

Slavery and the Slave Trade in the Louisiana Purchase, 1803-1812

By JOHN E. FISHER

The importance of the Louisiana Purchase has hardly been ignored. When Everett S. Brown wrote in 1920 that "undoubtedly the purchase of Louisiana was one of the momentous steps in the history of our country," he expressed the consensus among historians of every generation.¹ Yet for all the benefits eventually derived from it, the Louisiana Purchase presented numerous problems at the outset. In the first place, it was something of a diplomatic embarrassment. The American representatives had oversucceeded. Instead of buying New Orleans as instructed, they had bought enough territory to double the size of the nation; and agreed to pay more for it than they were authorized to spend. Moreover, France sold the territory after having promised not to do so and without having actual possession of it. As a result, American relations with Spain were strained because the latter felt herself a victim of international robbery. To compound the felony the Americans, who coveted Texas and the Floridas, claimed as much as possible under the vague boundaries of Louisiana.

Secondly, the Purchase raised a constitutional question. After years of sermonizing about strict construction, Jefferson had inconsistently acquired territory without any explicit constitutional provision. But fearing French intentions and finding the action backed by strong popular support, he overcame his constitutional misgivings. As a result, Jefferson and his party reinforced the concept of loose construction. Frederick Jackson Turner has observed:

When the whole sweep of American history and the present tendencies of our life are taken into view, it would be possible to argue that the doctrines of the Louisiana Purchase were farther-reaching in their effect upon the Constitution than even the measures of Alexander Hamilton or the decisions of John Marshall.²

A third problem involved the future of the acquired territory. Was the area to achieve statehood in some form or to be held in permanent subordination? On December 30, 1803, a committee headed by Senator John Breckinridge of Kentucky reported a bill for governing the territory. The Breckinridge bill was probably drawn up by Madison

1. Everett S. Brown, *The Constitutional History of the Louisiana Purchase, 1803-1812* (Berkeley, 1920), 2.

2. *Ibid.*

in co-operation with the President. It divided the area at the thirty-third parallel, with the District of Louisiana to the north subject to the territorial government of Indiana and to the provisions of the Ordinance of 1787. It created the Territory of Orleans to the south, which contained about fifty thousand people of predominantly French and Spanish descent. It provided for a Governor and Secretary appointed by the President for three years, a Legislative Council of Thirteen annually appointed by the President, and judicial officers appointed for four years by the President. It was not a democratic government; the people of the territory had no voice in the selection of these officials. The legislative Council had no initiative in law-making, being convened or prorogued at will by the Governor. Trial by jury was restricted to civil controversies exceeding twenty dollars and to capital crimes. Such a government seemed contrary to American ideals and principles and proved a source of irritation to the people of the Territory of Orleans.³ "By an act of sovereignty as despotic as the corresponding acts of France and Spain," Henry Adams wrote in a critical vein, "Jefferson and his party had annexed to the Union a foreign people and a vast territory, which profoundly altered the relation of the States and the character of their nationality. By similar acts they governed both."⁴ Edward Channing remarked: "By an act of Congress the government of the new territory was placed absolutely in the hands of the president of the United States, who simply stepped into the shoes of the king of Spain, so far as Louisiana was concerned."⁵ Similar charges of "royal government" were made in the Congressional debates.

While these strictures have some validity, they overtook several essential details. This act in the final form was limited to one year and was intended as a transitional measure, preparing for self-government a people with no experience. As Madison explained:

The provisions generally contemplated will leave the people of the District for awhile without the organization of power dictated by Republican theory; but it is evident that a sudden transition to a condition so much in contrast with that in which their ideas and habits have been formed, would be as unacceptable and as little beneficial to them as it would be difficult for the Government of the United States. It may

3. Henry Adams, *History of the United States of America During the Administrations of Jefferson and Madison*, 9 vols. (New York, 1889-1891), II, 118-124; Edward Channing, *The Jeffersonian System, 1801-1811* (New York, 1906), 80-85.

4. Adams, *History of the United States*, II, 118.

5. Channing, *Jeffersonian System*, 80.

fairly be expected that every blessing of liberty will be extended to them as fast as they shall be prepared and disposed to receive it.⁶

It should be noted also that in the first stage of territorial government under the Ordinance of 1787 there was no provision for a legislature, appointed or elected, and the Governor and territorial judges made the laws without the consent of the inhabitants. Under the Breckinridge Act, representatives of the people at least consented to the laws, even if they were not subject to popular re-election. This device was a compromise feature and a slight improvement. As Jefferson wrote:

We are now at work on a territorial division & government for Louisiana. It will probably be a small improvement of our former territorial governments, or first grade of government. The Act proposes to give them an assembly of Notables, selected by the Governor from the principal characters of the territory. This will, I think, be a better legislature than the former territorial one & will not be a greater departure from sound principles.⁷

Thus we have the three major problems presented by the Louisiana Purchase: diplomatic embarrassments with Spain; constitutional questions over the power to acquire territory; and the difficulties of providing government for a vast area with a foreign population. Historians have focused attention almost entirely on them. Receiving less attention, but no less important, is the issue of slavery in the territories.

