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EVENING NEWS

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FEDERAL JURISDICTION THE TERRITORIES.

RIGHT OF LOCAL BELF-GOVERNMENT JUDGE BLACK'S ABOUMENT FOR

UTAH.

FOLLOWING is the full text of the argument made by Judge Jeremiah S. Black before the Judiciary Committee of the House of Repres tives, February 1st, 1888:

Mr. Chairman and Gentlemen of the Committee:

I am here with your permission and at the request of the people of Utah to discuss their rights and the powers of the Federal Government to control them.

If you think for a moment how much they maysuffer by your legisla-tion and remember that they have no vote in either House of Congress, I trust you will hear without object I trust you will hear without ob tion the defence of their counsel. and permit him to show, if he is able, that the hostile measures passed and proposed against them are un-just and unconstitutional.

Though I claim nothing for those people on the score of their merits, yet their behavior and character ought not to be misunderstood. It is said (with how much trath you know as well as I) that they are sober, honest, peaceable, upright, know as well as 1) that they are sober, honest, peaceable, upright, and charitable, not only to one another, but to the stranger within their gates. The records show them to be singularly free from the crimes forbidden in the decalogue, and not at all addicted to the vulgar vices which often deform the character of frontier communities. Their Terri-torial government has been conduc-ted with survival to the vulgar vices ted with surprising purity, wisdom, and justice. Simple in its machin-ery and impartial in its laws, its burdens are light and its protection universal; no cheating at elections,

no official defalcations, no special taxes, and not a dollar of public

religion of their own, for which they are daily reviled and insulted; but they make no legal discrimination sgainst the faith of those who disantees to every human being the most perfect freedom in matters of worship and conscience. Nowhere on earth has the value of local selfgovernment been so strikingly at- It often happe

Mr. Grote, the most learned and thoughtful of modern historians, thoughtful of modern historians, has shown by divers examples that fidelity to the fundamental law-which he terms constitutional mor-ality-is the one indis pensable con-dition upon which the safety and success of every free government must depend. The high career of A thems from the expulsion of the Peisistratids to a period after the death of Pericles-the marvel and the admiration of all time-was plainly due to the faithful practice of this supreme vir tue. It was this that made the steady Roman strong enough to shake the world. Eng-land observes not only the theories, but the minutest forms of her con-stitution when lecislating for her

crime, of which you are incanable. Before I so

o stir up your pure minds

wither let me vindicate the justice

this censure, not because you ubt it, (for that is impossible,)but

of this ce

and observes not only the theories, but the minutest forms of her con-stitution when legislating for her teachers and jurists among them, an unshaken in the belief that man own people, and that has given her risge, being ordained of God and a domestic tranquillity and selid pow-er at home; her shame and her mis fortunes are all traceable to the dissecrament of the church, cannot be rightfully interfered with by the State. For the practical purpose of the present case it does not matter fortunes are all traceable to the dis-regard of it in dealing with colonies and outside dependencies. Consti-tutional morality was cherished and inculcated by our fathers, in the early ages of the Republic, as the great principle which should be the sheet-anchor of our peace at home and our safety abroad and to the

ify the law by pleading tion to Mores. A Sev

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They profess almost universally a svil is there, and the good never subject passed by the directors of a

It is plain as the moonday sun that without constitutional morality ines, who will take pleasure and give pleasure to their constituents, by the most injurious legislation they can havent against the people who are subject to it. The anderlying oppress and plander their subjects, the determine before you can know that situation have always acted: a diction, which you are passing a law or morely disgracing the ataite book volta the first symptom to of constitutional law by an act of gross usurpation. If it is not an offence which is ever made even is there, and the good never merely disgracing the ataite book to avoit that good may come. The swills there, and the good never morely disgracing the ataite book to make of avoit the good never subject passed by the directors of a first, it will widen like a crevase in the Mississippi, until the whole stream of arbitrary power goes rush-for of arbitrary power goes rush-for of a the particular mischler. The Mississippi, until the whole stream of arbitrary power goes rush-for of a the particular mischler. The Mission is forgery, whether the sum obtained by it be great or small, and the the the great or small, and the discord or small, and that the for the dississippi, until the whole stream of arbitrary power goes rush-for a the particular mischler. The Mission particular mischler. The dississippi, until the whole stream of arbitrary power goes rush-to be true. Their faith in there were be true to the great or small, and the distinction results and the for the constitution re-ligion with them to t are daily revited and insulted; but they make no legal discrimination sgainst the faith of those who dis-sent from them; there is no trace of intolerance in their enactments, and the constitution framed by themselves, and under which they ask for admission as a State, guar-antees to every human being the most perfect freedom in matters of worship and conscience. Nowhere obtained by it be great or small, and murder is not mitigated by showing that the victim was short of stature. It often hanness that legislators, other sect in modern times has any it often hanness that legislators, other sect in modern times has any

