

the divine right of kings to rule over the people without their consent, to establish free government, with taxation and representation inseparably united, and to give the people (the source of power) the right to choose their own officers, especially those intrusted with the law-making power. This, I repeat, was the remedy intended for the mischief under the old regime, by the fathers of the Revolution. The appeal to the God of battles was not in vain. The weaker became the stronger party. The divine right of man to govern himself triumphed; and our republican Government was established, the Federal Constitution was adopted, an elective Congress created, but clothed with certain well-defined powers, and prohibited from the exercise of any but those that were delegated.

#### POWER OF CONGRESS TO ORGANIZE TERRITORIAL GOVERNMENTS.

In looking into the Constitution, however, we find no express power conferred upon Congress to organize territorial governments. As Congress derives all its powers from the Constitution, it follows, as a necessary consequence, that it must be confined in its legislation to the exercise of only such as are therein enumerated. But it has been said that the power lurks in the second section of the fourth article of the Constitution:

"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."

By this section Congress may do two things: first, dispose of the territory, that is the land, alienate the title; second, make needful rules and regulations respecting the territory, the land, the timber, the manner of alienation. I believe in no place else in the Constitution is the word "territory" used. Here it is used as property, clearly so, as the words "other property," immediately following, determine its signification, and force the mind to the conclusion that it was intended in that sense, and in that sense alone. Territorial governments are the "rules and regulations" for the people, and not for the territory; and as the people are not property, you cannot rely upon this clause in the Constitution as the basis of power for their government.

But it is said that with the right to acquire is coupled the right to govern. This is true when applied in a military sense; but how can it be true in a legislative sense, providing Congress derives all of its authority from the enumerated powers of the Constitution, and providing the power to govern by the formation of territorial governments is nowhere conferred?

The first section of the first article of the Constitution is as follows:

"All legislative power herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

The words "herein granted" confine Congress in its legislation within the scope of the specified powers therein expressed. But not to dwell, grant that the power is derived from the Constitution, it follows that your territorial courts, created by act of Congress, based upon the Constitution, should be organized as provided in the first section of the third article. It reads as follows:

"The judicial power of the United States shall be vested in one Supreme Court and such inferior courts as Congress may from time to time ordain and establish. The judges both of the Supreme and inferior courts shall hold their offices during good behavior."

Congress derives its power to establish inferior courts from a clause in the eighth section of the first article, among the enumerated powers, to wit: "to constitute tribunals inferior to the Supreme Court;" but section one of the third article above cited, vests the judicial power of the United States in the supreme and such inferior courts as Congress may ordain and establish, and the judges thereof shall hold their offices during good behavior. All territorial courts established by Congress are United States courts. The judicial power of the United States is in part vested in these courts. The only power to ordain them that Congress has is derived from the Constitution. Yet, strange to say, the law creating these territorial courts as the judicial department of the territorial government, provides for the appointment of the judges for four years; and who does not know that it has been and is the practice of the President to remove these judges at pleasure?

It follows, then, that if we look to the Constitution for the authority for these territorial governments, we are in doubt, trouble, and embarrassment, and I am at a loss to find the source of power except we resort to that full and overflowing fountain, the *Dred Scott* decision.

My only object in calling the attention of the House to the constitutional question involved is that the difficulty may be obviated by admitting these Territories as soon as possible. If the question is asked: How are the people to be governed prior to admission into the Union? I answer, in the language of articles nine and ten of the Amendments to the Constitution:

"ART. 9. The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

"ART. 10. The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

#### CHARACTER OF TERRITORIAL GOVERNMENT.

But, sir, these territorial governments once established, what is their character? Are they republican? Not, Mr. Chairman, if you mean by the word republican the right of the people to elect their own rulers. I said in the

commencement that it had been gravely questioned whether our territorial governments were consistent with the principles of our republican government. Our fathers sought to get rid of the old law—officers to rule over them without their consent, taxation without representation—and it has been generally understood, perhaps erroneously, that they were successful; that they planted upon American soil republican liberty, taxation and representation, both growing upon the same stalk, and self-government, free and universal suffrage among the people, as the most precious fruits of the Revolution.

