FREE NAVIGATION
OF
THE MISSIPPI RIVER

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By

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PREFACE

In this study the writer has made a sincere effort to set forth: (1) the historical background of the Mississippi river question, 1700 to 1763; (2) the Spanish domination of the valley from 1763 to the formation of the Federal Union of the United States of America in 1789, giving the sustained efforts of the United States government under the guidance of the Continental Congress to secure the right of free navigation of the Mississippi river, and (3) the efforts of the Federal government in the continuance of this negotiation from 1789 to 1803 which culminated in the Treaty of San Lorenzo with Spain in 1795 , and with the purchase of Louisiana from France in 1803.

An attempt has been made to present an unbiased statement of the facts in question which have been supported, as far as possible, by the best available documentary evidence. It is hoped that an impartial presentation has been given regarding the French and Spanish relations with the United States during the period of study. The writer has not undertaken to solve any new problems, or to offer any new solutions to old problems, but has endeavored to present established facts relative to a subject that was of the most importance to the early diplomatic history of our nation.

It would not be possible to mention all of the sources from which help has been received in the preparation of this monograph, but much assistance was rendered by Miss Grace Campbell and Miss Margaret Walters, of the Oklahoma A. & M.

College Library staff, and Miss Jameson, Assistant Librarian of the University of Oklahoma. Words cannot express the gratitude due Dr. T. H. Reynolds, Head of the History Department, for his kind, patient, and constructive assistance, without which this work would not have been possible.

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CHAPTER I

HISTORICAL BACKGROUND OF THE MISSISSIPPI RIVER VALLEY

1700-1763

In the early colonial history of the United States river transportation was of the most vital importance in the existence of pioneer settlements and progress. Early colonies were established along the rivers and near the coasts in order that transportation of goods to and from the communities might be possible. When the westward movement of migration had pushed settlements farther and farther toward the interior of North America, until the settlers had crossed the Allegheny Mountains and settled in the Mississippi river valley, the navigation of the "Father of Waters" became a subject of long and continued importance in diplomacy; a subject that in time threatened to disrupt the Federal Union, unless the settlers of the upper Mississippi river valley could have the right of free navigation of said river to the sea.

Before entering into the discussion of the subject of free navigation of the Mississippi, it would be well to give a brief summary of the history of the Louisiana territory, which is in itself the history of the navigation of the Mississippi, because all of the European countries that were struggling for the control of this artery of commerce were doing so in the hopes that it would give them the control of the entire continent of North America.

The Spaniards had entered the Mississippi river valley from the sea. This they had done within a few years after Columbus discovered America, conquering, exploring, and exploiting the greater part of South and Central America. The rich gold mines of South America, that poured their wealth into the Spanish treasury, caused other nations of Europe to have dreams of establishing colonial empires in some unexplored regions of the New World.

Moreover, Spain, France, and England were soon laying claims to vast areas of territory in what is now the United States. Spain based her claims to Florida and the south and southwest parts of what is now the United States upon the explorations of Ponce de Leon in 1513, and upon De Soto's discovery of the lower Mississippi River in 1541. Other Spanish explorers soon came in, and the claims of Spain upon this region were firmly established.

England claimed the Atlantic seaboard from the St. Lawrence river to Florida, basing her claims upon the explorations of John Cabot and later upon the establishment of colonies along the Atlantic coast. However, it was France which was to play a greater part in the early history of this region, both in its settlement and control.

France gained a foothold to this great river valley upon the explorations of Father Marquette, a Canadian priest, who with Joilet, a merchant, left Quebec in 1673, penetrated to the Wisconsin River, thence into the Mississippi, and floated down to the mouth of the Arkansas river before returning to

Canada.[1]

This expedition paved the way for France's entrance into the valley of the Mississippi, which had already been settled in its lower extremities, and led to the great expedition of Robert de La Salle, who, so far as records go, was the first white man to explore the Mississippi River to its mouth.[2] He went to a point near the present site of Chicago, made a portage to the Illinois River and started south. Various disasters caused him to turn back, however, for protection; he established a fort near the present site of Peoria, Illinois, which he named Fort Creve-Coeur (broken-heart) typfying the sorrow over his failure.[3]

In 1682, La Salle started on a second expedition in which he was more successful than in the first, and he reached the Mississippi River in February of that year. He drifted down that river and out into the Gulf of Mexico the following April. He took possession of the entire valley and named it "Louisiana" in honor of Louis XIV, King of France.[4] La Salle soon returned to France where he was royally received by the King's court. When it was proposed that colonists be sent to America to settle the Louisiana territory, and thereby join it to Canada, La Salle was ordered to take charge of the

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[1] Adolphus M. Hart, History of the Discovery of the Valley of the Mississippi, New York, 1901, p. 29.

