WHAT LESSONS MAY BE DERIVED BY THE PHILIPPINE ISLANDS FROM THE LEGAL HISTORY OF LOUISIANA

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PREFACE

The roots of the present lie deep in the past. There is no part of human knowledge so generally useful as that which relates to the history and progress of human institutions. And naturally so, because history is the golden repository of the past, the fountain-head of education, of knowledge. History is the mother of truth, whose luminous and resplendent luster will serve to guide and inspire the conduct of the individual and the life and aspirations of all peoples, countries, and nations. Indeed, is not the Federal Constitution of the United States which stands solitary and unique as "the greatest document ever struck off at a given time by the brain and purpose of man," the product of experience, the necessary and legitimate result of that great and memorable struggle for independence against England for the recognition and enjoyment, nay, perpetuity of English rights and liberties—a struggle which forms an integral part and constitutes but a small portion of the world's colonial and constitutional history? Are not the Christian, the humanitarian, the present educational and religious institutions of the world, the necessary sequel of human progress, prosperity, and civilization, wrought under the guiding influence of history? The sublimity of history needs no further postulation. What is today the civilized world is not the spontaneous growth and creation of time, but the outcome of the slow and gradual but great process of evolution whose constant formula is towards the advancement of mankind from its primitive and present conditions to higher physical, moral, and intellectual levels. And what is evolution but in a sense history, and what is the history of evolution but the history of humanity? The writer, in humbly undertaking to write on the subject—What Lessons May be Derived by the Philippine Islands from the Legal History of Louisiana—has, as a matter of course, dealt rather extensively with the complicated history, systems, stages, and development of the jurisprudence of the State of Louisiana—and in thus attempting the presentation of what may be called a great accumulation

of historico-legal facts, he contemplates the possibility that, history being, in the words of Lord Bolingbroke, philosophy teaching by examples, (1) the Philippine Islands may profit by the example of the State of Louisiana at this momentous period of her legal transition, and (2) certain constitutional principles and principles of legislation which evolved from a long and intricate process of the history of Louisiana may sooner or later be applied and put to experimental test in the Philippine Islands. The history, however, of the jurisprudence of a country is so closely related and knit with the history, customs, traditions, and institutions of that country that, for a clear and thorough understanding of that country's laws, well-grounded familiarity with her national history in all its phases is necessary. A comparative study of the Philippine and Louisiana laws being also necessary for the clear determination and exposition of those "lessons which may be derived by the Philippine Islands from the legal history of Louisiana," the subject requires that the author should be familiar with the Philippine jurisprudence and laws. The Philippine Islands and the State of Louisiana being once territories or possessions of Spain over which the Spanish laws held sway, the nature of the subject demands furthermore that the author should be acquainted with the general history and development of the Spanish laws.

As may be seen, the subject covers a vast field of research and investigation worthy to be treated by the subtle and consummate mind rather than by the limited range of the mental powers of the student who is yet to complete the studies preparatory to entrance upon his professional career. The author, therefore, will not pretend to have here laid and discussed all the lessons that could *possibly* be derived by the Philippine Islands from the legal history of Louisiana.

In the treatment of the subject there are two lessons which, in the mind of the author, may be learned by the Philippine Islands from the legal history of Louisiana, to wit:

1. Lesson predicated upon the acquisition by, and subsequent incorporation into, the United States of the present State of Louisiana; and

2. Lesson to be learned from the history of Louisiana jurisprudence proper.

THE AUTHOR.

PART ONE

Lesson to Be Derived by the Philippine Islands from the History of Acquisition by, and Incorporation into, the United States, of the State of Louisiana:

THE PHILIPPINE ISLANDS CAN, LEGALLY AND CONSTITUTIONALLY, BE MADE A STATE OF THE AMERICAN UNION

"Of course, born and reared under the tender care of this, our mother country, and a living witness to her now past misfortunes and struggles against the tyranny and despotism of Spain, the author would much prefer to see the Philippine Islands serving an apprenticeship to liberty, taught the lessons of freedom, by degrees raised to the enjoyment and practice of independence, and ultimately brought to light as an independent and forever-free 'Pearl of the Orient,' trained in the knowledge of her own laws and institutions, than for her personality to be absorbed, her laws, customs, and traditions forgotten, consequent upon her becoming a State of the American Union." (pp. 25-26)

EARLY HISTORY OF LOUISIANA

The early history of Louisiana belongs to the romance of American history. The region known as the territory of Louisiana was originally a French colony, having been taken possession of by Robert Cavalier de la Salle, and named by him "Louisiana" in honor of the then King of France, Louis XIV. From 1712 to 1717, Louisiana was held by Antoine Crozat under a private grant from the King until the time it was granted to the Western Company under the control of John Law. In 1731 Louisiana was declared a royal province. In 1763 France by the Treaty of Paris surrendered to Great Britain all her territory east of the Mississippi except New Orleans, and the adjacent district. On the same day, by a secret treaty, France ceded to Spain all the rest of her territory in America. On October 1, 1800, Napoleon made a secret treaty with Spain by which Louisiana was restored to France, with its former boundaries. (Encyclopedia Britannica, Vol. XVII, p. 59 *et seq.;* Appleton's Practical Cyclopedia, Vol. IV, pp. 114-115; History for Ready References and Topical Reading, Vol. III, pp. 2088-2096; Harper's Encyclopedia of the United States, Vol. II; Martin, History of Louisiana; Gayarre, History of Louisiana; Hosmer, The History of the Louisiana Purchase.) And on October 30th, 1803, took place the

