tion against the passage of an *ex post facto* law. In the case of Cummings against the State of Missouri, juct decided, we have had occasion to consider at length the meaning of a bill of attainder and of an *ex post facto* law in the clause of the Constitution forbidding their passage by the States, and it is unnecessary to repeat here what we there said. A like prohibition is contained in the Constitution against enactments of this kind by Congress; and the argument presented in that case against certain clauses of the constitution of Missouri is equally applicable to the act of Congress under consideration in this case.

I have read that decision only to show that these prohibitions of the Constitution of the United States are just as obligatory upon Congress as they are upon the States, and the court so held and set aside the act under which the Senator from Arkansas was excluded from practicing law in the Supreme Court of the United States, or indeed in any court of the United States.

Now we have the entire case under the Constitution. I submit to the honorable committee and to the Senate that this bill is amenable to two constitutional objections in the particulars I have named. First, it is an *ex post facto* law, punishing men for crimes heretofore committed, and to which the punishment now sought to be annexed was not annexed at the time of their commission. The next is that it is a bill of attainder, a bill of pains and penalties, whereby the legislative department of the Government *usurps* the functions of the judicial, and puts a man under condemnation without trial and without even the due observance of the forms of law. As the act stands on its face, and as the purposes of it are entirely apparent from its whole tenor, I think there could not be a more flagrant violation of the Constitution.

If I am mistaken in the construction of this act, it is easy enough for the committee to strike out so much of it as enables five commissionsrs to adjudge a man guilty of bigamy or polygamy and punish him by depriving him of the right to vote. It is also easy enough for them to say in the bill that this act shall not have effect upon any person who now holds an office, and who, before the passage of this act, might have been guilty of the crime of bigamy or polygamy.

Mr. Jones, of Florida. Will the Senator permit me to ask him a question?

Mr. Morgan. Certainly.

Mr. Jones, of Florida. Do I understand the Senator to take the ground in his argument that the right of a person to vote at an election in any of the Territories of this Union rests upon the same ground as the right of a citizen to exercise a profession or calling necessary to his sustenance and support?

Mr. Morgan. They are not the same right; they are very distinct rights. Indeed one is a privilege conferred by law upon a man who is a citizen of the United States and twenty-one years of age. However, it is a privilege of our republican system which is considered essential, a privilege that is essential to the existence of republican government whether in a State or in a Territory; yet it is a mere privilege conferred by law, by an act of Congress in the Territories or by an act of the Territorial legislature as the case may be, whereas the right to hold property is a right that belongs to every man from time immemorial, and has always belonged to him under all governments, whether monarchies or despotisms or republics. They are entirely different rights. So the right to practise the legal profession is a privilege given by the decree of a court, and cannot, therefore, be taken away by an act of the Legislature. But while the Congress of the United States have the right to annex new qualifications to the right of suffrage, which I do not dispute, I do dispute that when you make a new disqualification the breach of a criminal statute, and then say that five men not belonging to the judicial tribunals of the country may punish him without due form of law, you violate the Constitution in the very act of forbidding him the right under such circumstances or allowing other persons to deprive him of it who are not judicial officers and who do not proceed according to law.

You give to a man the right to vote; you qualify him by saying, "You must not be guilty of bigamy or polygamy." this is a crime so denounced in the statute, and made punishable by a fine and imprisonment. If you vote there are five men selected to do what? To find you guilty of that crime, and in consequence of it to render you so infamous that you are not entitled to vote. In many statutes of the States and in many constitutions of the States men are deprived of the right of suffrage because they have been guilty of grand larceny or petit larceny or arson or burglary or some violation of the voting law; but in none of them has the Legislature ever attempted, so far as I have been advised at least, to create a tribunal entirely non-judicial in character which should pass on a man's guilt, and disqualify him from directly casting his vote at the ballot-box. It is an honorable privilege to cast a vote in this country. As I have had occasion before to observe, every man in the United States who casts a vote must represent at least five persons; he acts in a representative capacity, and has a right to be heard by the people, depending on the manner in which he casts the suffrage, itself a high American privilege, one boasted of by our people, and I hope it ever will be. If a man can disqualify himself by crime so that he cannot exercise that privilege, you say to him, "You shall not vote because you have been guilty of crime;" and then to deprive him of the right of trial according to due process of law and before a judicial tribunal is something that violates the whole tenor and spirit as well as the plain letter of the Constitution.