of their right to legislate for them-selves, the extent to which it was exercised, and the range of subjects it embraced are known to all who law of the land, and he cannot null- you think proper to telerate. You the reve make it as permicious as you ch It need not be "a terror to ev

competied its pyil-do ers to Sunday as a day of rest, though his conscience assures him that Eatur-day is the Sabbath of his God. One sh his ers, or a praise unto them that do well," if you wish to have it otherwell," if you wish to have it other-wise. The virtues may be visited with penalties; justice, chastity, temperance and truth may be sent to the penitentiary; swindling and perjury may be legalized. Taking the exceptional jurisprudence of Sparts as a model, larceny may be-come a merit, or following a more recent precedent in the Congres-sional government of the South, you can maintain the worst men in the highest offices, throw the rains loose who has no faith at all is p highest offices, throw the reins loose on the neck of rapacity, make leprous fraud adored.

> :--Pince thieves and give them title, knee and approbation With sens tors on the bench.

If you have not only the right the exclusive right, to do this it must be acknowledged that there is no use for a local government; it is interference with their est no use for a local government; it is merely in your way and accordingly you have already begun to abolish it. Agents appointed under your laws have gone down with instruc-tions to take possession of all the polling places and registration offi-ces, and the people were expressly forbidden to vote except by their permission and under their supervi-sion. They construed your law as a bill of pains and penalties, which attainted the whole population, and they ordered every voter to be dis-franchised who would not take an expurgatory oath that covered his whole life. Another set of agents assert that they have your direction

tended to matters of religion as it did to all other affairs within the scope of the civil authority. Here and now the conflict between Federal power and the rights of a State or Territory could not take that shape, insemuch as legislation on such subjects is excepted forever out of the power of all government.

But suppose by a stretch of your imagination that Parliament, led by some ultra Tory, had undertaken to prescribe what family relations should exist in a particular colony,

oppress and plunder their subjects, steal their money, and tax their in-dustry to death. This might pro-voke the resistance of the most pa-tient people, and the first subjects.

officers already chosen, and replaced them by avowed enemies with pow-er to tax and cheat them at will. Could such measures as these against any of the colonies have found one unprejudiced and honest defender in the world? <text><text><text><text><text><text><text><text><text><text><text><text><text> about matters which concern nobody else, it is void. Even if the colonists would consent, for a consideration, to accept an organic law imposing a restraint upon the right of self-gov-ernment, they could throw it off as a nullity; for the birthright of a free-man is inalienable. I need not say that foreigners naturalized are on a level with native citizens. level with native citizens. As Congress cannot give, so it cannot withhold the blessing of pop-ular government in a Territory. But the legislation now proposed in ad-dition to that already passed would blacken the character of the Federal Government with an act of cruel perfidy. The charter you gave to Government with an act of cruch perfidy. The charter you gave to Utah was in full accordance with the broad principles of American liberty. You organized for them a free territorial government, put into their hands all the machinery that was needed to carry it on; the balairs, collect the taxes, and take charge of their money, and a legisto them, clothed with exclusiv power to make their laws and to al-er them from time to time as ex-perience might show to be just and expedient. Gilding your invitation with this offer of free government; you attracted people from every State and from all parts of the civil-ized world, whose industry scattered plenty over that barren region and them; make their legislation a ckery by declaring that yours is

