision thereof may be applicable.

And the report of the minority inquires, "Now, why is the provision of the Constitution relating to the qualification of members not applicable to the Territories?" And so it may be so far as it goes. And the reason why it is not applicable to the case of a Delegate to the extent of reducing the House to the narrow rule prescribed by the Constitution for the admission of members from the States, is that the status and rights of the State are fixed and certain by its admission into the Union, while a Territory, being a State in embryo, with ever-shifting conditions, is subject, in addition to those provisions of the Constitution applicable to the States, to the unlimited power and duty of Congress "to make all needful rules and regulations for the Territories."

Now, it is contended that this provision of the act must be held to relate to that part of the Constitution only which treats of the qualifications of members of Congress. But by its terms every provision of the Constitution applicable to the proper government of the Territory is made part of the act of organization. And even this was a work of supererogation. For whether the act said so or not, Congress had no power by any act of legislation to throw off the discharge of any duty imposed upon it by the Constitution.

And by the act of 1850 it was not undertaken to do so, but on the other hand needlessly and in express terms declared its purpose to govern the Territory in obedience to each and every requirement of the Constitution applicable to the facts and circumstances of the particular case.

Whether these provisions then relate to the personal qualifications of the claimant or not is not necessarily material, for if they relate to any other fact or circumstance pertinent to the execution by Congress of any duty imposed by the organic law with regard to the Territory, then this House on its part is bound to the performance of that duty, even though it involve the abrogation of its previous action.

But, as I have shown, every power and every duty imposed upon Congress by the Constitution is expressly reserved by section 16 of the act.

Judge Curtis says in Scott vs. Sanford: "Whether a law be 'needful' is a legislative or *political* and not a judicial question." This House, as I shall attempt to show, has no more warrant under the Constitution to give aid or sanction or recognition to the unrepublican system that in reality dominates and governs the Territory of Utah, by admitting its ambassador to a seat on its floor, than it would have, under the same circumstances, to admit Utah as a member of the Federal Union.

The Constitution declares:

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.

Then follows in logical order the provision:

The United States shall guarantee to each State a republican form of government.

These provisions must be construed together. The first was clearly intended to devolve upon Congress the duty of supervising and governing the Territories, and as incident to the discharge of that duty, a plenary power, that is as stated by Justice Curtis in 1 Peters, 512:

All the power which both Houses and the State Legislature combined possess in the States.

And this doctrine stood unquestioned until slavery had outgrown its natural and traditional limits and was seeking judicial warrant for setting up its standard in the free territories of the west. Then it was discovered for the first time that Congress no longer had the power to make all needful rules and regulations respecting the Territories, but that it had the power to make all needful rules, &c., except to make a rule excluding slavery from the Territories.

But the time has gone by forever when any interest will be strong enough to compel such a construction again. And we, of the North, who assailed it with the zeal that comes from conviction, and you, of the South, who defended it with the courage of lions and the fury of fanatics, even to the pulling down of the temple of our liberties over our heads, now that fever dream is over we are discussing the powers and relations of Congress to the Territories in a better and more philosophic spirit, and are substantially agreed that that decision was part of the old system, and that the organic change which swept that away buried also this doctrine under the results of the war.

As Paschal says in his notes on the Constitution:

Congress has all the power of legislation which may be necessary and proper to guarantee the principles of republican government and to insure the erection and admission of new States with those principles.

Justice Curtis in the Dred Scott case says, and his reasoning may now be regarded as settled law:

If, then, this clause does not contain power to legislate respecting the Territory, what are the limits of that power?

To this I answer, that in common with all the other legislative powers of Congress, it finds limits in the express prohibition of Congress not to do certain things; cannot pass an *ex post facto* law nor bill of attainder, etc. Besides this, the rules and regulations must be needful. But, undoubtedly, the question whether a particular rule or regulation be needful must be finally determined by Congress itself. Whether a law be needful is a legislative or political, not a judicial question.

