with Congress. At the second session of the Third Congress, 1794, James White presented his credentials claiming to be a Delegate from the territory south of the Ohio River, then not organized.

This Territory of Alaska is a vast, unorganized domain—a wilderness, without any of the most remote attempts at formal government. It has no census or other evidence of its resources or population. Yet these gentlemen who want to exact the qualifications of a member of Congress for a Delegate from Utah, here use language and make a recommendation which shows that they go even further than any who have preceded them in holding that a Delegate is in no respect like a member of Congress, but is a mere agent and business factotum of a Territory. That Territory may, as has been held in very many cases, contain a mere handful of population. Alaska has only 129 white people, and possibly 20,000 native savages. Dakota, when admitted as a Territory, had only 2,576 inhabitants. Nevada had but very few more.

In White's case, 1 Clark & Hall, 85-91, referred to and relied upon in the Alaska case, it was decided that the right of the inhabitants of Territories entitled to elect delegates, is secured by compacts and ordinances of the United States and not by the Constitution, and that the rights and powers and duties of such delegates from the Territories are so widely different from those of members of Congress, that "the oath required of members of Congress cannot be exacted of them." Mr. Madison, who is presumed to have known something of the spirit and compass of the Federal Constitution, and Mr. Dayton and other distinguished gentlemen who debated that case, clearly held and showed that Delegates were in no possible respect constitutional officers. The whole debate in White's case, participated in by the men who made the Constitution and formulated the ordinances in reference to the Territories, shows more clearly than any present argument can what was regarded in that day as the status of Delegates from the Territories.

In Smith's case, 1 Bartlett, 112, it was decided that the admission of Delegates depends upon the will of Congress. Mr. Carter in his argument in that case, (p. 115), says: "A Delegate from any Territory is not an officer provided for by the Constitution and when admitted to the floor discharges no constitutional duties.

HOW HAS CONGRESS REGARDED REGULATIONS PROVIDED FOR THE TERRITORIES?

Next let us inquire how Congress has regarded its own acts and the compacts and agreements between the Federal Government and the States in reference to the Territories. Let us look into the considerations which have governed the admission of States in the past. The States of Kentucky, Tennessee, Ohio, Indiana, Mississippi, Illinois, Alabama, Michigan, and Wisconsin were formed out of territory belonging to the original thirteen States; and the terms of their admission to the Union were largely determined by the provisions of the act of July 13, 1787, and of various compacts between the United States and the several state governments based upon the terms of that ordinance as the result of which the territory out of which they were severally constituted was relinquished to the general Government.

The ordinance referred to provided for the formation of the Territory, which should become the common possession of the Union, into States, to be laid out in accordance with the term of the act, and to be admitted whenever they should have a free population of 60,000, or before their population reached this number, if deemed expedient by Congress. Among other notable features of this act were provisions for the establishment of two grades of Territorial government, the first to be under the administration of executive and judicial officers appointed by the President, and intended to continue until the condition of the Territory was such as to warrant the establishment of the second grade which was provided for when the free male inhabitants should reach the number of 5,000, and was to be establishtd by the election of a Legislative Assembly chosen by the qualified voters of the Territory.

The conditions and steps essential to the formation of new States, according to the terms of the ordinance of 1787, of the compacts with the various States relinquishing territory to the Union, of the treaty stipulations by which purchased territory was acquired, and of the laws of Congress passed in conformity with the articles of the Constitution adopted in 1787, may be briefly stated as follows: First, the determination of boundaries; second, proof that the population equals the number required by the ordinance of 1787, or the number necessary at the time to entitle the State seeking admission to a representative in Congress, upon the basis of representation then existing; third, authority for the formation of a constitution and State government in accordance with provisions made by Congress under so-called enabling acts; fourth, the ratification of the constitution adopted in pursuance of the above provisions, by vote of the qualified citizens of the Territory; fifth, an act of Congress approving the steps taken under the enabling act, and formally recognizing the formed government as a State.