But how is it with your territorial governments? I answer, mere colonies, occupying much the same relation to the General Government as the colonies did to the British Government prior to the Revolution. You give them the form of a government, but withhold from the people the right of elective franchise. You appoint their Governor, their secretary, their judges, their marshal, and their district attorney, and too often impose these officers upon them from a class of men who have no interest in common with the people, and know nothing of the trials and struggles of their infant settlement. Aside from this anti-republican feature, it is a serious hardship to the people of our western Territories, who are forming the nucleus of mighty States. Bold and enterprising, full of adventure and intelligence, the hardy pioneer turns his back upon the refinements of civilization, and with his family penetrates the unexplored West, and there establishes the foundation of a great empire, which in a few years is destined to make you powerful among the nations of the earth. Who can, who dare deny them the right secured to them, as was supposed, by their fathers, but of selecting from their number their own men to administer the affairs of the new colony? But such has not been the practice of the Government.

It is said they have the right to elect members to the Legislature to form their own laws. This is true; but of what avail is this right in the Territory I represent, when the Governor, who is appointed by the President and consent of the Senate, has an absolute veto upon all their legislation? The members of the Council and House, may have been unanimously chosen by the people, understanding their local wants, may pass without a dissenting vote in either branch such bills as the interests of their constituents may require, and when sent to the Governor, who is fresh from some of our northern cities, unless it meet with his royal sanction, their legislation is all in vain. He is not even required to veto the bill and return it to the House, from whence it originated, with his objections. It must be approved by him, or it cannot become a law. Hence he has only to deposit the bill in his capacious pocket, treat the Legislature with supreme contempt, as his negative power overcomes and overrides the united action of an entire legislative body. So arbitrarily was this power exercised over the Legislature of Utah during the session of 1862-63, that only two bills of a general nature, and they unimportant, met with executive favor. The vital legislation of that session, the appropriation and other important bills, passed during a session of forty days, were summarily ignored by "His Excellency," and that, too, without even deigning to stoop from his giddy height of gubernatorial elevation to return the bills to the Legislature with his objections.

Mr. Chairman, the very first cause of complaint against King George by our fathers, as recorded in the Declaration of Independence, is the following:

"He has refused his assent to laws the most wholesome and necessary for the public good."

Comment is unnecessary. The analogy is too striking; and I leave it for the future historian to determine the respective merits of George III and Stephen S. Harding, late Governor of Utah.

#### TAXATION AND REPRESENTATION.

But I have referred to the causes of the Revolution, and, as one of those, taxation without representation. Do the people of Territories pay a tax? Most certainly, upon all foreign articles which they consume they pay the same tax as the people of States according to their consumption. Have they any representation in the Congress, where the tax on foreign imports is levied? Not at all, sir. It is true that each Territory is allowed a Delegate in Congress; but he has no vote and cannot record the will of his constituents upon any of those questions of legislation that may be pending seriously affecting their interests. It is the right to vote that constitutes representation, and without this right there is no proper representation. Why is this representation denied the people of the Territories? I answer, first, because territorial governments were not provided for in the Constitution. Second, because the second section of the Constitution provides as follows:

"Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers."

It is not a little strange, Mr. Chairman, that while you deny us representation because of this inhibition, or rather because of this inclusion of States as alone entitled to representation, you levy a direct tax upon the Territories which is equally forbidden in the same sentence? "Representatives and direct taxes shall be apportioned among the several States." Hence Territories never have been represented by vote in Congress, and cannot be while this section remains. But representation and direct taxation are conjoined in the

sentence, and if by it Territories are excluded from representation, are they not alike excluded from direct taxation? But so far as the people I represent are concerned, when your direct tax was assessed against them, they raised no constitutional question; they made no objection. They did not stop to inquire whether it was constitutional or not. It was enough for them to know that the nation was struggling to put down a rebellion whose gigantic proportions had no parallel in history; and, true to their impulses of loyalty, they at once assumed the payment of this tax by an act of the Legislative Assembly, as follows:

"Be it enacted by the Governor and Legislative Assembly of the Territory of Utah: That the said Territory does hereby assume the direct tax apportioned to said Territory, agreeably to an act of Congress entitled 'An act to provide increased revenue from imports, to pay interest on the public debt, and for other purposes,' approved August 5, 1861, and that the Governor of the Territory do notify the Secretary of the Treasury of the United States, on or before the 21st day of February next." Approved January 17, 1862.

This tax has been collected from the people without objection or complaint.