I am not objecting to your qualifying the suffrage, if you wish to do it, but I say that when you put a disqualification upon suffrage for the commission of crime, you cannot, unless you decitizenize the person, convict him and put him in the legal category of having violated that statute otherwise than by a judicial investigation, and that according to due form of law. No board can be be organized outside of the judiciary that can have the constitutional power finally to deprive a man of the privilege of voting at elections in this country, and to cast that particular shame upon him under which he must be disfranchised as for crime. It would be the extremest cruelty to place in the hands of political partisans, a set of men that go into office for the mere purpose of *controlling elections*, the power to cast the stigma of crime on a whole community or on any individual, no matter how humble he might be, and allow them to coudemn men without accusation and without hearing witnesses. There is no man in a Territory or elsewhere where this law may prevail that would have the slightest chance for his character under such a procedure; and all the guarantees of the Constitution of the United States for the preservation of the rights of the *individual* man are swept down by this broad, this radical statute proposed by this honorable committee.

I know perfectly well that in antagonizing this bill of the committee on the judiciary I encounter great risk; and I looked this ground over very carefully before I ventured to take this line of action; but I have not been able to reconcile my conscience to the support of these two sections in the form in which they are presented by the bill.

ANOTHER STRONG DEFENCE OF THE RIGHT.

FOLLOWING is the speech of Senator Call delivered on Feb. 16th, during the debate in the Senate on the passage of the Edmunds' bill.

Mr. President, the bill now under consideration by the Senate is in my judgment the most extraordinary *bill that has* ever been presented in the history of *this country*. Whether it is regarded in the whole or in its details, it is a bill, I think, that will long stand as a monument of the invasion upon the Constitution, of the disregard of personal rights, of the violation of every essential principle contained in our form of Government and in our institutions.

The bill proposes to be a bill for the punishment of bigamy in the Territories of the United States, and in places where it has exclusive jurisdiction. It destroys one government and organizes another for the avowed purpose of giving efficiency to provisions for punishing this crime. It does not stop there; it constitutes tribunals which are partial, and in which it expressly and deliberately provides that the person charged with crime shall not have an impartial trial. It imposes a religious test upon the jurors which is in violation of the cardinal provision of the Constitution of the United States, that when a man is charged with crime he shall have a fair and and impartial trial. It imposes a religious test by which persons entertaining that opinion are excluded from the juries who are to try individuals charged with this crime. If there be anything sacred in the history of American jurisprudence and American liberty, it is that a person charged with crime shall have a fair and an impartial trial by a jury of his peers, and not by a packed jury selected of men known to be opposed to him and prejudiced against him, and a religious test imposed upon them for their qualification as jurors.

Mr. President, while the bill avows itself to be a bill for the punishment of bigamy, it is avowed in the argument here and is known in the current history of the country to be a bill in which the population of a particular Territory, by a large majority entertaining particular views and opinions, which they regard as religious, and others believe in practice are criminal, in which a whole population, 130,000 or more of people, declared by our form of government in its most essential principles to have the right of self-government, are by the organization of a government against their wishes, sought to be deprived of all political power and subjected to trial by partial courts and by partial juries. That is the bill in its true purpose and true object, it actually constitutes a court unfriendly to them, avowedly so, for their trial and conviction as a means of suppressing their religion; and that is justified in the argument and discussion here. It is a court carefully prepared to give a partial verdict, and composed of men selected because of their unfriendliness to that population of 130,000 people, be they criminals or not. They are citizens of the United States by express declaration of our Constitution, subject to our jurisdiction; they have a right to the equal protection of our laws.

