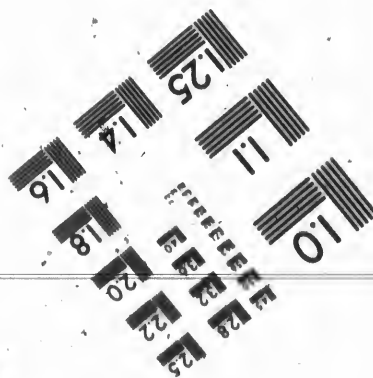
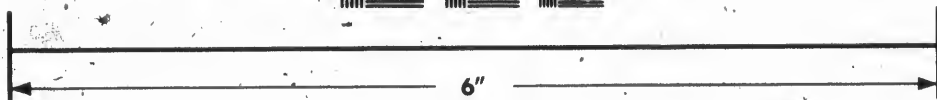
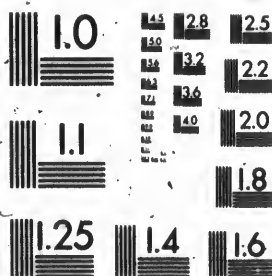


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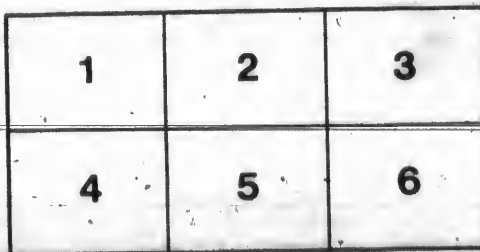
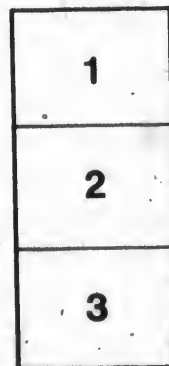
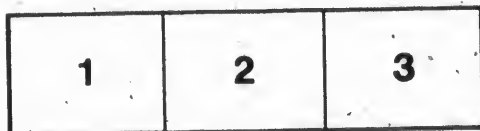
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INDIANA HISTORICAL SOCIETY PAMPHLETS.

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NO. 3.

THE ACQUISITION  
OF LOUISIANA.

By JUDGE THOMAS M. COOLÉY.

INDIANAPOLIS:  
THE BOWEN-MERRILL CO., PUBLISHERS,  
1887.

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# The Acquisition of Louisiana.

An Address delivered before the Indiana Historical Society,  
February 16, 1887.

No theatre of human activity has been more prolific of great and striking events and changes than has the United States of America since independence of the mother country was secured. And of these events three stand out specially prominent, because of their having affected most profoundly the subsequent history. These are the establishment of territorial government under the Ordinance of 1787, the adoption of the Federal Constitution, and the purchase of Louisiana from France. The first was the beginning of the end of slavery on the American continent; the second saved the American States from anarchy and laid enduring foundation for the greatest republic known to history; and the third in its consequences, increased beyond expectation or prophecy the importance of both the others, and gave such direction to the subsequent thought of the people, and led to such marshalling of political forces, that nearly all the leading events of later American history were either traceable to or in some measure shaped or determined by it.

We shall spend no time on this occasion in a consideration of the Ordinance of 1787, so peculiarly interesting to us who were bred under its protection and who are immediate inheritors of its blessings. Neither shall we now discuss the great event which made us a nation, except as to its bearings upon the acquisition of Louisiana, to which alone at this time attention will be directed.

- The discovery of the Western Continent had exposed a new



world of wonderful possibilities to the grasp of the first people who should embrace the opportunity to seize upon it. Its savage inhabitants were neither sufficiently numerous fitly to possess and utilize it, nor sufficiently skilled to be able to defend their occupancy; and the nations of Europe, which appropriated to themselves the designation of civilized, treated the country as derelict, and therefore as falling by right to the first finder. And then began the great race in colonization and settlement, which continued until the tremendous impact of nation with nation in Europe loosened the hold of some while it seemed to tighten the grasp of others, but was all the while preparing the way for that reaction of America upon Europe which before long gave birth to the French Revolution, and for a generation put the peace and industry of the world at the mercy of a gifted but unscrupulous adventurer.

French and Spanish colonization of America were not more remarkable for rapidity and extent than for the complete subjection to the despotic authority which then controlled the two countries respectively. The Spaniards, following the course of the first discoverer, lost no time in possessing themselves of vast but indefinite regions in South as well as North America, while the French, directing their course farther to the North, entered the Gulf of St. Lawrence, and pushing on up the great river of the same name, were soon exploring the vast interior beyond its head-waters, planting here and there, in the most commanding positions, their missions and their trading posts, until at length the Mississippi was reached, upon which also they erected the cross and established trading stations. Every mission and trading post was a military station also, and the whole chain of posts from the mouth of the St. Lawrence to and around the great lakes and down the Mississippi was subject to the principle of absolute obedience to the King and his viceregents, and the whole structure was so imposing in its embodied force, and so completely and immediately available for either aggressive or defensive warfare, that it gave to France in the eyes of the world and of its own King and people a grandeur and apparent strength quite out of proportion to the meagre settlement that had been made under the French flag, and for a long time enabled the French colonial power to carry on a doubtful struggle with the far stronger but less perfectly united and controlled colonies planted by

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the English. But the fall of Quebec struck a death blow to French power in America, and by the treaty of Fontainebleau all the vast region claimed by the French east of the Mississippi, the island of Orleans excepted, was surrendered finally to England. When a little later the struggle came between England and her colonies, the latter were enabled to make good their claim to all the ceded territory south and west of the great lakes, and by the treaty of peace the British claim was relinquished and the few military posts still remaining in British hands were agreed to be surrendered. A vexatious delay afterwards occurred, and the surrender was not completed until after the ratification of Jay's treaty, but the whole North West Territory then came under the beneficent provisions of the anti-slavery ordinance which had previously been put in force.

