THE DECLARATION OF INDEPENDENCE AND GOVERNMENT BY CONSENT.

[The following critical analysis of the meaning of the Declaration of Independence was written for the Chicago Record by Professor Harry Pratt Judson, of the University of Chicago:]

The declaration of Independence has of late been pressed into politics with an interpretation which would amaze the framers of the immortal document. One would almost think that the Declaration is a legal and not a political, instrument; that it was intended as law, and not primarily to influence opinion; in short, that it is, like the constitution, a part of the supreme law of the land, and is to be applied therefore in the exact and literal meaning of its every word, so as to rule every proposed policy. This has not heretofore been the view taken by students of political science. Indeed, until this time it would be difficult to find any scholar of authority who would risk his reputation on such an interpretation. That such interpretation was far from being in the minds of the framers, and that the American people as a whole have never acted in accordance with such a view of political philosophy, is a matter which in other times than the present would hardly seem to need serious discussion.

"Governments," said the congress of 1776, "derive their just powers from the consent of the governed;" and now we are told that that proposition must be construed as true with literal exactness, and must be applied in that sense to every case which may arise.

Did the framers so understand it?

At the very time when Jefferson was writing the Declaration slaves were held in his own colony of Virginia and in every other colony which united with Virginia in the insurrection against Great Britain. Did the government of these slaves rest on their consent? Did the congress which voted the Declaration think for a moment that its doctrines applied to negroes? No doubt we regard slavery as morally indefensible and rejoice in its abolition. But the fact remains that with reference to this large part of the community the framers never thought of applying literally the doctrine of the consent of the governed.

It requires no great stretch of imagination to realize the way in which the congress of 1776 would have received the proposition to apply the doctrine to women. Some states in our time have admitted women to a share in government. But does any one suppose that as the revolutionary congress listened to the report of Jefferson's committee it occurred to a single one of them that the logic of it was woman suffrage? The fiction that women virtually have a voice in political action through their husbands and brothers would hardly satisfy our equal-suffrage associations. They certainly would maintain very positively that the literal application of the Declaration would give women a vote. But it is quite clear that here is a half of our community who during the whole history of the republic have been governed by the other half in spite of the Declaration of Independence. And it is quite as clear that the framers would not have thought any other arrangement conceivable.

Government of Indians.

We have uniformly treated Indians in this respect as we have slaves and women. While permitting tribal authority under certain limitations, yet we have always maintained our own supremacy. We have governed Indians by the strong hand, regardless of their assent to our policies. Of course we have often sought to pursuade. But when moral suasion has failed, if the issue has seemed to us of sufficient importance, we have then compelled obedience to our will. This was true in 1776, and has been true all the time since. Here is a case in which one nation has uniformly assumed the right to judge whether another nation is fit for political independence. We are told that such an assumption is always of the essence of tyranny. Perhaps it is. But the consequences which would have followed the withholding of our control over the Indians are so plain that they must be obvious even to one who believes, or thinks he believes, in the literal interpretation of the doctrine of the consent of the governed.

In 1803 Mr. Jefferson had an opportunity to make a literal application of the doctrine. He wanted Louisiana to belong to the United States. He believed that the vital interests of this country imperatively demanded the acquisition of New Orleans, and had bluntly avowed the opinion that any foreign nation which held that city was our natural enemy. It was not the wilderness beyond the Mississippi which he sought, but the city of New Orleans, regardless of the wishes of its thriving French and Spanish population. These people passionately desired not to be transferred to the authority of the United States. But their wishes were not consulted. They were sold by France and bought by the United States for $15,000,000. The whole population of the ceded territory was estimated at the time to include somewhat less than 100,000 souls—whites, negroes and Indians. Probably most of the Indians never heard of the transaction, the most of the negroes either knew or cared nothing about it, and the whites were almost unanimously opposed to it. But regardless of their wishes the author of the Declaration of Independence promptly bought them all, at the rate, if one may employ the present-day jargon, of $150 a head. The city of New Orleans, it is sometimes said, was only a trifling settlement, too small to take into account in this question. In 1800 there were only six cities in the union with a population over 8,000. At that time the population of New Orleans was between 8,000 and 10,000, and thus when annexed it fell within the largest seven cities in the area of the republic. Can as much be said of Manila? No, the consent of the governed was not asked in the case of Louisiana, doubtless because Mr. Jefferson was convinced that the most important interests of the United States were at stake. Doubtless he was right. And he probably knew what he meant by the "consent of the governed" clause in the Declaration.

The Southern Confederacy.

In 1861 a number of our states decided that they no longer were willing to be governed by the rest, and so set up a government of their own. This was no scanty population in a vast wilderness. The seceding states were compact, were inhabited by millions of our own race, had their own local governments which the people had been long accustomed to administer, and undoubtedly if they had been allowed their independence would have held a dignified position among the nations of the world. But the remaining states of the Union waged a long and bloody war on the southerners in order to force on them a government to which they did not consent. If the Declaration ever had an application in its literal meaning it was in 1861. But such an application was utterly disregarded, partly from sentiment, largely because the north believed, as did Jefferson in 1803, that the vital interests of the whole ought to prevail over even the earnest desires of a part.

In our own time we have another interesting case in which the literal application of the Declaration is in question. North Carolina, Louisiana and other states have recently modified their fundamental law in such way as to disfranchise nearly all of their negroes. Now, for my part, I am quite convinced that ignorant and shiftless negroes should have no share in political power. Whether the same principle should be applied to similar classes of whites is a question to which there are two sides, and which need not be considered now. But it is perfectly plain that the disfranchised negroes, many thousands in number, are governed irrespective of their consent, in square contradiction of the literal interpretation of the Declaration.

A distinguished citizen of Nebraska is seeking the presidency of the United States at present on the issue of a novel interpretation of the Declaration of Independence, just as four years ago he sought the same office on the issue of a novel interpretation of the laws of na-