[2] Ibid., p. 36.

[3] Richard B. Houghton, "The Influence of the Mississippi River upon the Early Settlement of Its Valley", Mississippi Historical Society Publication, (Oxford, Miss., 1909), IV, 465.

[4] Ibid., p. 466.

expedition. He started with four shiploads of colonists, but he missed his course, failed to find the mouth of the Mississippi River, and landed near the present site of Matagorda, Texas. The colony which he founded there failed to prosper; La Salle started overland to Canada; and, on the way, was killed by one of his men.[5]

For some time the King made no further efforts to colonize the Louisiana territory, but French colonists came into the region from Canada and settled along the Mississippi river, principally in and around the present site of New Orleans.[6]

In 1699 D'Iberville was sent over from France to colonize Louisiana. He was more successful than La Salle, for he entered the mouth of the Mississippi River, and later established a colony at a point on the Bay of Biloxi, Mississippi. In 1699, he was made the governor-general of the territory, and more colonists were sent over from France the same year. In 1702 D'Iberville died and Bienville was left in command. Harassed by the Indians, and to a large extent deserted by the French authorities, the colony dwindled considerably. In 1712 the territory was turned over to Crozat as governor-general. The entire population at this time was about 325.[7]

When the colonies of Spain, England, and France, began to push their settlements into the interior, they came in

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[5] Hart, op. cit., p. 75.

[6] Ibid., p. 75.

[7] Ibid., p. 76.

contact with each other. These contacts led to disputes as to the ownership and settlement of the territory. Naturally, when these countries engaged in war in Europe, the colonies engaged in war in America. Thus when the War of the Spanish Succession, known in America as Queen Anne's War,[8] began with France and Spain aligned against England, the American colonists took sides in the fight. This war continued until 1713 when it was closed by the treaty of Utrecht. By articles nine and thirteen of this treaty, France ceded New Foundland, Acadia, and the Hudson Bay region to England.[9] The treaty left France in possession of all of the territory drained by the Mississippi River and its tributaries. The Spanish possessions were left unchanged. The treaty contained a mutual recognition by France and Spain of the other's colonial possessions in America, but with no agreed boundary between them. The eastern and western boundaries of French Louisiana in 1713--it then extended on both sides of the Mississippi--remained a matter of minor diplomatic contention while those two powers, through most of that period, stood jointly facing Great Britain in the wars of the eighteenth century.[10]

In 1715, Louisiana (particularly its supposed mines) was made the basis for the notorious "Mississippi Bubble" scheme

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[8]Fred Paxon, History of the American Frontier 1763-1873, New York, 1924, p. 1.

[9]Francis G. Davenport, European Treaties Bearing on the History of the United States and its Dependencies, Washington, D. C., 1904, III, 196-198.

[10]Samuel Flagg Bemis, Pinckney's Treaty, Baltimore, 1926, p. 5.

of John Law, which was started to refill the depleted coffers of the French treasury. The Western Company was formed and sent over a great many emigrants to colonize the country. Bienville was appointed commander of the expedition.[11] Natchitoches was founded that same year, and in 1718 Bienville founded New Orleans, which he named in honor of the Duke of Orleans, the regent of France.[12] In 1720 Bienville built Fort Rosalie, near the present site of Natchez, as a protection against the Indians.[13] In 1722 the seat of the government was moved to New Orleans which at that time had a population of about 200. Emigrants soon began to come in rapidly from France, and by the end of 1723 there were approximately six thousand inhabitants in New France.[14]

The French, along in these years, began settlements at Yazoo, Baton Rouge, Bayou Goula, Ecores, Point Coupee, Black River, Pascogoula and as far north as Illinois.[15] The Mississippi was by that time taking on the status of the main artery of travel and commerce in the new country.

The first movement of white people into Illinois and Missouri was by the French from Canada. They were hunters and traders, principally, who came down by the Great Lakes or overland, established camps, killed game, and traded with the

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[11] Hart, op. cit., p. 83.

[12] Ibid., p. 111.

[13] Hart, op. cit., p. 111.

[14] Houghton, op. cit., p. 468.

[15] Hart, op. cit., p. 121.