When the Constitution was adopted there was abundant reason for believing that the institution of slavery would never in the United States rise to any great political importance. The public conscience was not then very sensitive to its wrongs, but enlightened men in all sections opposed it, and the opposition was nowhere more pronounced than in Virginia, whose leading statesmen clearly perceived its political and social evils. The pecuniary interest in it was then small as compared to what it became a few years later; and had not the condition of things greatly changed, it must in time have peaceably passed away, without shock to the Constitutional structure. But when the new cotton machinery had made that crop the most valuable of American staples, new and unanticipated strength was given to the institution, which was wonderfully augmented by the purchase of that vast territory then vaguely known as Louisiana. Of the transcendent importance of that event, aside from the expansion of territory, we get some idea when we reflect that the Missouri Compromise, the Annexation of Texas, the Compromise of 1850, the Kansas Nebraska bill, the Dred Scott case, and at length the civil war, were events in regular sequence, directly traceable to it, not one of which would have occurred without it. The United States of to-day stands as it does in the first rank of nations, strong and self-centered, and without threatening diversity of interest among the states, because Mr. Jefferson, in 1803, without constitutional justification as he then believed, assumed on behalf of the Union to make a purchase of foreign territory. The pur-

chase, therefore, stands out on the pages of history as one of those significant and mighty events that distinguish the epoch of occurrence; not the less significant because of, being accomplished peacefully, and without disturbing the social and industrial state. Events of such transcendent importance seldom occur except as a result of bloodshed and disaster; and the purchase of Louisiana therefore challenges our special attention, not merely from its influence upon subsequent events, but from its unique character. We may well give a brief hour to an inquiry into the circumstances which led up to it, and into the motives under the influence of which it was accomplished. Possibly as we do so we may be conscious of a doubt whether those who were concerned in it were aware at the time of the great part they were playing in the history of the world.

And first, a word regarding the situation.

Settlers in considerable numbers had crossed the mountains into Kentucky and Tennessee while the war of Independence was in progress. With most of them a love of adventure rather than the prospect of gain was the motive; for the woods were full of hostile Indians, and at Detroit the British Commandant Hamilton, with subordinates at Vincennes and Kaskaskia, was vigilant and relentless in directing the savage warfare against the settlements and keeping them in constant alarm. But the country was of such wonderful fertility as to make it quite worth the necessary struggle; and settlement not only went on while the war continued, but the settlers were enabled to make their hostile measures against their British adversaries so effective that when peace came the whole valley of the Ohio was in their hands, and settlement in it was going on with constantly increasing rapidity.

At once it became a question of vital importance how these people were to find avenues of commerce with the outer world. There was no natural highway to the east until the Potomac or the lakes should be reached, and the profitable transportation of agricultural or forest products to market by land was entirely out of the question. The difficulty was so obvious and apparently so insurmountable that the people of the eastern States very generally assumed that the great interior must necessarily be settled slowly, and that a generation or more must pass away before its commerce could be of considerable importance. It was also a preva-

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lent notion that the spread of population over so vast a region would in itself constitute a severe and perhaps fatal test of republican institutions. History it was said did not warrant the belief that popular government could exist for any considerable period except in cities and small districts of territory; and when Fisher Ames said in 1792, "Ages must elapse before our western wilderness will be peopled, and God alone knows how it can be governed," he gave expression to ideas which were common in political circles the world over. There were nevertheless some far-sighted men who read the immediate future more accurately, and who had a faith in the strength and vigor of republican institutions which was not circumscribed within narrow limits, nor disturbed by the lack of historical precedents. Among the most confident of these was Washington, who had from the first appreciated the value of the West to the Union, and who immediately on the successful termination of the Revolutionary war had addressed his thoughts to the subject of a highway for immigration and commerce by means of artificial water communication connecting the Potomac and the Ohio. But his attention was soon drawn away to public matters of more immediate interest, and the projected canal was postponed.

Immigration to the interior must cross the mountains; but the natural highway for commerce was the Mississippi river. If the use of this river were left free, nothing better could be desired. Unfortunately it was not free. The east bank of the river as far south as the north boundary of Florida was the property of the United States, but the west bank, together with the island of Orleans was held by Spain. That power, while conceding to the people of the United States the free navigation of the Mississippi as far down as the American ownership of the left bank extended, claimed exclusive jurisdiction below that line, and proposed to exact customs duties from such American commerce as should pass in or out of the mouth of the river.

This pretension if yielded to would place all that commerce at the mercy of Spain, and render not merely the navigation of the river of little value, but the very land from which the commerce sprung. It was inconceivable that such pretensions should be tolerated if successful resistance were possible, but the settlers were able to combat it on two grounds, either of which seemed, according to recognized rules of international law, conclusive.

