

MYTH AMERICA

Volume I

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The Louisiana Purchase: A Dangerous Precedent

Walter LaFeber

The nation had made an auspicious anti-imperialist beginning. As early as the Confederation Period of the 1780s, Congress, following Jefferson's leadership, set an anti-imperialist course for the Northwest Territory. States within the territory would ultimately emerge and enjoy equal status with the original thirteen, the inhabitants receiving equal citizenship. During Washington's presidency a policy of noninvolvement in "entangling alliances" and other muscular foreign activities was enunciated and to a large extent followed. So far so good.

In 1803, however, with Jefferson president, an opportunity presented itself that was impossible to refuse. Napoleon's offer to sell all Louisiana to the United States for approximately fifteen million dollars proved irresistible to the President. Jefferson was not brimming over with expansionist fever, but was faced with the possibility of ample space for his yeoman farmers' advance. There were problems. Jefferson had been a champion of state over national rights; to buy Louisiana would contradict his previous stance. Also came the question of constitutionality: Where did that document contain the authority to double the existing size of the country? Influenced by advisers and news that Napoleon might change his mind, Jefferson without resort to constitutional amendment presented his decision to the Senate for advice and consent. After that body consented, House of Representatives' reservations were steamrollered, and the deed was done. One of the House reservations dealt with Jefferson's decision, in contrast to that in the Northwest Ordinance, to allow black slavery. Arthur Schlesinger, Jr., in his book *The Imperial Presidency* posits that whenever Presidents act decisively in foreign affairs—and particularly during wartime—the powers of the executive branch grow very rapidly. In accordance with Schlesinger's thesis, Walter LaFeber of Cornell University, raises serious doubt as to the advisability of such precedent-setting activity in the purchase of Louisiana. LaFeber sees a mythic path laid out for subsequent unilateral actions: President Polk in the Mexican War, President McKinley in 1898, and President Truman in Korea. Panama, Grenada, and the Persian Gulf are clear additions.

Thomas Jefferson was one of the greatest expansionists in an American history full of ardent expansionists. But then, he believed the success of America's great experiment in democracy demanded an expanding territory. In the Virginian's mind, the republic must be controlled by ambitious, independent, property-holding farmers, who would

form the incorruptible bedrock of democracy. As he wrote in 1785 in his *Notes on the State of Virginia*, "Those who labour in the earth are the chosen people. . . . Corruption of [their] morals . . . is a phenomenon of which no age nor nation has furnished an example." Americans who worked the land would never become dependent on factory wages. "De-

pendence begets subservience and venality," Jefferson warned in *Notes*, "and prepares fit tools for the designs of ambition."

But Jefferson's virtuous farmers needed land, and their population was growing at an astonishing rate. Jefferson and his close friend and Virginia neighbor, James Madison, had studied the birthrate carefully. The two men rightly perceived that Americans were nearly doubling their population every 25 to 27 years. Moreover, the number of immigrants seemed to be increasing so quickly that as early as 1785 Jefferson had actually suggested restricting their numbers. Virginia provided a striking example of how fast land was being peopled. The region on the state's western frontier had filled with settlers so quickly that in 1792 it became the state of Kentucky. Unless something was done, Jefferson declared, Virginia would within the next century be burdened with "nearly the state of population in the British islands." Given Jefferson's convictions about the corruption to be found in Britain's cities, the analogy was damning.

During his first term as President (1801–1805), Jefferson had the chance to obtain that "extension of territory which the rapid increase of our numbers will call for" by purchasing Louisiana, an area larger than Western Europe. In a single step he could double the size of the United States and open the possibility of an "empire for liberty," as he later described it, of mind-boggling proportions.

