statutes that they shall operate only in future. It is competent, however, for the law-making power to enact retrospective laws or those which relate to or operate upon the past, provided they do not divest vested rights, or make that criminal which was innocent when performed prior to the enactment, and punishes the same. It was held by the Supreme Court of the United States in the case of Calder vs. Bull, in 3 Dallas, that any law whereby a conviction can be had upon less evidence even than the rules of evidence in existence at the time the alleged illegal act was performed required was *ex post facto* and void.

All writers on statutory and constitutional law lay down the rule broadly that no statute shall be construed to have a retrospective or retroactive operation unless the statute itself so declares. The recently enacted statute against polygamy, upon which the other side relies, does not declare that it shall so operate. It must therefore be construed as though the word "hereafter" was interpolated into each section thereof. It therefore follows as a logical consequence that Cannon is legally entitled to a seat on this floor as a Delegate from Utah. After he is seated, should charges be then brought against him of violating the recent enactment while sitting here as a delegate, and his guilt be established by proof, he might be legally expelled from this House, and I for one would vote for his expulsion in that event.

But Mr. Speaker, he will not be seated. It is a foregone conclusion that the temper exhibited upon the part of the majority of this House unmistakably indicates such a decision. I regret it for the reason that in my judgment the citizens, the legal voters of Utah will be thereby denied a great legal right. It is no answer to say that the Mormons are violators of the law of the land. Await their trial and conviction; or would you condemn American citizens without a hearing? We are in this case a judicial tribunal. My duty to my country is to advocate the fair and unprejudiced enforcement of the law, and I shall therefore vote to seat Mr. Cannon.

Mr. Ranney said:

Mr. Speaker: The committee were all, save one, agreed in this, that contestant was duly elected and returned and entitled to the certificate of election at the hands of the governor, instead of Mr. Campbell. It has been proved satisfactorily that he was a naturalized citizen, over twenty-one years of age, and for many years a resident of Utah. It is conceded that he therefore possessed all the qualifications prescribed by the acts of Congress and the statutes of Utah as a condition of eligibility. By an examination of these acts and statutes it will be seen that the organic acts passed by Congress (Revised Statutes, sections 1860, 1862) provide that the qualifications of voters and of holding office shall be such as may be prescribed by the Legislative Assembly of each Territory, subject to certain restrictions as to citizenship and age; and that the statutes of Utah, approved by Congress, (Compiled Statutes of 1876, p. 87, 88,) have prescribed qualifications accordingly in conformity thereto; and that contestant in his person answered all these requirements of law.

Section 1862 provides in effect that "every such Delegate shall have a seat in the House of Representatives, with the right of debating but not of voting."

In this state of the facts and the then existing status it appeared to me that the right of contestant to a seat followed as a conclusion of law; and that the question of "final right" submitted to the committee was thus determined and their duty under the resolution of submission discharged.

It appeared, however, in the record that the contestant was a polygamist, and it was claimed and held by a majority of the committee that this was a disqualification and should exclude him from the seat as an unworthy person; while others, including myself, held that this was a fact affecting only the personal character of the contestant and furnishing only a ground for expulsion, in accordance with the practice of this House, and as was determined after full consideration and mature deliberation in the Forty-third Congress in the case of Maxwell vs. Cannon.

The case stood thus in its first aspect. Since the report was made, however, an act of Congress has been passed and approved by the Executive which expressly provides that a polygamist shall not be eligible for election to, or entitled to hold, any public office of trust, etc. And if this act applies to the present contest and disposes of it, the questions of law which divided the committee become of no consequence save as abstract principles or in so far as they may affect the validity and operation of the eighth section of this act in the future. I may be permitted to say, that so far as I am concerned I believe the new act does not apply to this case, and that Mr. Cannon, being a self confessed polygamist, must be denied his seat. As I felt bound by the statutes as they stood before, so I feel bound by the provisions of the new act, with this difference in feeling only—before, I obeyed the behests of duty alone; now, my pleasure and duty concur.