FIRST, As citizens of the country owning one of the banks on the upper portion of the stream, they claimed the free navigation to the sea with the privilege of a landing place at its mouth as a natural right; and they were able to fortify this claim,—if it needed support—with the opinions of publicists of acknowledged authority.

SECOND, They claimed under the treaty of 1763 between Great Britain and France, whereby the latter then the owner of Louisiana, had conceded to the former the free navigation of the Mississippi in its whole breadth and length, with passage in and out of its mouth, subject to the payment of no duty whatsoever. Whatsoever rights Great Britain secured by this treaty were secured for the advantage of the people who were to enjoy them, and must therefore have passed with the transfer of dominion to the United States; and whatsoever servitude the Spanish part of the river was subject to when held by France, it must be subject to in the hands of the nation to which France had transferred its jurisdiction.

Thus both in natural right and by treaty concession the claim of the American settlers seemed incontrovertible, and perhaps it may fairly be said that the whole country agreed in this view. When Mr. Jay, while the war of independence was still in progress, was sent to Spain to negotiate a treaty of amity and assistance, he was specially charged with the duty to see that the free navigation of the Mississippi was conceded. All his endeavors to that end, however, resulted in failure, and he was compelled to return home with the American claim still disputed. In 1785 the negotiation was transferred to this country, and Mr. Jay renewed his effort to obtain concessions, but without avail. The tenacity with which Spain held to its claim was so persistent that Congress in its anxiety to obtain a treaty of commerce finally instructed Mr. Jay on its behalf to consent that for twenty-five years the United States should forbear to claim the right in dispute. The instruction was given by the vote of the seven Northern States against a united South; and the action was so distinctly sectional as to threaten the stability of the Union. The southern people were with some reason excited and angry; and the charge was freely made that the North, to secure to itself commercial advantages, had ungenerously and unfairly sacrificed the interest of the South and West. There was enough in the circumstances to make the charge seem altogether plausible; and threats that the dis-

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satisfied people would take redress into their own hands regardless of treaty stipulations were freely indulged in.

In the West the feeling of dissatisfaction was most intense and uncompromising. The settlers of Kentucky already deemed themselves sufficiently numerous and powerful to be entitled to set up a state government of their own, and to have a voice in the councils of the Confederation. It seemed to them, therefore, an insult as well as an injury when their right to the use of their great national highway was thus, and as they believed on selfish grounds, put aside without so much as consulting their wishes or their interests. To waive their right was to check their prosperity; for their lands without it were of little value, and accumulations as a result of their labors and privations would be entirely out of the question. From that time, therefore, the movement for a state government was accompanied and strengthened by a feeling that the settlers beyond the mountains were treated with neglect and contempt by the dominant majority in the Confederacy; so that the influences which drew the settlers together in sentiment, drew them at the same time away from the Union.

In Tennessee as well as in Kentucky settlements had been going on rapidly; and perhaps in the former even more distinctly than in the latter a growing indifference to the national bond was manifest. Serious complaint had been made by the settlers when North Carolina ceded its western lands to the United States; and in 1784 their dissatisfaction rose to a height that impelled them to revolution. The authority of the parent state was repudiated, and the settlers organized a state of their own which they called Franklin, and proceeded to give it officers and enforce their jurisdiction. The likelihood of civil war was for a time threatening; but this strange episode of a revolutionary state peacefully performing its functions was finally after four years tolerance brought to an end, and the state dismantled, through wise measures of conciliation on the part of North Carolina authorities. But the feeling of dissatisfaction with Spanish pretensions remained and continued to grow in intensity; and one of the difficult questions which confronted the new government, formed under the Federal constitution, was how to deal with this feeling and control or remove it. Spanish levies on American commerce were in some cases almost prohibitory, reaching fifty or seventy-

satisfied people would take redress into their own hands regardless of treaty stipulations were freely indulged in.

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five per cent. ad valorem and it was quite out of the question that hardy backwoodsmen trained to arms should for any considerable time submit to pay them. If the national government failed to secure their rights by diplomacy, they would seek redress in such other way as might be open to them.

Five different methods of redress suggested themselves to different minds; and Mr. Martin the historian of Louisiana assures us that parties were to be found in the West who advocated each of them.

I. The West might declare its separation from the Union and the establishment of an independent republic, which would secure protection and at the same time obtain its rights in the Mississippi by entering into a treaty of alliance and commerce with Spain.

II. The country might with the consent of its people be annexed to the province of Louisiana, and Spanish laws and institutions accepted as a lesser evil than federal neglect with existing Spanish oppressions.

III. War might be made upon Spain, and New Orleans and West Florida seized and held by the settlers regardless of federal authority.

IV. Congress might by active and forcible measures compel Spain to yield the privileges and rights which had been refused to negotiation.

V. The settlers might place themselves under the protection of France; soliciting her to procure a retrocession of Louisiana and to extend her protection over Kentucky and the Cumberland settlements.

But while all these various remedies suggested themselves to the minds of the people, it can be safely assumed that a prevailing sentiment existed in favor of the existing connection with the Union, and that redress at the hands of France or Spain was looked to only in the contingency that any other was found to be impracticable.