The President was playing for large stakes. Louisiana stretched from the Mississippi westward to the Rocky Mountains, and from Canada's Lake of the Woods southward to the Gulf of Mexico. If annexed, these 825,000 square miles would give the new nation access to one of the world's potentially richest trading areas. The Missouri, Kansas, Arkansas and Red rivers and their tributaries could act as giant funnels carrying goods into the Mississippi and then down to New Orleans. Even in the 1790s, with access to the Mississippi only from the east, the hundreds of thousands of Americans settled along the river depended on it and on the port of New Orleans for access to both world markets and imported staples for everyday living. "The Mississippi is to them everything," Secretary of State James Madison observed privately in November 1802. "It is the Hudson, the Delaware, the Potomac, and all the navigable rivers of the Atlantic formed into one stream."

Louisiana had long been a focus for imperial

ambitions. The French had largely controlled the region until 1763 when, after losing the so-called Seven Years War, they were forced to cede it to Spain. But in 1799 Napoleon Bonaparte became head of the French government, and the next year he seized the opportunity to retake the territory. In exchange for his promise to make the Spanish royal family rulers of Tuscany, Spain handed over Louisiana. Though Bonaparte never bothered to carry out his end of the bargain, he set in motion plans for a New World colonial empire that would make Louisiana the food source for the rich French sugar island of Saint Domingue (Haiti) in the Caribbean.

Jefferson and Madison reacted with alarm. A decaying Spanish empire along the western American border was little threat. But Napoleon was something else. He would dam up American expansionism and perhaps attract settlements east of the Mississippi away from the United States. In 1801, after hearing rumors of Napoleon's bargain with Spain, Jefferson ordered Robert R. Livingston to Paris as the new U.S. minister. He instructed Livingston to talk Napoleon out of occupying Louisiana or, if that was impossible, to buy New Orleans. By 1802 both Jefferson and Livingston began to mention the possibility of acquiring not just the port, but also its vast interior.

Jefferson told Livingston that if France insisted on occupying New Orleans, he would consider an Anglo-American alliance against France. That threat was probably empty. But others were not. In February the Senate authorized Jefferson to create an 80,000-man army to defend the Mississippi. Although the House adjourned before acting on the measure, the President had already been strengthening forts along the river. He sent three artillery and four infantry companies into position north of New Orleans. The commander of these forces, William C.C. Claiborne, assured him that these troops could seize New Orleans if they attacked before French forces arrived to strengthen the Spanish garrison.

But just as war with Napoleon loomed in the early months of 1803, Jefferson faced a crisis of quite another kind. He knew that the Constitution had no provision giving him the power to take New Orleans—let alone an area such as Louisiana that would double the nation's size—and he believed he could take no action not explicitly authorized by the Constitution.

This conviction was no mere infatuation with

theory. As George Washington's secretary of state from 1790 until 1793, Jefferson had fought Secretary of the Treasury Alexander Hamilton's attempt to interpret the Constitution's phrases in broad terms. Beaten by Hamilton over such critical issues as whether the Constitution permitted the United States to create a national bank, or the federal government to assume state debts, Jefferson resigned from the cabinet. He retired to Monticello and—even as Vice-President under the Federalist President John Adams—organized the Republican Party to take power and, as he saw it, restore the Constitution's true meaning. "The powers not delegated to the United States," he wrote in a debate with Hamilton in 1790 and 1791, "are reserved to the States respectively, or to the people." He warned, in words that were later to cause him anguish, that "to take a single step beyond the boundaries thus specially drawn around the powers of Congress is to take possession of a boundless field of power, no longer susceptible of any definition."

In 1798 Jefferson's fears seemed to come true. Enmeshed in undeclared war with France on the high seas, the Federalists tried to force Americans to cooperate with Adam's war plans by passing the Alien and Sedition Acts. These measures gave President John Adams the power to arrest and imprison his critics. Jeffersonians believed the acts were aimed at them—and with good reason: the 14 indictments and 10 convictions that occurred under the act were against members of the Republican Party. In secret, Jefferson and Madison helped the Virginia and Kentucky legislatures draft resolutions that condemned the Federalists for enlarging central government—especially presidential—powers beyond the limits set by the Constitution. The resolutions argued that a state should have the power to decide whether federal governmental acts were constitutional or not. Demanding that Congress support a strict construction of the 1787 document, Jefferson won what he called "the revolution of 1800," which threw Adams and the Hamiltonians out of office. The "sum of good government," he observed in his 1801 inaugural address, was small and limited government.

