Volume III: Issue 7

The BEACON OF LIBERTY

A Structured Curriculum of Constitutional Study

Clause Discussed:
• Article I, Section 8, Clause 2

Concept Discussed:
• To borrow Money

The previous issue of *The Beacon of Liberty* discussed the first legislation enacted by Congress under their authority *To borrow Money*. This August 4, 1790 Act was perhaps the single-most critical test of government to date, for a government so over-laden with past-due debt was doomed to failure if it too could not bring current that debt.

Even when governments borrow money, lenders require assurance and means of repayment; and, due to greater sums generally involved, possibly even greater assurance and means (than private borrowers).

Borrowing money not only requires *cash flow* to make the required payments, but also generally requires *collateral* so that if payments cease, the lender can foreclose on pledged assets to cover the debt owed.

Legislation enacting Duties (beginning in 1789) was a necessary pre-condition to begin successfully and adequately managing the previous financial difficulties of the United States. Such legislation provided the United States with the cash flow necessary to begin promptly paying bills and to better establish their credit.

With huge war debts looming overhead, however, not enough funds could then be raised by Taxes, Duties, Imposts and Excises to secure the government's financial footing by these methods alone — additional means were necessary.

While the Western lands of the United States did not serve as collateral for loans in the strict sense of the term, preparing these lands for sale helped induce lenders to the belief that the United States were financially-responsible and took seriously their proper role to pay interest on their debts and work to pay off the principal. The later sale of the lands helped reduce (and, for a short period of time, virtually eliminate) loan principal.

The restructuring of government debts with new and uniform securities made the securities more marketable. Regular payments of interest and bringing current past-due debts greatly improved the government's credit. Over time, that which had not been done before was finally beginning to occur; past due debts were becoming current. The ability of government to lay and collect its own revenue was the primary reason for the change.

Early Attempts to Empower Congress with the Ability to Lay and Collect Duties

Even before the Articles of Confederation were ratified, Congress sought an ability to lay and collect import Duties directly. This would have directly empowered Congress with a viable means to fund the war effort which they did not have by the system of requisitions then in place for the States.

On **February 3, 1781**, the Continental Congress passed the following resolution:

> "*Resolved*, That it be recommended to the several states, as indispensably necessary, that they vest a power in Congress, to levy for the use of the United States, a duty of five per cent. *ad valorem*, at the time and place of importation, upon all goods, wares and merchandises of foreign growth and manufactures, which may be imported into any of the said states from any foreign port, island or plantation, after the first day of May, 1781; except arms, ammunition, cloathing and other articles imported on account of the United States, or any of them; and except wool-cards and cotton-cards, and wire for making them; and also, except salt, during the war." [1]

1. 19 Journals of the Continental Congress 109 @ 112.

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The five percent *ad valorem* import Duties were to be "appropriated to the discharge of the principal and interest of the debts already contracted, or which may be contracted, on the faith of the United States, for supporting the present war". The proposed Duties were to continue "until the said debts shall be fully and finally discharged".[2]

Rhode Island was the most vocal of a small number of States that did not pass (sufficient) legislation to support this measure. The **first** of her objections was:

> "That the proposed duty would be unequal in its operation, bearing hardest upon the most commercial states and so would press peculiarly hard upon that State, which draws its chief support from commerce."[3]

Her **second** objection was:

> "That the recommendation proposes to introduce into that and the other states, Officers unknown and unaccountable to them, and so is against the constitution of the State."[4]

The **third** and final objection of Rhode Island was:

> "That by granting to Congress a power to collect monies from the commerce of these states indefinitely as to time and quantity, and for the expenditure of which they are not to be accountable to the states, they would become independent of their constituents, and so the proposed impost is repugnant to the liberty of the United States."[5]

No matter how much Alexander Hamilton and others of the committee formed to study Rhode Island's objections sought to disprove the objections or show how Rhode Island was mistaken, it nevertheless remained a fact that whether or not to support such a grant of power was within the sole discretion of each State. Each State then had the power even to be *wrong*, to withhold their vote and thereby prevent modification to the Articles.

After the Articles were ratified on March 1, 1781, Congress could act within the stated authority of the Ninth of the Articles by action of a simple majority of the Congressional delegates on issues of minor concern.