While the validity and expediency of these conditions have been recognized, they were almost wholly disregarded in the case of Tennessee, the Territory first admitted after the adoption of the ordinance of July 13, 1787, which came fully under its provisions; and, while some of the rules noted have been enforced, others have been equally ignored in connection with the admission of nearly all of the Territories subsequently formed into States. The people of Tennessee, whose territory had been under the jurisdiction of North Carolina, and whose boundaries were already defined, adopted a constitution and formed a State government in 1795, without authority of Congress, and in the following year, through its representatives, this self-constituted State demanded admission to the Union. Its claims were strenuously opposed by a minority in Congress, who demanded that, prior to the consideration of its claims for admission, it should be required to comply with the terms of the ordinance of 1787, and contended that to admit it at that time would be in disregard of the authority of Congress, and calculated to establish a dangerous precedent. These advocates of the maintenance of Congressional authority as alone competent for determining the conditions under which Territories shall be entitled to seek admission to the Union were overruled, having among their opponents Madison, Macon, Gallatin, and other eminent men. Mr. Dayton, one of the chief opponents of the bill, claimed that its enactment would be equivalent to an utter disregard of existing provisions, and as a renunciation by Congress of any right to deliberate as to the title of a Territory to be admitted. Mr. Madison said that the inhabitants of the Territory were at present in a degraded situation, deprived of rights essential to freemen—among others, that of representation in Congress; and that an exterior power had authority over their laws, something which could only be justified on the ground of obvious and imperious necessity. Mr. Macon, in answer to the objection that the State had been established in contravention of the provisions intended to govern the formation of new States, replied that but two conditions were essential. Was its Government republican in form, and had it the necessary number of inhabitants? If so its right to admission was indisputable.

Mr. Gallatin said that the people of the Territory became *ipso facto* a State the moment the population reached 60,000 free inhabitants, and that it became the duty of Congress to recognize their title to admission whenever it had satisfactory proof of this fact. The views of Mr. Madson, Mr. Macon, and Mr. Gallatin prevailed, and the precedent, so deprecated by Mr. Dayton, of admitting a Territory in disregard of the provisions of the ordinance of 1787, was established. That the ill results feared by this eminent statesman have not followed has been the result of fortunate circumstances rather than the wisdom of the measures which he so ably opposed. While but one Territory has been subsequently admitted under conditions altogether similar to those existing in the case of Tennessee, in the case of nearly all other Territories this precedent, as regards some one of the rules applicable under the law of 1787, or provided by subsequent measures, has been ignored. These departures from the original intent of Congress have been especially evident as regards population. At the date of the acts enabling them to form State governments, I find that, of the Territories constituted into free States, Ohio, Indiana, Illinois, Oregon, Nevada, and Nebraska had a population less than 60,000; and of those constituted as slave States, not one had then a free population in excess of the required number, the total population, free and slave, of Kentucky, Louisiana, Mississippi, and Missouri being but a little above it, and that of Arkansas and Florida considerably below it. Of the above named States, at the time of their final admission to the Union, Ohio, Illinois, Oregon, and Nevada, of the free States, were still below the required population; and in none of the slave States, including Tennessee, admitted without the formality of an enabling act, was the free population sufficient, while in Arkansas and Florida the total, including slaves, was still less than 60,000.

It will be thus seen that eleven States organized from Territories, when authorized to form State governments and the same number when admitted to the Union, had free population of less than 60,000, and that of the slaves States included in this number, seven in all, not one had the required number of free inhabitants, either when authorized to take the first steps toward admission or when finally admitted; and that both of these steps were taken by two of the latter States with a total population, free and slave, below the required number. Why so many States have been authorized to form State governments, and have been subsequently admitted to the Union with populations so far below the requirements of the ordinance of 1787, and the accepted rules for subsequent action, may be briefly explained as follows: First, by the ground for the use of a wide discretion afforded in the provisions of the ordinance of 1787, for the admission of States, when deemed expedient, before their population should equal the required number; and, second, by the equally wide discretion given by the Constitution in the words, "New States may be admitted by Congress into this Union," the only provision of the Constitution bearing specifically upon this subject. Efforts have been made at various times to secure the strict enforcement of the orignal rules, with the modification resulting from the increase in the population of the Union, which provided that the number of free inhabitants in a Territory should equal the number established as the basis of representation in the apportionment of Representatives in Congress, as determined by the preceeding census. How little success the efforts made in this direction have met may be seen by a comparison of the number of inhabitants forming the basis of representation, as established by the different cessuses, and the free population of the Territories admitted at corresponding periods.

WHAT POWER HAS CONGRESS TO ACQUIRE AND HOLD TERRITORY?

It has been decided that the power to govern the territory acquired by the Federal Government after the formation of the Constitution is an inevitable consequence of the right to acquire territory. Judge Taney says:

> But no power is given to acquire a territory, to be held and governed permanently in that character. The power exercised by Congress to acquire territory and establish a government there according to its own unlimited discretion was viewed with great jealousy by the earlier statesmen.