ACQUISITION OF THE TERRITORY BY THE UNITED STATES

From the time of the first settlement in the valley of the Mississippi and its tributaries, the importance of the river as a means of transportation to the seaboard, and the almost absolute necessity of possessing the country about its mouths, were recognized by the United States. As settlements increased in the valley and spread down the river, and as the hostile policy of Spain became more and more plainly developed, the feeling of the settlers became stronger against the restrictions of the Spanish Government. This restriction became intolerable to the large number of immigrants who were leaving the Eastern States to settle in the fertile valley of that river and its tributaries. After several futile attempts to secure the free navigation of that river by treaty, advantage was taken of the exhaustion of Spain in her war with France, and a provision inserted in the treaty of October 27, 1795, by which the Mississippi River was opened to commerce of the United States (85 Stat. 138, 140, Art. IV). In October, 1800, by the secret treaty of San Ildefonso, Spain retroceded to France the territory of Louisiana. This treaty created such a ferment in the United States that James Monroe was sent as a minister extraordinary with discretionary powers to co-operate with Livingston, then minister to France, in the purchase of New Orleans, for which Congress appropriated $2,000,000. To the surprise of the negotiators, Bonaparte invited them to make an offer for the whole of Louisiana at a price finally fixed at $15,000,000. (See opinion of Justice White in Downes vs. Bidwell, 182 United States 251; Encyclopedia Britannica, Vol. XV, 11th Ed.—Louisiana, History, p. 22; Moore, International Law Digest, Vol. I, pp. 433-439, History for Ready References and Topical Reading, Larned, Vol. III, pp. 2092-2093, Chambers Encyclopedia, Vol. VI, p. 203, Harpers

Encyclopedia of the United States, Vol. V, pp. 481-487.) The territory ceded to the United States, as composing the Colony of Louisiana, covered the entire area west of the Mississippi River, from its source to its mouth, and lying between the Mississippi on the east, the southern boundary of British America on the north, the Rocky Mountains on the west, and an irregular and ill-defined boundary line running from the northwest corner of Texas, first, in an easterly direction, and then south along the Sabine River to its mouth. There was, also, included what was called the Isle of Orleans, an irregular wedge-shaped tract of land, bounded on the west, for about 200 miles, by the Mississippi River, on the south by the Gulf of Mexico, on the east by Pearl River and Lakes Pont-chartrain and Maurepas, and on the north by the Iberville River, running from the Mississippi into the northwest of Lake Maurepas. (Encyclopedia Britanica, Vol. XV, 11th Ed.—Louisiana, History.)

The following message of October 17, 1803, sent by Thomas Jefferson, then President of the United States, to the Senate and House of Representatives, summarizes the circumstances and causes leading to the ultimate acquisition of the territory of Louisiana by the United States:

"To the Senate and House of Representatives of the United States:

"In calling you together, fellow-citizens, at an earlier day than was contemplated by the act of the last session of Congress, I have not been insensible to the personal inconveniences necessarily resulting from an unexpected change in your arrangements. But matters of great public concernment have rendered this call necessary, and the interest you feel in this will supersede, in your minds, all private considerations.

"Congress witnessed, at their late session, the extraordinary agitation produced in the public mind by the suspension of our right of deposit at the port of New Orleans, no assignment of another place having been made according to treaty. They were sensible that the continuance of that privation would be more injurious to our nation than any consequence which could flow from any mode of redress; but, reposing just confidence in the good faith of the Government whose officer had committed the wrong, friendly and reasonable representations were resorted to, and the right of deposit was restored.

"Previous, however, to this period we had not been unaware of the danger to which our peace would be perpetually exposed whilst so important a key to the commerce of the western country remained under a foreign Power. Difficulties too were presenting themselves as to the navigation of other streams, which arising within our territories, pass through those adjacent. Propositions had therefore been authorized for obtaining, on fair conditions, the sovereignty of New Orleans, and of other possessions in that quarter, interesting to our quiet, to such extent as was deemed practicable; and the provisional appropriation of two millions of dollars, to be applied and accounted for by the President of the United States, intended as part of the price, was considered as conveying the sanction of Congress to the acquisition proposed. The enlightened Government of France saw, with just discernment, the importance to both nations of such liberal arrangements as might best and permanently promote the peace interests, and friendship of both; and the property and sovereignty of all Louisiana, which had been restored to them,

has, on certain conditions, been transferred to the United States, by instruments bearing date the 30th of April last. When these shall have received the Constitutional sanction of the Senate, they will, without delay, be communicated to the Representatives for the exercise of their functions, as to those conditions which are within the powers vested by the Constitution in Congress. Whilst the property and sovereignty of the Mississippi and its waters secure an independent outlet for the produce of the Western States, and an uncontrolled navigation through their whole course free from collision with other Powers, and the dangers to our peace from that source, the fertility of the country, its climate and extent, promise in due season, important aids to our Treasury, an ample provision for our posterity, and a wide spread for the blessings of freedom and equal laws.