Among the most prominent of the Kentucky settlers was Gen. James Wilkinson, who had gone there as a merchant in 1784. He was shortly found advocating, though somewhat covertly, the setting up of an independent State Government. In 1787 he opened trade with New Orleans, and endeavored to impress upon the Spanish authorities the importance of an amicable understanding with the settlers in the Ohio valley. His representations for a time had considerable

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effect, and the trade was not only relieved of oppressive burdens; but Americans were invited to make settlements within Spanish limits in Louisiana and West Florida. A considerable settlement was actually made at New Madrid under this invitation. But there is no reason to believe that genuine good feeling inspired this policy; the purpose plainly in view was to build up a Spanish party among the American settlers and eventually to detach them from the United States. But the course pursued was variable, being characterized in turn by liberality and by rigor. Wilkinson appears to have been allowed special privileges in trade, and this together with the fact that he was known to receive a heavy remittance from New Orleans, begat a suspicion that he was under Spanish pay; a suspicion from which he was never wholly relieved, and which probably to some extent affected the judgments of men when he came under further suspicion in consequence of equivocal relations with Aaron Burr. In 1789 a British emissary made his appearance in Kentucky, whose mission seemed to be to sound the sentiments of the people respecting union with Canada. He came at a bad time for his purposes; for the feeling of the country against Great Britain was then at its height, and was particularly strong in the West, where the failure to deliver up the posts within American limits was known to have been influential in encouraging Indian hostilities. The British agent, therefore, met with anything but friendly reception, and found it for his interest to maintain secrecy as far as possible, and to take speedy departure. But the Spanish authorities continued their intrigues, and in 1795, Thomas Powers, an Englishman who had become a Spanish subject, and Don Manuel Gayoso, a brigadier General in the armies of Spain, and then holding the office of Governor of Natchez, were sent on a secret mission to the disaffected settlers. What was done by them was carefully veiled in secrecy, but there is reason to believe that men in high position were ready to listen to their advances. But the putting down of what is known as the Whisky Insurrection in western Pennsylvania and the final defeat of the Indians by General Wayne had greatly strengthened the national sentiment and made treasonable plans proportionately more dangerous; so that this mission also had no result. Meantime Spain had become so far complicated in European wars as to be solicitous regarding the preservation of her own American possessions, then bordered

by a hostile people, and at her suggestion an envoy was sent by the United States to Madrid, with whom in October 1795 a treaty was made whereby among other things it was agreed that Spain should permit the people of the United States for the term of three years to make use of the port of New Orleans as a place of deposit for their produce and merchandise, and to export the same free from all duty or charge except for storage and incidental expenses. At the end of the three years the treaty contemplated further negotiations, and it was hoped by the American authorities that a decisive step had been taken towards the complete recognition of American claims.

The treaty, however, was far from satisfying the people of Kentucky and Tennessee, who looked upon the assent of Spain to it as a mere makeshift for the protection of her territory from invasion. Projects for taking forcible possession of the mouth of the Mississippi continued therefore to be agitated. In 1798 after the admission of Tennessee to the Union, William Blount, one of its Senators, was expelled from the Senate on the charge of conspiring to set on foot an expedition against the Spanish American possessions, but his punishment only made him more popular than ever in his own State, and he was likely to be chosen Governor as a mark of their approval had not his death occurred before the time of election.

It is evident that this state of affairs continually boded mischief, and the difficulty of preserving friendly relations with Spain was greatly increased by the existence of European wars in which that power was involved.

The schemes of Don Francisco de Miranda for the overthrow of Spanish authority in America now became important. Miranda was of Spanish-American birth, and had been in the United States while the war of Independence was pending and formed acquaintance among the American officers. Conceiving the idea of liberating the Spanish colonies, he sought assistance from England and Russia, but when the French Revolution occurred he enlisted in the French service and for a time held important military positions. Driven from France in 1797 he took up his old scheme again, looking now to England and America for the necessary assistance. Several leading American statesmen were approached on the subject, Hamilton among them; and while the relations between France and the United States seemed

likely to result in war, that great man, who had no fear of evils to result from the extension of territory, listened with approval to the project of a combined attack by British and American forces on the Spanish Colonies, and would have been willing with the approval of the government, to personally take part in it. President Adams, however, frowned upon the scheme, and it was necessarily but with great reluctance abandoned.

And now occurred an event of highest interest to the people of the United States. Spain aware of her precarious hold upon Louisiana, in 1800 retroceded it to France. The country thus passed from a weak nation to a strong one; from a people to whose enmity Americans would be comparatively indifferent, to another that in our extremity had been our friend and ally, and with whom we had just been arranging unpleasant controversies, and would not willingly have new difficulties opened. Mr. Jefferson was deeply stirred when he learned of it and foreboded only evil from France possessing itself of the mouth of the Mississippi. - He immediately addressed a letter to Mr. Livingston the American minister at Paris, in which in strong terms he expressed his anxiety. The retrocession he said, "completely reverses all the political relations of the United States, and will form a new epoch in our political course." "France," he went on to say, "we have ever looked to as our natural friend; as one with which we could never have an occasion of difference." But France, placing herself at the door of our interior commerce, "assumes to us the attitude of defiance. Spain might have retained it quietly for years. Her pacific disposition, her feeble state, would induce her to increase our facilities there, so that her possession of the place would be hardly felt by us, and it would not perhaps be very long before some circumstance might arise which might make the cession of it to us the price of something of more worth to her. Not so can it ever be in the hands of France; the impetuosity of her temper, the energy and restlessness of her character, placed in a point of eternal friction with us, and our character, which, though quiet and loving peace and the pursuit of wealth, is high minded, despising wealth in competition with insult and injury, enterprising and energetic as any nation on earth; these circumstances render it impossible that France and the United States can long continue friends when they meet in so irritable a position." The consequence which he fore-