In Louisiana the issue had a special feature: slavery existed there prior to American incorporation. Slavery was an established institution among a people of foreign ancestry whose loyalty had to be gained. Because it was allowed to continue, Robert McColley, who doubts the sincerity of Jefferson's anti-slavery views, has charged that the President deliberately negated the slavery prohibition of the Ordinance of 1787:

As president . . . he [Jefferson] guaranteed the protection of Spanish and French slavery in Louisiana, and helped open that territory to American slavery as well. . . . Jefferson's reputation has indeed been fortunate, when one considers that he has been recognized universally as the father

6. Madison to Robert R. Livingston, January 31, 1804, quoted in Brown, *Louisiana Purchase*, 100.

7. Jefferson to Thomas McKean, January 17, 1804, quoted in *ibid.*, 99.

of exclusion in the Old Northwest, but has never been labeled as the father of slavery in Louisiana, except by a few seething Federalists in his own day, who have long since been discredited.⁸

To call Jefferson "the father of slavery in Louisiana," however, is like calling King George III of England the father of the American colonies. When the United States acquired Louisiana, the New Orleans area had a population of 50,000, nearly half of it slave. Jefferson seems to have accepted the impossibility of changing existing conditions. There was already some doubt whether the Creoles would acquiesce in American rule. To emancipate their slaves immediately might have provoked open revolt. A moderate course was necessary.

To place the Louisiana problem in perspective it is useful here to review earlier policies on slavery in the territories. The first proposal, by Thomas Jefferson in 1784, was to prohibit slavery in the whole region west of the Alleghanies after 1800. But this provision failed adoption by one vote. The Ordinance of 1787 did prohibit slavery in the Northwest Territory, but not south of the Ohio River. Even so, the ban was unpopular with certain of the settlers of Indiana and Illinois, who petitioned Congress to suspend it. By default slavery continued quietly and increased south of the Ohio River, and in 1792 Kentucky entered the Union as a slave state. In 1796 Tennessee did likewise. When the Mississippi Territory was organized in 1798, Congress almost applied the slavery exclusion clause of the Ordinance of 1787, but exempted the area from it and slavery soon spread there. Thus the Ohio River became an extension of the Mason-Dixon line, dividing free and slave sections.⁹

With the status of slavery decided in the Northwest and Southwest, the question was revived in 1803 with the annexation of territory west of the Mississippi River. The prospect of prohibiting slavery there received more attention than had been given to the Mississippi Territory. But again it should be stressed that an existing institution was involved, not just a potential one. In fact the existence of slavery in the Louisiana territory had been one of the grounds of Federalist opposition to the new acquisition.¹⁰

8. Robert McColley, *Slavery and Jeffersonian Virginia* (Urbana, 1964), 125.

9. Mary S. Locke, *Anti-Slavery in America, 1619-1808* (Gloucester, Mass., 1965), 157-162; Thomas P. Abernethy, *The South in the New Nation, 1789-1812* (Baton Rouge, 1961), 446-447; Hermann Von Holst, *The Constitutional and Political History of the United States*, 8 vols. (Chicago, 1876-1892), I, 322-323.

10. Locke, *Anti-Slavery in America*, 162.

Nevertheless, the American Convention for Promoting the Abolition of Slavery presented a memorial from Philadelphia to Congress, calling not only for the prohibition of the slave trade in the new territory but also for the application of the slavery ban included in the Ordinance of 1787. The petitioners asserted that "while the Constitution of the United States declares all men equally entitled to liberty, they cannot conceive our Government as acting consistently with its declarations, if it shall, in any instance, authorize men to enslave unoffending man." They especially urged passage of "such laws as shall prohibit the importation of slaves into the Territory of Louisiana."¹¹ Though the institution of slavery was involved in the subsequent debate in Congress, the main device used to strike against slavery was the prohibition of the slave trade. Southerners who wanted to strengthen slavery in Louisiana recognized this and opposed the prohibition of the slave trade on these grounds. As W.E.B. DuBois writes:

The cession of Louisiana in 1803 challenged and aroused the North on the slavery question again; put the Carolina and Georgia slave-traders in the saddle, to the dismay of the Border States; and brought the whole slave-trade question vividly before the public conscience.¹²

What restrictions, if any, placed on the slave trade to Louisiana would affect not only the domestic trade but foreign importations as well. In December, 1803, South Carolina had reopened her ports to the foreign slave trade partly because of the difficulty in repressing illicit traffic and partly because of the certainty of a federal prohibition in 1808, but also because the recent acquisition of Louisiana opened up a vast potential demand for slave labor. This was another consideration as Congress approached the subject.