Whatever Congress deems needful is so under the grant of power. * * * I cannot doubt that this is a power to govern the inhabitants of the Territory by such laws as Congress deems needful until they obtain admission as a State. Chancellor Kent says:

With respect to the vast Territories belonging to the United States, Congress have assumed to exercise over them supreme acts of sovereignty. Exclusive and unlimited power of legislation is given to Congress by the Constitution and sanctioned by judicial decision. The general sovereignty existing in the Government of the United States over its Territories is founded on the Constitution which declares "that Congress shall have the power to dispose of and make all needful rules and regulations respecting the Territories."

Cooley, in his work on Constitutional Limitations, page 30, says:

1. The people of the several Territories may form for themselves State constitutions whenever enabling acts for that purpose are passed by Congress, but only in the manner allowed by those enabling acts and through the action of such persons as the enabling act shall clothe with the elective franchise to that end.

If the people of a Territory shall of their own motion, without such enabling act meet in convention, frame and adopt a constitution, and demand admission to the Union under it, such action does not entitle them as matter of right to be recognized as a State; but the power that can admit can also refuse, and the Territorial status must be continued until Congress shall be satisfied to suffer the Territory to become a State. There are always in these cases questions of policy as well as of constitutional law to be determined by the Congress before admission becomes a matter of right. For example, whether the Constitution formed is republican; * * * whether any inveterate evil exists in the Territory which is now subject to control, but which might be perpetuated under a state government.

Now, if the two sections of the Constitution already referred to be read together, they may be paraphrased as follows:

Congress shall have power to make all such needful rules and regulations respecting the Territories as will entitle them at the proper time to be admitted by the Congress into this Union, with a government republican in form and practice and principles.

The Constitution assumes a pre-existing government republican in form, and guarantees that it shall be maintained.

The Constitution assumes that the political unit known as a Territory shall be so informed and pervaded by the practice and principles of republican government that it may be admitted into the Union.

And this places Congress in *loco parentis* to the infant States, commits to its care their training, to guide their steps and watch their growth to the end that they may adopt the practice and principles as well as the form of republican government. The United States cannot long hold this great Territory, with its teeming population, as a colony, and it becomes the duty of Congress to so govern and mold it that it may be fit for self-government.

The Census Bureau has completed its estimate of the population of Utah Territory, classified as Mormons, Gentiles, Apostates, Josephites, and doubtful. Of the Mormons there are 120,283, nearly 49,000 of whom are more than 21 years old, while 40,000 are less than nine years old. Of the Gentiles there are only 14,146, of whom a little more than one-half are more than 21 years old. There are 6,988 Apostate Mormons, 820 Josephite Mormons, and 1,716 persons who are classified as doubtful. Of the Mormons nearly 37,000 are of foreign birth.

But had she a million inhabitants within her borders to-day, and resources corresponding to her population, and stood knocking at our doors for admission, bearing in her hands a republican form of government; but with this mighty system of polygamy standing in the shadow behind, usurping in reality all the functions of government and social order—were such a spectacle presented to-day, is there a man on this floor bold enough to assert, or wrong or reckless enough to vote to engraft such a monstrous growth on the body of the Republic? And if some Congress years ago had passed a law prescribing certain things as the only conditions upon compliance with which she should be admitted as a State, and all those conditions were complied with to-day, would you admit her? That will not be one man asking for a seat on this floor, but a great people with all the muniments of the right of self-government, except this unrepublican practice and system, and staking their cause, as our fathers did, on the declaration "that taxation without representation was tyranny."

This will confront us ere long, and what better reason will you have for refusing to admit a Territory into the Union which more than possesses all the qualifications ever before exacted, on the ground that this monstrous and "inveterate evil" dominates the Territory; than you now have to refuse to receive its proclaimed apostle, its accredited ambassador for the same reason? You have no right to strengthen and dignify this system by admitting their agent to a seat on this floor, because that would be in aid of a power which is at war with the principle of the organic law, the settled policy of the government, and the spirit of our institutions. And Mr. Speaker, Utah is unrepublican because—

First. It is a theocracy stronger in practice than the laws of Congress, and seeks a union of church and state.

Second. Because no political community can be republican that maintains a civil or ecclesiastical law which abrogates the American institution of marriage and substitutes in its place the system of plural wives.

From its infancy every step in its growth has been distinguished by the complete subordination of the civil to the ecclesiastical power.