"With the wisdom of Congress it will rest to take those ulterior measures which may be necessary for the immediate occupation and temporary government of the country; for its incorporation into our Union, for rendering the change of government a blessing to our newly adopted brethren; for securing to them the right of conscience and of property; for confirming to the Indian inhabitants their occupancy and self-government, establishing friendly and commercial relations with them and for ascertaining the geography of the country required. Such materials for your information relative to its affairs in general, as the short space of time has permitted me to collect, will be laid before you when the subject shall be in a state for your consideration * * * "

On October 20th, 1803, the following treaty referred to in the above communication, was ratified by the Senate of the United States[1]:

"TREATY WITH FRANCE FOR THE CESSION OF LOUISIANA.

"The President of the United States of America, and the First Consul of the French Republic, in the name of the French people, desiring to remove all source of misunderstanding relative to objects of discussion mentioned in the second and fifth articles of the convention of the 8th Vendemiaire, *an* 9 (30th of September, 1800) relative to the rights claimed by the United States, in virtue of the treaty concluded at Madrid, the 27th of October, 1795, between his Catholic Majesty and the said United States, and willing to strengthen the union and friendship which at the time of the said convention was happily re-established between the two nations, have respectively named their Plenipotentiaries, to wit, the President of the United States, by and with the advice and consent of the Senate of the said States, Robert R. Livingston, Minister Plenipotentiary of the United States, and James Monroe, Minister Plenipotentiary and Envoy Extraordinary of the said States, near the Government of the French Republic; and the First Consul, in the name of the French people, Citizen Francis Barbe Mabois, Minister of the Public Treasury, who, after having respectively exchanged their full powers, have agreed to the following articles:

ARTICLE I.

"Whereas by the article the third of the treaty concluded at St. Ildefonso, the 9th Vendemiaire, *an* 9 (1st of October, 1800) between the First Consul of the French Republic and his Catholic Majesty, it was agreed as

1. The two conventions of same date are omitted.

follows: 'His Catholic Majesty promises and engages on his part, to cede to the French Republic, six months after the full and entire execution of the conditions and stipulations herein relative to His Royal Highness the Duke of Parma, the colony or province of Louisiana, with the same extent that it now has in the hands of Spain, and that it had when France possessed it, and such as it should be after the treaties subsequently entered into between Spain and other States.' And whereas, in pursuance of the treaty, and particularly of the third article, the French Republic has an incontestible title to the domain and to the possession of the said territory: The First Consul of the French Republic desiring to give to the United States a strong proof of his friendship, doth hereby cede to the said United States, in the name of the French Republic, forever and in full sovereignty, the said territory, with all its rights and appurtenances, as fully and in the same manner as they have been acquired by the French Republic, in virtue of the above-mentioned treaty, concluded with His Catholic Majesty.

ARTICLE II.

"In the cession made by the preceding article are included the adjacent islands belonging to Louisiana, all public lots and squares, vacant lands, and all public buildings, fortifications, barracks, and other edifices which are not private property. The archives, papers, and documents, relative to the domain and sovereignty of Louisiana and its dependencies, will be left in the possession of the commissaries of the United States, and copies will be afterwards given in due form to the magistrates and municipal officers of such of the said papers and documents as may be necessary to them.

ARTICLE III.

"The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and submitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States; and in the meantime they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess.

ARTICLE IV.

"There shall be sent by the Government of France a commissary to Louisiana to the end that he do every act necessary, as well as to receive from the officers of His Catholic Majesty the said country and its dependencies, in the name of the French Republic, if it has not been already done, as to transmit it in the name of the French Republic to the commissary or agent of the United States.

ARTICLE V.

"Immediately after the ratification of the present treaty by the President of the United States, and in case that of the First Consul shall have been previously obtained, the commissary of the French Republic shall remit all military posts of New Orleans, and other parts of the ceded territory, to the commissary or commissaries named by the President to take possession; the troops,

whether of France or Spain, who may be there, shall cease to occupy any military post from the time of taking possession, and shall be embarked as soon as possible, in the course of three months after the ratification of the treaty.

ARTICLE VI.

"The United States promise to execute such treaties and articles as may have been agreed between Spain and the tribes and nations of Indians, until, by mutual consent of the United States and the said tribes or nations, other suitable articles shall have been agreed upon.

ARTICLE VII.

"As it is reciprocally advantageous to the commerce of France and the United States to encourage the communication of both nations for a limited time in the country ceded by the present treaty, until general arrangements relative to the commerce of both nations may be agreed on, it has been agreed between the contracting parties, that the French ships coming directly from France or any of her colonies, loaded only with the produce and manufactures of France; and the ships of Spain coming directly from Spain or any of her colonies, loaded only with the produce or manufactures of Spain or her colonies, shall be admitted during the space of twelve years in the port of New Orleans, and in all other legal ports of entry within the ceded territory, in the same manner as the ships of the United States coming directly from France or Spain, or any of their colonies, without being subject to any other or greater duty on merchandise, or other greater tonnage than that paid by the citizens of the United States.

