

**THE CONSTITUTIONAL
HISTORY OF
THE LOUISIANA
PURCHASE, 1803-1812**

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The Constitutional History of the Louisiana Purchase, 1803-1812 by Everett Somerville Brown

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THE
CONSTITUTIONAL HISTORY
OF THE
LOUISIANA PURCHASE
1803-1812 †

BY
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PREFACE

One of the most striking features of the history of the United States is the gradual extension of its boundaries westward and the successful operation of a colonial, or territorial, system of government. Hardly had the Constitution, which contained no specific grant of power to acquire territory, been put into effect when the first step in the acquisition of foreign territory was made. The purpose of this monograph is to discuss the most important of the constitutional questions which arose as a consequence of the purchase of Louisiana, and to show how the statesmen and legislators in charge of affairs at that time interpreted the Constitution in answering those questions. Much has been written on the Louisiana Purchase but no connected narrative of its constitutional aspects has hitherto appeared.

The writer believes that he has added many important details to the printed accounts of United States history. For instance, he has given, for the first time, the detailed story of the Senate debate on the Breckinridge Bill. Then, too, there is much to be learned of the struggle between correct theory and actual practice in government from tracing Jefferson's plans for the settlement and government of Louisiana. The status of the inhabitants of territories—so fruitful a theme for controversy even to the present day; the control of slavery and the slave-trade by Congress, set forth with startling bitterness in the Senate debate on the Breckinridge Bill; and the Indian and land questions, always incidental to American westward expansion, all have new light shed upon them.

A certain limitation should here be made. This study has been confined principally to the lower part of the province purchased from France, that which was organized as Orleans

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Territory and which later entered the Union as the state of Louisiana. Occasional reference is made to Upper Louisiana but to have traced the constitutional history of the entire area known as Louisiana would have involved entering a field almost limitless in extent. The writer hopes, however, to make further investigation of the constitutional history of the territorial expansion of the United States.

In writing this monograph, much hitherto unpublished manuscript material has been utilized. Personal investigation was conducted in the following places: the University of California Library; the Bancroft Library; the Cabildo (home of the Louisiana Historical Society), and the City Hall, New Orleans; the Library of Congress, especially the Manuscript Division; the Bureau of Rolls and Library of the State Department, Washington, D. C.; the Boston Public Library; the Massachusetts Historical Society Library; the Athenaeum; Harvard University Library; the American Antiquarian Society Library, Worcester, Mass.; the New Hampshire Historical Society Library, and the New Hampshire State Library, both located at Concord; and the New York Public Library.

Much new information was obtained from the William Plumer manuscripts, a mine of hitherto little-consulted material. William Plumer was born at Newburyport, Massachusetts, in 1759, but moved with his parents to Epping, New Hampshire, in 1768. He was given a liberal education, following which he engaged in the practice of law. Entering the political field, he served for a number of years in the state legislature, and rose to the position of presiding officer of the house of representatives and, later, of the senate. He was a member of the state constitutional convention in 1791-1792; served as United States senator from New Hampshire from December 6, 1802, to March 3, 1807; was governor of his state for the terms of 1812-1813

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and 1816-1819; and, as presidential elector in 1820, cast the single vote against James Monroe. Plumer devoted the later years of his life to literature. He died in 1850.

Having decided early in life to write a history of the United States, Plumer made use of every opportunity to collect materials to that end. His ambition as a historical writer was not gratified, but he left a vast quantity of manuscripts, invaluable for the history of his period. A small part of this collection was used by William Plumer Jr. in his *Life of William Plumer*. In that book, however, the younger Plumer practically ignored the very valuable memorandum which Senator Plumer kept of the debates in the United States Senate from 1803 to 1807. This memorandum gives detailed information on government matters seemingly nowhere else obtainable. Neither the Government nor the newspapers at that time kept a full report of the debates in Congress. Especially was this true of those of the Senate.

A part of this "Memorandum" was contributed by the present writer to the *American Historical Review*, XXII (1917), 340-364. No other writer, so far as I can ascertain, has extensively used the Plumer "Memorandum." In the monograph a differentiation in citation is made between the "Memorandum" and Plumer's letters, the latter being referred to as MSS. Plumer's papers have not been arranged in any more definite order than that in which he left them, which makes citation of them rather difficult.