I do not propose to discuss the evils of polygamy. That discussion has been had and been exhausted; and we are all agreed upon that point. The sentiment of the country is against it, and should be. But I believe that the moral and religious people who feel so strongly about it, would not have asked this House to violate the statutes themselves in order to rebuke others for doing that thing. They are a law-loving and a law-abiding people, I believe, and they with me, will rejoice at the change made in the law.

Can there be any serious question about the application and effect of the act referred to and approved March 23, 1882? It has taken effect now. It says in effect that a polygamist shall not be entitled to hold the office of Delegate. Contestant is not yet inducted into office, and stands as a petitioner before this House asking for a seat with no certificate entitling him to one, *prima facie* even, and we have only to deny his request. The act does not require any conviction for a criminal offense in order to work the disqualification provided; but the proof needs only to show that contestant practices or maintains the lawfulness of polygamy in order to make him out a polygamist, according to the ordinary meaning of that word as defined by Webster. The same state of things, confessed in the written admission of record, must be presumed to continue to this time in the absence of any proof to the contrary, according to a well-settled rule of logic and of evidence, and the rule does no violence here because the polygamous relations admitted are of a permanent character. The admission was given as proof in the issue raised to be used for the purposes of this contest until ended, and an amendment of the law meanwhile so that polygamy becomes a disqualification instead of a cause of expulsion, cannot be properly held to diminish its effect as proof. All prior irregularity in the introduction of this issue into the contest may be waived and the previous proceedings now adopted by the House. I do not see how it can be justly contended that any vested rights of property are destroyed. For I take it to be well settled, or if not as sound law, that a public office is not property but only a trust or privilege, and is subject to legislative control, unless some constitutional provision is in the way. Whether it would not have been more fair and wiser to allow a Delegate elected under the law as it stood then to serve out his term is not now an open question, as no such reservation or exception is incorporated in the act.

Contestant seems not to have been disposed to heed statutes of this class, for after the act of 1862, making polygamy a crime, he appears to have married his fourth wife in defiance of the same. So we can hardly be said to be harsh in not waiting to see whether he is disposed to yield to the law as amended. I grant that those who assent to the doctrine of the majority of the committee do not need this new statute, and may do as they please even now. So far as I am concerned, however, this disposes of the present contest, and I am ready to vote for the resolutions pending. But before doing so, I may be pardoned for saying that I dissent still, and if possible with more firmness of conviction than ever, from the views of the majority so far as they hold that Congress cannot by a statute define or prescribe the qualifications of Delegates, and that this House has power when that is done to disregard the same and fix them themselves, admitting or rejecting the elected in their discretion and for any reason deemed sufficient in every individual case.

And I may be pardoned for saying, with all respect for my honored associates, that I regard this doctrine as contravening all authority and precedent, unsound in principle and mischeivous in practice.

Objection is made, or intimated, that the new act is *ex post facto*. But the objector must have forgotten that the inhibition against that class of legislation relates only to laws affecting crimes. It is said that statutes must be construed as prospective only in their operation, unless they are clearly designed to be retroactive. I admit the rule of law to be so. But the eighth section is prospective so far as it says that a polygamist, etc., "shall not be eligible for election," but when it says "or be entitled to hold," these four words bring the present base within that rule. If the Delegate was in his seat the words would have their prospective effect the same as if "hereafter" was in it. It is now a part of the hereafter since the act was passed. Under the act an occupant would be required to vacate his seat. Much more can we say that an applicant shall not be permitted to take a seat which he could not rightfully hold. Whether it be harsh to unseat a man who had been duly elected under a prior law the requirements of which he answered is not the question. That was an argument proper to be argued against the bill before it became a law. It was argued in the Senate and a vain attempt made to amend it in that regard on the expressed construction that otherwise it would exclude a Delegate already elected.