That is not the character of American jurisprudence. That is not the Constitution of the United States. That is not the theory of government of gentlemen who claim manhood suffrage, the right of man to have free opinion, who claim that every man is a brother, and who have *reconstructed* one-half of this country with millions of white, intelligent, and civilized people, upon the theory that they should be deprived of the control of their States, because every man should be equal before the law, and as a man has a right to suffrage.

Let us see what warrant there is in the Constitution of this country for this proceeding. Let us go into its details. My learned and distinguished colleague, for whose opinions I have very great respect, cited yesterday the act by which the Territory of Florida was first organized as a government, or as he pleased to term it, by which arbitrary power was conferred by Congress upon the authorities in that Territory, authorizing the President to govern those people, and continuing the executive, legislative, and judicial power therein to such persons as he appointed, and he conceived from that fact that the act created an arbitrary power. There is no place in the Constitution of the United States for arbitrary power. There is no logical proposition which can sustain it. The act by which the Territory of Florida was constituted, only authorized the officers designated by the President to execute the legislative and judicial authority according to the powers and the limitation of power contained in the Constitution of the United States, and not otherwise. To say that Congress can confer power upon the President or a creature, which it is prohibited from exercising; to say that the creature of Congress can deprive the citizens of that guaranteed liberty and those individual rights which it was the object of the Constitution to create and secure, because he is upon land that is property of the United States; to affirm that a government whose powers concern the people and are declared to be so limited that they cannot deprive them of certain personal rights, becomes an arbitrary and unlimited power when the citizen enters upon the land, or comes within the exclusive jurisdiction of the government is certainly without the sanction of either reason or authority.

There is nothing in the decisions in the case cited by my colleague that can contemplate a proposition such as that. That under a constitution made to secure personal rights, made by the people, for the people, forbidding Congress from invading by any law these personal rights, securing an impartial trial to every man charged with crime, investing the citizen with absolute immunity in these personal rights, because territory is acquired by the Government, which is the creature of and subject to that Constitution, when the citizen walks upon that territory he loses the guarantee of these rights, is entirely without foundation. No government manifestly can constitutionally be created in the territories of this country except a government which guarantees to the citizen the rights which Congress is forbiden from exercising any power to deprive him of. Whether this government be that one man chosen by Congress or of many men chosen by the people of the Territory, the power and the rights remain the same.

It is said that the clause that Congress may make "needful rules and regulations respecting the Territories of the United States" gives an unlimited power. What argument is that? What are "needful rules and regulations respecting the Territories of the United States" in the sense of the Constitution? Will any man say that the Constitution regards that as "needful" for the people of the Territories of the United States which the Constitution says is not needful but is hurtful and destructive to the people out of the Territories? Will any one say that the limitation of the grants of power in the Constitution are confined to the States of the country when they are universal, and relate to the immunities and rights of the citizen everywhere? Senators are strangely unmindful of the first section of the fourteenth article of the Constituion, the words of which are: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities," etc. Here is a bill, and we are told that it is a proper bill. What does it do? Will the Senator from Vermont, who is its special champion, undertake upon this floor or elsewhere to say that he will vote for a law giving to the governor of the State of Vermont the power to designate five men who shall say to him and to every other man in Vermont, "you shall not be eligible to office because we choose without trial, without notice, without a jury, with Constitution either to punish polygamy or to establish a despotism for some other purpose.

Mr. President, while I concur with every word of the able and unanswerable argument of the Senator from Georgia [Mr. Brown] upon the subject of a religious test, and with every word of the equally unanswerable demonstration of the Senator from Alabama [Mr. Morgan] and the Senator from Missouri [Mr. Vest] that this is unquestionably and by the decision of the courts a bill of attainder, I am willing to vote to withdraw all powers of Government from the people of this polygamous Territory and let that power be exercised by the Congress of the United States through a legislative council or otherwise, convicting under fair and just modes of proceeding people engaged in improper practices; but I am not willing to destroy the very safeguards which rest around every individual in the country, to deny the limitations of powers contained in the Constitution of the United States upon Congress, which are two-fold: First, as respects the grant, to be construed unquestionably in the light of the objects of Government, of its own mode of government by the people; and, second, in respect to the citizen and the immunities and rights which it guarantees to him.