Thus Jefferson's dilemma in January and February 1803. As he and his closest advisers agreed, nothing in the Constitution explicitly permitted the government to annex and govern new territory—let alone a territory so immense that it would transform the nation's political balance. Reading that power

into the Constitution's general wording, Jefferson warned, could so twist and distort the document that American liberty would be threatened. "Our peculiar security is in possession of a written Constitution," he wrote privately to a close friend. "Let us not make it a blank paper by construction." By no means, however, was he willing to turn away Louisiana.

In January 1803, Jefferson discussed these difficulties with Attorney General Levi Lincoln and the brilliant young secretary of the treasury, Albert Gallatin. Lincoln suggested that Jefferson have the French, if they sold any part of the territory, designate it as an extension of the Mississippi Territory or the state of Georgia. Gallatin retorted that if the central government lacked the constitutional power to annex new territory, then so did the states. By mid-January he had given Jefferson his rather Hamiltonian view of the matter: "1st. That the United States as a nation have an inherent right to acquire territory. 2nd. That whenever that acquisition is by treaty, the same constituted authorities in whom the treaty-making power is vested [that is, in the President and the Senate] have a constitutional right to sanction the acquisition. 3rd. That whenever the territory has been acquired, Congress have the power either of admitting into the Union as a new State, or of annexing to a State with the consent of that State, or of making regulations for the government of such territory."

In acquiring a territorial empire over the next century, Americans were to follow precisely these principles. But Gallatin's views did little to quell Jefferson's uneasiness, which reached a climax on July 3 when he learned that the two U.S. diplomats in Paris, Robert R. Livingston and James Monroe, had signed a treaty in which Napoleon sold Louisiana to the United States for \$11,250,000. A separate agreement stipulated that the United States would assume \$3,750,000 more for claims of U.S. citizens against France. The two diplomats also agreed that for 12 years French and Spanish ships would receive special tariff rates over other foreign ships and merchandise in New Orleans. The inhabitants of the vast territory, moreover, were to receive full constitutional rights as soon as possible.

These last provisions were to bedevil Jefferson. Giving French and Spanish traders preferences in New Orleans violated the Constitution's provisions that duties be levied uniformly throughout the nation. Granting full constitutional rights to the many

non-Americans, especially nonwhites, in this vast area went against Jefferson's better judgment—not to mention the devout wishes of conservative and increasingly agitated New Englanders.

On July 16, Jefferson placed the agreements before his cabinet (or "executive council" as it was then known) and suggested that Congress "be obliged to ask from the people an amendment to the Constitution authorizing their receiving the province into the Union, and providing for its government." Gallatin, Madison, Lincoln, Secretary of War Henry Dearborn and Secretary of the Navy Robert Smith vigorously disagreed. They did not share the President's constitutional sensitivities.

The council pointed out a more immediate danger: the treaty provided for an exchange of ratifications within six months of the signing on April 30, 1803. No constitutional amendment could be passed by the necessary two-thirds vote in both houses of Congress and the three fourths of the states in the time remaining. But if there were any delay, Napoleon could renounce the agreement and recommence his empire building along the Mississippi. The advisers urged that Jefferson call a special session of Congress in October and rush the treaty and conventions through without mentioning the amendment.