In (specified) matters of major concern, however, Congress could only act under the direction of delegates from *nine* States (thereby against the actions of *four* if all 13 States were present).

In obtaining any *new* authority, however, Article XIII required approval by *every* State legislature before any new authority was given (unanimity was required for amendments to the Articles).

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2. Ibid, 112 - 113.

3. 23 Journals of the Continental Congress 798 @ 799, December 16, 1782.

4. Ibid, 801.

5. Ibid, 803.

On April 18th, 1783 (the same day which Congress again requested the States to make liberal cessions of their Western lands and the day on which the eighth of the Articles of Confederation were proposed to be modified from using *surveyed lands* as the measure of the proportion of Taxes [requisitions] due by the States, to using *population*), Congress resolved:

> "That it be recommended to the several states, as indispensably necessary to the restoration of public credit, and to the punctual and honorable discharge of the public debts, to invest the United States in Congress assembled with a power to levy for the use of the United States…duties upon goods imported into the said states from any foreign port, island or plantation."[6]

A ***proviso*** was included within the above resolution stating:

> "that none of the said duties shall be applied to any other purpose than the discharge of the interest or principal of the debts contracted on the faith of the United States, for supporting the war…nor be continued for a longer term than twenty-five years."[7]

The proposed Duties would only be levied for the purpose of paying the interest and principal of the war debts of the United States. The twenty-five year time limitation was added to ease Rhode Island's argument in opposition to the imposition of indefinite Duties.

Neither the United States loosely assembled prior to the Articles of Confederation, nor assembled under them, were ever granted the authority to lay Duties. Without every State agreeing, the Articles could not be amended — since all the States did not agree, the Articles were not changed. Congress watched for years as their efforts at establishing collective Duties seemed only moments away, but such a power did not then come to pass.

Another means had to be found to bypass the unanimity requirement of the Articles of Confederation. This requirement began to threaten the very existence of the Union that the Articles were supposed to promote.

A confederation of fully sovereign States that only conceded power voluntarily proved impractical over time. Had all 13 States ratified a change allowing Congress limited means to lay and collect Duties, the Articles of Confederation would have surely stayed intact much longer. The primary difficulty with the Articles was that they simply failed to provide Congress with adequate funds to meet the stated objectives of Congress.

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6. 24 Journals of the Continental Congress 256 @ 257.

7. Ibid, 258.

The United States of America in Congress assembled bound themselves "to assist each other against all force offered to, or attacks made upon them, or any of them" in the third of the Articles, but Article VIII wholly failed to bring adequate funds into the common treasury to meet that charge. The failure to provide sufficient funds to meet the given objectives of government was an early example of *great need* and *minimal means*. Successful government must match the two; either it expands its means or it contracts its needs.

The failure to provide sufficient funds to meet the given objectives of government was an early example of *great need* and *minimal means*. Successful government must match the two; either it expands its means or it contracts its needs.

A confederation of co-equal sovereignties each responsible for its own proportionate share works only when each is responsible, only when each fulfills its appropriate obligations in a timely fashion.

As even any small group of (co-equal) individuals can attest, unanimity of thought seldom occurs. The concept of State sovereignty — that no State be subject to power which she does not individually and voluntarily concede — is certainly a noble concept; but it can be unworkable for the long term, especially when the primary circumstances which brought that Union together are removed (when the war concluded).

The inevitable repercussions (large debts) of the very circumstance (war) that brought together the Union over time drove it apart and ultimately caused a significant change to its very structure (loss, to a significant degree, of State sovereignty).

The transition of power from one form of government to another involved a significant degree of deft political handling. The convention properly-empowered only to revise the Articles of Confederation quickly turned into a convention proposing another form of collective government that severed the concept of a strict confederacy.

One significant point on which this new form of government differed was that States agreeing to this proposed Constitution could be later forced to relinquish an authority or power to which they did not specifically agree. This novel and significant development, which was not possible under the Articles, offended many important patriots and thinkers of the day and caused many to oppose ratification of the Constitution.