From its cradle in Seneca County, New York, to Kirtland, Ohio, thence to Jackson County, Missouri, and back again across the Mississippi to Nauvoo in 1840, it everywhere exalted the shibboleth of the prophet over the law, and aspired to local independence and supremacy. The Legislature of Illinois, in the kindly exuberance of their sympathy for men claiming to be flying from unjust persecution, granted them a city charter so artfully framed that the laws of the State were practically nullified within the corporate limits of the holy city of Nauvoo.

Under it, its courts had original and exclusive jurisdiction; a little army called the "Nauvoo Legion" was was organized and command by the prophet as lieutenant-general. Such open abuse of their hospitality and such high-handed defiance of their laws, led first to ineffectual prosecutions for treason, and then to the death of the prophet at the hands of the people, and their final flight beyond the borders of civilization that abhorred and spewed them out, under the leadership of Brigham Young, to the shores of the Salt Lake and the fertile plains and picturesque valleys of that charming solitude.

And here, where, in the words of the old familiar hymn,

Where every prospect pleases
And only man is vile.

And fondly fancying themselves beyond the control of the government, (as they have been ever since) they set up the standard of the prophet, again proclaimed their right to govern themselves, organized the free and independent "State of Deseret," and planted themselves on the manifesto of Sidney Rigdon, their great orator at Far West, Missouri, in 1838.

"We this day proclaim ourselves free, with a purpose and determination never to be broken—no, never! no, never! no, never!" And with the aid of Congress until now they have kept their word. Up to this hour, and for more than thirty years, against the indignant protest of the Christian world, against the laws they have set at naught, in the teeth of a great nation that has vanquished every other foreign and domestic foe, this monstrous and phenomenal power has more than held its own. And now I ask, what in all these years of Territorial tutelage has Congress done to make such "needful rules and regulations" as would bring about the subjugation of this unrepublican and inveterate evil and prepare this embryo State for admission into the Union?

Congress in 1850, with a view of supplanting the "State of Deseret," gave Utah the right to govern itself only subject to the Constitution and the laws of the United States so far as applicable. The Legislature organized under this law proceeded with all convenient speed to gather Utah, her woods, her mines, her fields and streams, her women and everybody else's women, from Iceland to the tropics, into Abraham's bosom. They re enacted the ordinance, incorporating the "Church of Jesus Christ of Latter-day," and under Brigham Young and the Apostles, acquired vast tracts of the most fertile and inviting sections. They organized a surveyor-general's office and sold the public lands to the highest bidder. They destroyed the monuments of survey the Government had established, captured the records of the surveyor general and compelled him to fly for his life. Brigham Young was the absolute head of the church, the vicegerent of heaven and the civil governor of the Territory. In September, 1857, a little army was marched against them. Brigham Young declared the Territory under martial law, and threatened to resist the advance of the troops by armed force, but the pacification of the Territory was apparently secured, the troops withdrawn and the civil power remanded without additional safe-guards, conditions, or penalties into the reckless and wicked hands of the Mormon hierarchy, with no semblance of Federal authority except a powerless Federal governor and a baffled and despised Federal court.

Then followed the agitation of the question in the Thirty-sixth Congress, and Mr. Nelson, from the Judiciary Committee of the House, in the bill which afterward substantially became the law of 1862, calls the attention of Congress to the enactment by the State of Deseret of a law entitled "an ordinance incorporating the Church of Jesus Christ of Latter-day Saints," and which was afterwards re-enacted by the Territorial government, and which not only authorizes the Church of Jesus Christ of Latter-day Saints to hold and occupy real and personal estate, but by the section of the act it is declared that the real and personal property of the said church shall be exempt from taxation, thus establishing an hierarchy obnoxious to the spirit of our institutions, and conferring privileges and prerogatives unknown to any other ecclesiastical denomination. Such monstrous power and arrogant assumptions are at war with the genius of our Government. He further says that the Territorial statute, being constructively an act of Congress, is in direct violation of the amendment to the Constitution, article 1, provided that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

Mr. Cook, in the 39th Congress, from the committee on judiciary, as to the memorial of Utah to repeal the act of 1862, says the humiliating fact is, however, apparent that the law is at present practically a dead letter in the Territory of Utah, and demands that it shall be executed.