#### SETTLEMENT OF UTAH.

But, Mr. Chairman, to pass to another branch of my subject. Probably no settlement has ever been made on this continent under more painful circumstances than those attending the first settlement in Utah. I will not pause at this time to relate the tragic story; to recount their wrongs; to describe the patient suffering of the people, as they slowly journeyed, the aged, the sick, the infirm, across an unexplored country, (twelve hundred miles of it through hostile tribes of Indians,) until they perished, and, worn down with exposure and fatigue, halted in the very center of the great western desert. Nor stop to tell you how here, with provisions exhausted, they, in a half-famished condition, subsisted, until they raised the first crop, upon roots dug from the mountains, or how at times they were compelled to eat the hide that was taken from the faithful ox that had been their companion in toil. I will not ask you to go with me in imagination over the road which they first made across the continent, and which if all trace were obliterated could still be readily found by the graves left behind, standing as lonely, solitary milestones, to remind the traveler as he journeys from east to west, and passes these mournful monuments of their sufferings, how cruel it was, to drive loyal American citizens from American soil. All this, yea, more, the patient spirit of the people under greater sufferings, more terrible affliction, pledges broken, property destroyed, life taken, have all passed into history, and the picture of persecution and cruelty will some day startle the student as we are startled in reading the history of the reformation in the sixteenth century.

#### SETTLEMENT OF UTAH AND CONDITION OF THE COUNTRY.

But, Mr. Chairman, while I would avoid the history of their complaints, preferring to cicatrize and heal up an old and painful wound, inflicted without cause, I must be permitted to speak of their achievements. The history of the settlement of Utah is full of interest. The development, thus far, of the country, has been attended with wonderful results. In the summer of 1847, the pioneer company reached the Valley of the Great Salt Lake, and on the 24th day of July, a day which will be ever memorable in their history as the day of their deliverance from long, weary marches across the plains, they prostrated themselves before that divine Power that had preserved them not only from their enemies, but from the tomahawk and scalping knife of the savage, and offered up the gratitude of humble hearts for the asylum afforded them in the chambers of the mountains. The country was, in all respects, forbidding. The leaves withered the early and latter rain. The ground was parched and baked with heat and drought, and the eye rested upon naught save rugged mountains, sterile and arid valleys. The Indian held undisputed control, and no evidences were to be found that civilization had ventured so far into the secret caves of the mountains. With provisions exhausted, near fifteen hundred miles from cultivated fields, far into the interior, from all supplies, with mountains over their heads and a desert beneath their feet, it is not strange to suppose that the mind naturally wandered back to the comfortable homes—he result of their own industry, of which they had been deprived in the country of their birth. They were now in a foreign land, standing upon foreign soil, in a Mexican province. Still, the old stars and stripes were flung to the breeze, and appeared even more glorious and beautiful than usual on this day of a new era in their history. But, Mr. Chairman, all were not there. Some had fallen by the wayside, not able to endure the exposure and hardships which the fate of cruel circumstances had forced upon them. The babe slept quietly upon the plains. The aged father had fallen—the old, familiar staff, unable longer to sustain its burden. The youthful maiden, unaccustomed to such hardships, had yielded her frail form to the kind deliverer, and the heart-broken parents performed the last solemn ceremony by gathering up stones and placing them over her resting place to protect the form, that was still beautiful in death, from the prey of the American hyena.

#### A NUMBER OF MEN ABSENT, AND THEIR ABSENCE EXPLAINED.

But aside from those who had fallen victims upon the plains, there were those that were living who would have been glad to have been

permitted to associate with their friends and brethren on an occasion so interesting as the one I have mentioned—the arrival of the pioneers in the Valley of the Great Salt Lake. There were five hundred of these brave, hardy and stalwart men, who were almost indispensable to the formation of a settlement in this new country, that seemed to mock in derision the efforts of man to subdue and reclaim it. The future home of these men was here. Their families were here. Their interests, hopes of the future, and all that was dear to them in life clustered around and were associated with the pioneers in their efforts to establish a colony on the west side of the Wasatch range of the Rocky Mountains. Why was it that these five hundred men were not present at the "dedication?" Did they linger behind? Oh, no! Had they proved false to their faith, and deserted it in the hour of danger and trial? Not at all, sir. Why, then, is their place vacant; and why is to be seen among this group of pioneers such a large proportion of aged and infirm men? I will tell you, Mr. Chairman. After these men had been exiled, and after they had traveled across unsettled Iowa with the flag which now floats so proudly over the pioneer camp, borne at the head of their column, and after they had gone into tents on the banks of the Missouri river, an order came from the President of the United States asking them to furnish five hundred men as volunteers to assist in preserving the honor of the nation in a war with a foreign Power.