The establishment procedures of the Constitution itself violated the terms of the Articles of Confederation, at least for a time. The Thirteenth of the Articles of Confederation required that each State inviolably observe the Articles, that the Union shall be perpetual, and that no changes be made without agreement by each and every State legislature.

The Constitution was established in principle (between nine States) on June 21, 1788 when New Hampshire became the necessary ninth State to ratify the Constitution, under the terms of the Seventh Article of the Constitution.

Congress under the Articles of Confederation last conducted business on October 10, 1788. Thereafter, the delegates continued to attend intermittently through to March 2, 1789, but insufficient quorum numbers prevented the transaction of further business.

By the time the Congress of the United States actually assembled under the Constitution to begin government in 1789, two additional States (Virginia and New York) had ratified the Constitution and came under its authority.

Even as Congress assembled on March 4, 1789 and government under the Constitution began shortly thereafter (once quorums were established in each House), North Carolina and Rhode Island remained *outside* the eleven United States of America.

Only when Rhode Island became the thirteenth and final of the original States to ratify the Constitution on May 29, 1790 was there finally unanimity of action. By this action, the earlier transgressions essentially become moot. In other words, North Carolina and Rhode Island retroactively sanctioned any earlier transgressions of the other States when they became the last of the original States to ratify the Constitution.[8]

The Credit of the United States Established

8. A viable argument to the charge of transgression, certainly more plausible after October 10th, 1788 when quorums were no longer present in Congress, was that the Articles of Confederation ceased operation and were therefore without authority. Even if the terms were perhaps alive in spirit[9], in actuality, the Articles became void due to lack of confidence in that system of government. From such a viewpoint, which would be difficult to counter by history, any terms imposed by the Articles were meaningless.

9. If sufficient numbers of delegates had attended at any point between October 10th, 1788 and March 2nd, 1789, Congress could have then conducted business and any charge of inability would have been diluted, even if that charge could not have been fully discredited.

The United States under the Constitution finally succeeded in establishing an economically-feasible system of collective government which had secured their credit, whereas the United States under the Continental Congress and under the Confederate Congress had thoroughly annihilated theirs.

The Continental Congress and the Confederate Congress both borrowed money, but they had also heavily printed their own currency to meet their financial needs. In time, the latter precluded the former. Time had run out for the early government — those who knew the score knew that things would necessarily change in one fashion or another.

State Requisitions a Thing of the Past

With Congress (under the Constitution) now given the authority to lay and collect Taxes, Duties, Imposts and Excises, no longer was it necessary for Congress to appeal to the State legislatures to send their appropriate share of the expenses of government to Congress.

No longer was Congress helpless to collect the funds necessary to meet their given objectives. Duties of Impost were now collected directly at the ports of entry themselves from the importers.

Congress also had the authority and power to lay direct Taxes and could collect them directly from the individuals and entities owing them within the States.

Laying Taxes, Duties, Imposts and Excises, refinancing debts, borrowing money, and selling Western lands properly established the credit of the United States upon proper standing in due course. The road ventured was not easy, nor was it sure, but the United States were finally upon the path toward growing strength, independence, and prosperity.

Further Acts To Borrow Money

On **April 28, 1796,** Congress laid out the schedule for paying the interest and principal of the *funded stock*.[10] Section 1 required that (interest) dividends be made at the end of the first three quarters of each year through 1818 at the rate of 1.5% of the original capital amount. The fourth quarter dividend each year through 1817 was to be paid at the rate of 3.5% (for an 8% cumulative rate in accordance with earlier Acts). The final payment in 1818 was to pay off the said principal balance.

Section 2 directed that the *funded debt* (deferred stock) be paid similarly beginning in January of 1801 through to 1824, with the final payment of principal and interest due by the end of 1824.

On **March 3, 1797**, Congress made "evidences of the public debt of the United States" *receivable* in payment for public lands sold in the Northwest Territory.[11] Those certificates bearing interest were received at their nominal value (with an allowance for interest earned); certificates with deferred interest were valued at their market rates.

On **April 18, 1806**, Congress repealed the 1797 statute allowing for evidences of public debt to be used for payment on sales of Western lands (in effect, resuming the requirement of payment of such lands in gold or silver).[12]

The use of debt instruments caused a fair amount of confusion at the time over the calculation of interest and other matters, and did not sufficiently stimulate the sales of lands nor materially support the value of the certificates. The use of securities in such manner really only gave speculators who knew how to exploit them a chance to enrich themselves in ways not understood by the common man.