Indians. Their camps in time grew into towns and cities.[16]

James I of England had granted to the colony of Virginia a strip of territory extending two hundred miles north and south of Point Comfort and extending west from sea to sea. Under this charter, Virginia claimed the Ohio river valley. By reason of these claims, Governor Dinwiddie of Virginia sent George Washington to notify the French that they were settling on Virginia soil when they established Fort Duquesne located at the present site of Pittsburgh, Pennsylvania. The French claimed that the Ohio region was theirs by the right of exploration and settlement, therefore they refused to evacuate. Upon the refusal of the French to retire from the Ohio river valley, the governor of Virginia sent a body of troops there under the command of General Braddock, with orders to drive the French out of the valley. This was the beginning of the Seven Years War in America, commonly known as the French and Indian War. Before the war was over Spain was drawn into the conflict as the ally of France, joining her in the struggle against Great Britain on January 2, 1762. This alliance not only proved costly to France, but it was disastrous to Spain as well.[17] For both nations the combined attack was a blunder, as Spain suffered a series of unparalleled colonial defeats, and France found herself handicapped by a defeated and obstinate ally. The treaty of alliance

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[16] Timothy Flint, History of the Geography of the Mississippi Valley, Boston, 1828, p. 164.

[17] E. Wilson Lyon, Louisiana in French Diplomacy, Norman, Oklahoma, 1934, p. 21.

called for a mutual division of the spoils, so the obligation would have to be equally binding on the sharing of one another's misfortunes.[18]

Choiseul, the French Minister of Foreign Affairs, had been negotiating with England for terms of peace for some time prior to Spain's entry into the war. Spain's action failed to diminish his efforts one bit, for he took up the negotiations almost immediately, which followed the basis of uti passidetis. This would have meant the surrender by France of some of her West Indian possessions which she was the most interested in saving. Choiseul regarded St. Lucia as essential to the defense of Martinque and Guadelupe, the most prized of the French Islands, and for returning it to England now demanded eastern Louisiana, which would give her a port on the Gulf of Mexico.[19] This would violate the ancient principle of Spain that other powers should be kept out of these waters, and to no nation did this apply so strongly as it did to Great Britain. Anticipating the opposition of his ally, Choiseul informed the Sardinian ambassador at Paris that he would appease Spain by ceding her the remainder of the vast territory of Louisiana.[20]

The Spanish Ambassador at Paris was the Marquis of Guinaldi, and he protested heavily the proposition of Choiseul to cede to Great Britain the eastern portion of Louisiana,

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[18] Ibid., p. 22.

[19] Arthur S. Aiton, "The Diplomacy of the Louisiana Cession" American Historical Review, 1931, XXXIV, 714-715.

[20] Lyon, op. cit., p. 22.

stating that it was a reiteration of the ancient Spanish claim to hegemony in all North America, and he added further that France had no right to dispose of any part of Louisiana without the consent of Spain.[21] Spain did not want England to possess the right to navigate the Mississippi River. Choiseul replied that as the Iberville River and the Lakes Maurepas and Pontchartrain were to be retained by France, English navigation of the river and the penetration of the gulf would be forbidden.

Spain, in her turn, proposed to set up a neutral Indian zone between western Georgia and the Mississippi River, its northern boundary to be the southern boundary of Canada.[22] For such an arrangement she would guarantee the English claim to Georgia and the French title to Louisiana.[23] This idea was very soon abandoned, England agreeing to accept the left bank of the Mississippi whenever France offered it. By July, 1762, England had given up her earlier claim to New Orleans, but she still insisted upon the right to navigate the Mississippi River. Choiseul, then very cleverly and just as erroneously, defined the Iberville and the Lakes Mauropas and Pontchartrain as one of the mouths of the Mississippi, and by promising navigation through them, separated New Orleans and the island on which it was located from the rest of the

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[21] W. R. Shepherd, "The Cession of Louisiana to Spain" Political Science Quarterly, 1904, XIX, 442.

[22] Ibid., p. 443.

[23] Lyon, op. cit., p. 23.

eastern part of Louisiana.[24] This was a diplomatic stroke of great importance, as the primary value of Louisiana lay in this city and its control of the navigation of the river.[25]

By August, 1762, Choiseul was almost in agreement with the English on terms of peace. The only remaining difficulty was the obstinancy of the Spaniards who, having achieved success against Portugual, the satiellite of England, wished to continue the war. Thus France's problem was not with her enemy but with her ally. To please Spain, Choiseul offered her all of Louisiana west of the Mississippi, including the city of New Orleans and the island upon which it was located. Spain was reluctant and hesitated to accept, for when the deed to the territory was placed in the hands of Charles III, the King of Spain, exclained:

> I say no, no, no, my cousin is losing altogether too much; I do not want him to lose anything in addition for my sake, and I would to Heaven that I could do yet more for him.[26]

The king of Spain knew full well as he voiced these generous sentiments that his kinsman, Louis XV of France, was anxious to get rid of the province of Louisiana. The colonial possessions in the West Indes, due to the production of sugar, were far more desirable to the powers of Europe than the vast territory of Louisiana. In addition to the general preference for tropical colonies, Louisiana had certain positive disadvantages. Its colony had since its beginning been a dead ex-

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[24] Aiton, op. cit., p. 715.

