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The Territories of the United States

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THE TERRITORIES OF THE UNITED STATES.

In the common acceptation of those terms the United States has no colonies and no foreign possessions.

It was provided by the constitution of the United States that "new states may be admitted by the Congress into this Union, but no new state shall be formed or erected within the jurisdiction of any other state, nor any state be formed by the junction of two or more states or parts of states, without the consent of the legislatures of the states concerned as well as of the Congress." Art. 4, § 3, cl. 1. Also that "the Congress shall have power to dispose of and make all needful rules and regulations respecting the territory and other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States or of any particular state." Art. 4, § 3, cl. 2. Also that "the Congress shall have power" "to exercise exclusive legislation in all cases whatsoever over such district, not exceeding ten miles square, as may by cession of particular states, and the acceptance of Congress, become the seat of government of the United States, and to exercise like authority over all places purchased, by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings." Art. 1, § 8, cl. 17.

It is always to be borne in mind, in considering the constitution of the United States, that it was made for sovereign states. Nevertheless its purpose was to create a sovereignty, which in respect to some of the highest powers of government, should be supreme over all the states, and which should be the sole representative of all the states in the family of nations. And no doubt any such sovereignty would possess all the incidental powers belonging to any sovereignty, of providing for the exercise of its constitutional functions, and of perpetuating its existence. Martin v. Hunter, 1 Wheat., 304; United States v. Bevans, 3 Wheat., 336; McCulloch v. Maryland, 4 Wheat., 316; Osborn v. United States, 9 Wheat., 738; United States v. Coombs, 12 Pet., 72; Ableman v. Booth, 21 How., 506.

But the United States as a nation was possessed at the time the constitution was formed of certain territory which had been ceded to it by the states. Within the limits of the cessions there were many private estates, which had been acquired by grant from the crown, or from the colonies then owning the territory, but the title to the land not thus granted passed by the cessions to the United States, which thus became proprietor of the soil, so far as it had not previously become private property, and ruler of the territory and of its people. Previous to the adoption of the constitution a government had been provided for the territory northwest of the Ohio, and as that government has to a considerable extent been a model since, it may be useful to give some

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statement of the provisions of the ordinance establishing it. This was the ordinance of July 13,1787.

The ordinance provided for a governor of the territory, to be appointed by Congress for the term of three years; a secretary, to be in like manner appointed for the term of four years, and three judges, to hold office during good behavior. The judges were not only to exercise judicial authority, but they were to be the legislature for the territory until it should have five thousand inhabitants, when the people were to elect representatives to sit in a general assembly. Meantime the governor was to appoint magistrates and other civil officers. The general assembly was to consist of the representatives, constituting one house, and a council of five members chosen by the Congress from ten names nominated to it by the representatives. All laws required the assent of both houses and of the governor. The fifth article of the ordinance provided that there should be formed within said territory not less than three nor more than five states; and after indicating boundaries for three states, it declares that, "whenever any of the said states shall have sixty thousand free inhabitants therein, such state shall be admitted, by its delegates, into the Congress of the United States, on an equal footing with the original states in all respects whatever, and shall be at liberty to form a permanent constitution and state government.

After the federal government was organized under the constitution, the appointing power for the territory was transferred from the Congress to the president, but in other respects the ordinance remained in force. New territories were formed within its limits, however, as the needs of the people seemed to require separate governments, and in time, when the requisite population was obtained, the five states contemplated as possible by the ordinance, were formed and admitted into the Union in the following order: Ohio, Indiana, Illinois, Michigan and Wisconsin.

Here we observe a normal condition of things contemplated by the constitution when it speaks of the admission of new states into the Union. It contemplated that settlements would be formed on the unoccupied lands belonging to the United States; that the people would for a time be governed by the "rules and regulations" established for them by Congress, but that eventually, when the population was sufficient to warrant it, states suitable in size should be admitted to the Union on an equal footing with the original states. What should be sufficient population to justify admission has never been definitely agreed, but it has generally been thought it should be equal to the number required to entitle the existing states to a representative in Congress according to the ratio of representation as it stands at the time.