Judge McLean, in Scott *vs.* Sandford, says:

> No powers can be exercised but those which are initiatory to the establishment of State governments, and no power can be claimed or exercised that is necessary to the attainment of the end. This is the limitation of all the Federal power.

Judge Curtis says:

> The purposes and objects of the clause were the enactment of laws concerning the disposal of the public lands and the temporary government of the settlers thereon until new States could be formed.
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> It has been held to authorize the acquisition of territory not fit for admission at the time but to be admitted as soon as its population and situation would entitle it to admission. It is required to become a State and not to be held as a colony and governed by Congress with absolute authority.
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> The Government holds it (territory) for their (people's) common use until it shall be associated with the other States as a member of the Union. But until that time arrives it is undoubtedly necessary that some government should be established in order to organize society and to protect the inhabitants in their persons and property; and as the people of the United States could act in the matter only through the Government which represented them and through which they spoke and acted when the territory was obtained, it was not only within the scope of its power, but it was its duty to pass such laws and establish such a government as would enable those by whose authority they acted to reap the advantages anticipated from its acquisition, and to gather there a population which would enable it to assume a position to which it was destined among the States of the Union.

It was a part of the solemn compact between the States and the General Government, as we have shown, that the territory ceded should be formed into States at the earliest practicable moment, and should be held for no other purpose.

Utah would long ago have been admitted as a State but for the persistent and defiant practice and propagation of the odious and unrepublican doctrines of polygamy in that Territory. It is unpatriotic and unstatesmanlike for Congress longer to permit such a rich and prosperous section of the Union to remain in the condition of a subject province instead of an equal and sovereign State. It will never be otherwise, however, unless we begin at once, and with sincerity and energy, to disqualify and wipe out the power of polygamy. Professor Henry Randall Waite, Ph. D., a very learned and impartial gentleman, has recently said on this subject:

> Utah is now, as when its first petition was presented, debarred from admittance by its anomalous condition as a government controlled by those who maintain, in defiance of law and public opinion, a social system the revolting character of which is too well known to need description. Should the inhabitants of this Territory place themselves in a condition which would not be antagonistic to the laws of the Union, there can be no question that its right to become a State would be at once recognized. Originally settled by its present inhabitants in 1846-47, it was organized as a Territory and provided with a Territorial government by act of September 9, 1850. For a considerable period prior to this act, however, there had been in force in the Territory a semi ecclesiastical government administered by the Mormon leaders, under the name of the "State of Deseret." The government provided by Congress was intended to extinguish that of this pseudo State, but the people of the Territory cunningly framed, under its provision, a constitution and laws which did not interfere with the essential features of the abrogated code of "Deseret," and was at the same time acceptable to Congress. The result of the change, instead of weakening the power of the Mormon leaders, really strengthened it, by enabling them, under statutes approved by Congress, to exercise from that time until now permanent and supreme executive, legislative, and judicial control throughout the Territory. While it is difficult to say in what manner such a result could have been prevented under the provisions of a representative Territorial government, it is undoubtedly true that the development of Mormonism as a system, the defiant attitude of its adherents, and the resultant difficulties to which reference will be made elsewhere, are chiefly due to the long tenure of absolute civil authority upon which its leaders entered in 1850.
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> *Polygamy is the scarlet letter upon the brow* of this fair young commonwealth which proclaims her deep shame, and forbids her entrance into the sisterhood of States.

EACH CONGRESS MAY FIX THE QUALIFICATIONS OF ITS DELEGATES.

Why? Because the history of the territories, the clause in reference to them in the Constitution, the decisions of the courts thereon and the contemporary legislation, all show that the Constitution does not apply to any Territory except such as was within the jurisdiction of the confederacy at the time of the formation of the Federation of the Federal Government; that while the office of Delegate was well known to the framers of the Constitution, the word "Delegate" was not mentioned nor dignified by the slightest recognition. Delegates were clearly considered by the founders of the Government as not within the purview of the Constitution nor having any of the qualifications of members of Congress. Delegates are not, therefore contemplated by the Constitution, nor any provision made for them in any way as to qualifications or otherwise.

If it is clear, therefore, that the Constitution did not intend that Territorial Delegates should come within its provisions or that they should have the status and qualifications of members. No act of Congress by simply extending the Constitution to a Territory would change it so as to require such qualifications unless the act itself provided such qualifications, and then they would be fixed by the act, and not by the Constitution. No act extending the Constitution to the Territories, is so far *applicable*, as was done in the case of Utah, would have the effect to in any manner provide or change the qualifications of Delegates, because the Constitution is not applicable to Delegates.