kidnapper by an acknowledged usur

are not gr 

it embraced are known to all have read their history. In those days the doctrine of 1 fect religious freedom was unknow it was regarded as a proper funct of the civil authority to pun whatever it deemed false theolo standed that the f is not now pretended that the ble rupture of private relations ure of 'ballot houses, disfr ble ru int of voters, expulsion of tem ial officers are needful rules an whatever it deemed false theology. This power, like others, belonged to the colonies. When heretics, pro-scribed in England by the laws in force there, fied beyond the sea and organized a colony, they not, only escaped persecution, but acquired the right to persecute others. By some of the colonies this power was much abused; but the Parliament could not interfere to prevent it. The King sent Lord Baltimore and a al or use of bill," (which could not have been drawn by the Senator of that name) assumes and expresses the assump-tion in unequivocal words that the United States have exclusive juris-diction in a Territory. This is much worse than the other; it is not merely King sent Lord Baltimore and a ti-large body of his retainers to Virgin-ia with a grant of land and a letter

to the colonial authorities, request to the colonial authorities, repeated ing that he might not be molested on account of his religion. The co-lonial legislature resented this as an 100 Million of the second this as an right of self-government, and repli-ed to the King that if Lord Balti-more practiced the Catholic religion within their territory he must subwithin their territory he must sub-mit to such penalties as they chose to inflict. The royal mandate was withdrawn; Lord Baltimore was moved above the Potomac, where he and his friends erected a colony of their own, and that colony excited the disgust of Parliament and the indignation of Virginia by tolerating all kinds of religion.

all kinds of religion. I mention these things to show that self-government in its broadest sense was claimed by and conceded to the colonies. Then home rule exthe legislature of the State in which the same shall be for the crection of forts, magazines, arsenals, dock-yards, and other needful buildings."

There is the only grant of exclu-sive jurisdiction that can be found in the instrument. It is plainly in-tended to and does cover the Dis-trict of Columbia. The authority is granted with equal clearness over the places occupied by the forts, arsenals, magazines, and dockyards; provide the severest penalties to en-force the regulations by penalties in force the regulations by penalties in direct conflict with the popular sense of duty and against pre-existing laws, customs and opinions." What would history have said about such strict or losse. Whether the Constitution grants or does not grant the power of exclusive legislation over the Territories to Congress, is a ques-tion of fact to be determined by institutions of the colony, foronce trial by jury unless the jury was packed, distranchised the legal vot-ers, prevented elections that were not supervised by agents of the min-istry, ordered the expulsion of all officers already chosen, and replaced them by avowed enemies with pow-er to tax and cheat them at will. If the power is not given to Con-

If the power is not given to Congress in and by the Constitution, then Congress has it not at all. This

moning clerk must be what is called in Philadelphia a "jury fixer;" your judges must bring themselves with in the old statute against "evil procurers of dosens," that being the designation of certain persons who designation of certain persons who made it a business and a trade to find twelve man predetermined on a verdict desired by the party who employed them.
An attempt has been made and will be again to justify this unreal mockery of a trial by saying that unless you pack the juries you cannot get convictions. As matter of fact this may be true. Generally it is vain to hope that a jury of the country representing the popular feeling and sense of right will carry of the governor and his adherents are now making the popular feeling and sense of right will carry of the governor and his adherents are now making under, it to description of the people, whether aoning clerk must be what is called a Philadelphia a "jury fixer;" your udges must bring themselves with-

tion in anequivocal words that is jury of the United States have exclusive juris-diction is a Territory. This is much country representing the popular diction is a Territory. This is much feeling and sense of right will carry interval to be put into the appro-country representing the popular field upon the metations claim which is an attempt to put into the out to its bitter end a law regarded by the governor and his adherents are now making under it to deepoil the popular fightly or wrongly, as unjust, op-pressive, and cruel. That is why they alone have the right to fill. You we have juries. For that reason trial by jury is the great safeguard of civil liberty. To make them affi-exclusive jurisdiction in a particular of civil liberty. To make them affi-cient to that end they are judges of the public liberty of no people as santed. I do not say that the law of th place, he means to say that the Con-stitution has given to the Federal Legislature and Executive the sole authority to make and enforce all laws in all cases for and against all persons in that place. There are places in which this omnipotent and exclusive power is given to Con-grees, but to say that it extends to but for any other Territory is sim-and asse for yourselves. Among the enumerated powers of Congress, is this—

