

# AN UNLIKELY SET OF CIRCUMSTANCES

*Dean Ernest G. Muntz  
Raymond Walters Branch  
University of Cincinnati*

Let us return to the very early years of our national history when we were struggling, under the leadership of Presidents George Washington and John Adams, to produce "a more perfect union." As the decade of the 1790's opened, we still had to make good our claim to the land between the Appalachian Mountains and the Mississippi River. The British Empire was poised to the north, the Spanish Empire to the south and west. Indian resistance, widely assumed to be supported by those colonial powers, checked the advance of American settlers into those regions so recently ceded to us in the Treaty of Paris of 1783. The loss of life was great and the seeming inability of the federal government to protect its citizens was disturbing. Even worse, the blockage by Spain of the Mississippi River to American traffic - the only cheap and convenient way for western farmers to export their produce - made every westerner subject to the siren song of separatism and alliance with Spain. Frontier adventurers and Spanish agents, playing on these fears and offering economic prosperity under different political relationships, clearly were a threat to the unity of the new country.

As our first Secretary of State, Thomas Jefferson considered this situation in the west to be the most important problem of American foreign relations. During his service as Secretary of State, he sought to use the conflicts between England and Spain to secure Spanish recognition of the right of American citizens to freely navigate the Mississippi River and to secure the right of deposit at the mouth of the river for American goods awaiting transshipment. Eventually these efforts bore fruit in the Pinckney Treaty of 1795, when the United States secured free navigation of the Mississippi and the right to deposit -goods at New Orleans. This temporarily appeased frontier discontent and removed the threat of disunion.

Such tranquility was not to last long. You will recall that in 1763, at the close of the Seven Years' War -known by you Warriors, I am sure, as the French and Indian War - the defeated France was excluded from continental North America. While England received undisputed possession of the trans - Appalachian West as well as the north country to be known as Canada, Spain, in compensation for territorial losses suffered as the ill-fated ally of France, fell heir to the vast territory that lay between the Mississippi River and the Rocky Mountains. This land, the heart of the French colonial empire, bore the name Louisiana in memory of King Louis XIV. Ownership of Louisiana, however, did not produce beneficial results for Spain. Poorly governed, virtually unexplored, almost impossible to defend, it cost more to own than it produced in revenue. In a practical sense, its only value to Spain was

strategic, for it served as a buffer between her vastly more important silver mines in Mexico and the British presence in North America.

During the decade of the 1790's, both France and Spain were reassessing the value of Louisiana. There were elements in France who dreamed of reconstructing New France, the colonial empire lost to England in 1763: Among them was Talleyrand, judged by many as the craftiest, most dissolute and most corrupt of European Statesmen - a former bishop whose illegitimate children were said to be scattered around Paris like chestnuts. He was small, lame, brilliant, ambitious. And of course, there was the Corsican - Napoleon Bonaparte - who was gradually, steadily accruing the power that would soon lead to his emperorship. For Talleyrand, the restoration of the French Empire would ensure the greatness of France. For Napoleon, it would ensure the greatness of Napoleon. In Spain, a prime actor was Manuel Godoy, duque de Alcudia, a protegee of Queen Maria Luisa. A consummate diplomat - who else could keep the Queen of Spain as his mistress and the King of Spain as his best friend! - Godoy was in charge of every department that dealt with Louisiana and the other parts of New Spain. His view of Louisiana was completely pragmatic. If France wanted to remove this constant drain from the Spanish treasury, and if she would maintain it as a buffer protecting Mexico, she could have it - for the right price. It was only over the issue of price that negotiations for the sale of Louisiana to France broke down in 1795, 1796, and 1797. But Godoy could afford to wait.

When Napoleon became First Consul of France in 1799, the grand plan for France's - and Napoleon's - greatness was put into place. With the controlling factor that England must ultimately be met and defeated in battle always in mind, the Undeclared Naval War which France and the United States had been waging for several years was settled on terms quite favorable to us. These negotiations were completed on September 30, 1800. The very next day, October 1, 1800, agreement was reached with Spain for the transfer of Louisiana to France at some future date. For the time being, this Treaty of San Ildefonso was to remain secret so as to give France time to rebuild her fleet. The purpose of this reacquisition of a long-lost territory was to use Louisiana as a continental base from which to mount sufficient seapower to protect the French Caribbean Islands, and to serve as a granary to supply the slave workers on those islands. Furthermore, the very presence of France on her western boarder would ensure the neutrality of the United States when France and England finally locked horns in the coming war for European - indeed, world - hegemony.