On **February 11, 1807**, Congress opened a new loan subscription to the full amount of the deferred 6% stock and 3% stocks.[13] New certificates were given to the creditors at a no greater amounts than $10,000 per certificate at 6% interest, payable quarterly. The new certificates, when ultimately redeemed, were required by Section 2 to be redeemed in whole and could not be redeemed in part.

On **March 2, 1811**, Congress authorized the sale of new stock certificates at *public auction*.[14] Such certificates were authorized to the amount of five million dollars paying to 6% interest; redeemable either at the pleasure of the United States or by terms of contract not exceeding six years.

Stock Certificates Issued to Fund the Louisiana Purchase

President Thomas Jefferson, through his Ministers Plenipotentiary Robert Livingston and James Monroe (also acting as Envoy Extraordinary), negotiated the purchase of the Louisiana Territory from France by Treaty and (two) Convention(s) on April 30th, 1803.

10. I Stat. 458.

11. I Stat. 507

12. II Stat. 405.

13. II Stat. 415 @ 415 - 416.

14. II Stat. 656.

Under **Article I** of the April 30th Treaty, the First Consul of the French Republic (Napoleon Bonaparte), through his Minister of the Public Treasury as Plenipotentiary, ceded:

> "the colony or province of Louisiana…to the said United States…forever and in full sovereignty, the said territory with all its rights and appurtenances".[15]

Article II ceded to the United States:

> "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."

Also transferred to the United States were the "archives, papers, and documents, relative to the domain and sovereignty of Louisiana, and its dependencies".

Article III of the Treaty stated:

> "The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted 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 mean time they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess."

The Seventh Congress adjourned (from their Second Session) on March 3, 1803; thus the Senate was not in session to immediately ratify the April 30th Treaty. The Eighth Congress began their First Session on October 17th, 1803. The Senate ratified the Treaty and Conventions three days later, on October 20th.[16]

On October 31, 1803, Congress authorized the President to take possession of the Louisiana Territory, stating, in **Section 1**:

> "That the President of the United States be, and he is hereby authorized to take possession of, and occupy the territory ceded by France to the United States, by the treaty concluded at Paris, on the thirtieth day of April last, between the two nations; and that he may for that purpose, and in order to maintain in the said territories the authority of the United States, employ any part of the army and navy of the United States, and of the force authorized by an act passed the third day of March last, intitled 'An act directing a detachment from the militia of the United States, and for erecting certain arsenals,' which he may deem necessary…"[17]

Section 2 further enacted:

> "That until the expiration of the present session of Congress, unless provision for the temporary government of the said territories be sooner made by Congress, all the military, civil and judicial powers, exercised by the officers of the existing government of the same, shall be vested in such person or persons, and shall be exercised in such manner, as the President of the United State shall direct for maintaining and protecting the inhabitants of Louisiana in the free enjoyment of their liberty, property and religion."

The first convention of April 30th settled the terms of the purchase with respect to payments to be made directly to France. Article I specified the payment of sixty million francs to France. By the exchange rates specified within Article III (one dollar equal to 5.3333 francs), this nearly equated (and was, in effect, rounded down) to $11,250,000.[18]

For this payment to France, Congress authorized the creation of $11,250,000 of **certificates of stock** on November 10, 1803.[19]

Section 1 of the November 10th Act made the Louisiana stock certificates in favor of the French Republic (or its named assignees) payable, at the direction of France, in London (at four shillings and sixpence sterling/dollar) or Amsterdam (at 2.5 Dutch guilders/dollar), at six percent annual interest, payable half-yearly.

The April 30th convention specified, in Article II, "annual payments of not less than three millions of dollars each; of which the first payment shall commence fifteen years after the date of the exchange of ratifications". The Article also authorized shorter payment terms relative to the credit of the United States reflecting the aim of keeping up the stock price.

Any (later) proprietor of the stock certificates could surrender his certificates payable in Europe and receive an equivalent certificate payable in America at the Treasury of the United States.