[25] Lyon, op. cit., p. 24.

[26] Bemis, op. cit., p. 1.

pense for the mother country, and now it would be much more so, since it would have to be fortified against the English.[27]

The motives for France's offer to Spain have been the subject of considerable conjecture. Especially is this true of Choiseul's policy, which Dr. W. R. Shepherd characterized as, "A mixture of Gallic impulsiveness and Gallic policy."[28] In a recent article, Professor Arthur S. Aiton viewed the cession as:

> . . . a calculated move of selfish national policy carefully staged by a statesman intent on deriving every ounce of advantage for his own country.[29]

Whatever the motives of the French Foreign Minister may have been, it is certain that he was looking to the day when France might seek revenge on Great Britain for the defeats of the Seven Years War, and he realized that his country would be in need of a powerful ally to accomplish this end. No doubt the immediate problem of French diplomacy was to extricate herself from the unfortunate plight into which she had fallen. In doing so, care had to be taken to prepare for the future struggle, which at that time was regarded as inevitable, and despite her lamentable failure in 1762, Spain could be of value to France in the next war.[30] The reorganization of her forces in the light of her defeats might be expected to strengthen her military power. In view of this, Choiseul was

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[27] Lyon, op. cit., p. 29.

[28] Shepherd, op. cit., p. 463.

[29] Aiton, op. cit., p. 720.

[30] Lyon, op. cit., p. 30.

convinced that the continued alliance of the two countries was to the interest of the French. Then, what better means could he use to promote this alliance than to offer to cede to Spain the great province of Louisiana in compensation for Spain's sacrifices and as a reward for her fidelity?[31]

Although the King of Spain had said "No, no," to the offer of Louisiana when it was made to him, it was not hard to persuade him to accept the cession. He felt, even though he knew his cousin was palming him a "white elephant," that it would be better to have Louisiana as a buffer state between the Spanish possessions than to leave it inevitably to fall into the hands of the English Crown. Such aggressive neighbors might mean the loss of Mexico and the eventual downfall of all Spain's colonial empire in America.[32]

Choiseul, in his endeavors to press Louisiana upon Spain persuaded Louis XV to address his cousin of Spain as follows:

> I have induced the Marquis of Grimaldi, subject to the good pleasure of Your Majesty, to sign the treaty ceding New Orleans and Louisiana to Spain. I offered Louisiana to the English in place of Florida, (but) they refused it. I would have given them some other possessions in order to have saved Spain from ceding this colony (Florida), but I feared that a cession in the Gulf would have been attended with too serious consequences. I realize that Louisiana indemnifies Your Majesty only slightly for the losses he has made in such a brief war undertaken for France. But in ceding him Louisiana, I consider its value less than (I do) the good it may accomplish for the union of the French and Spanish nations, a union which should be firmly established for the intergets of our subjects as well as for those of our house.[33]

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[31] Ibid., p. 31.

[32] Bemis, op. cit., p. 3.

[33] Shepherd, op. cit., p. 449 (quoted in French in this work)

Like Choiseul, Charles III believed the best interests of France and Spain lay in close cooperation with each other. He, too, hoped to use the Family Compact as a means of recovering colonial prestige at the expense of England. Publically, at least, he ascribed the acceptance of Louisiana to his desire to further the good relations of the two countries by cooperating in an act which would tend to bring the two countries closer together.[34]

Presentation of the concrete advantages of Spanish ownership of the territory soon led Charles III to fall in line, and he signed the treaty of the cession of the province of the colony of Louisiana and New Orleans by France to Spain on November 13, 1762. The same was concluded with the signature of Louis XV of France, on November 23, 1762. All that remained now was the formal transfer of the territory and its evacuation by the French.[35] By the terms of the general treaty which closed the French and Indian War, France ceded to England all of her territory east of the Mississippi River except the isle of New Orleans, which was soon ceded to Spain along with Louisiana. The only territory retained by France after the transactions were completed, were two small islands in the mouth of the St. Lawrence River which were held for the purpose of fishing. Spain ceded Florida, including all of her territory east of the Mississippi, except the isle of New Orleans, to England. Thus in 1763,

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[34] Lyon, op. cit., p. 34

[35] Ibid., p. 34.