The New France envisioned by Napoleon and Talleyrand was to be built in stages. First, the rich Caribbean Islands, and particularly Santo Domingo -the eastern end of Hispanola -must be made secure and productive. France had lost control of Santo Domingo when slave insurrections led by the gifted Toussaint L'Ouverture in the early 1790's had driven virtually all white men from the island. In October 1801, a French force of 20,000 men and 30 ships, commanded by Napoleon's brother-in-law General Charles Leclerc, was sent to subdue once and for all the pesky Dominicans and then sail on to take formal possession of

Louisiana. A grand plan, perhaps, but one that was totally wrecked by a combination of fierce, savage resistance by the islanders and by the deadly scourge of yellow fever. The army was decimated, the workers slaughtered, both Leclerc and Toussaint dead. The dream of a new colonial empire also was dead.

Meanwhile, as early as May 1801 rumors had reached Washington that Spain had secretly ceded Louisiana to France, a fact later confirmed by our minister in London, Rufus King. A reborn French Empire in North America had enormous implications for the young United States, posing a far greater threat to our security than did the decrepid Spanish Empire. Somehow, through either war or negotiation, the vital rights of the free navigation of the Mississippi River and of deposit of goods at New Orleans had to be preserved. While Jefferson quietly made preparations for building some military strength in the west, he also set in motion certain diplomatic measures.

At about the time General Leclerc's fleet was on its way to Santo Domingo, our newly appointed minister to France was presenting his credentials. He was Robert R. Livingston, a wealthy, landed gentleman from New York. Though totally without diplomatic experience, he had earlier served in both Continental Congresses, had been a member of the committee charged with drafting the Declaration of Independence, and had served for twenty-four years as Chancellor (or secretary) of New York. He was a friend of Jefferson, vigorously pro-French, and brimming with self-confidence. For over a year, in ways subtle and not so subtle, through letters and essays, personal remonstrances and arguments, Livingston sought to impress on any and all officials in the French government who might have the ear of Napoleon that Louisiana, in the great poker game then being played, represented at best a busted flush, and that Louisiana should be given back to Spain. At the very least, American interests in the Mississippi River and New Orleans must be recognized and guaranteed. Despite his great energy, Livingston seemed to be making little progress.

And then a new development occurred. On October 16, 1802 the Spanish official in charge at New Orleans, Juan Ventura Morales, suddenly withdrew our right of deposit at New Orleans and did not assign an alternate depot as required by the Pinckney Treaty. The west blew up, and again there was wild talk of secession or of direct attack on New Orleans. Though we now know that Morales' action was taken on his own initiative in retaliation to American smuggling, westerners assumed that the order had come from Napoleon and that it presaged a complete closure of the Mississippi to American traffic when France took possession of Louisiana. With the Federalists trying to make political hay through promising aid to the westerners and calling for an armed attack on New Orleans, Jefferson was faced with a dilemma. Action that was too weak could lead to a disruption of the Union; action that was too strong could lead to war with France - and defeat in that war could also destroy the Union.

Jefferson hit on the right combination of actions. Through pressure on both French and Spanish representatives in Washington he secured the restoration of the right of deposit at New Orleans. He also gave every indication that French policy was forcing closer relations with England, France's enemy. But his master stroke in tempering the inflamed attitudes of the west was his decision to send to France James Monroe, his Virginia neighbor and former law student, as envoy extraordinary and minister plenipotentiary. Monroe throughout his career had identified himself with the interest of westerners, possibly because of his own large land holdings there. He was known by the westerner, and trusted by him. Monroe was to work with Livingston in Paris and Charles Pinckney in Madrid "In enlarging and more effectively securing our rights and interests in the river Mississippi and the territories eastward thereof." Congress authorized Monroe and Livingston to engage in negotiations to purchase New Orleans and West Florida, spending up to two million dollars if necessary.

Livingston, of course, saw the Monroe mission not as a response to a domestic political crisis but as a slap in the face. Determined that his work of the past year not be lost - nor his place in history blurred by this unwanted helper - Livingston redoubled his efforts. And suddenly those efforts bore totally unexpected fruit. In January 1803 Napoleon had learned of Leclerc's death and of the impossibility, without frightful expenditure - of both treasure and men, of pacifying Santo Domingo. War with England was imminent. In that war, Louisiana would surely be taken, either by England or by the United States. In addition, money, much money, would be required to fight the war. Therefore Napoleon suddenly decided to postpone his dream of empire.

On April 11, 1803, Talleyrand sought a meeting with Livingston and casually asked whether the United States would be interested in buying all of Louisiana. One can only imagine how surprised - even shocked - certainly how skeptical - Livingston must have been, but that same day the offer was formally repeated by the Minister of the Treasury, Francois Barbe-Marbois, who had been selected by Napoleon to be his chief negotiator for the sale.

