

Constitutionality of the Louisiana Purchase (1803)

Thomas Jefferson to John C. Breckinridge

Monticello, Aug. 12, 1803 DEAR SIR,—The enclosed letter, tho' directed to you, was intended to me also, and was left open with a request, that when perused, I would forward it to you. It gives me occasion to write a word to you on the subject of Louisiana, which being a new one, an interchange of sentiments may produce correct ideas before we are to act on them.

Our information as to the country is very incompleat; we have taken measures to obtain it in full as to the settled part, which I hope to receive in time for Congress. The boundaries, which I deem not admitting question, are the high lands on the western side of the Mississippi enclosing all it's waters, the Missouri of course, and terminating in the line drawn from the northwestern point of the Lake of the Woods to the nearest source of the Missipi, as lately settled between Gr Britain and the U S. We have some claims to extend on the sea coast Westwardly to the Rio Norte or Bravo, and better, to go Eastwardly to the Rio Perdido, between Mobile & Pensacola, the antient boundary of Louisiana. These claims will be a subject of negociation with Spain, and if, as soon as she is at war, we push them strongly with one hand, holding out a price in the other, we shall certainly obtain the Floridas, and all in good time. In the meanwhile, without waiting for permission, we shall enter into the exercise of the natural right we have always insisted on with Spain, to wit, that of a nation holding the upper part of streams, having a right of innocent passage thro' them to the ocean. We shall prepare her to see us practise on this, & she will not oppose it by force.

Objections are raising to the Eastward against the vast extent of our boundaries, and propositions are made to exchange Louisiana, or a part of it, for the Floridas. But, as I have said, we shall get the Floridas without, and I would not give one inch of the waters of the Mississippi to any nation, because I see in a light very important to our peace the exclusive right to it's navigation, & the admission of no nation into it, but as into the Potomak or Delaware, with our consent & under our police. These federalists see in this acquisition the formation of a new confederacy, embracing all the waters of the Missipi, on both sides of it, and a separation of it's Eastern waters from us. These combinations depend on so many circumstances which we cannot foresee, that I place little reliance on them. We have seldom seen neighborhood produce affection among nations. The reverse is almost the universal truth. Besides, if it should become the great interest of those nations to separate from this, if their happiness should depend on it so strongly as to induce them to go through that convulsion, why should the Atlantic States dread it? But especially why should we, their present inhabitants, take side in such a question? When I view the Atlantic States, procuring for those on the Eastern waters of the Missipi friendly instead of hostile neighbors of it's Western waters, I do not view it as an Englishman would the procuring future blessing for the French nation, with whom he has no relations of blood or affection. The future inhabitants of the Atlantic & Missipi States will be our sons. We leave them in distinct but bordering establishments. We think we see their happiness in their union, & we wish it. Events

may prove it otherwise; and if they see their interest in separation, why should we take side with our Atlantic rather than our Missipi descendants? It is the elder and the younger son differing. God bless them both, & keep them in union, if it be for their good, but separate them, if it be better. The inhabited part of Louisiana, from Point Coupée to the sea, will of course be immediately a territorial government, and soon a State. But above that, the best use we can make of the country for some time, will be to give establishments in it to the Indians on the East side of the Missipi, in exchange for their present country, and open land offices in the last, & thus make this acquisition the means of filling up the Eastern side, instead of drawing off it's population. When we shall be full on this side, we may lay off a range of States on the Western bank from the head to the mouth, & so, range after range, advancing compactly as we multiply.

This treaty must of course be laid before both Houses, because both have important functions to exercise respecting it. They, I presume, will see their duty to their country in ratifying & paying for it, so as to secure a good which would otherwise probably be never again in their power. But I suppose they must then appeal to *the nation* for an additional article to the Constitution, approving & confirming an act which the nation had not previously authorized. The constitution has made no provision for our holding foreign territory, still less for incorporating foreign nations into our Union. The Executive in seizing the fugitive occurrence which so much advances the good of their country, have done an act beyond the Constitution. The Legislature in casting behind them metaphysical subtleties, and risking themselves like faithful servants, must ratify & pay for it, and throw themselves on their country for doing for them unauthorized what we know they would have done for themselves had they been in a situation to do it. It is the case of a guardian, investing the money of his ward in purchasing an important adjacent territory; & saying to him when of age, I did this for your good; I pretend to no right to bind you: you may disavow me, and I must get out of the scrape as I can: I thought it my duty to risk myself for you. But we shall not be disavowed by the nation, and their act of indemnity will confirm & not weaken the Constitution, by more strongly marking out its lines.

We have nothing later from Europe than the public papers give. I hope yourself and all the Western members will make a sacred point of being at the first day of the meeting of Congress; for *vestra res agitur*.

Accept my affectionate salutations & assurances of esteem & respect.