saw was the forcing of America into the arms of Britain. "This is not a state of things," he said, "we seek or desire. It is one which this measure, if adopted by France, forces on us, necessarily as any other course, by the laws of nature, brings on its necessary result." In this change of friends, America will be compelled to embark in the first war of Europe, and "in that case France will have held possession of New Orleans during the interval of a peace, long or short, at the end of which it would be wrested from her."

It is plain from this letter that Jefferson believed an emergency had arisen which made the acquisition of Louisiana by the United States imperative. The country in the hands of France made that power our continual antagonist, and almost certain enemy. Our oldest friend and ally would thus be lost to us, though her interests in other respects were such as ought to insure the most useful relations and the most amicable intercourse. But while losing France we should at the same time be thrown into the arms of our old enemy England, our natural, most persistent and unscrupulous competitor in the markets of the world. England it might be assumed would not hesitate to take any possible advantage of the situation which would benefit herself, and the political independence which with so much expense of life and treasure had been secured, would under such circumstances fail to establish the commercial independence which was necessary to make it of much value. And it is not unlikely that Mr. Jefferson contemplated the contingency that the West, irritated by the failure of the general government to give full protection to a natural right of transcendent importance, as was the navigation of the Mississippi, might undertake to throw off its allegiance, and either to set up a government of its own, or to become a dependency of France or England. The probability of such an attempt was not so great as it had been a few years before, but it was certain that while the mouth of the Mississippi was thus held by a strong and aggressive power, the possession must constitute to some extent a menace to American unity as it did also to American commercial independence.

Mr. Jefferson with his partiality for France could be expected to give no countenance to any scheme for the acquisition of Louisiana that was not amicable, or that did not contemplate fair compensation. But a difficulty here presented itself to his mind which at first blush would appear insur-

mountable. The Constitution which was the measure of national powers did not in terms confer upon the Federal government the power to acquire foreign territory. It gave to Congress the power to make regulations for the territory and other property of the United States, but the territory intended was evidently that which then belonged to the Union. It also contemplated the admission of new states to the Union; but this also had in view the territory then possessed by the United States and the possible division of it into new states. These provisions had therefore abundant subject matter on which to operate without looking to an enlargement of the bounds of the Union, and nothing in the debates of the Constitutional Convention indicated an expectation on the part of its members that any such enlargement would take place. Mr. Jefferson belonged to the school of strict construction, and was in fact its leader and apostle. He had found himself in opposition to the administration of Washington on some very important measures whose constitutionality was only to be sustained on an assumption of implied powers, and by the defeat of Mr. Adams he had been elevated to the presidency as the exponent of the anti-federal views. But under a construction of the Constitution as strict as he had been insisting upon, it was plain that the government would have no power to acquire foreign territory by purchase, and that any attempt in that direction would be usurpation.

The case presented then was one in which something important to the peace and welfare, perhaps to the very perpetuation, of the Union, could not be accomplished under the Constitution because the necessary power had not been conferred upon the general government for the purpose. To give the necessary authority an amendment of the Constitution would be essential, and amendment would be a slow process which might not be accomplished in time to meet the emergency. The case would be complicated by the fact that if the territory was acquired a considerable population would be brought into the Union and thus made citizens by a process of naturalization not contemplated by the Constitution. Mr. Madison, the Secretary of State, agreed with the President in his views. To use Mr. Jefferson's words, "The Constitution has made no provision for our holding foreign territory; still less for incorporating foreign nations into our Union." But under circumstances so imperative he thought the political departments of the government

should meet the emergency by consummating the purchase, and "then appeal to the nation for an additional article in the Constitution approving and confirming an act which the nation had not previously authorized." He did not conceal from himself, however, that in so doing ground would be occupied which it would be difficult to defend, and he proceeds to say: "The less that is said about any constitutional difficulty the better. Congress should do what is necessary in silence. I find but one opinion as to the necessity of shutting up the Constitution for some time." Mr. John Quincy Adams held similar views, and, as he says in his diary, "urged the necessity of removing as speedily as possible all question on the subject." This could only be done in the mode proposed by Mr. Jefferson; that is to say by amendment.