The very next day, April 12, 1803, Monroe arrived. Both American ministers agreed that this opportunity must not be lost. In less than three weeks the terms had been hammered out. After some haggling, the price for Louisiana was finally settled at 80 million francs, or \$15,000,000. Of this sum, 20 million francs, or \$3,750,000, was to be distributed by the United States to American ship owners who had suffered losses at the hands of French privateers since 1800. The rest would be paid to France. Though some loose ends still had to be tied up, the Purchase Treaty was dated April 30, 1803, with formal ratification by both governments within six months. As he signed the treaty, Livingston said "We have lived long, but this is the noblest work of our whole lives." And he was right - but this "noblest work" was by no means an assured thing, something that had automatically and inevitably happened. There were so many irregularities, so many improbabilities, so many inconsistencies connected with the whole history of Louisiana and its eventual purchase by the United States that the deal might never have been struck or never carried to its culmination.

Consider, for instance, what France was offering to sell. The Secret Treaty of San Ildefonso which conveyed Louisiana from Spain to France contained a number of provisions along with some clear understandings. For one thing, France solemnly promised that in exchange for Louisiana and the Duchy of Parma (which Napoleon's army had occupied in 1796), France would turn over Tuscany, with its glamorous cities of Florence, Pisa, and Siena. This area would be reorganized into the Kingdom of Etruria, and the deposed duke de Parma -who happened to be Charles IV's son-in-law and nephew - would be installed as King of Etruria. For Spain, land in Italy - plus solving a family problem - might have seemed a fair exchange for non-productive Louisiana. The only problem was that the exchange never took place! Napoleon reneged on the promise of Tuscany and Spain was left holding the bag. The Treaty of San Ildefonso was thus nothing but a broken contract, and Spain could protest -as she did, but ineffectively - that Louisiana was legally hers. Furthermore, at the time of the original negotiations in 1800, and clearly and specifically repeated when Charles IV finally and reluctantly signed the Treaty of San Ildefonso on October 12, 1802, Spain had stipulated that France was never to alienate the territory or cede it to any other nation but Spain. The French ambassador had given his country's pledge to this stipulation. Our negotiators were well aware of these substantial clouds on France's title to Louisiana, but they shrugged them off as a problem between France and Spain that did not concern them. The might of France prevailed over the right of Spain, but in a more perfect world one might bring into question both the moral and the legal right of France to sell Louisiana to the United States.

And if one could argue that France had no right to sell, it could also be argued that Livingston and Monroe had no right to buy. Their instructions and authorization were rather specific: two million dollars to purchase New Orleans and a few thousand square miles of sandy coastal lands to the east. Now, suddenly, unexpectedly, they are offered half a continent, an empire, a land larger than the nations of Great Britain, Germany, France, Spain, Portugal and Italy combined -and at a price that far exceeded their authorized limit. Additional authorizations were impossible to obtain. Weeks and weeks of sea voyage separated them from Washington. Lesser men might have hesitated, but fully aware of the unparalleled opportunity presented, and equally aware of the mercurial nature of Napoleon that could lead him to decide not to sell a quickly has he decided to sell, they pressed ahead with the negotiations. But in so doing, they clearly exceeded their instructions and could only rely, ultimately, on the approval of the American people for their action.

Beyond that, however, was the problem of determining exactly what they were buying in the name of the United States. In simple terms, of course, we were to get what France had gotten from Spain in the Treaty of San Ildefonso. But what was that? Article three of the Treaty of San Ildefonso included a description of the land as ". . .the colony or province of Louisiana, with the same extent that it now has in the hands...of Spain, and that it had when France possessed it. . ." That language was incorporated in the Treaty of Purchase, but it really didn't help much in determining exact boundaries. In 1803, despite three hundred years