"During the space of time above-mentioned, no other nation shall have a right to the same privileges in the ports of the ceded territory; the twelve years shall commence three months after the exchange of ratifications, if it shall take place in France, or three months after it shall have been notified at Paris to the French Government, if it shall take place in the United States; it is however well understood that the object of the above article is to favor the manufactures, commerce, freight, and navigation of France and of Spain, so far as relates to the importation that the French and Spanish shall make into the said ports of the United States, without in any sort affecting the regulation that the United States may make concerning the exportation of the produce and merchandise of the United States, or any right that it may have to make such regulations.

ARTICLE VIII.

"In the future and forever after the expiration of the twelve years, the ships of France shall be treated upon the footing of the most favoured nations in the ports above-mentioned.

ARTICLE IX.

"The particular convention signed this day by the respective ministers, having for its object to provide for the payment of debts due to the citizens of the United States by the French Republic prior to the 30th of September, 1800 (8th Vendemiaire, *an* 9) is approved, and to have its execution in the

same manner as if it had been inserted in this present treaty, and it shall be ratified in the same form and in the same manner, so that the one shall not be ratified distinct from the other.

"Another particular convention signed at the same date as the present treaty relative to a definitive rule between the contracting parties is in like manner approved and will be ratified in the same form, and in the same time, and jointly.

ARTICLE X.

"The present treaty shall be ratified in good and due form, and the ratifications shall be exchanged in the space of six months after the date of the signature by the Ministers Plenipotentiary, or sooner if possible.

"In faith whereof, the respective Plenipotentiaries have signed these articles in the French and English languages, declaring nevertheless that the present treaty was originally agreed to in the French language; and have thereunto affixed their seals.

"Done at Paris the tenth day of Flore in the eleventh year of the French Republic, and the 30th of April, 1803.

ROBT. R. LIVINGSTON, (L. S.)
JAS. MONROE, (L. S.)
F. BARBE MARBOIS, (L. S.)"

ARGUMENTS PRO AND CONTRA THE CONSTITUTIONALITY OF LOUISIANA PURCHASE

It must be borne in mind that at the time of the Louisiana purchase there were two political parties in opposition in the United States, the Federalist party and the Republican. The Federalist was also called the strict-constructionist party. It maintained that the Federal Constitution should be construed strictly in accordance with its letter. The Republican was also called the broad-constructionist party and supported the theory that the Constitution of the United States should be construed liberally, and claimed for the general government more or less extensive powers, called "incidental powers" or "implied powers," not granted specifically by the Fundamental Law. (The New International Encyclopedia, Vol. XVIII, p. 627, Vol. XVII, p. 62; Nelson's Encyclopedia, Vol. IV, p. 1591; Vol. X, p. 284; History of the People of the United States, McMasters, Vol. III, p. 1 *et seq.*)

Two provisions of the foregoing treaty ceding Louisiana were specifically attacked on two constitutional grounds—(1) that for the ultimate incorporation of the territory of the Union (Art. III of the Treaty, *supra*), and (2) that by which French and Spanish ships were accorded for twelve years an exclusive preference as to duties in the ports of the ceded territory over the ships of other foreign countries (Art. VII of the Treaty, *supra*). For the purposes of the subject, however, the first ground only will be considered.

The Federalists declared the Louisiana treaty unconstitutional. It was unconstitutional, they maintained, because no constitutional power was lodged in any branch of the Government of the United States to buy and incorporate foreign territory into the union of the United States. Indeed, by a careful examination of the United States Constitution, it will be seen that no express provision could be found giving the United States power to buy and incorporate foreign soil into the Union. Articles II (sec. 2, par. 2) and IV (sec. 3) of the United States Constitution provide:

ARTICLE II. Sec. 2, Second paragraph:

"He (President of the United States) shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint Ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the president alone, in the Courts of law, or in the head of Departments."

ARTICLE IV. Sec. 3:

"New States may be admitted by 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 Legislature of the States concerned as well as of the Congress."

The Federalists maintained that the treaty-making power vested by Article II, Sec. 2, par. 2 in the President of the United States with the advice and consent of the Senate did not extend to the incorporation of foreign soil and a foreign people with the United States. The Government of the United States, they argued, was not formed for the purpose of distributing its principles and advantages to foreign nations. It was formed with the sole view of securing these blessings to the American people and their posterity. From these principles they inferred that no power could possibly reside in any branch of the Government of the United States, or national authority thereof, to contract any engagement, or to pursue any measure calculated to change the Union of the States. This restriction, they said, grew out of the nature of the Government, and it was not necessary that any restrictive clause should have been inserted in the Constitution to prevent the public agents from exercising such extraordinary powers. They admitted the right of the President with the advice of the Senate to make treaties; they admitted that a new territory and subjects could be acquired by the United States either by conquest or by purchase; but they strongly denied that either treaty, conquest, or purchase could incorporate a territory and people into the Union of the United States. And as the treaty in Article III, *supra*, stipulated for such incorporation and as this condition was unconstitutional, they declared the treaty null and void. And granting that such an extraordinary power did exist, the Federalists maintained that it belonged to Congress under Art. IV, Sec. 3, and not to the President with the advice and con-