Assumption of French Claims

A second convention on April 30th covered the remainder of the terms of the purchase and treaty, and dealt with settling old claims owed by France to various American creditors "for supplies, for embargoes, and prizes made at sea".[20]

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15. *Treaty between the United States of America and the French Republic*, 8 Stat. 200 @ 200, 202.

16. Volume I, Senate Executive Journal, Page 450.

17. II Stat. 245, Chapter I.

18. *Convention between the United States of America and the French Republic*, 8 Stat. 206 @ 206 & 208, Articles I and III. April 30, 1803.

19. II Stat. 245, Chapter II.

20. *Convention between the United States of America and the French Republic*, 8 Stat. 208 @ 210, Article IV.

Congress enacted yet another Act on November 10, 1803,[21] the purpose of which was to appropriate $3,750,000 for the purpose of paying the creditors of France located in the United States in conformance with the April 30th Treaty and (the second) Convention. This amount of money was the extent of French debt that the United States assumed on behalf of France.

The United States paid France $11,250,000 and assumed $3,750,000 of her debts (both at interest) for the ~830,000 square miles (530 million acres of land, plus or minus) of the Louisiana Purchase, for a total of $15 million, or under 3 cents/acre (not including subsequent interest payments which amounted to some $8.2 million).[22]

Payment of the $11,250,000 was financed for a period of up to 18 years by use of stock certificates; payment of the $3,750,000 in claims was financed over a five-year period (by bank loans).

Section 3 of the latter November 10th Act (Chapter III) authorized a 5-year loan of $1,750,000 payable at 6% interest. The said section 3 pointedly allowed the Bank of the United States to lend that amount to the United States.

Section 4 of the Act appropriated out of Duties on merchandise and tonnage sufficient funds to pay the interest on that loan of $1.75 million.

In that the French creditors were owed $3,750,000, but the November 10th Act only authorized a loan for $1,750,000, there would initially appear to be a $2 million shortfall.

The story of this "missing" $2 million better tells the story of the Louisiana Purchase.

The road that lead to the Louisiana Purchase did not begin with the intended acquisition of this immense area. To better understand the turn of events, an early history of this area needs to be briefly discussed.

In 1541, Hernando De Soto reached the Mississippi River and claimed the drainage basin for Spain, though little settling occurred.

141 years later, in 1682, René Robert Cavelier de La Salle took possession of the countryside adjacent to the Mississippi in the name of King Louis XIV of France, naming it *Louisiana*.

As a concession of the French and Indian Wars, on November 3, 1762, King Louis XV ceded "the whole country known by the name of Louisiana" back to his "very dear and best beloved cousin, the King of Spain".[23]

Spain held the land under this treaty for 38 years until the Treaty of St. Ildelfonso (San Ildefonso) on October 1, 1800. The terms of this treaty between France and Spain called for the retrocession to France of the province of Louisiana as received by Spain in 1762.

Though the Spanish/French treaty was finalized in 1800, it was not until immediately before France was to transfer Louisiana to the United States under terms of her treaty with them that France herself received possession of Louisiana.

The United States had full navigation rights on most of the Mississippi River by the fact that they controlled and governed the land on the Eastern bank of almost the entire length of the river.[24]

The United States, however, did not have any land on either side of the lowest portions of the river, which were controlled by Spain and/or France (depending upon the era). Thus, the right to dock in these foreign ports located at the terminus of the river was controlled by treaty.

The United States had rights by a 1795 Spanish treaty to land and "deposit" cargo from the river boats at the docks at New Orleans.[25] At such ports, the cargo could be assembled into larger or specified loads for continued transport in ocean-going vessels to various foreign ports. Without being able to land at a port at or near the mouth of the Mississippi River, this important waterway at America's then-Western edge unfortunately would be of far less value.

The initial incident that heightened America's thirst to better control their future occurred on October 18, 1802. The Spanish Intendant, still in possession of the port of New Orleans, issued a proclamation (in conformance with the inevitable transfer to France) "forbidding American citizens to deposit their merchandises and effects in the said port".[26] Neither did he specify another port in accordance with the 1795 treaty.

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21. II Stat. 247, Chapter III.

