

Lewis & Clark and American Indians

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In 1803, the United States signed a treaty with France and made the Louisiana Purchase. In this treaty, the U.S. purported to buy 828 million acres of land west of the Mississippi River for \$15 million. This area is known as the Louisiana Territory. Many historians and commentators state that this was “the greatest real estate deal in history” because the United States paid about three cents an acre. But that statement is incorrect.

In fact, the U.S. did not buy any land in the Louisiana Territory from France because France did not own the land in the Territory. Instead, the Indian nations owned the land. President Thomas Jefferson was well aware of this fact. He wrote several times after the Louisiana Purchase that the Indian nations were the proprietors, or owners, of the lands in Louisiana. And, over the next one hundred years, the United States signed treaties with up to 100 tribes that resided in the Louisiana Territory in which the U.S. paid cash and trade goods to the tribal governments to buy land in the Territory. One scholar calculated that the United States paid tribes over \$300 million during this period to buy the lands they were willing to sell to the United States. And today, dozens of American Indian tribes still own millions of acres of land in what was the Louisiana Territory.

What France sold the United States in 1803, then, was not the land but the legal right to be the only purchaser of tribal lands, when and if the Indian nations ever chose to sell. The United States also claimed to have acquired from France the sovereign and commercial rights to be the only government to trade and engage in diplomatic relationships with the tribal nations in the Louisiana Territory.

France claimed these rights in Louisiana under the international law called the Doctrine of Discovery. Under that law, the first European, Christian country to discover an area unknown to other Europeans claimed various legal rights. Under the Doctrine, France held the sole right to buy land from the native nations and the right to be the only country to deal with those tribes commercially and politically. The French explorers who traveled the Mississippi and established towns like St. Louis and St. Genevieve, and found the mouth of the Mississippi River, acquired legal rights for France to the entire drainage system of the Mississippi River, which included millions of acres of land.

France claimed this right from the Appalachia and Allegheny mountains all the way west to the Rocky Mountains until it lost the French and Indian War against England in 1754-1763. At the end of that war, France ceded its Discovery claim to the lands east of the Mississippi River to England, and ceded its claim to the lands west of the river to Spain.

In 1801, President Thomas Jefferson was content that Spain held the Louisiana Territory. He called Spain “that feeble old man” and assumed that the Louisiana Territory would fall to the United States whenever the U.S. was ready. But Spain sold Louisiana to France

in a secret treaty in 1800. This was an alarming prospect to President Jefferson. Now, France was a real threat to the U.S. and Jefferson began to take aggressive steps to acquire Louisiana. In fact, Jefferson proclaimed that France was now the enemy of the United States because it could block America's westward expansion. Jefferson even began planning an alliance with England and maybe even war against France over the Louisiana Territory.

Even worse, in 1802, Spanish officials revoked the right of Americans to store goods at New Orleans. This cut off three-eighths of the trade of American goods to foreign markets and was a very serious threat. Members of Congress called for war against Spain. Thomas Jefferson was thus provoked to send James Monroe to assist the American ambassador to France, Robert Livingstone, to buy New Orleans from France. They were authorized to pay up to \$2 million for the city. After prolonged negotiations, France suddenly offered the entire Louisiana Territory to the U.S. for \$15 million. Monroe and Livingstone quickly agreed without awaiting approval from President Jefferson.

Jefferson initially considered the treaty unconstitutional because he thought the federal government did not have the constitutional authority to increase the size of the United States. Thus, he drafted a constitutional amendment to authorize the Louisiana Purchase. Jefferson even guaranteed in his draft amendment that the tribal nations in the Louisiana Territory would still own the "rights of occupancy in the soil, and of self government" Jefferson was well aware that the treaty between France and the United States did not affect the Indian nations' ownership of their lands. In addition, in July 1803, Jefferson said that the U.S. would occupy the city of New Orleans but that the "rest of the territory will probably be locked up from American settlement, and under the self-government of the native occupants." In October 1803, in his Third Annual Message to Congress, Jefferson even recommended that Congress "confirm[] to the Indian inhabitants their occupancy and self-government, [and] establish[] friendly and commercial relations with them" President Jefferson well understood the rights the Indian nations held to their lands in Louisiana.

Jefferson was also delighted with the Louisiana Purchase because it facilitated his plan to remove all the Indian nations from east of the Mississippi River to the west. In May 1803, Jefferson had revealed his plan to remove the eastern tribes even before the Purchase occurred. Now that the U.S. had bought France's Doctrine of Discovery rights in the Territory, Jefferson assumed he had the authority to carry out his Indian removal policy.

Jefferson was naturally very interested in the boundaries of the Louisiana Territory. In 1804, he personally researched and drafted a forty page pamphlet called *The Limits and Bounds of Louisiana*. This amazing document is filled with Jefferson's reliance on Doctrine of Discovery principles, such as international law, first discovery, actual occupancy, and the discovery of river mouths to determine the borders of the Louisiana Territory. Jefferson argued that the country drained by the Missouri River and its tributaries would determine the northernmost reaches of Louisiana and thus the new northernmost boundary of the United States. Even before the Louisiana Purchase occurred, President Jefferson had launched the Lewis & Clark expedition to explore the

interior of North America, to travel all the way to the Pacific Ocean, and to exert America's political and commercial control across the continent. The Louisiana Purchase occurred after Meriwether Lewis left Washington D.C. on the expedition. Consequently, in January 1804, after the Louisiana Treaty was confirmed, Jefferson wrote a new letter of instructions to Lewis and to give him the news that the U.S. had purchased France's rights in Louisiana. Jefferson explained that Lewis' mission had changed significantly because the United States had now gained a form of sovereignty over the Louisiana Territory tribes and the sole right to engage in commercial and diplomatic relations with them. He now instructed Lewis to proclaim American sovereignty in the Territory.

“When your instructions were penned, this new position [the Louisiana Purchase] was not so authentically known as to effect the completion [sic] of your instructions. *Being now become sovereigns of the country, without however any diminution of the Indian rights of occupancy* we are authorised [sic] to propose to them in direct terms the institution of commerce with them. It will now be proper you should inform *those through whose country you will pass*, or whom you may meet, that their late fathers the Spaniards have agreed to withdraw . . . that they have surrendered to us all their subjects . . . *that henceforward we become their fathers and friends . . .*” (italics added).

Lewis & Clark followed these instructions and tried to impose the United States' sovereign and commercial rights against the Indian nations in the Louisiana Territory.

In a cruel irony, Jefferson even figured out how to make Indians pay for the U.S. purchase of Louisiana. During the Jefferson administration, millions of acres of Indian lands in the east were purchased for \$0.05-\$0.25 an acre and the United States immediately resold the lands to American settlers and planters for \$1.25-\$2.00 an acre. Jefferson wrote that the profits from the sales of Indian lands made the United States so much money that it could afford to pay off the loans it borrowed to buy Louisiana before they even came due. The United States also paid off other debts and helped fund the operation of the government from these profits for many years.

The Louisiana Territory was used exactly as Jefferson foresaw. It was used as an area to remove the eastern Indian tribes and for the United States to expand. The area is today comprised of several states of the United States just as Jefferson hoped. The American expansion occurred so quickly in fact that areas expected to be left aside for Indian tribes for generations were quickly settled and the U.S. forced these tribes to accept smaller and smaller reservations and often to move further west. The Indian Territory, which is now eastern Oklahoma, was supposed to be Indian country forever and was never to become part of any state. That concept, as well as many of the rights of Indian people and tribal nations, fell by the wayside on the altar of American expansion and ambitions.

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