France was driven entirely out of the mainland of North America.

Prior to the cession of the territory of Louisiana to Spain, France had in the preliminary treaty which closed the Seven Years' War granted to Great Britain the full right of navigation of the Mississippi River, which was stipulated in article seven of the said treaty as follows:

> It being well understood that the navigation of the Mississippi River shall be free equally to the subjects of Great Britain and to those of France, throughout all its length and breadth, from its source to the sea, and particularly that part of it which is between the above said island of New Orleans and the right bank of this river, as well as entrance and exit by its mouth; it is further stipulated that the vessels belonging to the subjects of either nation cannot be stopped, visited, or subjected to the payment of any tax whatever.[36]

Because nothing was mentioned in the treaty to the contrary, Louisiana would, by the law of nations, go to Spain. Spain did not deny Great Britain the right of free navigation of the Mississippi River, but she did her best to vitiate that right by refusing to permit ships to moor on the shore, or to permit a British officer or sailor to set foot on Spanish soil.[37] We shall see this possibility of frustrating the right of navigation introduces a new complication of the question.

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[36] Bemis, op. cit., p. 3; Freeman Snow, Treaties and Topics in American Dipolmacy, Boston, 1894, p. 4.

[37] Ver Lee Brown, "Anglo-Spanish Relations in America in the Closing Years of the Colonial Era," Hispanic American Historical Review, V, 370.

CHAPTER II

SPANISH DOMINATION OF THE MISSISSIPPI RIVER VALLEY 1763-1789

Although Spain had become the owner of the Louisiana territory on November 3, 1762, it was not until March 5, 1766 that the province really passed into her hands. On that date Don Antonio de Ulloa, Spain's first appointed governor of the Louisiana colony, arrived in America. He came to the colony with certain preconceived ideas. One was that the Louisianians should change their nationality, their allegiance, and their flag, all with a welcoming gladness. He assumed, also, that the French troops stationed in the colony would readily enlist in the service of their master, and, finally, he was sure that the Louisianians would be profoundly grateful at his coming to rule over them.[1]

In these assumptions, he was badly mistaken for the people of the newly acquired territory were not so willing to become the subjects of Spain. The soldiers refused to enlist in the service of the Spanish king, and the colonists were by no means impressed by the presence of the self-praising Ulloa. Instead of the expected grand reception upon his arrival, he was greeted very coldly and with sullen disapproval.[2] Since the French soldiers refused to serve under Spanish rule, Ulloa was forced to postpone the acceptance of the territory. As the small army of ninety men that

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[1] Henry E. Chambers, Mississippi Valley Beginnings, New York and London, 1922, pp. 92-93.

[2] Ibid., p. 94.

he had with him was insufficient, even for police duty, a peculiar arrangement was worked out with Aubry, the French commander at New Orleans. The Spanish flag was to be raised at all of the ports in the colony except New Orleans, and all orders were to be issued by Aubry, in the name of the Spanish King. The French commander thus described this unusual situation in a report of January 20, 1768, in which he said:

> My position is most extraordinary. I command for the King of France and at the same time I govern the colony as if it belonged to the King of Spain.[3]

Ulloa remained in the Louisiana colony until his expulsion by the revolt of October, 1768, in all a stay of approximately thirty-two months. During this time he did little more than make a tour of inspection of the colony, and make some recommendations to his home government regarding the necessary expense and troops needed to expel the British from the use of the Mississippi River.

His report was followed by prompt action on the part of the Spanish ministry when it decided that Louisiana should be held at all costs, that the rebellion should be suppressed, and that the ringleaders should be brought to trial and punished. In a short time a large Spanish fleet arrived at the mouth of the Mississippi River, under the command of Alexander O'Reilly, an Irish soldier of fortune, then a Lieutenant General in the Spanish army. The French soldiers, in a state of revolt, were persuaded by Aubry to submit to the Spanish

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[3] Alcee Fortier, A History of Louisiana, (New York and Paris, 1904), I, 162.

commander. Consequently, the revolt was called off. There soon followed a peaceful transfer of the colony with an impressive ceremony, on August 18, 1769.[4] The subsequent trial and execution of the leaders of the revolt completed, O'Reilly restored order rapidly in a way that was approved by both France and Spain, and under his successor, Don Louis de Unzaga, Louisiana assumed the normal life of a minor Spanish colonial possession, which was to continue unbroken to the American Revolution.[5]

When Unzaga entered upon the duties as governor of the Louisiana province, on August 17, 1772, he found that the commerce of the colony had greatly decreased under the ill-advised policy of Spanish restrictions.* This oppressive restriction was exceedingly foolish, as it benefited neither the colony nor the mother country. It left an opportunity for the English merchants, who had the right to navigate the Mississippi River, to supply the inhabitants with the goods they desired, thereby enabling the English to reap huge profits out of such a clandestine trade.[6] They took in exchange for goods and slaves whatever their customers had for trade, and extended to them the most liberal credit. Besides

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[4] Ibid., p. 210.