22. As determined by deducting the $15 million of principal from the chart following: Chart Series J7, Page 428, 93rd Congress, 1st Session, House Document 93 - 78 *Historical Statistics of the United States, Colonial Times to 1970*, September, 1975.

23. 46th Congress, 3td Session, Executive Document #47, "*The Public Domain, Its History, with Statistics*" Pt. 4, Pg. 90, 1881.

24. See also the *Treaty of Friendship, Limits and Navigation, Between the United States of American, and the King of Spain*, 8 Stat. 138 @ 140, Article IV, October 27, 1795.

25. Ibid, Pg. 152, Article XXII.

26. 3 Journal of the Senate 248, December 24, 1802.

Though the ability of American vessels to land again in New Orleans was soon restored, this incident left an indelible impression in the halls of Congress and within the Executive Offices. It was not a mere inconvenience that there was not any American soil on either side of the lower Mississippi River. Without such access, the United States had no means to secure their future to settle the vast drainage basin of the Mississippi River.

To remain in this vulnerable position indefinitely would be a continuous source of incitement and provocation.

Unfortunately, the stakes were higher since Spain had earlier announced in the Treaty of St. Ildelfonso that she was granting Louisiana back to (more-territorial and adversarial) France.

Americans far and wide knew they had to better control their future. The only logical conclusion was the purchase of significant port grounds at or near the mouth of the Mississippi, with the city and island of New Orleans being the ideal target for acquisition.

Dock - Yards

Under **Article I, Section 8, Clause 17** of the Constitution, Congress have the express ability to purchase property "for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings".

Thus Congress have the express ability to purchase and possess dock-Yards, even when and if they must pay exorbitant rates to obtain a strategic site. Congress may also borrow large sums of money to buy such grounds, and/or levy high Taxes, Duties, Imposts or Excises to pay for them.[27]

Under such authority and with such a view in mind, the House of Representatives transmitted a bill to the Senate "relative to the purchase of the Island of New Orleans, and the provinces of East and West Florida".[28]

Prior to the April treaty to purchase Louisiana, on **February 26, 1803** Congress appropriated $2,000,000 "for the purpose of defraying any extraordinary expenses which may be incurred in the intercourse between the United States and foreign nations".[29]

These funds were to be "applied under the direction of the President of the United States" who was responsible for the accounting of the sum to Congress. Section 2 of the Act authorized the President to borrow this sum of money, specifically noting within the Section that the Bank of the United States was authorized to lend this sum. Section 3 appropriated out of the surplus of Import and Tonnage Duties the funds necessary to pay the interest and redeem the principal under the terms to be negotiated in the loan.

This $2,000,000 appropriated in February of 1803 is the source of the "missing" funds which added to the $1,750,000 appropriated in November of 1803 — the total of which came to the $3.75 million owed to France's American creditors.

The $2 million appropriation to treat with France for the purchase of New Orleans as a dock-yard and port was well within the proper authority of Congress, even if such appropriation amounted to such a large amount of money.[30]

Fortunately for the long-term interests of America, but disheartening initially, France was not interested in the sale of New Orleans.

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27. Clause 17, it may be noted, further specifies that property may purchased "by the Consent of the Legislature of the State in which the Same shall be", perhaps inferring the purchase of property only from one of the States of the Union (and not from foreign States). This understanding, when looked at more closely, however, does not stand.

The purpose of this portion of the Clause was not to withhold from Congress the ability to make purchases of grounds (for the stated purposes) from foreign powers, but to give the States of the Union the final authority to decide if they desired to voluntarily concede governing authority in an area of land otherwise within their jurisdiction.

It was to clarify that just because Congress wanted a particular piece of ground, each State wherein the property was located had the final authority to decide if that State would cede governing jurisdiction to Congress.

Clause 17 is as much about governing authority as the ability to purchase land for specified purposes. When Congress purchases land for these purposes and a State voluntarily concedes governing authority, then the United States not only own the land, but they also govern it exclusively.

The purchase of these lands was expressly allowed by the Constitution, and as such the United States have the power to hold them (indefinitely).

Since State authority would be ceded (by the State's own choice), there could be no potential conflict with State authority. What property remained within State jurisdiction remained solely within State jurisdiction.