But it is difficult to conceive of any doctrine more dangerous or more distinctly antagonistic to the fundamental ideas of the American Union than the doctrine that the Constitution may be "shut up" for a time in order that the government may accomplish something not warranted by it. The political immorality was obvious and glaring; more so in the case of the apostle of strict construction than it could have been if advanced by any other statesman of the day. But by whomsoever advanced, it was intrinsically demoralizing, for it suggested to the public mind that officers deriving all their authority from the Constitution might at pleasure set it aside whenever a supporting majority of the people was obtainable. This was to put the temporary majority above the Constitution; to deprive that instrument of all restraining and conservative force; to make the official oath to support the Constitution a meaningless formality; and to deprive the fundamental law in the popular as well as the official mind of all sense of sanctity. In a monarchy the "divinity that doth hedge a King" will commonly support his throne with an active and reverent sentiment of loyalty. In a republican government a corresponding sentiment must concentrate upon the Constitution as the true representative of sovereignty, which, because it is such representative, is to be with unhesitating and patriotic regard held sacred and inviolable. Such a sentiment when it exists is a vital force of great and saving power in the government; but it can grow up only when the Constitution is habitually observed, and when it is seen to restrain the governing majority as

it does those who for the time constitute the smaller and weaker party. Mr. Jefferson, therefore, struck a dangerous blow at the foundation principles of the government, and offered to demagogues who should come after him a corrupting and dangerous precedent, when he proposed to violate the Constitution in order to accomplish an object of immediate desire. And it was quite immaterial that the object to be accomplished appeared to be of great importance and urgency: party measures commonly appear such to party leaders, and the plea is one that can always be advanced and will be found as available in one case as in another if popular support can be gained for it.

But Mr. Jefferson's political mistake was scarcely greater than that committed by his opponents: and indeed from a party standpoint it was no mistake whatsoever, but a bold measure of wise policy. He rightly judged that the purchase would meet with popular approval and would strengthen his administration and his party. If this proved to be the case the political wrong would be condoned by the popular voice even though it would stand as a dangerous precedent. But the purchase, according to the Federal view of the Constitution was perfectly legitimate. That instrument had given to the Federal Government complete control of the foreign relations of the states, and vested it with the powers of sovereignty in respect to them as completely as they were possessed by any other power on the globe. If, therefore, any other power might acquire territory by purchase or otherwise, the United States must possess the competency to do so. This, according to the Federal construction of the Constitution was clear and unquestionable. If the express authority were not given, the power was nevertheless to be implied from the complete grant of sovereignty in respect to the general subject: otherwise, as the states were deprived by the Constitution of all participation in diplomatic intercourse, the extraordinary spectacle would be exhibited of a great nation so hampered and tied up by its internal regulations that in no emergency, however great or imperative, could it deal with another for the acquisition of territory: for a spot even for a fortress or a light-house, or for an indispensable passage way. This was at war with the doctrine which the Federalists had advocated from the first. According to their construction of the Constitution the government had been invested by it with complete powers of





sovereignty over all the subjects entrusted to it, except as express restrictions were imposed. A Federalist therefore, might very well regard with satisfaction the purchase of Louisiana, since it could only be lawfully made in recognition of the federal doctrine of implied national powers. He might also be pleased with it because it must tend greatly to strengthen the national authority, which had been an important object of federal policy from the time the government was organized. Mr. Gouverneur Morris, one of the most consistent and able of the Federalist leaders, saw this very plainly, and gave strong approval to the purchase. Hamilton saw it with equal distinctness. He had never had any fears of evils to spring from territorial expansion, and he had little patience with the disposition the Federalists now exhibited to fall back on a strict construction of the Constitution and embarrass the Government with scruples as to power. "It will never do," he said, "to carry the morals of a monk into the cabinet of a statesman." No doubt he agreed in the view expressed by John Quincy Adams a little later that the purchase was "an assumption of implied powers greater in itself and more comprehensive in its consequences than all the assumptions of implied powers in the twelve years of the Washington and Adams administrations put together." But this was of no moment if the act was wise in itself and warranted by the Constitution, and of the wisdom of the acquisition he took the same broad and enlightened view which was expressed by Franklin to Jay in 1794 when in answer to a suggestion that we should concede to Spain its claims he said: "I would rather agree with the Spaniards to buy at a great price the whole of their right on the Mississippi than sell a drop of its waters. A neighbor might as well ask me to sell my street door."

The purchase was accomplished with popular approval. LaFayette justly called it a "blessed arrangement for Louisiana," and wrote to Edward Livingston brother to the minister, "With all my heart I rejoice with you on this great negotiation." But the Federalists in general took narrow and partisan views, and in order to embarrass the administration resorted to quibbles which were altogether unworthy the party which had boasted of Washington as its chief and Hamilton as the exponent of its doctrines. First, they questioned the validity of the title which France assumed to convey, and which they claimed was hampered by conditions

in the Spanish transfer: an objection which properly belonged to Spain herself to raise if it had any force. Second, they objected that in the purchase it was agreed that the inhabitants of the acquired territory should be clothed with the rights of citizenship, whereas the constitution vested the power to naturalize exclusively in Congress. But if the power to acquire the territory existed this objection was without merit since the power to confer citizenship upon the people must be incidental. Third, they complained that the acquisition added greatly to the presidential patronage: the last objection that a Federalist, anxious to strengthen the national authority, could consistently raise. And besides other objections which were mere cavils, they claimed that the boundaries of Louisiana were wholly uncertain and undefined, so that it was impossible to say what we had purchased. This last objection was based in fact. No one could say what was the south west boundary of the territory acquired; whether it should be the Sabine or the Rio del Norte; and a controversy with Spain on the subject might at any time arise. The northwest boundary was also somewhat vague and uncertain, and would be open to controversy with Great Britain. The territory extended west to the Rocky Mountains was not questioned, but it might be claimed that it extended to the Pacific. An impression that it did so extend has since prevailed in some quarters, and in some public papers and documents it has been assumed as an undoubted fact. But neither Mr. Jefferson nor the French, whose right he purchased, ever claimed for Louisiana any such extent and our title to Oregon, has been safely deduced from other sources. Mr. Jefferson said expressly, "To the waters of the Pacific, we can found no claim in right of Louisiana."