Other important manuscripts used were the *Claiborne Papers*, consisting of six volumes entitled "Claiborne's Correspondence relative to Orleans Territory," and one volume, "Orleans Territory, Miscellaneous." These volumes in the Bureau of Rolls and Library in the Department of State in Washington, contain Governor Claiborne's reports of the territorial government of Louisiana, or, to be more exact, of Orleans Territory, from

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December, 1803, when the province was turned over to the American commissioners, until the admission, in 1812, of Orleans Territory into the Union as the state of Louisiana. The volume of miscellaneous papers contains a few items of as late date as 1815. An idea of the number of letters in the Claiborne collection and the subject matter contained in them can be obtained by consulting David W. Parker, *Calendar of papers in Washington relating to the territories of the United States*, Washington, D. C., 1911 (Publication number 148 of the Carnegie Institution). Copies of Claiborne's letters and papers have been preserved in Jackson, Mississippi.*

From the Jefferson, Madison, and Monroe papers were gleaned many items not contained in the published writings of these statesmen. Especially was this true of letters which had been available only in part in printed form. The following bibliographical aids were of much assistance in the examination of the voluminous collections just cited:

Calendar of the Correspondence of Thomas Jefferson, Part I, *Letters from Jefferson*. Bulletin No. 6 of the Bureau of Rolls and Library of the Department of State, Washington, 1894.

Ibid., Part II, *Letters to Jefferson*. Bulletin No. 8 of the same department. Washington, 1895.

Ibid., Part III, *Supplementary*. Bulletin No. 10 of the same department. Washington, 1903. (Calendar of papers received after the publication of Bulletin No. 8.)

* See the *Third Annual Report of the Director of the Department of Archives and History of the State of Mississippi from October 1, 1905, to October 1, 1906*, Dunbar Rowland, director. Nashville, Tenn., 1905. Also *Eleventh and Twelfth Reports of the Director of the Department of Archives and History of the State of Mississippi from November 1, 1911, to October 31, 1912. An Official Guide to the Historical Materials in the Mississippi Department of Archives and History*, Dunbar Rowland, LL.D., director. Nashville, Tenn., 1914.

At the time when this monograph was being written, the *Official Letter Books of W. C. C. Claiborne, 1801-1816*, edited by Dunbar Rowland (6 vols. Jackson, Miss., 1917) had not yet appeared. Many of the Claiborne letters cited in manuscript form are now available in print.

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Calendar of the Correspondence of James Monroe. Bulletin No. 2 of the same department. Washington, 1893.

Calendar of the Correspondence of James Madison. Bulletin No. 4 of the same department. Washington, 1894.

Arrangement of the Papers of Madison, Jefferson, Hamilton, Monroe, and Franklin. Bulletin No. 5 of the same department. Washington, 1894.

A number of unpublished letters bearing on the subject of Louisiana were found in the *Pickering Papers*, in the library of the Massachusetts Historical Society. Consultation of the Pickering collection also afforded the opportunity of correcting or verifying dates and names used erroneously or doubtfully by editors of the printed works of some of Pickering's correspondents. *The Historical Index to the Pickering Papers* in the Massachusetts Historical Society, *Collections*, Sixth Series, III, Boston, 1896, was of great assistance in the use of these papers.

Occasional important letters were picked up in odd places. An excellent example is the Nabum Mitchell letter, quoted in Chapter VIII, which was found among the *Robbins Papers*. The present writer is unaware of its ever having been previously used.

Needless to say, the published writings of the statesmen already mentioned, as well as many others, were carefully consulted. A full list is given in the bibliography.

The controversial side of the Louisiana question is well illustrated by contemporaneous printed pamphlets and newspapers. On the publications of this type, the citations in the monograph and the bibliography afford sufficient comment.

Secondary authorities were used only to substantiate a statement already obtained from primary sources, or when the author of the book cited was himself quoting primary authorities. In this respect the books most used were those of Henry Adams and Charles Gayarré.