sent of the Senate under Art. II, sec. 2, par. 2. But such power, they argued, could not have existed under Art. IV, Sec. 3, because the words "new States may be admitted by the Congress into this Union" meant new States carved out of the territory belonging to the United States at the time the Union was formed. It was not consistent, they contended, with the spirit of the Constitution that territory other than that attached to the United States at the time of the adoption of the Constitution should be admitted because at that time the framers of the Constitution had a particular respect to the then subsisting territory, carrying their ideas to the time when there might be an extended population, but never to the time when an addition might be made to the Union of a territory almost equal to the then whole of the United States (Area of Louisiana Purchase is 824,607 sq. m.), thereby overbalancing the then existing territory, and absorbing the rights of the citizens of the United States. Again, the Government of the United States, they maintained, was formed by a Union of States or in the words of the preamble of the Constitution, "to form a more perfect Union of the United States." The United States here mentioned, they said, were the States then in existence and such other new States as should be formed, within the then limits of the Union. It was therefore urged, that every measure which tended to infringe the perfect Union of the States therein described, was a violation of the first sentiment expressed in the Constitution, that the incorporation of a foreign nation into the Union, was a direct inroad upon, and destructive of, the perfect union contemplated between the original States, by interposing an alien and a stranger to share the power of government with them. Hence the Federalists concluded that, not only there could not, and did not exist under the Federal Constitution the power to incorporate into the Union by treaty or by law, a foreign nation and people, but that such power, if it did exist at all, was contrary and repugnant to the letter and spirit of the Constitution, and subversive of the very existence of the Union; wherefore, any treaty entered pursuant thereto was a nullity, an instrument void *ab initio*, not a part of the supreme law of the land, and consequently not binding upon the United States. (See Annals of Congress, 8th Congress, October 17, 1803 to March 3, 1805, inclusive, pp. 431-514; History of the People of the United States, Vol. III, p. 1 *et seq.*; Woodburn, The American Republic and Its Government, p. 388 *et seq.*)

The Republicans, on the other hand, supported the treaty. With great accuracy and erudition, they traced the history of the principles on which the authority to acquire territory was founded. Briefly it is thus: In the year 1776 the United States absolved their allegiance to the English Crown. *Ipso facto*, each of the States became a separate and independent sovereignty. As such independent sovereignties, the States, severally, had full power in the language of the Declaration of Independence "to levy war, conclude peace, contract alliances, establish commerce, and do all other acts and things which independent States might of right do." Each State, separately and of itself, had all the attributes of sovereignty and consequently the right to extend its limits, either by conquest or by purchase. In 1781, the arti-

cles of confederation were finally agreed to, and each State surrendered a portion of its sovereignty for the common benefit of the whole. The management of external concerns was then given to Congress, and Congress alone had the power to levy war, conclude peace, and contract alliances. The capacity then of the individual States to acquire new territory no longer remained. It was surrendered to the General Government with powers of peace and war. In 1788, the States again returned to their original independence and their sovereignty was once more assumed. They deliberated about the means of a more permanent Union, to secure to the American people and their posterity the blessings of liberty. The present Constitution was adopted and even a larger portion of individual sovereignty was surrendered,—the right to declare war was given to Congress, the right to make treaties to the President and Senate. Conquest and purchase alone were the only means by which nations could acquire territory. The one could only be effected by war, the other by treaty; and when the States divested themselves of these powers and gave them to the General Government, they gave, at the same time, that right to acquire territory, which they themselves originally had. (See Annals of Congress, *supra*.)

The 10th section of the article of the Constitution, it will be observed, expressly prohibits the States from entering into treaties, or levying war, and even from forming any compact or agreement with another State or a foreign Power, without the consent of Congress. All the rights which the States originally enjoyed seem, therefore, either to have been reserved to the States or are vested in the General Government. If they once had the power individually to acquire territory, and this is now prohibited to them by the Constitution, it would indeed seem to follow, as a matter of course, that the power was and is now vested in the United States.

The Republicans referred to the first paragraph of section 8, Article I, of the Constitution which provides: "The Congress shall have power to lay and collect taxes, duties, imposts, and excises to pay the debts and to provide for the common defense and general welfare of the United States." They maintained that this provision is predicated on the principle of the United States acquiring territory either by war, treaty or purchase; that the words "to provide for the general welfare" are very comprehensive, and include the power of incorporating territory. Again, they referred to the 18th paragraph of section 8, Article I, of the Constitution which provides: "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 the 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 ports, magazines, arsenals, dock-yards, and other needful buildings."

It was argued that by this provision Congress was given exclusive legislation over particular places, not over 10 miles square and over such places as they may purchase; that this provision was expressly predicated on the right to purchase, and only limits that purchase by the consent of the States, and that if Congress had

the right of purchasing territory from a State, they had also the right of purchasing territory from elsewhere, if in their judgment they should consider it well calculated to subserve the great interests of the Union. Again, Article IV, Sec. 3, Par. 2 of the Constitution provides:

> "The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claim of the United States, or of any particular State."

This provision it was urged is a clear recognition not only of territory belonging to the United States but of territory which might in the future be acquired by treaty or purchase.

Hence, the Republicans concluded that the United States had the right not only to acquire foreign territory and people by conquest or treaty, but also the right to incorporate the territory and people thus acquired into the United States, if deemed expedient and conducive to the general welfare of the United States—such rights being essential to independent sovereignty.