The whole policy of the act was to strike a blow upon the institution of polygamy, and that presently, on the theory that the evil was present and pressing, and that it was a case demanding an effectual and severe remedy. The subsequent sections of the act indicate an intention that incumbents of the office are to vacate at once. Hence the intention is plain that the act should take effect now. It *is not* necessarily by way of punishment and a pain or penalty, giving it the nature of a bill of attainder, as is urged, but only adds another disqualification, like saying that a Delegate should be a man of good moral character, and if not he must vacate his seat. It may be partly by way of rebuke, to a vicious institution, it is true, but may properly be regarded only as a safeguard for the good of the office and the Territories. Within the ordinary province of such legislation Congress is supreme in a case like this, and may exercise an arbitrary power if it wills. The whole argument made by our friends upon the other side against the doctrine of the majority of the committee is that Congress has power to fix qualifications, and that statutes passed for that purpose are binding on this House. And so far I agree with them. But, strange to say, when another statute has been passed in the same line of legislation, fixing another qualification, they proceed to attack that, and say they will not heed it, resorting to arguments which seem to me less tenable than the grounds assigned by the majority of the committee as an argument to get rid of the effect of the prior statute.

Every statute passed by constitutional authority is binding on this House and the courts as much as on the humblest citizen, as is admitted in the views of the chairman; and if the statutes fixing the qualifications of Delegates have the force of law, this House has no right to disregard them or any part of them. The power of Congress to erect Territorial governments and secure the right of representation by the creation of the office of Delegate, and providing that he shall have a seat in the House of Representatives, is not denied but conceded by the majority. And if this is conceded, I do not see why it does not follow, as surely as night follows day, that the general power conferred to create the office and to regulate the election of a Delegate embraces within its scope, as one of its natural and proper elements, an authority to fix the conditions of eligibility, such as citizenship, age and residence. They are part of the needful rules and regulations of the office as they were when fixed in the Constitution for full Members.

But if this concession is not accepted by the House, and any member is disposed, as strict constructionist or what not, to contend that Congress had no power under the Constitution to impose by statute the presence of a Delegate upon this House or any future House if they did not wish to receive him, whoever and whatever he might be, that is quite a different question; and if maintained it would lead to the result reached by a majority of my associates. This question, sir, is not new, and the committee could hardly find warrant for maintaining such a proposition. It was suggested and urged by Mr. Swift in the Third Congress, when James Madison was a member of the House, and voted down. It was involved in a contest for a seat by a Delegate in the Fourteenth Congress, when Daniel Webster was a member of the House, and the rights and position of a Delegate as a member or otherwise were discussed and found no favor.

It appears that the celebrated ordinance of July 13, 1877, provided for a Delegate to Congress with the same rights as given now; that it was in force under the confederation when the Constitution was adopted; and one of the first things done in the Fifth Congress was to adapt it to the Constitution, (1 Stat., 60, ch. 8,) with no demur or pretense that its provisions conflicted with it in any respect. In the act of March 3, 1817, the office was further regulated, without any such claim being made, and made applicable to all present and all future acquired Territories. The provisions of the said ordinance, and other ordinance relating to the Territory south of the Ohio River, the said statutes, and all others amendatory or supplementary, have been observed and kept to this day as securing rights and not as "persuasives" on this House.

In three cases of contested elections, which occurred in 1850 or thereabout, in the matter of Doty vs. Jones, Messervy, and Babbitt respectively, the whole subject was elaborately examined and considered in three several reports, written and presented by Mr. Strong, then a member of the committee on elections in this House, and since a distinguished and able judge, for so many years upon the bench of the United States Supreme Court, and now in honorable retirement; which said reports, as adopted, show that the right of a delegate to a seat rests upon the Constitution and laws of Congress, and not on any discretion of the House alone.

It is true that a distinguished member from my own State, E. R. Hoar, in the Forty-third Congress, in the case of Maxwell vs. Cannon, expressed himself as troubled in mind on the question, and raised a query on the subject by a pointed suggestion. But after the same had been answered in the discussion by other legal gentlemen he did not attempt to obtain his suggested position, and we are left to infer by his silence and the subsequent action of the House that his doubts were removed, or certainly that they got no lodgment in the minds of the members of the House very generally.

If cotemporaneous interpretation, acquiescence, and long-continued practice for nearly a century, with an unvarying line of numerous and uniform precedents in election cases in this House, amount to anything as evidence upon the proper construction to be put upon the Constitution, we have them all here in a marked degree. They are very potent, and it will take a bold lawyer to gainsay the doctrines which they indicate.