Jefferson's friends warned him that if he so much as hinted at the need for an amendment, the treaty's enemies—most notably, New England Federalists whose fear of a vast western empire beyond their control was matched only by their hatred of Jefferson—would delay and probably kill the agreements. The President realized this. Nevertheless, that summer he tried to write at least two drafts of an amendment. He admitted to his close friend, Senator John Breckinridge of Kentucky, that in agreeing to the purchase he had gone far beyond what the Constitution permitted. Breckinridge, who had written the Kentucky Resolutions with Jefferson just four years earlier, disagreed. He had long nurtured the ambition to control New Orleans and the trans-Mississippi—an ambition that in the 1790s had led him to plot secretly (and in some Easterners' eyes, treasonously) with a French agent to gain control of the river without the knowledge or approval of the Washington administration. In any case, the President's desire for empire was becoming overwhelming. "I infer," he wrote Madison later in August, "that the less we say about constitutional difficulties respecting Louisiana the better, and that what is nec-

essary for surmounting them must be done sub silentio."

Jefferson found these "constitutional difficulties" distinctly less important after he received two letters. In the first, which arrived from Paris on August 17, Livingston warned that Napoleon now regretted having signed the treaty. The French leader was searching for any excuse ("the slightest alteration" made by the United States, in the envoy's words) to avoid carrying it out. If Congress did not act within the six-month limit, the First Consul would renounce the deal. The second letter carried a long-expected message from the Spanish minister in Washington, Marquis de Casa Yrujo. It reached Jefferson on September 12. The king of Spain, Yrujo wrote, was shocked that Napoleon had sold Louisiana. The French leader had no right to do so. The President now had to fear that either his majesty or Napoleon might use this message as an excuse to reclaim New Orleans and the interior.

Livingston's note decided Jefferson, and Yrujo's protest reinforced his determination. The President concluded that although it would be advisable to push for an amendment, it could be done only after Congress had acted on the agreements and the territory was safely in hand. In the meantime, he told Gallatin, Congress should approve the documents "without talking."

Jefferson needed two thirds of the Senate to ratify his treaty and a simple majority of the House to carry the agreements into effect. In the Senate, where his forces were led by the loyal Breckinridge, his party held 25 seats to the Federalists' nine; in the House the numbers were also overwhelming—103 to 39. Jefferson, however, left nothing to chance. Regularly working 10 to 13 hours a day to ensure that his wishes were carried out, he became the most powerful party leader in the republic's short history. Such a regimen left, according to this remarkably organized man, "an interval of 4 hours for riding, dining, and a little unbending." Even then he used the dinner hour several times a week to invite congressional members, stoke them with excellent food and wine and, as Jefferson delicately put it, exchange information for the sake of the "public interest."

Many, New England Federalists feared the idea of annexing a vast territory whose people would over time develop immense political power—and, no doubt, be forever grateful to Jeffersonians. A Boston Federalist newspaper sniffed that Louisiana was

nothing more than "a great waste, a wilderness unpeopled with any beings except wolves and wandering Indians. . . . We are to give money of which we have too little for land of which we already have too much." Senator William Plumer, a Federalist from New Hampshire, warned that New England would not "tamely shrink into a state of insignificance."

On October 17, 1803, Jefferson told the Congress he had summoned into session that he was sending it the treaty and the accompanying agreements. Nothing was said about a constitutional amendment. The measures were being whipped through after only three days of debate when a crisis developed. Senate Federalists demanded that Jefferson send the documents proving that Napoleon had rightfully obtained Louisiana from Spain and so had the power to sell the territory. This demand presented a problem: the documents did not exist. Republicans nevertheless closed ranks and "with unblushing front" (as Plumer sarcastically commented) voted down the resolution on the grounds that such information was not needed. The agreements were then rammed through, 24 to 7. "The Senate," Plumer complained, "have taken less time to deliberate on this most important treaty than they allowed themselves on the most trivial Indian contract."