But the Federal leaders did not stop at cavils; they insisted that the unconstitutional extension of territory was in effect a dissolution of the Union, so that they were at liberty to contemplate and plan for a final disruption. Mr. Timothy Pickering, Mr. Roger Griswold and Mr. Josiah Quincy were particularly outspoken in this regard. They saw in this vast acquisition of western territory the final overthrow of the Federal party, the triumph of Democratic ideas, the destruction of the conservative influence of New England in the nation, and the impoverishment of their section by the transfer of population and enterprise to the west

and south. But their fears were as extravagant as their policy was short sighted and suicidal. Even in their own section of the Union their bitter complaints fell on deaf ears, and they blows they aimed at Mr. Jefferson, while failing to harm him, from their very violence recoiled destructively upon the party they assumed to lead. Mr. Jefferson, as president, it is plain to be seen, now, committed some serious mistakes, but none of them so great, in a party point of view, as the mistake of the Federalists in opposing the acquisition of Louisiana. That party, though still, for a time, possessing considerable vitality, was never again able to make hopeful contest for the government of the country. From 1800 to 1814 its partyism was stronger than its patriotism, and it justly suffered the penalty.

Briefly now, we direct attention to such subsequent events of importance as connect themselves directly with the Louisiana purchase.

I. When the purchase was accomplished the parties concerned in it troubled themselves no more with scruples respecting the want of constitutional power. The purchase was a finality, and if made without authority, it was nevertheless made and could not be undone. A constitutional amendment might affirm it, but it needed no affirmation for its protection, and the only advantage in having one would be to quiet doubts and remove scruples. But when the Federalists came to make profession of scruples, Mr. Jefferson and his friends from party antagonism, found their own scruples growing weaker, and very soon ceasing to trouble them. The more vigorously the Federalists cried out against the violation of the Constitution, the more complaisant the Republicans became, and the less disposed to question the original justification. The annexation of the territory was therefore accepted as a legitimate exercise of constitutional authority, and it settled for all time the question of power. It established a precedent which was certain to be followed whenever occasion should invite it, and it would be vain to contend that the Constitution did not sanction what had thus with public approval been so successfully accomplished.

II. The purchase also tended to strengthen very greatly the federal power. This was not merely because it created new offices and demanded considerable expenditure of public money, but also because it constituted an exercise of implied powers, most important in their nature, by the party

that up to that time had contended against them. It was vain afterwards, for that party or any other to contend that the federal government must limit itself to the powers expressly granted.

In theory there might still be a party of strict construction, but it was certain that theory would easily yield to policy, when circumstances appeared to justify it, and it has repeatedly yielded from time to time, from that day to this.

But though the method of settlement of a constitutional question by exercising a power which the actors asserted had no constitutional basis, was of itself indefensible, the settlement actually made was just and right. Mr. Jefferson's scruples on the subject were wholly unwarranted. It was not the intention in forming the constitution that the government of the Union, in dealing with international questions, should have any less than the same complete authority which is possessed by other independent governments, or that it should be precluded under any circumstances from recognizing and acting upon such motives of necessity and of supreme policy as may be recognized and acted upon by others. In fact, the President's scruples were born of party contention; and we may well believe that reflection brought to his mind a conviction of their baseless nature.

III. But this practical settlement of the question of constitutional power did not heal the wound the Constitution received when the chief officer holding office under it, advised the temporary putting it aside, and secured the approval of his advice by a numerical majority of the people.

It is immaterial that as we look back upon his work we can see that what he did was not *ultra vires*: the poison was in the doctrine which took from the Constitution all sacredness, and made subject to the will and caprice of the hour, that which, in the intent of the founders, was above parties, and majorities, and presidents, and congresses, and was meant to hold them all in close subordination. After that time the proposal to exercise unwarranted powers on a plea of necessity might be safely advanced without exciting the detestation it deserved; and the sentiment of loyalty to the Constitution was so far weakened that it easily gave way under the pressure of political expediency. Very few persons when rebellion broke out were restrained from engaging in it by reverence for the Constitution; and on the part

of the Union, so long as hostilities lasted, usurpations, by military and civil officers were popularly justified by the strange paradox that it is right to violate the constitution when the purpose is to save it. There is something specious about such a doctrine, but the liberty it allows might satisfy the most reckless fanatic or anarchist; for it gives unbridled license, and leaves every man to judge for himself of the times and occasions when he will elevate his own discretion above that great charter of national unity, which, if sacredly preserved and defended, will make the freest government in the world the strongest and most conservative.