[5] Charles Gayarre, History of Louisiana: The French Domination, (New Orleans, 1903), Fourth Edition, III, 44-45.

* By the royal ordinance of 1766, the trade of the colony had been confined to Seville, Alicant, Carthagena, Malaga, Barcelona, and Coruna, and no vessels were to engage in this trade restricted as it was, but those that were Spanish built and commanded by the Spaniards.

[6] Ibid., p. 44.

the English had very large warehouses at Manchac, Baton Rouge, and Natchez; also a number of vessels constantly moored on the river a short distance above New Orleans. To these places the inhabitants of Louisiana used to resort in order to carry on their contraband dealings which the Spanish authorities made little if any effort to check.[7] Thus the English merchants, by tempting the inhabitants to trade with them, through liberal exchange and credit, had rendered the colony of Louisiana worthless to the mother country through a complete monopoly of trade.

On the 17th of August, 1772, the King of Spain granted to the province of Louisiana some extension of commerce in conformity with the suggestions made by O'Reilly in his dispatch a few years earlier, but the favor, after all, was so restricted that it did not prove of much importance to the colony.[8]

By 1773 the colonists were becoming reconciled to their new government, which was recommended to them by the mildness of Unzaga's administration. The planters, in particular, found considerable resources in the clandestine trade with England, who supplied them with negro slaves at a low price.[9]

The cession of Louisiana to Spain, which Choiseul had hoped to effect so speedily, thus engaged the French office of foreign affairs for nearly a decade before all of the

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[7] Ibid., p. 46.

[8] Ibid., p. 49.

[9] Ibid., pp. 97-98.

details of the transaction were cleared up. Hardly had France concluded the transfer of the Louisiana territory to Spain when the long hoped for rebellion of the English colonies occurred, and once again directed France's attention to the Mississippi river valley.

France's aim in the American Revolution was the recovery of European prestige through the humiliation of England. The French ministers of the time did not believe in the permanence of the colonies, and Vergennes's prime consideration was the independence of the United States. His interest in Louisiana, therefore, was incidental to his ambitious policy.[10]

In 1778, it had been stipulated between the courts of France and Spain that Louisiana should be permitted to trade with the French West Indes on condition that the articles which might be desired from Louisiana for these islands should be purchased by two commissioners, appointed by the French government. The commissioners, upon their appointment, were to reside in New Orleans. These commissioners soon arrived, and at the same time Unzaga was replaced by Galvez as governor. Therefore the monopoly of trade that England had enjoyed under the rule of Unzaga passed into the hands of the French under Galvez.[11]

The outbreak of hostilities between the American colonies and the mother country presented the opportunity for which France had waited ever since the Peace of Paris, 1763--that

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[10] E. S. Corwin, French Policy and the American Alliance, (Princeton, N. J., 1916), p. 5.

[11] Gayarre, op. cit., p. 106.

of splitting the British Empire and raising the power of France in the European world in accordance with the downfall of Great Britain. The public opinion of France, at this time, lent a helping hand towards the French statesmen in their efforts to persuade the King to aid the colonies. The movement favoring liberty and equality of mankind was just beginning to take shape in the minds of the populace of France. At first, while the ultimate chances of the success of the colonies was uncertain, the Count de Vergennes, able French Minister of Foreign Affairs after 1774, was inclined to wait in regard to engaging in the war, meanwhile furnishing supplies and money to the rebels via the Spanish colony of Louisiana. After the American victory at the battle of Saratoga, in October, 1777, the French minister hastened to form an alliance with the colonies.[12] When this decision to recognize the independence of the United States was made, Vergennes was positive that Spain would soon follow the French lead.

In 1776, Spain, then under the administration of Grimaldi, as Minister of Foreign Affairs, had been willing to come to the aid of the American colonies because of the favorable circumstances for her to conquer Portugal, but it was Vergennes who then held off because he was not sure of the colonies' success.[13] By 1777, the Portuguese-Spanish issue had been settled, and Spain was under the guidance of

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[12] Samuel Flagg Bemis, "British Secret Service and the French American Alliance," American Historical Review, XXIX, 474-496.