Next the papers went to the House for legislation that would authorize monetary payments to carry out the agreements. Again the Federalists demanded documents, particularly a deed of cession from Spain to France. The request touched a nerve. Seven years earlier, Madison, then the Jeffersonian leader in a Federalist-dominated House of Representatives, had tried to kill the Jay treaty with Great Britain by demanding all appropriate documents. President Washington had refused on the grounds that the House was obliged to carry out treaties that, under the Constitution, only the Senate had to ratify. Madison protested, but he was beaten in a showdown vote that had large implications for the constitutional role the House was to play in future U.S. foreign policy. Now, in 1803, the roles were reversed. As the Federalists demanded the deed, Samuel Mitchill of New York rose to reply on behalf of the Jeffersonians that if the President had thought the House needed to see any more papers, he certainly would have sent them. After that disingenuous response, the House voted down the Federalist demand by two votes.

In his pioneering analysis of how rapidly presidential power grew during the Jeffersonian years,

Abraham Sofaer argues that the Virginian set a precedent in refusing to acknowledge the Federalists' call for the documents. President Washington had taken the position that, yes, papers that Congress had requested did exist, but, no, he did not have to send certain confidential papers to Congress. The Jeffersonians had responded vigorously that such official information could be demanded and used by the people's representatives in the legislature. In 1803, however, (and again during the treason trial of former Vice-President Aaron Burr in 1807) Jefferson took the position that it was unnecessary to tell the Congress (or the court) that such papers even existed. Instead, he labeled the documents "private" or "confidential" and kept them out of sight. The people's representatives in Congress apparently had a limited right to know, and the limits were determined by the President.

This embarrassment eased in December 1803 when Jefferson learned that Napoleon had finally pressured Spain into giving him official possession of Louisiana. In January 1804, the forces Jefferson had dispatched under Claiborne's command a year earlier controlled the region. The Stars and Stripes replaced the French Tricolor over New Orleans.

One major obstacle remained, however. Jefferson had to create, and Congress approve, a government for this vast territory. The region held fewer than 100,000 inhabitants, and Jefferson believed, rightly as it turned out, that only half of those were white and that the remainder were largely Indian and African-American. The President indicated from the start of the debate that he thought only whites could govern the territory. But even some of them were suspect. New Orleans had attracted renegades and runaways, like former New York district attorney, Edward Livingston, who had moved to New Orleans after he was suspected of having illegally siphoned money from his office. Roman Catholic groups, long protected by Spain, were fearful and suspicious of Jefferson's intentions. As for the large population of Creoles (those with French ancestry born in Louisiana), the President believed they were "as yet as incapable of self-government as children." When a Creole delegation traveled to Washington to demonstrate its ability to lobby, it was turned away.

Congress divided the region into two districts: Orleans (the future state of Louisiana) and Louisiana. Late in 1803 the President sent Congress a bill for governing the area during the next year. This meas-

ure gave the inhabitants guarantees for their "liberty, property, and religion," which the treaty had obligated him to grant. There was, however, no self-government, no indication that, to repeat one of Jefferson's earlier principles, governments derived "their just powers from the consent of the governed." Military officers, chosen by the President, were to rule in the iron-handed manner of the former Spanish governor. They were responsible to no local authorities, but only to the President in the faraway city of Washington. Senator John Quincy Adams, who had just won election from Massachusetts, supported the annexation, but he was appalled that the Constitution was being interpreted as giving the President authority to rule the territory as a colony. When Adams moved that a constitutional amendment be considered to make such rule legitimate, no senator seconded his proposal. Jefferson's governing bill passed the Senate 26 to 6.

The House's view of Jefferson's constitutional powers was revealed when angry Federalists attacked the treaty provision that gave French and Spanish merchants trade preferences in New Orleans. Joseph H. Nicholson of Maryland replied for the Jeffersonians that the whole of Louisiana "is in the nature of a colony whose commerce may be regulated without any reference to the Constitution" and its provision that duties be uniformly imposed throughout the Union. Madison, with his sensitivity to such issues, excused the Jeffersonians' tough approach by granting that while "Republican theory" would not immediately govern the newly annexed people, "it may 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." The secretary of state was known for choosing his words carefully.