When discussion began on the Breckinridge bill to provide government for Louisiana (details of which have been summarized above), opponents of the slave trade launched an attack. By amendments they attempted first to prohibit the slave trade completely, then to compel the emancipation at a certain age of all those imported, then to confine all importation to the states, and finally to limit it to slaves imported before South Carolina reopened the foreign trade. This led

11. *Annals of Congress*, 8th Congress, 2nd Session, 1596-97; *American State Papers: Miscellaneous*, I, 386.

12. W. E. B. DuBois, *The Suppression of the African Slave-Trade* (New York, 1896), 94, 86; cf. Richard Hildreth, *History of the United States of America*, 6 vols. (New York, 1880), V, 500, which castigates Jefferson for not demanding the complete abolition of slavery in Louisiana.

to a debate over the merits and legality of the slave trade, which revealed varying attitudes toward the institution of slavery itself.¹³

Those who advocated stringent restrictions on the slave trade generally expressed opposition to slavery as well, considering it both morally wrong and contrary to the fundamental American principles of liberty and equality. But there was another aspect involved, as expressed by Senator John Breckinridge of Kentucky: "I fear our slaves in the south will produce another St. Domingo." There was a strong fear of slave insurrections by Southerners and Northerners alike. Senator Jesse Franklin of North Carolina spoke of them as "alarming", and John Smith of Ohio declared:

Will you encrease their number, and lay the necessary foundation for the horrors of another St. Domingo? If slaves are admitted there, I fear, we shall have cause to lament the acquisition of that country—it will prove a curse.

And James Hillhouse of Connecticut asked: "Why encrease (sic) the evil at a distant part of your territory—which must necessarily require a standing army to protect it?"¹⁴

Those who opposed restrictions on the slave trade took the position that Louisiana could not be developed without it. "Slaves must be admitted into that territory," contended James Jackson of Georgia, for "it cannot be cultivated without them." Jonathan Dayton of New Jersey added:

Slavery must be tolerated, it must be established in that country or it can never be inhabited. White people cannot cultivate it—your men cannot bear the burning sun and damp dews of that country—I have traversed a large portion of it.

To this Smith of Ohio retorted: "I know that country. I have spent considerable time there—white men can cultivate it." Hillhouse also replied that if "that country cannot be cultivated without slaves, . . . let it remain a wilderness."¹⁵

Some support for the slave trade came from the "diffusion theory" on slavery, prevalent in the early nineteenth century. By this theory emancipation could be hastened by spreading the slaves more

13. *Annals of Congress*, 8th Congress, 1st Session, 240-255; DuBois, *African Slave-Trade*, 89.

14. Senator William Plumer's "Memorandum of the Proceedings of Congress, Particularly of the Senate, from October 17, 1803, to March 27, 1804," edited by E. S. Brown in the *American Historical Review*, XXII (January, 1917), 340-364.

15. *Ibid.*

thinly throughout the country, thereby lessening the dangers inherent in manumission. While there was no explicit defense of the morality of slave-holding, Robert Wright of Maryland made an unusual observation: "It is wrong to reproach us with the *immorality* of *slavery*—that is a crime we must answer at the bar of God—we ought not therefore to answer it here—for it would be unjust that we should be punished twice for the same offence." Others stressed the legal obligations under the treaty. "The faith of the nation, is by the treaty," said Dayton, "pledged to that people, that their rights shall be secured to them—one of their rights is slavery." However, he construed those rights very narrowly, adding: "An elective government and trial by jury would be a curse to that people; but slavery is essential to their existence."¹⁶

The foreign slave trade was also defended because, if prohibited, the only slaves available through the domestic trade would be the worst ones, rebellious and unhealthy. "Slaves directly from Africa," said Jackson of Georgia, "are preferable to those who have been long in this country or even to those born here." His defense of slavery appealed to a higher law: "You cannot prevent slavery—neither laws moral or human can do it. Men will be governed by their interest, not the law." He also anticipated the later "popular sovereignty" doctrine, saying "Let those people judge for themselves—the treaty is obligatory upon us."¹⁷