The Constitution not fixing the qualifications of Delegates, and no act of Congress having ever done so, the question remains open, and under the powers of the House and general parliamentary law the House has the exclusive power to judge of and fix them.

The Constitution clearly, therefore, does not apply or provide any qualifications for Delegates, but leaves it in the power of Congress to say at any time and in any way it may see proper what qualifications it will exact of the agents whom as a matter of grace and discretion it permits to come from the Territories into its deliberations and to sit among its members. Neither the Senate nor the Executive, nor any other power on earth, has any right to interfere except by permission in fixing the qualifications for admission to the House, and the concurrence and co-operation of the Senate and Executive in the passage of any enactment on the subject can go no further in giving it force and validity than to make it a persuasive rule of action which the House is at liberty to follow or disregard. "Each House shall be the judge of the election, returns, and qualifications of its own members." No law that was ever passed on this subject, which is under the exclusive and unlimited control of each House, by any former Congress, is binding on any subsequent House. Each House may wholly repudiate all such acts with entire propriety. It is customary to regard them as rules of conduct. This is well illustrated by the doctrine laid down by McCrary in his Law of Elections, section 349, in reference to the laws made to govern contested elections:

> The houses of Congress, when exercising their authority and jurisdiction to decide upon "the election returns and qualifications" of members, are not bound by the technical rules which govern proceedings in courts of justice. Indeed, the statutes to be found among the acts of Congress regulating the mode of conducting an election contest in the House of Representatives are directory only, and are not and cannot be made mandatory under the Constitution. In practice these statutory regulations are often varied, and sometimes wholly departed from. They are convenient as rules of practice, and of course will be adhered to unless the House, in its discretion, shall in a given case determine that the ends of justice require a different course of action. They constitute wholesome rules, not to be departed from without cause. It is not within the constitutional power of Congress, by a legislative enactment or otherwise, to control either House in the exercise of its exclusive right to be judges of the election, returns and qualifications of its own members.
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> The laws that have been enacted on this subject being therefore only directory, and not absolutely binding, would have been more appropriately *passed as* mere rules of the House of Representatives, since by their *passage* it may be claimed *that the House* conceded the right to the Senate to share with it in this duty and power conferred by the Constitution. It is presumed, however, that the provisions in question were enacted in the form of a statute rather than as a mere rule of the House, in order to give them more general publicity, etc.

CONGRESS HAS ADDED TO THE CONSTITUTIONAL QUALIFICATIONS OF MEMBERS; WHY NOT OF DELEGATES?

But admitting for the purposes of *this discussion* what cannot *be* maintained, that the same qualifications which entitle a member of Congress to admission shall also entitle a Delegate to the same right, and I still hold that Congress has the right and power to say that a polygamist shall not be admitted as Delegate. Under the high power inherent in every organization on earth to preserve its integrity and existence, Congress has the indubitable right to keep out of its councils any person whom it believes to be dangerous and hostile to the Government.

During the war almost the whole Congressional delegation from the State of Kentucky were halted at the bar of the House, and, on the objection of a member, were not permitted to be sworn until it was ascertained whether they or either of them were guilty of disloyal practices. They had each every qualification usually required by the Constitution; they were duly and regularly elected and returned; they were sent by a sovereign State, holding all her relations in perfect accord with the Federal Government; but the House proceeded to inquire into each case, and not *until a reasonable* investigation was had were any of them admitted. The committee which had the matter in charge reported, and the House adopted and laid down the following rule on the subject of all such cases:

> Whenever it is shown by proof that the claimant has, by act or speech, given aid or countenance to the rebellion, he should not be permitted to take the oath, and such acts or speech need not be such as to constitute treason technically, but must have been so overt and public, and must have been done or said under such circumstances as fairly to show that they were actually designed to, and in their nature tended to, forward the cause of the rebellion.

In the case of John Young Brown, who was among the number, the committee almost unanimously reported against his right to admission on the ground that he had written an imprudent and disloyal letter, nothing more. He had never committed an act of treason. He was never arrested or tried or convicted. He denied all treasonable intent in the letter, and made every effort in his power to explain and extenuate his offense. But seven out of the nine members of the Committee on Elections of the Fortieth Congress reported that he "was not entitled to take the oath of office, or to be