As pertinent to this piece of history, I have taken the following extract from the able official report of Captain Stansbury's exploration and survey of the Great Salt Lake valley, published among the Executive Documents, special session, March, 1851. After speaking of the injuries which the people had received and the wrongs which they had endured, Captain Stansbury says:

"But from all I saw and heard, I deem it but simple justice to say, that notwithstanding these causes of irritation, a more loyal and patriotic people cannot be found within the limits of the Union. This I think was emphatically shown in the promptitude and cheerfulness with which they responded to the call of the Government to furnish a battalion for service during the Mexican war. While in the heart of an Indian country, and on the eve of a long and uncertain pilgrimage into an unknown wild region, they were suddenly called upon to surrender five hundred of their best men to the hazards of a hostile campaign, and to the exposure and vicissitudes of a march of two thousand miles across trackless deserts and burning plains to fight the battles of their country. Their peculiar circumstances presented almost insuperable objection to a compliance with the requisition, yet not the slightest hesitation was evinced. 'You shall have your battalion at once,' was the reply of President Young, 'it has to be a class of our elders,' and in three days the force, recruiting principally among fathers of families, was raised and ready to march. Here, certainly, was no evidence of lack of patriotism."—Report, pp. 114, 145.

Colonel J. Allen, who raised what is known as the Mormon battalion under the peculiar circumstances spoken of by Captain Stansbury, before his departure sends to J. C. Little, Esq., a letter of which the following is a true copy:

HEADQUARTERS MORMON BATTALION, }  
COUNCIL BLUFFS, July 20, 1846. }

DEAR SIR: Colonel Kane has informed me of your intended departure for the East, and of your desire that I would express to you my opinion concerning the character of the Mormon people as derived from my observation among them on my present duties.

I have been intimately associated with this people since the 26th ultimo, as my duty required in raising the battalion of volunteers now under my command. In the hurry of business connected with my immediate march from this place I have only time to say that in all of my intercourse with the Mormons I have found them civil, polite and honest as a people. There appears to me much intelligence among them, particularly with their principal men or leaders, to whom I feel much indebted for their active and zealous exertions to raise the volunteer force that I was authorized to ask for for the service of the United States.

The president of the council, Mr. Brigham Young, is entitled to my particular thanks. All of these people are entirely patriotic, and they have come with cheerfulness, but under circumstances of great difficulty to them, to enlist themselves in the service of their country.

In my official report to the War Department, which I shall make on my arrival at Fort Leavenworth, I will speak more fully of the community of the Mormon people, or Mormon church, and will here say to you that I think them, as a community in their circumstances, deserving of a high consideration from our Government.

Very respectfully, your obedient servant,  
J. ALLEN,  
Lieutenant Colonel Commanding Mormon Battalion,  
J. C. LITTLE, Esq.

Colonel P. St. George Cooke, who commanded the battalion, after he reaches the shores of the Pacific, issues the following order:

[Orders No. 1.]

HEADQUARTERS MORMON BATTALION, }  
MISSION OF SAN DIEGO, January 30, 1847 }

The lieutenant colonel commanding congratulates the battalion on their safe arrival on the shores of the Pacific ocean, and the conclusion of its march of over two thousand miles. History may be searched in vain for an equal march of infantry. Nine tenths of it has been through a wilderness where nothing but savages and wild beasts are found, or deserts where, for want of water, there is no living creature. There, with almost hopeless labor, we have dug deep wells, which the future traveler will enjoy. Without a guide who had traversed them we have ventured into trackless prairies, where water was not found for several marches. With crowbar and pick and axe in hand, we have worked our way over mountains which seemed to defy sight save the wild goat, and hewed a passage through a chasm of living rock more narrow than our wagons. To bring these first wagons to the Pacific we have preserved the strength of the mules by herding them ever over large tracts, which you have laboriously guarded without loss. The garrisons of four Presidents of Sonora concentrated within the walls of Tucson gave us no pause. We drove them out with their artillery; but our intercourse with the citizens was unmarked by a single act of injustice. Thus marching, half naked and half fed, and living upon wild animals we have discovered and made a road of great value to our country.

Arrived at the first settlement of California, after a single day's rest you cheerfully turned off from the route this point of promised repose to enter upon a campaign and meet, as we believed, the approach of the enemy; and this, too, without even salt to season your sole subsistence of fresh meat.

Lieutenants A. J. Smith and George Stoneman, of the