Two Senators who opposed slavery and the measure for restricting the slave trade were John Quincy Adams and Stephen Bradley of Vermont. Adams opposed the measure as inadequate; Bradley explained simply, "the resolution under consideration admits the principle of slavery, and therefore I shall vote against it."¹⁸ Nevertheless, the measure passed, prohibiting the foreign slave trade, the introduction of slaves imported before May 1, 1798, and the introduction of slaves not the *bona fide* property of actual settlers. Illegal importation carried a fine of \$300 and the freedom of the slave.¹⁹

The slave trade became a constant problem in the Territory of Orleans. The Governor, W. C. C. Claiborne, had been in charge only about a month when the problem became evident. Under the act of

16. *Ibid.* For an example of Jefferson's thinking on the "diffusion theory," see Jefferson to John Dickinson, January 13, 1807, in A. A. Lipscomb and A. E. Bergh, *The Writings of Thomas Jefferson*, 20 vols. (Washington, D.C., 1904) XI, 135.

17. Plumer's "Memorandum," 350, 347; Brown, *Louisiana Purchase*, 113.

18. Plumer's "Memorandum," 346-348.

19. DuBois, *African Slave-Trade*, 89; Adams, *History of the United States*, II, 121-122.

Congress taking possession of the area, Spanish laws were largely continued in force, thus allowing the slave trade temporarily. As Claiborne reported to Secretary of State Madison:

A vessel arrived at this port a few days since with fifty African negroes for sale. Being unwilling to permit so barbarous a traffic, if my powers authorized me to prevent it, I immediately applied to a Mr. Leonard, the late Spanish Contadore at this place, a man of great integrity of character for information as to the laws and customs of Spain relating to the African trade and received from him a letter upon the Subject. . . . Finding from Mr. Leonard's Communication that the bringing of African Slaves to Louisiana had been permitted by the Spanish authorities, and doubting whether I was vested with authority to forbid their sale, the importer has been left to pursue his own wishes.²⁰

Soon after he took control of the government, Claiborne tried to gain more information about the area and dispatched Dr. John Watkins, formerly of Kentucky, who spoke both French and Spanish. Watkins reported to Claiborne that "no subject seems to be so interesting to the minds of the inhabitants of all that part of the country, which I have visited [to the north of New Orleans] as that of the importation of brute Negroes from Africa." That permission, he believed, would "better reconcile them to the Government of the United States, than any other privilege that could be extended to the Country." Without it, Watkins continued,

they pretend that they must abandon the culture both of Sugar and Cotton. White laborers they say, cannot be had in this unhealthy climate, and they would in vain enjoy the blessings of a rich soil, and a valuable cultivation, even under the happy Government of America, deprived of this necessary resource in their Labours.

Watkins felt it was this consideration which prompted their concern over the form of territorial government and their desire for a delegate to Congress to represent their interests.²¹ Claiborne forwarded this report to Madison with the comment that on the matter of the slave trade "the people generally appear to feel a lively interest, and

20. Claiborne to Madison, January 31, 1804, in James A. Robertson, *Louisiana Under the Rule of Spain, France, and the United States*, 2 vols. (Cleveland, 1911), II, 240.

21. Dr. John Watkins to Claiborne, February 2, 1804, in Dunbar Rowland (ed.), *Official Letter Books of W. C. C. Claiborne, 1801-1816*, 6 vols. (Jackson, Miss., 1917), II, 3-13.

the prevailing opinion expressed here is, that a prohibition would tend generally to the injury of the province."²²

When word reached Louisiana that Congress was about to prohibit the foreign slave trade, it resulted in great agitation. "The African trade has hitherto been lucrative," wrote Claiborne, "and the farmers are desirous of increasing the number of their Slaves. The prohibiting of the importation of Negroes therefore is viewed here as a serious blow at the commercial and agricultural interest of the Province."²³ He was certain that "no act of Congress would excite more discontent. . . ." This grievance was intensified because South Carolina was allowed to make importations. The Louisianians did not understand the constitutional provision by which South Carolina retained that right. They felt Congress was unfairly giving South Carolina a monopoly on the trade to the detriment of their interests.²⁴ Nor was Claiborne the only one to recognize the discontent of the inhabitants. Laussat, the French Commissioner who had taken possession of Louisiana briefly for France, wrote: "But scarcely had the agents of the United States taken the reins than they made blunder after blunder and mistake after mistake." He was equally sure of the source of discontent: "The importation of negroes there is abolished point blank. The present inhabitants of Lower Louisiana could not have been attacked in a more vulnerable spot."²⁵

The Louisianians were greatly concerned over the loss of what seemed an essential labor supply and were preparing in frenzied fashion against that loss. Claiborne informed Madison that

previous to the 1st of October [when the prohibition went into effect] thousands of African negroes will be imported into this province; for the Citizens seem impressed with an opinion that, a great, very great supply of slaves is essential to the prosperity of Louisiana. Hence, Sir, you may conclude that the prohibition as to the importation, subsequent to the 1st of October is a source of some discontent; Nay, Sir, it is at present a cause of much clamor, but I indulge a hope, that the Louisianians will very soon see the justice and policy of the measure.²⁶

But these hopes were in vain. A few weeks later, Claiborne observed continued dissatisfaction, and also a growing discontent over

²². Claiborne to Madison, March 1, 1804, in *ibid.*, 13-14.