ADMISSION TO THE UNION OF THE PRESENT STATE OF LOUISIANA

There were thus two conflicting theories: (1) The Federalists maintained that although the United States could purchase and hold foreign country and a foreign people, she could not, under the Constitution, incorporate them into the Union, while (2) the Republicans contended that not only could the United States purchase, hold, and govern foreign soil and people thus acquired by purchase or conquest but could also constitutionally admit them into the Union—such right being inherent to independent sovereignty. History records the result of the contest. The Republicans proved to be right. The treaty, as has been said (see *ante* p. 13), was finally ratified by the Senate of the United States, and on October 27, 1803, President Jefferson sent the following message to the Senate and House of Representatives of the United States:

> "In my communication to you of the 17th instant, I informed you that conventions had been entered into with the Government of France for the cession of Louisiana to the United States. This, with the advice and consent of the Senate, having now been ratified and my ratification exchanged for that of the First Consul of France in due form, they are communicated to you for consideration in your legislative capacity. You will observe that some important conditions cannot be carried into execution but with the aid of the Legislature; and that time presses a decision in them without delay.
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> "The ulterior provisions also suggested in the same communication, for the occupation and government of the country, will call for early attention. Such information relative to its government as time and distance have permitted me to obtain will be ready to be laid before you in a few days. But as permanent arrangements for this object may require time and consideration, it is for your consideration whether you will not forthwith make such temporary provision, for the preservation of order and tranquillity in the country, as the case may require.
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> "October 21, 1803 "THOS. JEFFERSON."

Pursuant to the above message, Congress on October 31, 1803, passed "An Act to enable the President of the United States to take possession of the territories ceded by France to the United States by the Treaty concluded at Paris on the 30th of April, 1803," (2 United States Statutes 283, C. 38) and Louisiana was thus taken possession of by the United States. Later civil government was inaugurated pursuant to the Act of Congress "providing for the expenses of the civil government of Louisiana." By virtue of the Act of Congress of March 26, 1804, "erecting into two territories and providing for the temporary government thereof," the territory of Louisiana was divided into the territories of Orleans and Louisiana. In November, 1811, a convention met at New Orleans and framed a constitution under which on the 30th of April, 1812 (History for Ready References and Topical Reading, Larned, Vol. III, p. 2095) the territory of Orleans became the State of Louisiana. Thus was Louisiana admitted to the sisterhood of States and became, in the language of Mr. Bryce, a "commonwealth within a commonwealth." And that vast territory, once a wilderness, finally became one of the centers of power and wealth of the Union, now containing more than fifteen million inhabitants, and whose taxable property alone is four hundred times the fifteen millions given to Napoleon. (See United States Census, 1903, Louisiana.)

PRINCIPLES ESTABLISHED OR SANCTIONED BY THE ACQUISITION BY, AND SUBSEQUENT INCORPORATION INTO, THE UNITED STATES, OF THE STATE OF LOUISIANA

It has been said that the Great Napoleon realizing the significance for the development of the Great American Republic of the sale and transfer of the immense region and boundless resources of Louisiana territory, truly remarked: "I have given England a rival which sooner or later will humble her pride." In truth, it is generally admitted that after the Revolution and the Civil War, the Louisiana purchase is the greatest fact in American history. It made possible for the American people to hold a more independent and more dignified position between France and England during the Napoleonic Wars; it gave the new Republic a grand basis for material greatness; assured its dominance in North America; afforded the field for a magnificent experiment in expansion, and new doctrines of colonization; fed the natural land hunger; incidentally moulded the slavery issue; and precipitated its final solution. But important as the Louisiana purchase has been to the United States materially, socially, and politically, there is nothing decisive, far reaching, and more pervading in its consequences upon the constitutional history of the United States than the determination, once and forever, of the principles that (1) the United States has the perfect and inherent right to acquire territory either by conquest or treaty, and (2) that territory thus acquired may be incorporated into the United States, should such incorporation be deemed subservient of, and conducive to, the great interests of the American people. We thus find that time before the towering legal genius of Chief Justice Marshall confirmed the inherent right of the United States,

under the laws of nations and the Constitution of the United States, to acquire foreign territory and people, either by conquest or treaty (American Insurance Co. v. Canter, 1 Pet. U. S. 511, 542), and long before the so-called Insular cases were decided by the Supreme Court of the United States, the legal history of Louisiana had already established this right and the further right of the United States to incorporate the territory and people so acquired into the Union, for "within the meaning of the Constitution is included the power of increasing our territory (the United States) if necessary for the general welfare of the United States." (See Annals of Congress, *supra*.) The net result was the establishment of the doctrine of "implied powers" in interpreting the Constitution; a doctrine under which the Supreme Court of the United States found power to acquire and incorporate territory implied in the powers to wage war and make peace, negotiate treaties and "dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States."

CONSTITUTIONAL RIGHT OF THE UNITED STATES TO INCORPORATE THE PHILIPPINE ISLANDS INTO THE UNITED STATES PREDICATED UPON THE ACQUISITION BY, AND SUBSEQUENT INCORPORATION INTO, THE UNITED STATES, OF THE STATE OF LOUISIANA.

In the case of United States v. Bull (15 Phil. Rep. 7), the Supreme Court of the Philippine Islands, through Justice Elliot, said:

> "This government of the Philippine Islands is not a State or a territory of the United States although its form and organization somewhat resembles that of both. It stands outside of the constitutional relation which unites the States and Territories into the Union. * * * Within the limits of its authority the government of the Philippine Islands is a complete governmental organization with executive, legislative, and judicial departments exercising the functions commonly assigned to such departments."