Congress has not always—nor generally of late—in organizing a territory, made the judges a legislative authority, but it has provided for a legislature chosen exclusively by the people. Whatever may be the local legislature, it possesses general legislative power, to be exercised, however, in conformity to the constitution of the United States, and to the organic law. Miners' Bank v. Iowa, 12 How., 1; Vincennes University v. Indiana 14 How., 268; Cross v. Harrison, 16 How., 164. But Congress may, in its discretion, disallow any territorial legislation, and legislate directly for the territory itself, so far as

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it shall deem necessary or expedient: American Ins. Co., v. Canter, 1 Pet., 511; Clinton v. Englebrecht, 13 Wall., 434; Reynolds v. United States, 98 U. S. Rep., 145.

Before any state can be admitted to the union, there must be a state ready to admit; and this implies that there shall be a state with a constitution and laws, so that when admitted, it can proceed at once in the performance of sovereign functions. The regular method of obtaining admission is for Congress to pass an "enabling act," as it is called, which empowers the people of the territory who possess such qualifications as voters as the act prescribes, to elect representatives to a convention, for forming a constitution, and to vote upon the adoption of such instrument as the convention shall frame. If this authority shall be acted upon, and a constitution adopted and submitted to Congress, that body, if satisfied with the constitution, will pass another act admitting the state to the union under it. In some cases the people of territories have proceeded irregularly to form a state constitution, without the previous authority of Congress, and Congress has deemed it wise to overlook the irregularity, and pass an act of admission. There is no question of its power to do so.

But though it was probably expected that new states would generally be formed from territory belonging to the United States, there was nothing in the constitution to preclude the United States from acquiring new territory from foreign nations, and this has been done to a very large extent. The general understanding has always been, that all such territory shall have suitable territorial governments established for its people, and that eventually states of suitable size and population shall be formed from it. And many new states have already been admitted from the territory thus acquired. In no case, with the possible exception of Alaska, has it been supposed that the territory would remain permanently in a territorial or dependent condition. Such may possibly be the fate of the country just named. It is certain that it has no suitable population at the present time to be entrusted with legislative authority, and that the probability of a self-governing state being formed within its limits, is very remote and uncertain.

For the formation of a new state within the limits of an existing state, we have a precedent in the case of West Virginia. See Virginia v. West Virginia, 11 Wall., 39; Kanawha Coal Co. v. Kanawha Coal, etc. Co., 7 Blatch., 391. The precedent comes from troublous times, and possesses some features which are never likely to present themselves again; but it nevertheless serves to show the operation of the constitutional provision.

In several cases—notably those of Missouri, Michigan and Nebraska—Congress has admitted states to the union subject to a condition to be thereafter accepted by the states. That conditions may thus be imposed will probably not be questioned; but as all new states must come into the union "on an equal footing with the original states," any condition that would preclude this must be inoperative.

The constitution under which any state can be received, must be republican in form. Const. of U. S., Art. 4, § 4.

The territory which the constitution contemplated should be obtained for the seat of government, was afterwards acquired by cessions from Maryland

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and Virginia, and was named the District of Columbia. Over this district, with the exception of a portion, subsequently retroceded to Virginia, Congress exercises all the powers of sovereignty. See Loughborough v. Blake, 5 Wheat., 317, 322; Cohens v. Virginia, 6 Wheat., 264, 424 For a time the district was given a territorial government, but the experiment was not satisfactory, and it was abolished. The executive and administrative authority of the district is now vested in two commissioners appointed by the president.

As the power of exclusive legislation carries with it exclusive jurisdiction (United States v. Cornell, 2 Mass.,60), the states cannot take cognizance of acts done in places acquired by the United States, with the consent of the states, for forts, magazines, arsenals, dockyards and other needful buildings, and the inhabitants of those places cease to be inhabitants of the states, and can no longer exercise any civil or political rights under state laws. Commonwealth v. Clary, 8 Mass., 72; Sinks v. Reese, 19 Ohio St., 306. But it is competent for the United States to acquire lands for its purposes under the eminent domain, without the consent of the states: Kohl v. United States, 91 U. S. Rep., 367; and whenever it acquires or holds territory within the limits of a state without its consent, state jurisdiction is not excluded. People v. Godfrey, 17 Johns., 225. It is common for the states, when ceding jurisdiction of small parcels of territory for national purposes, to reserve authority for the service of state process within them.

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