²³. Claiborne to Madison, March 10, 1804, Robertson, *Louisiana*, II, 258-259.

²⁴. Claiborne to Madison, March 16, 1804, Rowland, *Claiborne*, II, 46.

²⁵. Laussat to Decres, April 7, 1804, Robertson, *Louisiana*, II, 51-59.

²⁶. Claiborne to Madison, May 8, 1804, Robertson, *Louisiana*, II, 263.

the form of territorial government. He found that many American immigrants and the natives of the area united in opposition to the government prescribed by Congress.²⁷ "On the subject of the Government," he was sure, "the great body of the people have no opinion."²⁸ The agitation toward forming a state government did not originate with the natives of Louisiana. What they wanted was the privilege of electing their Legislative Council, and the opening of the slave trade for a few years; "the slave trade seems to be a favourite object throughout the Province." There was a general impression that by achieving statehood they would regain control of the trade until 1808, and that prospect, he felt, "has had some influence in rendering popular the claims of immediate admission into the Union."²⁹ The need for slave labor, then, ironically led to demands for the right of self-government. The cause of the agitation seemed clear to Claiborne: "It is certainly true (and I perceive it with great regret) that there is almost an Universal Sentiment in favor of this inhuman traffic, and the prohibition thereof is the great Source of discontent."³⁰ In part, his concern over the foreign slave trade, like that of Congress, was caused by fears of another Santo Domingo. Being responsible for governing an area with a population nearly half slave already, the prospect of a larger influx was not inviting. But the prohibition of the trade produced political revolt by the native whites.³¹ Nor was Claiborne the only one to stress the importance of the slave trade. Another observer, Hatch Dent, no admirer of Claiborne, wrote that "our Governor whose egregious vanity solicits adulation becomes less respected every day." Yet he noted the seriousness of the discontent among the Louisianians:

They complain of the prohibition of the Slave Trade as rendering the plantations of little or no value, as Sugar, Cotton, Rice or Indigo cannot be cultivated to any extent, nor raised in large quantities without employing a number of hands, nor the Levee . . . Kept in repair; And that the heat of the climate & the marshiness of the country . . . is unfriendly to the labouring classes of whitemen.³²

27. Claiborne to Madison, May 29, 1804, Rowland, *Claiborne*, II, 175.

28. Claiborne to Madison, July 5, 1804, in *ibid.*

29. Claiborne to Madison, July 26, 1804 in *ibid.*

30. Claiborne to Madison, July 5, 1804, Rowland, *Claiborne*, II, 175.

31. On the threat of slave insurrection, see, for example, the Petition of the Citizens of Pointe Coupee to Claiborne, November 9, 1804, Robertson, *Louisiana*, II, 300-301.

32. Hatch Dent to James H. McColloch, July 14, 1804, Clarence Carter (ed.), *The Territorial Papers of the United States*, 20 vols. (Washington, 1934), IX, 265-266.

The inhabitants of Louisiana had expected a more liberal form of government and, no doubt, were disappointed with the one provided. The most flagrant change from Spanish and French to American control, however, was not the form of government, but the prohibition of the slave trade, which seemed the strongest threat to their interests and remained a continuous grievance. This discontent provided the basis for agitation toward self-government. Americans who had migrated into Louisiana, some recently, some older residents, provided the leadership in voicing this discontent. Claiborne characterized them as "adventurers." At the head of these were Edward Livingston, Daniel Clark, and Evan Jones, all disgruntled with the territorial government for one reason or another. They hoped to gain power and prestige if a state government were formed.³³

These dissident elements held a meeting and drew up a memorial. Claiborne, after seeing one sheet of the original, said that it was in the handwriting of Edward Livingston. The memorial was then circulated throughout the territory to gain as many signatures as possible. Many signed it, however, without reading or understanding it. Few of the natives had ever before been called on to sign a political paper.³⁴ Reiterating that the prohibition of slave trade was a source of great dissatisfaction, Claiborne wrote: "I believe the opinions and wishes of the people upon this subject will be expressed in a Memorial to Congress. . . ." ³⁵