The Philippine Islands "is well-nigh a sovereign nation, lacking complete independence in that it is not at liberty to exercise its judgment and discretion in matters affecting its relation with foreign governments, and that its exercises of legislative authority are subject to the disapproval of Congress" (What Followed the Flag in the Philippines, Address by Hon. Charles Magoon before the Patria Club of the city of New York, on February 19, 1904). The Philippine Islands is "self-governing, having a government with such delegated, implied, inherent, and necessary military, civil, political, and police powers as are necessary to maintain itself." (Forbes, etc. vs. Chouco Tiaco and Crossfield, 16 Phil. Rep., 534.)

(As to sovereign character of the government of the Philippine Islands, see Instructions of President McKinley to the Taft Commission dated June 21, 1901; Act of Congress of March 2, 1901, known as the Spooner Amendment; Barcelona vs. Baker, 5 Phil. Rep. 87; U. S. v. Bull, 15 Phil. Rep. 7; and Severino v. Governor-General, 16 Phil. Rep. 366.)

If the Philippine Islands, although a "well-nigh sovereign nation" (What Followed the Flag in the Philippines, *supra*) is, in its relation to the United States, neither a State or Territory of the United States (United States vs. Bull, *supra*), and stands "outside of the constitutional relation which unites the States and Territories into the Union" (United States vs. Bull, *supra*), and occupies a position "between that of being a foreign country absolutely, and of being domestic territory absolutely" (Rowe, The United States and Porto Rico, p. 53), what then is the Philippine Islands in its relation to the United States?

In the case of American Insurance Co. vs. Canter (1 Pet. 542), the Supreme Court of the United States, through Chief Justice Marshall, said: "The holding of a conquered territory is regarded a mere military occupation until its fate shall be determined at the treaty of peace. If it be ceded by treaty the acquisition is confirmed, and the ceded territory becomes a part of the nation to which it is annexed, *either on the terms stipulated in the treaty of cession, or on such as its new master shall impose.*" See also United States v. Hayward, 2 Dall. 485; United States v. Rice, 4 Wheat. 246; More v. Steinbach, 127 U. S. 70, 80; Fremont v. United States 17 How. 542, 563.

The second paragraph of Article IX of the Treaty of Paris of the 10th of December, 1898, is as follows:

"The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by Congress."

In the case of Downes vs. Bidwell (182 U. S. 280), the Supreme Court of the United States said:

"The above provision is an implied denial of the right of the inhabitants (of Porto Rico) to American citizenship until Congress by further action shall signify its assent thereto."

Upon the ratification, however, of the treaty with Spain, it was held that Porto Rico ceased to be a foreign country and became a domestic territory of the United States (De Lima vs. Bidwell, 182 U. S. 1), and while in an international sense Porto Rico was not a foreign country, since it was subject to the sovereignty of, and was owned by, the United States, it was nevertheless foreign to the United States in a domestic sense, because the Island had not been incorporated into the United States, but was merely appurtenant thereto as a possession. (Concurring opinion of Justice White in Downes vs. Bidwell, 182, U. S., 341.)

By a careful perusal of the second paragraph of Article IX of the Treaty of Paris, and applying the doctrines of the decisions above referred to, to the case of the Philippine Islands by the process of analogy, "no reason is perceived for any different ruling as to the Philippines." (Chief Justice Fuller in The Diamond Rings, 183 U. S. 179.) The Philippine Islands is, in the language of Justice Brown, in the case of Downes vs. Bidwell (*supra*), "a territory appurtenant and belonging to the United States, but not a part of the United States" within the meaning of the federal Constitution. The Philippines, like Porto Rico, became, by virtue

of the treaty, ceded conquered territory, or territory ceded by way of indemnity. The Philippines were not simply occupied, but acquired, and having been granted and delivered to the United States, by their former master, are no longer under the sovereignty of any foreign nations. "The Philippines thereby ceased, in the language of the treaty 'to be Spanish.' Ceasing to be Spanish, they ceased to be foreign country. They came under the complete and absolute sovereignty and dominion of the United States, and so became territory of the United States over which civil government could be established." (The Diamond Rings 183 U. S. 178, 179.)