From January through March 1804, Congress discussed Jefferson's plans for a more permanent government, which would last until both sections of Louisiana had enough white settlers to be entrusted with regular territorial government. Few problems arose in the debates until Senator James Hillhouse of Connecticut proposed that slavery be prohibited from both parts of the purchase. A struggle erupted in the Senate that previewed some of the arguments that later threatened to splinter the Union. When one slave-state senator tried to stop the uproar by saying, "I am unwilling to think let alone speak on this subject," another grimly warned that "if we leave it, it will follow us." Jefferson notably refused to sup-

port Hillhouse, and Senator James Jackson of Georgia led the opposition to the Connecticut senator by declaring that Louisiana could "not be cultivated" without slavery. He urged that the people on the scene (many of whom owned slaves) be allowed to decide. "You cannot prevent slavery. . . . Men will be governed by their interest not the law." In the end, though, Congress again broadly construed its power by recognizing slavery where it existed in the purchase, while allowing a previous act to stand that stringently limited the slave trade. Provisions were added to prevent Orleans, a center of the foreign slave trade, from becoming a state until after the 1810 census. This delay not only appeased New England Federalists but also prevented Orleans' entry as a state until after 1808 when, as the Constitution provided, the foreign trade in slaves was to end.

The final bill gave the President the power to appoint governors over Orleans and Louisiana who, with a small legislative body they were to choose, would rule autocratically. The rights of the inhabitants were not "self-evident," as Jefferson had once described them, but were granted by the will of the central government. The law became effective October 1, 1804.

In less than one year Jefferson had enlarged the central government's constitutional powers more broadly than had Washington and Adams in 12 years. He had set a dangerous precedent, moreover, by arguing that when time was of the essence, the President and Congress could ignore, perhaps violate, the Constitution if they considered it to be in the national interest. Critics called Jefferson's government in Louisiana "about as despotic as that of Turkey in Asia." The President and his supporters responded that such a government was, unfortunately, necessary to ensure that the vast territory would remain orderly until enough white Americans could populate the region. The new states would then prosper as a part of the Union with rights equal to those of the older parts.

Critics were not reassured. "We rush like a comet into infinite space," Fisher Ames of Massachusetts warned. "In our wild career we may jostle some other world out of its orbit, but we shall, in every event, quench the light of our own." John Randolph of Virginia had a less apocalyptic response to Jefferson's actions. He had helped the President push the Louisiana legislation through the House. But by 1806 he had turned against his fellow Virginian for hav-

ing overthrown Republican constitutional doctrine. There were only "two parties in all States," Randolph concluded, "the *ins* and the *outs*." The *ins* construed governmental power broadly for the gain of their own "patronage and wealth," while the *outs* tried to limit such power. "But let the *outs* get in . . . and you will find their Constitutional scruples and arguments vanish like dew before the morning sun."

As the *ins*, Jefferson and his supporters realized larger objectives than "patronage and wealth." They succeeded in transforming the Constitution into an instrument for imperial expansion, which made it possible for Jefferson to resolve the crisis in his great democratic experiment.

But the transformation of the Constitution for the sake of "enlarging the empire of liberty" had a price.

The President, as Jefferson had demonstrated, could find in the Constitution virtually any power he needed to carry out the most expansive foreign policy, especially if his party commanded a majority in Congress. Loose construction was given the seal of bipartisanship as the Republicans, now the *ins*, out-Hamiltoned Hamilton in construing the 1787 document broadly. Such loose construction would be used by others, among them President James K. Polk from 1845 to '46 as he maneuvered Mexico into a war in order to annex California, President William McKinley between 1898 and 1901 when he expanded U.S. power into the Philippines and landed troops in China, and President Harry S. Truman when he claimed the authority to wage war in Korea. Jefferson's experiment in democracy cast long shadows.