IV. The acquisition of Louisiana gave occasion for such contests over the institution of slavery as at several periods brought the Union to the verge of disruption, and at last led to civil war. From the first there was a party which contended that Louisiana was bought to give room for an extension of slavery, or, that if that was not the motive, the purchase gave the opportunity for such extension and for a predominating influence of the South and West in the Union. The admission of new states formed from the purchase was therefore contested on the ground that the original acquisition, being unwarranted by the Constitution, the territory could not be considered the property of the United States for the purpose of forming new states from it. The Hartford Convention which met in the most gloomy period of the last war with Great Britain made the admission of new states in the West one of its grounds of complaint against the general government, an absurd complaint if the purchase of Louisiana was justifiable. But the more serious contention arose when the State of Missouri applied for admission to the Union, with a constitution framed to perpetuate slavery. The alarm which this created was aptly compared to a fire bell in the night time, which, while announcing a real terror, excites the imagination with others which are unknown and indefinite and for that very reason more fearful. The great compromise effected under the leadership of Mr. Clay quieted the alarm for the time, but it did so at the cost of a line of distinct demarcation between free and slave territory in the Great West; a line which constituted a perpetual reminder of antagonistic interests, and for that reason was in itself a standing menace to unity. The sentiment of patriotism henceforward gradually took on something of a sectional character, and public measures were ad-

vocated or antagonized according as it was supposed that in the end they would strengthen or weaken a section.

To follow in detail the successive events which were alluded to in the early part of this paper would be to rehearse a story already so often told as to have become somewhat monotonous and tiresome. The acquisition of Texas; the war with Mexico; the unexpected results of that war in strengthening the free rather than the slave-holding section of the Union; the advancement of the doctrine of squatter sovereignty, or as Gov. Wise, of Virginia, aptly phrased it, of what squatter with arms in his hands shall be sovereign; the compromise of 1850 entered into to save a Union then in imminent peril of disruption; the extra-judicial declaration of the Federal Supreme Court that Congress is without power to legislate against slavery in the territories; the *quasi* civil war in Kansas which prepared the way for the mighty struggle of which the gage was national life; the great revolution in the prevalent system of labor in half the Union: these were events the story of which will be told and retold "to the last syllable of recorded time;" but we shall not dwell upon them here, for the bitter controversies which attended still rankle in many minds, and we gladly turn away from them to contemplate with patriotic satisfaction a Union of mighty states purified and perfected in the great tribulation which made the people homogeneous.

We have said that the Ordinance of 1787 was the beginning of the end of American slavery. In the great North West was then witnessed the first triumph over that mighty institution recognized at the time alike by Christians, Mohammedans and heathen; and which inside the union of states antagonized their fundamental principles. We stand here on historic ground. We do not forget that there were slaves held here as well as elsewhere in the country; slaves under the provisions of the treaty with France whereby Canada was surrendered, and also under the treaties between the United States and Great Britain; but the people of Indiana and of the country at large can never be too grateful that when in their days of pioneer hardship the early settlers asked relief from the prohibition of bond service, a patriotic Congress denied the request, and held firmly to the original compact. If ever that extraordinary character, John Randolph, exhibited qualities of true statesmanship, it was when, resisting all solicitations, and all sectional and local influ-

ences, he refused to be a party to the suspension of the Ordinance of 1787 and declared it "highly dangerous and inexpedient to impair a provision wisely calculated to promote the happiness and prosperity of the Northwestern country, and to give strength and security to that extensive frontier." It was well said by him in addition that "in the salutary operation of this sagacious and benevolent restraint it is believed that the inhabitants of Indiana will at no very distant day find ample remuneration for a temporary privation of labor and emigration." Ample indeed! What the people asked for was permission to build into the structure of the social and civil state an insidious evil that must inevitably sap the energies of the people and corrupt the morals of society. Randolph forced them to be content with a blessing when in their blindness they would willingly have bound themselves to a curse. Possibly the eccentric Virginian who at a later day denounced in such severe and cutting terms the slave trade in the District of Columbia may have already perceived the great truth and rejoiced in knowing that freedom once securely planted in the heart of the country must in time by inherent energy expand and strengthen and subdue and possess until from ocean to ocean it held in safe embrace the Continent.

Thus briefly have we endeavored to picture the great event which so vastly expanded the territory and so profoundly affected the destiny of the republic. Its benefits to the country have been too great and too numerous to be placed before the mind by enumeration or estimate.

In congratulating ourselves upon these we have not thought it unwise or impertinent to emphasize the incidental evils which may spring from teaching the people that the fundamental law may be silenced in supposed emergencies. If there be any peculiar excellence in the American Constitutional System it must be found in the fact that the tendencies as well to usurpation as to license are held in close restraint by a law that never ceases to give effective command, and upon which we may all repose in trust and confidence. If a great political party may excuse the overriding of the constitution for one purpose, a riotous mob may do so for another, and at last comes the anarchist, who, perceiving that others are a law unto themselves, boldly repudiates all law, human and divine, and lays murderous hands upon society and civilization. It is of the essence of freedom that

sometimes it shall breed excesses; but if curbed by a sentiment of loyalty to the constitution, the excesses will seldom be serious, and we may justly expect that the great republic of the new world will yet as far surpass all others in solidity and duration as it does now in the liberty it ensures to its people. But to render certain a result so beneficent it is essential that we yield to the constitution no divided allegiance, and that however great may seem to be any existing emergency, the party or sectional aims that are involved shall be subdued and subordinated to the higher demands of a broad and conservative patriotism.