If the United States, then, can, of right, acquire foreign territory with its inhabitants either by conquest or treaty, and incorporate them into the United States (*supra*), the Philippine Islands, once a foreign territory, ceded to the United States by virtue of the Treaty of Paris of December 10, 1898 (Vol. I, Public Laws, p. 1047; Compilation of the Acts of the Philippine Commission, p. 3), and neither a State or Territory of the United States (U. S. vs. Bull, *supra*), but a mere possession appurtenant and belonging to the United States (Downes v. Bidwell, *supra;* The Diamond Rings, *supra*), can without doubt be incorporated into, and made a State of, the American Union. It is true that the United States has not, as in the case of Louisiana, obligated herself by treaty (Treaty with France for the Cession of Louisiana, *supra*), to give the Filipinos immediate or ultimate statehood, or organize the Philippine Islands into a territory of the United States (*vide*, by analogy, Rasmussen v. United States, 197 United States 516). In fact, "whatever may be finally decided by the American people as to the status of these Islands and their inhabitants—whether they shall be introduced into the sisterhood of States or be permitted to form independent governments" (by analogy, Downes v. Bidwell, 182 U. S. 244, 283) is for the American people through Congress to determine. The author, however, believes that, in the language of Chief Justice Fuller (The Diamond Rings, 183 U. S. 179) "the result was the same although there was no stipulation that the native inhabitants should be incorporated into the body politic, and none securing to them the right to choose their nationality." The Philippine Islands "came under the complete and absolute sovereignty and dominion of the United States (Woodburn, The American Republic and Its Government, p. 386,) their allegiance then "became due to the United States," they "became entitled to its protection," and no sound reason is perceived why under the power of Congress and with the consent of the Filipino people, the Philippines could not be incorporated into the United States. "They are ours" (the United States) in the words of President McKinley, in his message to Congress of December 5, 1899, "ours by every title of law and equity," and "Congress has a free hand to do as the public welfare may demand" (Woodburn, The American Republic and Its Government, p. 387). Besides it must be remembered that, although Louisiana was admitted to the Union pursuant to the treaty (Treaty with France for the Cession of Louisiana, *supra*, pp. 7-13), the constitutional principle established or confirmed by the fact of the admission and incorporation of the State of Louisiana was not the right of the United

States to make treaties under Article II, section 2, paragraph 2, of the Federal Constitution, nor merely the power of the President, by and with the advice and consent of the Senate, to stipulate by treaty the incorporation of a foreign territory, but rather the bare constitutional right of the United States to incorporate a foreign country with its inhabitants acquired by conquest or treaty into the Union, should such incorporation be deemed by the American people conducive to the general welfare of the United States. (Annals of Congress, 8th Congress, October 17, 1803 to March 3, 1805, inclusive, pp. 431-514.)

The unique history of Louisiana is undoubtedly not the first and only precedent of the right of nations, and consequently of the United States, to acquire and incorporate foreign soil and people. Perhaps the legal histories of the other nations, nay, of the other States of the American Union, of Florida, Texas, Arizona, New Mexico, Oregon, California, Colorado, Nevada, Utah, as well as decisions of courts on international questions (American Insurance Co. vs. Canter., 1 Pet. (United States) 511, 542, 7. L. Ed. 242; Fleming vs. Page, 9 How. (United States) 614, 13 L. Ed. 276; Jones vs. United States, 137 U. S. 202) and opinions of distinguished writers on international law (1 Oppenheim Int. L., Secs. 216, 238; 1 Moore Dig. Int. L., Sec. 83 *et seq.*, "Cession": Halleck, Int. L., p. 62; Hall Int. L., p. 45; Glenn, Int. L., p. 49; Phillimore, Int. L., pars. 268, 269, 270, 275; Calvo, Int. Law, pars. 291-299; Butler Treaty Making Power, Sec. 44; Encyclopedia of Law and Procedure, Vol. XXII, pp. 1724 *et seq.*; American and English Encyclopedia of Law and Practice, Vol. XVI, pp. 1129 *et seq.*; 4 Ohio L. N. 251), would unquestionably far more authoritatively bring our inquiry home to the same principle deemed established by the legal history of the State of Louisiana. Nay, perhaps the very second paragraph of Article IX of the Treaty of Paris is predicated on the very theory of the reserved right of the United States to incorporate the Philippine Islands when it says: "the civil rights and *political status* of the native inhabitants of the territories hereby ceded to the United States shall be determined by Congress." But whatever may be the case, the acquisition and subsequent admission to statehood of Louisiana is, alone, a confirmation, nay, a precedent of the right of the United States to incorporate territory acquired by conquest or treaty, and *a fortiori*, the Philippine Islands, should such incorporation be deemed wise and conducive to the general welfare of both the American and Filipino peoples.

The international and constitutional right of the United States to incorporate and admit the Philippine Islands into the sisterhood of States once established, *should* the Philippines be so incorporated into the United States? The question is an open one. The author, however, is prepared to answer the question in the negative. And naturally so, because born and reared under the tender care of this, our mother country, and a living witness to her now past misfortunes and struggles against the tyranny and dispotism of Spain, the author would much prefer to see the Philippine Islands serving an apprenticeship to liberty, taught the lessons of freedom, by degrees raised to the enjoyment and practice of independence, and ulti-

mately brought to light as an independent and forever-free "Pearl of the Orient," trained in the knowledge of her own laws and institutions, than for her personality to be absorbed, her laws, customs, and traditions forgotten, consequent upon her becoming a State of the American Union. Nor will such incorporation, in the mind of the author, be an act calculated to subserve in any degree the interests of the American people, for obvious geographical, racial, social, and political reasons. It must be borne in mind, however, that the question is not grounded upon the policy or impolicy, or upon the desirability or undesirability of the incorporation, but upon the right, the constitutional right of the United States to incorporate the Philippine Islands into the Union of the United States, should such incorporation be deemed wise by the joint action of the American and Filipino peoples. The sole question, therefore, is Should the Filipino people so desire, could the United States, legally and constitutionally, incorporate the Philippine Islands into the Union of the United States? The constitutional history of the State of Louisiana answers the query in the affirmative.

(*Concluded in the next issue.*)