Thomas Jefferson to Wilson Cary Nicholas

Monticello, Sep. 7, 1803 DEAR SIR,--Your favor of the 3d was delivered me at court; but we were much disappointed at not seeing you here, Mr. Madison & the Gov. being here at the time. I enclose you a letter from Monroe on the subject of the late treaty. You will observe a hint in it, to do without delay what we are bound to do. There is reason, in the opinion of our ministers, to believe, that if the thing were to do over again, it could not be obtained, & that if we give the least opening, they will declare the treaty void. A warning amounting to that has been given to them, & an unusual kind of letter written by their minister to our Secretary of State, direct. Whatever Congress shall think it necessary to do, should be done with as little debate as possible, & particularly so far

as respects the constitutional difficulty. I am aware of the force of the observations you make on the power given by the Constn to Congress, to admit new States into the Union, without restraining the subject to the territory then constituting the U S. But when I consider that the limits of the U S are precisely fixed by the treaty of 1783, that the Constitution expressly declares itself to be made for the U S, I cannot help believing the intention was to permit Congress to admit into the Union new States, which should be formed out of the territory for which, & under whose authority alone, they were then acting. I do not believe it was meant that they might receive England, Ireland, Holland, &c. into it, which would be the case on your construction. When an instrument admits two constructions, the one safe, the other dangerous, the one precise, the other indefinite, I prefer that which is safe & precise. I had rather ask an enlargement of power from the nation, where it is found necessary, than to assume it by a construction which would make our powers boundless. Our peculiar security is in 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. If it has bounds, they can be no others than the definitions of the power which that instrument gives. It specifies & delineates the operations permitted to the federal government, and gives all the powers necessary to carry these into execution. Whatever of these enumerated objects is proper for a law, Congress may make the law; whatever is proper to be executed by way of a treaty, the President & Senate may enter into the treaty; whatever is to be done by a judicial sentence, the judges may pass the sentence. Nothing is more likely than that their enumeration of powers is defective. This is the ordinary case of all human works. Let us go on then perfecting it, by adding, by way of amendment to the Constitution, those powers which time & trial show are still wanting. But it has been taken too much for granted, that by this rigorous construction the treaty power would be reduced to nothing. I had occasion once to examine its effect on the French treaty, made by the old Congress, & found that out of thirty odd articles which that contained, there were one, two, or three only which could not now be stipulated under our present Constitution. I confess, then, I think it important, in the present case, to set an example against broad construction, by appealing for new power to the people. If, however, our friends shall think differently, certainly I shall acquiesce with satisfaction; confiding, that the good sense of our country will correct the evil of construction when it shall produce ill effects.

No apologies for writing or speaking to me freely are necessary. On the contrary, nothing my friends can do is so dear to me, & proves to me their friendship so clearly, as the information they give me of their sentiments & those of others on interesting points where I am to act, and where information & warning is so essential to excite in me that due reflection which ought to precede action. I leave this about the 21st, and shall hope the District Court will give me an opportunity of seeing you.

Accept my affectionate salutations, & assurances of cordial esteem & respect.

Thomas Paine to John C. Breckinridge

I know little and can learn but little of the extent and present population of Louisiana. After the cession be completed and the territory annexed to the United States it will, I suppose, be formed into states, one, at least, to begin with. The people, as I have said,

are new to us and we to them and a great deal will depend on a right beginning. As they have been transferred backward and forward several times from one European Government to another it is natural to conclude they have no fixed prejudices with respect to foreign attachments, and this puts them in a fit disposition for their new condition. The established religion is roman; but in what state it is as to exterior ceremonies (such as processions and celebrations), I know not. Had the cession to France continued with her, religion I suppose would have been put on the same footing as it is in that country, and there no ceremonial of religion can appear on the streets or highways; and the same regulation is particularly necessary now or there will soon be quarrells and tumults between the old settlers and the new. The Yankees will not move out of the road for a little wooden Jesus stuck on a stick and carried in procession nor kneel in the dirt to a wooden Virgin Mary. As we do not govern the territory as provinces but incorporated as states, religion there must be on the same footing it is here, and Catholics have the same rights as Catholics have with us and no others. As to political condition the Idea proper to be held out is, that we have neither conquered them, nor bought them, but formed a Union with them and they become in consequence of that union a part of the national sovereignty.

The present Inhabitants and their descendants will be a majority for some time, but new emigrations from the old states and from Europe, and intermarriages, will soon change the first face of things, and it is necessary to have this in mind when the first measures shall be taken. Everything done as an expedient grows worse every day, for in proportion as the mind grows up to the full standard of sight it disclaims the expedient. America had nearly been ruined by expedients in the first stages of the revolution, and perhaps would have been so, had not *Common Sense* broken the charm and the Declaration of Independence sent it into banishment.