THE RIGHT OF THE TERRITORIES TO BECOME STATES OF THE UNION

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TO BECOME

STATES OF THE UNION.

"SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE OF DOCTOR OF PHILOSOPHY IN THE UNIVERSITY FACULTY OF POLITICAL SCIENCE, COLUMBIA COLLEGE."

BY

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INTRODUCTION.

The conflict of opinion regarding the nature of the American Union was settled by the Civil war. Many held before that time, that the Nation was the result of a compact entered into by free and independent States, which, while recognizing the Constitution as a common bond of union, yet left to each State as a part of an inherent sovereignty, the right either to nullify a national obligation or to withdraw without the circle of national influence and power.

This conception of the Union, which is known as the states-rights doctrine, was adopted by the Southern States, and their deliberate acts of secession were the immediate cause of the Civil war and all its attending disasters.

But with the defeat of the South, the dogma of states-rights perished. Henceforth the Constitution is to be viewed, not as a compact between sovereign States, but as the fundamental law of the whole land—as the expression of the will of the entire Nation—and arguments relating to it must be based upon that fundamental conception.

Among the first fruits of the triumph of the North was the adoption of three amendments to the Constitution, which gave a number of important powers to the central government, which were hitherto deemed to rest exclusively within

the province of the States. A series of acts was passed by Congress, which was in direct violation of principles hitherto maintained, and manifested a disposition to exalt the national idea by eliminating from State life theories of action from which the dogma of state-rights could again spring into being. I refer to those acts relating to the reconstruction of the rebellious States and their restoration to their former practical relations with the rest of the Union, and to some acts admitting new States.

The practical course pursued in the restoration of the old States throws new light upon the process of State formation and admission, which is reflected in the debates in Congress, incident to the admission of new States. It had often been maintained that the territories of the United States had the right to be admitted into the Union as States. This claim now met with rigid criticism, and even bold denial.

It will be our purpose to discover whether such a principle is recognized under our Constitution, as that which ascribes to the people of the territories the right to become members of the Union.

The subject finds an apt and handy illustration in the present interest which surrounds the case of Utah. Her population is numerous enough; her wealth and resources great enough to equal and surpass the estimates in corresponding particulars of many another territory, at the time of admission.

A large part of Utah's population believes in the Mormon religion, and there is objection to admitting her on that account. Can the inhabitants of the territory of Utah insist upon her admission as State, or can she be forever held in her present position as a territory of the United States by the

refusal of Congress to admit her? To answer this question, it will be necessary to know what power each of the parties to the transaction has in the matter.

I.—Opposing Conceptions of the Character of States and the Nature of the Process of Admission.

The statements made at the period first alluded to, as well as the arguments that have generally been advanced, in favor of, or against, the admission of States as they have successively applied for entrance into the Union, disclose very fully the claims that can be made in favor of the territory on the one hand, and of Congress on the other.

These arguments reveal antagonistic conceptions of the character of States, and of the nature of the process of admission. By those who favor the territorial claim to admission, the State is viewed as a political community, having all the rights guaranteed by the Constitution to members of the Union, and possessing, besides, inherently, all the residuary powers of self-government not expressly granted by the Constitution to the Federal Government.[1] The important distinction is made by them between the formation of such a State and its admission. It is granted that Congress has power to admit States; but the power to create them resides only in the people of the territory. It is by their sovereign will, alone, that the State comes into existence. The admitting acts, on the part of Congress, are viewed as simply supplementary to the course pursued by the territories, and in the nature of expressions of national

[1] As to what constitutes a State, see Texas vs. White. 7 Wallace, 700.

approval of territorial action, or an acceptance of a situation which the territories themselves have legally brought about.

On the other hand, the State is viewed by those who ascribe to Congress unlimited control over the matter, as a political corporation, created by the Congress of the United States for the purpose of local government, with such rights belonging to it as are guaranteed by the Constitution to members of the Union, but with only such other rights as may be left undisturbed by Congress. Under this theory, no right to become a State is recognized as inherent in a community.[1] Authority to form a State Constitution and government is given by Congress to a particular territory, through an enabling act. If the constitution adopted is in conformity with the requirments of that act, a law to admit the territory into the Union as a State is passed. These acts are not mere sequences to the assertion by the territories of valid claims to admission, but powerful acts of creative force.

The operation of the principle of popular sovereignty within the terrritories is brought into question by these arguments. The principle recognizes universally the capacity of a community of people, through inherent sovereignty, to govern themselves. At one time, as we shall see below, it became the watch-word of those who sought thereby to evade altogether Congressional influence over State formation.

It is readily seen that the arguments in support of the claims above stated, relate to the interpretation of the clause in the Constitution granting Congress authority to admit States. An answer as to which theory is correct would

[1] Congressional Globe, second session XXXIX Congress. See remarks by Senator Edmunds, of Vermont, relative to admission of Nebraska—pp. 334, 338 and 339.

involve a construction of this clause. But the Supreme Court has never determined the nature or extent of the authority hereby granted. The solution of the open question must, therefore, be sought in an examination of the precedents that have been established in actual practice.

The method to be pursued in our search will consist in an historical review of the procedure in the course of admission and an analysis of the provisions of the admitting acts.

II.—Historical Basis of the Claim to Admission and the Claim to Congressional Control.

But first, let us consider some of the historical and constitutional grounds for the support of the conflicting claims. The authority in pursuance of which States have been admitted, is found in the third section of the fourth article of the Constitution. With the exception stated in this section, referring to particular cases, there is no declaration as to when, or how, the admission shall take place. Nothing is said about the right of any people to claim admission as a State, or the obligation on the part of Congress to grant such admission. We must look outside the Constitution for any authority upon which to found the doctrine of the right of the community to become a member of the Union.

(*a*)—*The Cession of Virginia.*

The origin of this doctrine is found in a series of transactions, which culminated in an ordinance passed by the Continental Congress in 1784, for the government of ceded territory embraced between the Alleghanies and the Miss-