[13] Bemis, Pinckney's Treaty, p. 13.

a new foreign minister, Count Floridablanca, who could not be convinced, by Vergennes's arguments, that it was absolutely necessary for Spain to join France in order for the former country to protect her colonies in America. However, Vergennes could not pass up the good opportunity to get into the War so France virtually entered it alone, although there was a secret article in the treaty of alliance which provided for Spain's future adhesion to the treaty, which was concluded on February 6, 1778.[14]

On April 12, 1779, however, Floridablanca consented to enter the war and signed the Bourbon Family Compact, known as the secret convention of Aranjuez, wherein the two countries, France and Spain, agreed to fight a common war against Great Britain, the war to continue until certain concessions had been made to both countries.[15]

In this treaty, Spain was very careful not to recognize the independence of the United States. Until the declaration of war against Great Britain in 1779, the question of the navigation of the Mississippi River was not a serious one. Even though it became important to Spain upon her entry into the war, it was not the primary reason why she came into the conflict. She entered for the sole purpose of humbling her ancient and hectic enemy; for the recovery of Gibraltar; and to see that the Floridas did not pass into the hands of some

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[14] Journal of the Continental Congress, Washington, D.C., 1904-1934, XI, 454.

[15] Corwin, Op. cit. p. 149.

other power.[16]

The Spanish policy in regard to the Mississippi question and the southern and western boundaries of the United States, originated in the brain of Juan de Miralles, who was sent by Spain as a special agent to the colonies during the Revolution. His policy was: (1) that so far as Florida was concerned, it having once been a Spanish province, His Catholic Majesty would not be pleased to see it pass into the hands of any other nation; and, (2) that the great North West, i., e., the Ohio river valley, ought to be sold to Spain, since it would be isolated by her control of the mouth of the Mississippi River.[17]

The Continental Congress had been requested by Vergennes to formulate peace terms and to appoint a representative plenipotentiary to a peace conference in case the Spanish mediation, then in progress, should bring peace. The Spanish mediation, however, was not accepted by Great Britain, but the Continental Congress continued to debate the peace terms for several months, especially the questions of: (1) the southern and western boundaries of the United States; and, (2) the right of free navigation of the Mississippi River from its source to its mouth.

The committee, of which governor Morris was chairman, took a precise and positive stand in regard to these questions in its report to the Congress. Its recommendations in re-

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[16]Remis, Pinckney's Treaty, p. 21.

[17]Corwin, op. cit., p. 243.

gard to the boundary were:

> . . . thence to the south end of Lake Nipissing and thence to the source of the Mississippi. West by a line drawn along the middle of the river Mississippi from its source to that part of said river which lies in latitude thirty-one degrees north from the equator, thence by a line drawn due east to the river Apalachicola or Catahouche, thence to the junction thereof with the flint river, thence in a straight line to the head of St. Mary's river, and thence by a line along the middle of St. Mary's river to the Atlantic Ocean.[18]

On the question of the free navigation of the Mississippi River, the following was included in the report:

> . . . reserving always the free navigation of the river Mississippi to the subjects of the United States. . . in the fullest extent of egress and ingress. But, if this can not be obtained, then that a port be reserved for the delivery and sale, purchase and lading of all commodities, excepting such articles as shall be particularly enumerated.[19]

Then in another place in the same report which was presented to the Continental Congress, Tuesday, February 23, 1779, the question of the navigation of the Mississippi was referred to as follows:

> That the navigation of the river Mississippi, as low down as the southern boundary of the United States, be acknowledged and ratified absolutely free to the subjects of the United States.[20]

Congress acting as a committee of the whole modified these articles in the report to read:

> That the navigation of the river Mississippi be acknowledged and ratified absolute free to the

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[18] Journals of the Continental Congress, 1904-1922, XIII, 329-330.

[19] Ibid., pp. 243-244.

[20] Ibid., p. 868.

Subjects of the United States.[21]

Such a report, and the modifications of that report by Congress, left the question of the navigation of the Mississippi River ambiguous as to whether the "free" navigation of the "River Mississippi" meant to the sea, or merely down to the southern boundary of the United States. As it then was, it might be interpreted either way. Efforts were made in the Congress to insert the qualification which would limit the navigation to the southern boundary of the United States, but these efforts failed. Congress became more and more positive in its demands for the free navigation of the Mississippi River from its source to its mouth, expecially after it became known that Spain's mediation for peace had failed and that she had declared war upon Great Britain.[22]

The United States was then anxious to negotiate with Spain to get her to accede to the Franco-American alliance, and thereby recognize the independence of the colonies. Congress favored an offensive and defensive alliance of all three powers, which should obtain for the United States its stipulated boundaries, for Canada, Nova Scotia, and Bermuda, the free navigation of the Mississippi River, and a subsidy from Spain. This action was taken by Congress on Thursday, August 5, 1779.[23] In return for these concessions the United States was to give to Spain a free hand in the

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[21] Ibid., p. 369.