"To exercise exclusive legislation in all cases whatsoever over such District (not exceeding ten miles square) as may by cession of par-ticular States and the occeptance of Congress become the seat of Gov-ernment of the United States, and to exercise like authority over all places purchased by the consent of

the most secred right which the Constitution guarantees. I solemn-ly trust that it will turn out as im-potent as it is unauthorized. II. The promoters of the law in question, not satisfied with trying their victims by a court and jury composed of their enemies, conclud-ed to go a little further, and punish them with out of their offices are property in which, a legally vested estate. The Hear amendment is construed (falsely, I admit) as authorizing all these offi-

ed to carry this out, who, reversing the presumption of law and declar-ing the whole population to be guil-ty, proceeded to convict individuals by a test oath of their own fabrica-

The right to do such things as these does not depend on the juris-diction of Congress over the Territories. No matter how ex-what South Carolina did; there is no found one unprejudiced and honest defender in the world? In fact and in truth nothing near-ly so atrocious was proposed or at-tempted. The stamp act, the tat-upon tea, the prohibition of certain manufactures, the Boston port bill, and other restrictions upon trade were triffes in comparison. But

them without any trial at all. The ces to be seized, and used as a means them without any trial at all. The frightful penalty of disfranchise-ment is to be visited upon them without conviction. Men were di-ship, rendered incapable of voting, expelled from offices to which they had been legally chosen, and de-prived of all right to participate in the government they lived under for crimes of which they were never even accused before any legal tri-bunal. Commissioners are appoint.

the want of everything else that is honest and fair. Rulers forced upon a people are never just. It is as certain as the rising of the sun tomorrow that if the people are put under foot they will be trampled down without mergy. And their

government Esen so strikingly at-tested by the success of the people who enjoyed it. Thirty-six years ago the valkey of Balt Lake was the most foriorn and dreary region on the surface of the globe—a mere waste, which produced literally nothing. But under the stimulus of civil and religious liberty these

their enemies, whom you must con-ciliate and gratify if you can do so with a safe conscience, for they have votes, and power and influence which will not be opposed without

religion which the people ah adhere to with so enacity is regarded in other the country with extreme te, as the more superstition of patert sect. No man, however, has the faintest perception of stian principles, thinks it right il or plunder or outlaw them dialike, as the mere superstition of an upstart sect. No man, however, who has the faintest perception of Christian principles, thinks it right to kill or plunder or outlaw them for holding an erroneous faith. From real Christianity there comes no howl for the blood and property of the Mormons. But in other quarters its means general morality in all v converse of the proposition is also system, is a trust given and accept-ed upon certain covenanted terms is and to be executed within certain most rancorous hatred breaks By some famous preachers the y of killing the Mormons by esale, unless they leave their

arly, abandon their homes, and ayond the Union, is openly ad-ed and apparently concurred in great warmth by congregations panled with curses loud and constitutional objection to that thethod of dealing with them. when we read tof such things in history we are apt to think them disbolical. But approved as they are now and here by popular judg-ment, and unrebuked even by Senatorial wisdom, we must con-cede, I suppose, that it is very good tasts and refined humanity disguis-ed in a new dress. As a general rule collical nety, where it has

this country or in Europe, is a sham and a false pretence, but in this ex-ceptional case it would be speaking avii of dignities to call it hypocrisy. The soundness of the religion which shanders a Mormon is not to be ques-tioned. Equally pure is the act of a twentieth, justify their machinations gainst the others by expressing a most violent action the <text><text><text><text><text><text><text><text><text><text><text> most violant antipathy to that par- so treated? a in "The Congress shall have power

which see you like or loath it; you will be or loath it; you will be or loath it; you in one of loath it; you it is the officer. He may be allo for the officer, it is up. If you rearrant for the index of the index of

d up the whites of its eyes in country or in Europe, is a sham false pretence, but in this exginning to assure his followers that the Constitution had given to Con-gress this power over the Territories. To prove it he showed them the following provision: matrimonial contract, extends to all the relations of private life. That