When Congress purchased property outside the United States, then obviously no State of the United States would have ever had authority for this foreign area. Provided that the foreign State ceded governing authority also, then the United States would yet own and govern this area exclusively.

Whether Congress purchased property from a State of the Union or a foreign State would not change the matters involved. After purchase and cession, the area would be within the exclusive legislative jurisdiction of the United States.

28. 1 Senate Executive Journal 443. February 15, 1803.

29. II Stat. 202.

30. The contemplated purchase of Florida would bring up the same issues as were brought up by the purchase of Louisiana, however (see reference for note 28).

Napoleon Bonaparte had early visions of re-establishing France's dominion in the Americas. Central to his vision was reclaiming the sugar-producing island of Hispaniola (the current-day island of Haiti and the Dominican Republic [Saint Domingue/Santo Domingo]) from an earlier slave revolt. Through discouraging years of fighting, France lost thousands of soldiers to war and yellow fever. Unable to regain Hispaniola, the Louisiana grain belt was no longer of great importance to France.

Added to this loss was the potential that France could lose Louisiana in war with England. Napoleon thus agreed with his advisors that it was in the best interests of France to sell the entire province of Louisiana to the United States (rather than to simply lose it in war).

While the initial direction sought by Congress to purchase a dock-Yard and port was well within their authority (and better within their means), the direction such negotiations turned were not necessarily.

Though the treaty as negotiated was actually a far-better buy for the exponential increase of land to be purchased for a relatively minor increase in price, a number of defects soon presented themselves.

The first was that the American ministers were not empowered to negotiate for this immense area of land. Robert Livingston repeatedly told the French negotiators that he had no authority to negotiate for the whole province of Louisiana.

The second defect was the ultimate cause of the first — Congress had no express authority to purchase and hold such a large expanse of land. An even more significant problem was that Congress had no express lawful authority to make appropriations of money for acquisitions of land for general settlement purposes. Congress could not lay and collect Taxes, Duties, Imposts and Excises, nor could they borrow Money, for simply any reason they saw fit.

Though many of the framers of the Constitution foresaw the day when the United States would stretch the vast continent, they did not expressly provide for such direct expenditure of funds to acquire large expanses of lands for future settling.[31]

That France sought to sell to the United States a vast area of land which well fit her future needs caused President Jefferson a brief personal quandary. He knew America could not afford to pass up such an offer, and in no way could she fail to gain a port at the mouth of the Mississippi. He also knew that Napoleon's offer would not likely stay long on the table. Thus there wasn't likely the time for the appropriate course to seek and ratify a Constitutional Amendment.

Jefferson was otherwise a strict-constructionist of the Constitution; since it did not specifically authorize Congress the means to raise revenue and appropriate funds for the purchase of such general-use property directly, then he had no direct authority on which to proceed.

The expedient route ultimately taken by President Jefferson was to secure the offer, and then later make it legal with a Constitutional Amendment.

The only vocal opponents to the acquisition of the Louisiana province were a few Federalists who worried that the admission into the Union of the future States created out of it would sway the Union away from Northern interests.

The later move to amend the Constitution never materialized. The general consensus was that such a power existed in the Constitution, even if it was not explicitly stated. The question never again presented itself with any real debate in further acquisitions of land from Florida to Alaska.

As is often the case of political expediency, a dangerous precedent is set when the proper process of amendment is ignored in cases when there would otherwise be universal acquiescence to institute such a new power.

Just because all agree in a given circumstance that government *should* have the power, if it was not clearly *given* the power, then the proper thing to do is to amend the charter.

Only under such consistency of action do those who seek to keep that government charter meaningful have the ability to limit unauthorized future government actions. If the Constitution does not constrain government power even when all agree that government should have a new power, then it cannot hope to limit government actions when there is honest disagreement.

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31. As an interesting aside, Congress had every authority to declare and wage war, and also lay and collect Taxes, Duties, Imposts and Excises and to borrow Money to fund this war. One of the main purposes of war is often to acquire lands or settle boundaries. Congress had then the lawful means to acquire the lands of the conquered nations through war, but did not have the specific peaceful authority to buy such assets directly.

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