With all this argument and discussion, here is the Constitution of the United States, and here is the fourteenth amendment which the honorable Senator from Vermont was largely instrumental in passing, which declares that every person subject to the jurisdiction of the United States is a citizen and entitled to the equal protection of the laws. What equal protection of the laws is it between those men in Utah when five men say that "We believe, without evidence, without trial, without notice, without hearing, that you have been guilty of an act of impropriety with a female, and we deny you the right to that franchise that eligibility to office which you now possess. We deny you the right to a trial by a jury of your peers. We require you to be tried by men who are unfriendly to out evidence, to say that you have been guilty of a single impropriety in your relations with the other sex?" Will he undertake to say that the people of Vermont shall be disfranchised, and that a law would be competent in that State authorizing the governor to create an *ex parte* board to say that no man should vote, and no man should hold office in Vermont who in the opinion of those five men, be they democrats or Republicans, had been guilty of a single act of impropriety, without notice to the individual and without proof? Will he undertake to affirm here that the people of Vermont would regard a State government fastened upon them by the arbitrary exclusion from the franchise and from eligibility to office of three-fourths of her people by a board of five persons as a republican government?

Will any man undertake to say that it is republican government to constitute a board of that description? Are we to be told that it is necessary to create a packed and a partial court and jury, to deny to men the right of a fair and impartial jury, to deny to men the right of being heard before the consequences of crime are imputed to them, and that it can be justified by the proposition that it is only an electoral qualification? True it is a crime, they say, but it is not treated here as a crime. That is a subterfuge.

The bill proposes to disfranchise and deny under specious and false pretenses the right of 130,000 people in Utah to create a government, but it creates one for them by five men; and it is a false assertion in the bill which asserts that these five men are intended to canvass and decide fairly the electoral qualifications of that people. It is intended to create a government by a minority over the large majority. It so avows itself. It is so justified by its author and friends. It is not a question whether Congress has power to repeal all laws in the Territories and intrust the executive, judicial, and legislative power to whom it pleases, whether one or many; all concede this; but whether it can violate the personal rights guaranteed in the you; and we believe that your religious faith is an enemy of the country and ought to be suppressed with fire and sword?" Your faith, says the Senator from Vermont, is a shame to Christianity and therefore must be destroyed by these cruel methods. Mr. President, I have not so learned the precepts of our Christianity—I have not so learned our Constitution. I have been taught that the Christian religion was one of peace and good will, and that "no religious test" for office in the Constitution forbids the exclusion of Jew or Gentile because of his belief. Mr. President, it is useless to attempt to govern and control this question in this way. The honorable Senator from Delaware [Mr. Bayard] (whose fidelity to the Constitution has been distinguished and for which I honor him, and I have no animadversions to make upon his arguments upon this bill) speaks of the Mormons as a theocratic government. Why? What right is there for that allegation here? What is the argument? Because the organization of the Mormon Church rests in religious matters, and in social, an absolute power in the head of the Church. Does not another church do that? Does not our Christian church in one of its leading bodies, which is not to be spoken of anywhere except with the profoundest veneration, the ecclesiastical body that witnessed the beginning of Christianity, that certainly contributed no small part to its early history and its struggles with paganism and *maintained it all through the generations* of the past, assert the absolute infallibility of the head of the church upon all religious and social matters, and, when it speaks *ex cathedra*, command the absolute obedience of its millions of votaries?

There is nothing theocratic in the government of the Mormon Church that is exhibited to the world. It does not claim to govern the Territory of Utah. It acknowledges the authority of the Government of the United State. You cannot assail it by declaring as a matter of opinion on the part of the American Congress that for a man to worship God according to his belief, as Mormons do, (however contrary to our opinions and our wishes,) is a theocracy to be suppressed with fire and sword. But if you will make war upon it, let it not be by striking down the liberties of your people and doing violence to your own holy faith; but assail it with the red right hand of war, with the sword to stab it out, and say to them: "Proclaim your heresies and conduct your rites beyond the limits of this territory of

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