To present the Memorial to Congress, Pierre Derbigy, Jean Noel Destrehan and Pierre Sauve, all natives of France, were chosen. They were well-respected in the territory. Sauve and Destrehan were former merchants who had become sugar planters, and all three were warm advocates of the slave trade. This seems to have been the unifying

33. Brown, *Louisiana Purchase*, 147-153; Alcee Fortier, *A History of Louisiana*, 4 vols. (New York, 1904), III, 14-17; Anonymous, *A Faithful Picture of the Political Situation of New Orleans* (Boston, 1808), 6; Everett S. Brown, "The Orleans Territory Memorialists to Congress, 1804," *Louisiana Historical Quarterly*, I (January, 1917), 99-102. See also Mitchell Franklin, "Concerning the Historical Importance of Edward Livingston," *Tulane Law Review*, XI (February, 1937), 163-212. Franklin argues that Livingston was sincerely devoted to democracy and civil liberties; indeed, he was such a radical democrat that "perhaps he almost reached the threshold of socialism." (172). But he was used, Franklin argues, by the slaveholders: "Louisiana . . . was interested in him only up to a certain point, the point at which the material interests of slave-holding Louisiana and the liberal ideology of Edward Livingston coincided; and when that point was reached he was cast away." (164).

34. Brown, "The Orleans Memorialists," 99-102; and *Louisiana Purchase*, 153.

35. Claiborne to Madison, March 31, 1804, Rowland, *Claiborne*, II, 76-77.

factor among them. Destrehan, a friend of Laussat, had been mortified at the cession to the United States and still preferred French rule. The other two were loyal to the American government. Their complaint focused on the form of government Congress had established over them, saying that nothing would satisfy the people but an elective government. Claiborne assured Madison and the President that the primary objective was the opening of the slave trade. On that point the people were interested, but few were concerned about statehood.³⁶ "I am persuaded," [he wrote]

the great Body of the Signers care but little as to the success of their Congressional Agents; unless indeed, in relation to the African Trade; and on this subject, the people in general (greatly to my mortification) feel a lively Interest.³⁷

The Memorial was presented to the Senate on December 31, 1804. It objected to a form of government under which the people had no voice in choosing the governor or the legislature, to taxation without representation, to a dependent judiciary, and to the failure to incorporate the territory into the Union. The argument was heavily couched in the terms of natural rights philosophy, and those grievances enumerated regarding the form of government invoked the "Spirit of '76." The protest over the slave trade was a strange contrast to the language of the rights of man. Their equality with other American citizens had been denied, the petitioners contended, because the foreign slave trade was prohibited and the interstate trade restricted. Slavery and the slave trade was defended as a necessity:

To the necessity of employing African laborers, which arises from climate, and the species of cultivation pursued in warm latitudes, is added a reason in this country peculiar to itself. The banks raised to restrain the waters of the Mississippi can only be kept in repair by those whose natural constitution and habits of labor enable them to resist the combined effects of a deleterious moisture, and a degree of heat intolerable to whites; this labor is great, it requires many hands, and it is all important to the very existence of our

36. Claiborne to Madison, July 13, 1804, Carter, *Territorial Papers*, IX, 261; Brown, "The Orleans Memorialists," 89-102 and *Louisiana Purchase*, 155-157; Claiborne to Madison, October 27, 1804, Carter, *Territorial Papers*, IX, 305.

37. Claiborne to Jefferson, October 27, 1804, Carter, *Territorial Papers*, IX, 314.

country. If, therefore, this traffic is justifiable anywhere, it is surely in this province, where, unless it is permitted, cultivation must cease, the improvements of a century be destroyed, and the great river resume its empire over our ruined fields and demolished habitations.³⁸

Certainly Claiborne had not emphasized more strongly the desire to retain the slave trade. He reported to Madison that "a great anxiety exists here to learn the fate of the Memorial to Congress." The slave trade continued to be the primary concern. Immediate admission to statehood was not expected, though the territory hoped for the privilege of electing one branch of the legislature. But Claiborne did not expect any disturbance if the Memorial was not acted upon.³⁹

A similar remonstrance against the form of government established in the District of Louisiana (Upper Louisiana) was communicated to the House of Representatives on January 4, 1805. The situation in Upper Louisiana was different from that of the Orleans Territory. It had been annexed governmentally as a district of the Indiana Territory under the laws thereof. This made the status of slavery in Upper Louisiana very dubious. Slavery existed under Spanish law, but was prohibited in the Indiana Territory under the Northwest Ordinance of 1787. Congress had failed to clarify the status of slavery in Upper Louisiana, though recognizing it under the treaty obligations in the Orleans Territory. William C. Carr, a native of Virginia and the second lawyer to arrive in St. Louis, reported this confusion to Senator Breckinridge of Kentucky:

On my arrival I found the people very much agitated concerning various reports, in circulation here at that time; particularly in regard to this district's being annexed to the Indiana Territory & the regulations which Congress might adopt relative to slavery. Many were apprehensive that slavery would not only be prohibited but the more ignorant

38. *Annals of Congress*, 8th Congress, 2nd Session, 1597-1608; *American State Papers, Miscellaneous*, I, 396-398.