of attempted exploration by both the French and Spanish, the physical dimensions of Louisiana were still couched in the most general terms. Louisiana ended in the far west at "the height of the land", what we today would call the continental divide in the Rocky Mountains. In the far north the boundary ended at the source of the Mississippi River, which was unknown. In the south it ended at the Red River, more or less, but the Red River beyond Natchetoches was unexplored and unknown. More pertinent to the immediate concerns of the United States, however, was the status of East and West Florida. In 1800 Talleyrand had tried to get those territories specifically included in the land France was to receive from Spain, but Godoy had refused. Yet West Florida and the strategically important Mobile Bay region had been French in 1699, and thus would seem to fall under the clause "that it (Louisiana) had when France possessed it." But who could say? Certainly not the French, who hoped that obscurity might at some time create boundary disputes between Spain and the United States which France might use to her own advantage. Surprisingly, it was only after the treaty was signed that there was any substantive discussion of the boundaries of Louisiana. Livingston reported that he asked Talleyrand, "What are the eastern boundaries of Louisiana?" Talleyrand claimed not to know, saying, "You must take it as we received it." Livingston then asked, "But what did you mean to take (from Spain)?" Again Talleyrand said, "I don't know." Livingston then responded, "You mean that we should construe it in our own way?" Talleyrand: "I can give you no direction. You have made a noble bargain for yourselves, and I suppose you will make the most of it." So much for the property description! A noble bargain it certainly was, but Livingston and Monroe certainly could not claim detailed knowledge of just what they had bargained for! It would take nearly two decades of negotiation and additional treaties with both England and Spain before anyone could say with relative assurance just what it was that Livingston and Monroe had actually purchased in the names of President Jefferson and the American people.

To add to the irony, whatever it was that had been purchased was purchased in the name of a president who was firmly committed to the belief that it was unconstitutional for the United States to purchase any land at all! As a person who believed in the strict - or literal - construction of the Constitution, Jefferson could find in it no language specifically authorizing the extension of the boundaries of the United States beyond those in existence when the Constitution was ratified. Even when contemplating the possible purchase of New Orleans and West Florida, Jefferson had anticipated the need to go to the states for an amendment to the Constitution specifically authorizing such an acquisition. Now he was faced with the purchase of half the continent, and facing a deadline for ratification of the Treaty of Purchase by October 30, 1803. It is interesting to note that when he issued his call for Congress to meet October 17th for purposes of ratification and the enactment of legislation to put the treaty into effect, he did not even hint of the grave constitutional issue that was troubling him. Perhaps his shrewd political sense already told him what he must eventually do, but nevertheless throughout July, August and September, in meetings with his Cabinet and in letters to his political allies, he continually raised his doubts as to the legality of the

purchase without an amendment, and his fears for the future should Louisiana be purchased on the grounds that any nation has an inherent power to acquire territory or that such a power could be implied from another, constitutional power, such as the power to make war or the power to make treaties. As he expressed in a September letter, "Our peculiar security is in the possession of a written Constitution. Let us not make it a blank paper by construction. I say the same as to the opinion of those who consider the grant of the treaty-making power as boundless. If it is, then we have no Constitution. . ."

On August 30, 1803, Jefferson proposed specific constitutional amendment language to his Attorney-General, Levi Lincoln, and twice submitted his propose'd amendment to his Cabinet. He found no support there, nor, I suspect, did he really expect to. All, including Jefferson, were well aware of the fact that there was no time to secure a Constitutional amendment, for the treaty had to be ratified by October 30th. In addition, Monroe had sent warnings of the likelihood that Napoleon would change his mind once again should ratification be delayed. Even beyond that, there were compelling political problems, expressed very clearly in a September 3rd letter from Senator Wilson Cary Nicholas of Virginia: "I should think it very probable if the treaty should be by you declared to exceed the constitutional authority of the treaty- making power, that it would be rejected by the Senate, and if that should happen, that great use wou'd be made with the people, of a wilful breach of the constitution." And in the end, Jefferson never publicly demanded an amendment. As foreshadowed in his July call for the convening of the Congress, the issue was not raised by him. As he put it, in his reply to Senator Nicholas, after again expressing his personal wish that an amendment were possible, "If . . . our friends think differently, certainly I shall acquiesce with satisfaction; confident that the good sense of our country will correct the evil of construction when it shall produce ill effects." And, in due time, the Senate handily ratified the treaty by a vote of 24 to 7. The bitter opposition of the Federalists crumbled when Senator John Quincy Adams of Massachusetts supported the treaty. "True," he said, "the negotiators had exceeded their powers; true, certain stipulations had been made that were beyond the Constitution; but the cause was right and a constitutional amendment to meet all necessities should be proposed. Propose it, and it will be adopted by the Legislature of every State in the Union." Of course no such amendment was ever added to the Constitution, and the assumed power of Congress became a *fait accompli*, later confirmed by the Supreme Court in the 1828 case of *American Insurance Company v. Canter*. There was even a final irony in that. Chief Justice Marshall, the bitter political foe of Thomas Jefferson, confirmed the constitutionality of the purchase of East and West Florida in the Adams-Oxis Treaty of 1819, a treaty which had been negotiated by John Quincy Adams, the same man who admitted the unconstitutionality of the Louisiana Purchase. In 1803, however, the potential gain was so great that men like Adams and Jefferson could mute their constitutional scruples and pray that it would turn out all right in the end.