industry of Utah had made it rich enough to be worth robbing, the notion was started that if the Bouth-ern States could be reduced to the condition of Territories, the absolute domination of Congress over them through the instrumentality of car-pet-baggers and bayonets would be-come constitutional. Therefore the first step was to declare that the State governments did not legally exist; the States were said to be Ter-ritories, and, as a consequence sup-posed to be at the mercy of Cou-

had lived in the time of the revolu-tion. Thave and that these people have a natural right to govern themselves but I admit that this natural right may be abridged by fundamental ar rangement. That is to say, the right of legislation for a Territory upon some subjects or all may be there are other objections to this exame thing, slither for Illinois or upon some subjects or all may be there are other objections to this instrument a provision so hostile to the liberty for which they had the lower of exclusive legislation found it is not there. But the ulinitied sway which the power of exclusive legislation of there who cast there in times in our history been much desired by members of Congress and by friends of the rows and first work of cast the site of the site of the constitution that it is not there. But the ulinities and there on the set of the country, the peers of the sement a provision so hostile to the intervent times in the constitution that it is not there. But the ulinities and there on the set of the constitution that it is not there. But the ulinities and there on the set of the country, the peers of the sement population, se as to repre-tore and and property, which the the kind of jury that every mans syzes on offices and property, which the have of the work of the work of prove that here consent of the United the the induction the consent of the country for trial. That is the sement population, se as to repre-sent the congress and by friends is the kind of jury that every mans syzes on offices and property, which the have of the work of prove the prove the solution the consent of the consent of the consent of the consent of the induct of the solution of the solution the solutis solution the solu meaning of the word jury as used in the decrees of Alfred, the statutes of Edward the Confessor, Magna Charta, the Petition of Rights, the ing legally vested. This is so clear and unquestionable that the Federal judges themselves, with every in-clination to exclude them from vot-ing, were compelled to decide that Charts, the Petition of Edgins, in Bill of Rights, and the Americs Constitution. In that sense it is us by all English-speaking peoples, ar with that sense attached to it to institution has been adopted it could not be done. Of this ac-knowledged right it is now proposed to deprive them by a bill of pains and penalties, not grounded upon upon any pretence of guilt, but coupled with an admission that the suffering parties are perfectly innocent. It will hardly be pretended that the rights of a woman when once

other nations. The right of trial by jury is withheld by the Edmunds hav or given in a mutilated form, which makes it hardly better than a military commission, "organized to convict." not been circumvented by an act of Congress taking away the jurisdicegally vested are less sacred than hose of a man, or that he more legally vested are less sacred than those of a man, or that he more than she is protected by the Consti-intion against the wrath and malice of political rulers. If the male vot-of political rulers. If the male vot-or of Utah are free men, the fe-males are free women. One is no more subject to be disfranchized by a bill of pains and penalties than the other. Can either of them be so treated? The body of the population be-tieve as matter of moral and relig-ious sentiment that polygamy is at least so far right that a law which makes it a penal offence is unjust and impolitic. The anti-popular faction, composing about one Mr. Thaddens Stevens, the great leader and driver of that day, who ruled Congress with a sway that was boundless, thought it best in the be-I plety, wherever up the whites of its

parts of this bill which authorizes a person to be kidnapped and held as a witness who has not been sub-reenaed or notified, its subjection of private papers to unreasonable searches and seizures, or the inhu-man disregard which it shows of family feeling and the sanctities of private life by compelling men and women lawfully married to testify against one another.

VII. These enactments, made and proposed, are in the main a compre-hensive bill of pains and penalties, not against persons guilty or sup-posed to be guilty of polygamy or any other hurtfol crime, but against people known and acknowledged to be innocent. They are intended to disfranchise whole masses of free persons, reduce them to the condi-tion of slaves, and deprive a community of its natural and constit tional right to an hone t govern-ment of its own. For such a bill there is not only no warrant in the Constitution, but it is expressly in-terdicted. Nor is there any precedent for it except the reconstruction laws of 1867, and they were admitted to be unconstitutional by their author and by the counsel who undertook to defend them, and to my certain knowledge they would have been declared void by the Supreme Court in the case of McArdie, if we had