39. Claiborne to Madison, December 31, 1804, Robertson, *Louisiana*, II, 278-279. Thomas Paine was indignant over this use of the natural rights philosophy to plead for reopening the slave trade. He denounced "as being founded in direct injustice" the petition "for power, under the name of rights, to import and enslave africans!" He asked: "Dare you put up a petition to Heaven for such a power, without fearing to be struck from the earth by its justice?" See "To the French Inhabitants of Louisiana," in Moncure D. Conway (ed.), *The Writings of Thomas Paine* (New York, 1895), III, 430-436.

were fearful lest those already in their possession would also be manumitted.⁴⁰

In a similar tone, Thomas T. Davis, a Territorial Judge of Indiana, informed Jefferson:

I have been employed in visiting the Spanish settlements on the other side of the Mississippi. The people are wealthy & the Land rich. Most of them are averse to the Cession of Louisiana to the U. S. but I think by a little attention & moderation they may be easily won over. They are afraid of the Liberation of their Slaves (of which they have great numbers). I advised them to petition Congress on the Subject. They have done so.⁴¹

And so they had. Their main grievance regarding the form of government was that Louisiana had been divided into two parts and thereby had an insufficient population for statehood. This division, they feared, would lead to other divisions and result in indefinite postponement of statehood. Under the treaty of cession they claimed the right to be incorporated into the Union. Their petition drew upon the natural rights language of the Declaration of Independence. But it went on to defend slavery as a property right guaranteed under the treaty and to reproach Congress for endangering it:

Slavery cannot exist in the Indiana Territory, and slavery prevails in Louisiana; and here your petitioners must beg to observe . . . that they conceive [that] their property of every description has been warranted to them by the treaty between the United States and the French Republic. Your petitioners are informed that a law respecting slavery has been passed by Congress for the district of Orleans, similar in many respects to the one formerly made for the Mississippi Territory. Is not the silence of Congress with respect to slavery in this district of Louisiana, and the placing of this district under the Governor of a Territory where slavery is proscribed, calculated to alarm the people with respect to that kind of property, and to create the presumption of a disposition in Congress to abolish at a future day slavery altogether in the district of Louisiana?

The concern in Upper Louisiana was over property rights in slaves

40. W. C. Carr to John Breckinridge, July 7, 1804, Carter, *Territorial Papers*, XIII, 29-30.

41. Thomas T. Davis to Jefferson, October 5, 1803 in *ibid.*, 7.

and less with the slave trade. The petitioners only asked that "Congress would acknowledge the principle of [our] being entitled, in virtue of the treaty, to the free possession of our slaves, and to the right of importing slaves into the district of Louisiana, under such restrictions as to Congress in their wisdom will appear necessary."⁴²

The two petitions were referred to committees for study. In March, 1805, two bills passed Congress altering the government of the two areas. The District of Louisiana was separated from the Indiana Territory and became the Territory of Louisiana with its own Governor, Secretary, and three Judges. The inhabitants were to enjoy all the rights and privileges secured by the Ordinance of 1787, but, as in the Mississippi Territory, slavery was permitted. The Territory of Orleans was given a legislative assembly of twenty-five delegates chosen by the people, as in Mississippi, and the promise of statehood when the population reached 60,000. Though some Louisianians had hoped for immediate statehood, these concessions were satisfactory so far as the form of government was concerned. The issue of the foreign slave trade was not reopened as most of them considered essential. When Louisiana achieved statehood in 1812, it was too late to remove the prohibition on the slave trade by state action.⁴³

Although the agitation to legalize the foreign slave trade had failed, the demand for more slave labor continued. As a result the trade was carried on covertly with popular support, and its suppression was difficult. The Mayor of New Orleans wrote that

Such . . . is the public opinion of the necessity of more slaves and such the high price of labor that all the vigilance of the best organized Government upon earth will not be sufficient to prevent their introduction. They cannot be brought by regular traffick (sic) because the laws oppose it, but they will be fraudulently brought, and the Risque being less in getting them from the Islands than from Africa it naturally follows that our country is and will continue to be overrun with the wretches of St. Domingo, Martinique & Jamaica instead of the harmless African. Whoever takes a view of the sentiments of the inhabitants of lower Louisiana, of the natural and geographical situation of the country must be convinced of the truths of these observations. I defy all the vigilance of man to prevent the introduction of Slaves

⁴². *Annals of Congress*, 8th Congress, 2nd Session, 1608-1620; *American State Papers, Miscellaneous*, I, 400-404.