But besides, and in addition to all these, we have decisions of the Supreme Court of the United States which lead to the same result in legal effect. It cannot now be denied that Congress has a supreme power over the Territories, both those which existed at the time when the Constitution was adopted and also those subsequently acquired. That power is conferred expressly by or inheres in the Constitution, and has no restriction save what wisdom and good faith impose and of which Congress itself is the sole judge. It is best stated in the opinion of Chief-Justice Waite in National Bank *vs.* County of Yankton, 101 United States Reports, 133. It must be apparent to all that unless the acts of Congress impose upon the House a reciprocal obligation to receive the Delegate and give him a seat, they can in nowise be said to secure to Territories the right of representation. The representative principle is embodied and inheres in the very theory of this Government, and to assert at this late day that it cannot be granted by Congress and secured by the people of the Territories in the limited and qualified form appearing in the original ordinance of July 13, 1787, and in all the organic acts, is to predicate what will or should get little credence or favor.

When it is asserted that a Delegate exists *ex gratia* only, it is belittling the office, unless we add that it is by the grace of Congress and not of the House alone. It is hardly just or fair to call it grace when we consider what this country did or said about the right of representation when they were themselves colonies of Great Britain. The people embodied its principles in the very spirit and letter of the Constitution, and have acted them out ever since, and it is too late now to go back on them in reference to our Territories, which are part of the domain of this country. That this House has heretofore regarded the statutes fixing the qualifications of Delegates as binding upon them is apparent when we look at the various attempts which have been made at different times to change them so far as to disqualify a polygamist, and all without success until the present session. Even now, if the doctrine of the majority is sound, the present act obtained after so long a struggle, and hailed with so much joy throughout the country and which does that thing, is nugatory as law and not binding as a rule of the House. It was wholly unnecessary for the purposes of this contest. It will come up to plague the friends of this act in the future and serve to hoist them, as their own petard, in the possible event of a change occurring in the complexion of the majority.

I beg leave to notice one other phase of the views of the majority; for they do not agree altogether among themselves. Some of them concede all that I have claimed in regard to the power of Congress and that this House in judging of the election, returns and qualifications of Delegates are acting under the clause of the Constitution relating to members. In order to reach their result they have resorted to an apparent popular idea as to what "judging of the qualifications" means, to wit, that the House has a right in each case to say what they shall be and abridge or enlarge those prescribed by the Constitution or the statutes. While the main report does not assent to this doctrine so far as members are concerned, but admits that the House cannot add to or take from the qualifications fixed by the Constitution for them, yet he contends that the status fixing the qualifications for Delegates are not obligatory upon the House and a different rule of law prevails.

Now, sir, I am not ready for one to contravene and reverse the doctrine as laid down by Story, Kent, and other eminent jurists and the long line of uniform precedents found in the history of Congress and say, as is written on page 25 of the report, that they are chiefly valuable on account of their age and uniformity and that this House should, if it could, reverse them and hold to the contrary.

If anything can be said to be settled on principle and authority it is this.

When we come to the statutes prescribing the qualifications for Delegates we find that Congress attempted and intended to do to them just what the Constitution had done in that regard to members, to wit, adopt the representative principle, fix the qualifications deemed to be primarily essential, and leave all else to the electors and allow them to select their own Representative. Congress does this very thing, only it allows the legislative assemblies to add others, subject to its approval.

The Constitution and laws of the United States, except so far as locally inapplicable, are extended by statute over the Territory.

If these statutes are valid they must be interpreted according to their intention. If the purpose is manifest, to enumerate the qualifications prescribed and to exclude all others by implication, and to leave the rest to the electors or to the Legislative Assembly to determine, they must be so interpreted, just as the Constitution was, because the rule of construction under which this was done applies to statutes as well as to the Constitution. (Sedgwick on Con. of Statutes, etc., page 31, note.)

That such was the intention of Congress most manifestly is apparent from the language of the same; it is according to the policy of the Constitution and in consonance with the genius of the Government. The Constitution and laws of the United States are made by statute the constitution and fundamental law of the Territory.

It was never intended clearly to

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