Then followed the act of 1862, which provides, first, for the punishment of polygamy without providing any efficient machinery for the execution of the law. Section 2 annuls all acts which shield or countenance polygamy, but provides that this act shall be so limited and construed as not to interfere with the right of property legally acquired under the ordinance incorporating the Church of Jesus Christ of Latter-day Saints, but only to such acts as protect polygamy.

This left the church the owner in fee simple of 400,000 acres of the public land and 600 square miles of territory, and the power of the church undisturbed and unbroken and interwoven into every fiber and artery of the body-politic. The law was everywhere in Utah received with derision and has ever since been treated with contempt.

Later, Mr. Wade, from the committee on territories, in his report upon a bill authorizing the printing and distribution of the governor's message, which the Utah Legislature refused to print, says:

That the testimony taken by them disclosed the fact that the Territory was controlled by a sort of Jewish theocracy, graduated to the condition of that Territory, having a supreme head, who governs and guides every affair of importance in the church and practically in the Territory, and is the only real power acknowledged there. * * * We have here the first exhibition within the limits of the United States of a church ruling the State.

And there all agitation and deliberation looking to the breaking up of this "inveterate evil," all legislative effort in the direction of uprooting this theocracy ended, until the Forty-seventh Congress has at last asserted its unlimited power and advanced with vigorous measures to the discharge of its high constitutional duty. The fact that a nation of people can be gathered on this continent so besotted and ignorant who not only believe such rubbish as the "Last Revelation," but who would doubtless fight and die for it in the canons of the Rocky Mountains with the same devotion as did the Huguenots and Waldenses in the valleys of Italy and France demonstrates that extraordinary measures are demanded.

Again, Utah is unrepublican.

Second. Because no political community can be free that maintains a civil or ecclesiastical law which abrogates the American institution of marriage and substitutes the system of plural wives.

In support, Mr. Speaker, of this assertion we have the plain lesson, he undivided testmony of all history. For example, when the world was young, Zimur led the savage nomads of the North to the conquest of the luxurious nations of Southern Asia. The sway of the patriarchal chiefs over the tribes having been unlimited the rule of the conqueror over the subjugated races became despotic. Revolutions in Europe have always resulted in more or less organic change in the constitution of government and society. But in Asia, while great empires rise and fall, the same character has been constantly transmitted from the former to the succeeding dynasty.

And lest the views already stated may be thought to take their color from the passion and prejudice of this heated and widespread controversy, I invoke the deliberate testimony, the cool and unbiased judgment of the great German philosopher, Heeren, the ablest of all writers on the constitution of the society and government of the "Asiatic nations," and the causes of their decay and degradation, when more than a quarter of a century ago he said that all his other reasons and "observations were not sufficient to account for the most gloomy phenomenon in the history of the human race; the fact that the fairest and richest portion of the globe, where the mind of man might have been expected to attain its greatest maturity, has in all ages been condemned to perpetual slavery. * * How, he asks, did this strength come to be so impaired that in the periods of their greatest prosperity, they were unable to shake off a yoke which to European nations appears intolerable?"

To answer that question he says we must go back a step and seek the cause of the phenomenon in the defective constitution and condition, not of their civil institutions, but their domestic relations. Polygamy has at all times prevailed there; and polygamy, according to all the principles of our nature, has a tendency to promote unlimited despotism. No one who is aware how closely they are connected can deny the influence which the better or worse condition of the domestic relations has on those of society at large. The popular saying that a republic to be permanent must be founded on virtue appears to be only a consequence of the more general principle that civil freedom is closely connected with morality, and that the one inevitably perishes with the other. Now there is no one custom more adverse to virtue in general—especially the domestic virtues, the chief source of all true patriotism—than that of polygamy. By this we may explain the phenomenon that no nation practising polygamy has ever attained to a true republican constitution, nor even to that of a free monarchy. Nay, it may be confidently asserted that it would be unable to maintain a government of this kind even if presented with it.

Polygamy at once produces domestic tyranny by making woman