But there was yet another problem. The purchase price was fifteen million dollars, and we simply did not have that kind of money. Indeed, that sum exceeded the value of all the specie in circulation in the entire country! As a nation, we were still deeply in debt from the days of the Revolution and the Confederation. The annual revenue of the federal government was only about \$10,000,000, three-fourths of which was dedicated to servicing the national debt. Was the price set by the treaty too high? Certainly the die-hard New England Federalists, who opposed the purchase on partisan political grounds, thought so. They gleefully rang the changes. Why fifteen million dollars was the equivalent of 433 tons of solid silver! Why that much silver would fill 866 wagons, which lined up would stretch a distance of five and a third miles! Why a stack of fifteen million silver dollars would reach three miles high! Or we could hire an army of twenty-five thousand men for twenty-five years for \$15,000,000 - or give three dollars to every man, woman, and child in the United States. The price for Louisiana was ridiculous! Or was it? Proponents of the treaty could point to half a continent acquired without the shedding of one drop of blood, the addition to the country of a hundred thousand people who would not be cursing their conquerors. And how much blood and treasure would it have cost to fight a war just to gain possession of New Orleans? Furthermore, one could argue that, from a business point of view, the acquisition of land at a cost of something under three cents an acre at the very time the federal government was selling land to settlers for one dollar an acre represented a real bargain.

But despite the arguments somewhat analagous to the two drunks arguing over whether the bottle was half full or half empty, that fact remained that we did not have fifteen million dollars to spend. The \$3,750,000 to be paid American ship owners to settle the spoliation claims did not present too large a problem. Years would go by before each and every claim was adjudicated, and then when finally paid, the money would remain in this country. But what about the \$11,250,000 that was to go to France? Congress authorized the issuance of that amount in bonds, bearing a 6% interest rate. The interest was payable semi-annually with one-third of the principal to be paid in 1819 and the remainder in two successive years. But Napoleon needed gold, not paper, to fuel his war machine. French banks were unwilling to try to sell such a huge bond issue in France, and therefore, at the suggestion of Livingston and Monroe, the French sold the bonds, at a substantial discount, to Hope and Company of Amsterdam, and Francis Baring and Company of London. And thus comes the final irony in this tale. Though Napoleon received less than nine million dollars in gold from this trans- action, it was, nevertheless, largely British gold - British gold that had to be granted a special export permit by the British government, British gold that was clearly to be used to strengthen French military might,. British gold that might conceivably tip the balance of power between France and England who at the time of the transaction were already at war!

And so one might say that in the Louisiana Purchase of 1803 we were buying land from a country that had no right to sell it, represented by two diplomats who had no right to buy it and who didn't even know the boundaries of the land they were contracting for,

representing a president firmly convinced it was unconstitutional to add to the territory of the United States by purchase, and with money we didn't have but indirectly borrowed from England so that France could use it to buy guns and ammunition with which to kill British soldiers. An unlikely set of circumstances had produced an improbable conclusion - yet it was a conclusion that determined the future of the United States - and perhaps the world - as few others have. While the immediate goal - and the immediate benefit - was the removal of a foreign power from our Mississippi River border, the long term consequences of the addition of the Louisiana Territory to the United States were so immense as to require separate treatment. Just the most obvious - the vast and fertile plains which would become our breadbasket, the incalculable mineral wealth that would fuel our industrial revolution, the seemingly limitless space that would provide room for millions of future immigrants, the extension of liberty and freedom under Constitutional government - just these almost boggle the imagination. Of course, one could argue that without the addition of the Louisiana Territory there might never have been a Civil War, but if the young nation had been able to survive at all, limited and hobbled by its post-Revolutionary boundaries, it would have been as a second-rate power at best. Certainly the potential of the United States was secured by the Louisiana Purchase.

And yet, that "noblest work" of Livingston and Monroe would never have been culminated had the unlikely set of circumstances recited here not occurred. But they did occur, and the Louisiana Purchase became one more illustration of America reaping benefit from Europe's distresses. That, at least, is the standard interpretation of historians. Or, perhaps, these unusual events occurred as they did because, as that ubiquitous gentleman named "Anonymous" once said "God looks after fools, drunkards, and the United States." Our problems of today, when world distresses seem to compound our own distresses, may only mean that we lack the Jeffersons, the Monroes, the Livingstons who can see opportunity in crisis. Or it may simply mean that God - deservedly - has forgotten us. But that final interpretation I leave to you.

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