⁴³. *Annals of Congress*, 8th Congress, 2nd Session, 1674-1676.

by some means or other. The people ask for new Negroes, [if] you refuse them they say they must have Slaves of some kind and [they] will and do therefore procure such as they can get.⁴⁴

And Claiborne informed Jefferson that

Many African Slaves are introduced into the Settlement of Baton Rouge by the way of Pensacola, and Mobile, and from Baton Rouge they pass into Louisiana. These abuses are seen and regretted but (under the existing circumstances) cannot be prevented.⁴⁵

Later, even after American control had been extended over the Mobil area, Claiborne had to rely on the Navy to help prevent importations.⁴⁶

An authority on slavery and the slave trade in Louisiana, Joe G. Taylor, writes:

The people of Louisiana felt themselves injured when the foreign slave trade was prohibited and for almost two decades after the Louisiana Purchase, slave smuggling was carried on to such an extent that it was almost common. Smuggling ceased to be frequent, and may have halted completely, after the early 1820's.

As Taylor points out, this discontent, combined with normal frontier lawlessness and the difficulty of policing the Gulf coast, encouraged the slave trade. The pirates of the area, based at Galveston Island and Baratavia Bay, found it a lucrative business. Gradually the domestic slave trade came to supply labor needs but not until around 1820. In the meantime, from 1804 to 1820, the foreign trade flourished.⁴⁷

The Louisiana Purchase did expand the area of slavery in the United States. Ultimately three slave states were formed out of it—Louisiana, Missouri, and Arkansas. Despite the crisis precipitated over the admission of Missouri, it seemed inevitable that all three would be slave states because of the introduction and growth of slavery under Spanish rule. Given the attitude of the inhabitants, eman-

44. John Watkins, Mayor of New Orleans, to Secretary John Graham, September 6, 1805, Carter, *Territorial Papers*, IX, 500-504.

45. Claiborne to Jefferson, March 25, 1805 in *ibid.*, 424-425.

46. Claiborne to Paul Hamilton, Secretary of Navy, June 13, 1811, Rowland, *Claiborne*, V, 274-275.

47. Joe G. Taylor, "The Foreign Slave Trade in Louisiana," *Louisiana History*, I (Winter, 1960), 36-44.

cipation was impossible even in the territorial stage. The most that could be done was to restrict the slave trade in hope of restraining the growth of slavery. But when Jefferson and Congress attempted such a restriction, agitation and disaffection mounted steadily.

There can be no doubt how important the slave trade appeared to the Louisianians. Its restriction proved to be a major grievance, more so it seems, than the form of the territorial government. If the observations of Claiborne and others were correct, dissatisfaction over the slave trade produced the agitation to change the territorial government.⁴⁸ With the plea for self-government, phrased in the terms of natural rights, went the plea for slavery and the slave trade to fulfill labor needs. It may seem ironic that the contradictory ideals of natural rights and slavery were so combined, but the case is not unique. Indeed, one might argue that a consistent theme of Southern history has been the use of liberal ideas to promote illiberal ends. The ideas of states-rights and limited government have merit in opposing centralization and tyranny, but until the Civil War they were used to perpetuate slavery, and afterward to maintain white supremacy and racial discrimination. Such is the irony of Southern history. The slave trade in Louisiana is merely an example of this tendency.

48. See the articles of Mitchell Franklin, "Concerning the Historical Importance of Edward Livingston," *Tulane Law Review*, XI (February, 1937), 163-212; "The Place of Thomas Jefferson in the Expulsion of Spanish Medieval Law from Louisiana," *Tulane Law Review*, XVI (April, 1942), 319-338; "The Eighteenth *Brumaire* in Louisiana: Talleyrand and the Spanish Medieval Legal System of 1806," *Tulane Law Review*, XVI (June, 1942), 514-561. Franklin expresses a similar interpretation in fragmentary form, though with essential differences. Firstly, he is convinced that "Jefferson was seeking to eliminate Louisiana slavery. . . ." Secondly, he sees vast international designs involved: "In order to protect slavery from President Jefferson's attack, the French slaveholders of Louisiana would have to unite with Napoleon, the defender of slavery; and they would carry with them to Napoleon the support of other slaveholders in the southern states. Thus slavery not only would loosen the ties of the United States, but would unite as 'allies' all the slaveholders, through the Louisiana slaveholders." "The Eighteenth *Brumaire* in Louisiana," 517. The evidence for this is tenuous at best.