[22] Ibid., XIV, 835.

[23] Ibid., pp. 923-926.

conquest of the Floridas, guaranteeing them forever to Spain.[24]

Although the fact had been rumored in America that Spain had declared war against Great Britain, it was not officially announced until September 7, 1779, by Luzerns, new French minister to the United States.[25] On September 10, 1779, John Dickinson of Delaware, proposed that the representative plenipotentiary of the United States to Spain be empowered to conclude with the King of Spain any treaty that would give to this country, Canada, Nova Scotia, and the Bermudas, the free navigation of the Mississippi River, and a subsidy. In return for all this the United States would agree to furnish to the Spanish navy all the ship masts that could be spared, and, if Spain should insist on the Floridas for herself and the exclusive right of the river below thirty-one degrees north latitude, the United States minister to Spain might yield and guarantee both to the King; provided, that the United States might get the province demanded above. The United States also desired the use of a free port on the Mississippi River below the thirty-first parallel of north latitude.[26] This motion was rejected because of the concessions to Spain regarding the navigation of the Mississippi River.

On September 27, 1779, Mr. John Jay, president of the Continental Congress, was elected minister plenipotentiary

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[24] Ibid., p. 926; ibid., XV, 1046-1047.

[25] Francis Wharton, The Revolutionary Diplomatic Correspondence of the United States, (Washington, D. C., 1889), III, 310.

[26] Journals of the Continental Congress, XV, 1042.

to negotiate a treaty of alliance and amity and commerce between the United States and Spain.[27] Jay's instructions, as they were finally adopted on that same day, provided: (1) that Spain could have the Floridas if she acceded to the Franco-American alliance, provided always that the United States would have the free navigation of the Mississippi River into and from the sea; (2) that Jay could negotiate treaties of alliance and amity and commerce with Spain; (3) that the United States should get some convenient ports on the Mississippi River below the thirty-first parallel of north latitude: and, (4) that, in case of the failure to secure a subsidy, Jay was to solicit a loan of five million dollars at not more than six per cent interest.[28]

Mr. Jay arrived in Spain, January 27, 1780, where he was greeted rather coldly by Floridablanca, who, although he had not as yet received a report regarding Jay's instructions, had heard of the general nature of Jay's mission, and had made up his mind never to relinquish the exclusive right to navigate the Mississippi River.[29] Jay soon found that his instructions on the Mississippi question would be a bar to any treaty of commerce that he should attempt to make with Spain. He informed Congress of this and all of the details of his missions, and Congress responded by altering his instructions on the navigation of the river, as follows:

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[27] Ibid., p. 1113.

[28] Ibid., p. 1113.

[29] Warton, op. cit., IV, 256-257.

> . . . relative to the claim of the United States to the free navigation of the River Mississippi, and to a free port or ports below the thirty-first degree of north latitude. . . you are hereby instructed to recede from the instructions above referred to, so far as they insist on the free navigation of that part of the River Mississippi, which lies below the thirty-first degree of north latitude, and on a free port or ports below the same; provided such cession shall be unalterably insisted upon by Spain; and provided the free navigation of the said river, above the said degree of north latitude, shall be acknowledged and guaranteed by his Catholic Majesty to the citizens of the United States in common with his own subjects. It is the order of Congress at the same time, that you exert every possible effort to obtain from his Catholic Majesty the use of the river aforesaid, with a free port or ports below the said thirty-first degree of north latitude. . . .[30]

Thus it may be seen that the United States, although desirous of obtaining the free navigation of the Mississippi River and a port on its lower extremity, was more anxious to draw Spain into the Franco-American alliance in order to make more secure the certainty of the complete independence of the United Colonies of America.

Jay did not approve of these instructions for he thought them more adapted to negotiations with Spain before her entry into the war against Great Britain than to the then existing status of Spain and the United States as co-belligerents against the British. Of this he wrote to Congress:

> The effect which an alliance between Spain and America would have on Britain and other nations would certainly be in our favor, but whether more so than the free navigation of the Mississippi is less certain. The cession of this navigation will in my opinion, render a future war with Spain unavoidable, and I shall look upon my subscribing to one as fixing the certainty of the other.[31]

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[30] Journals of The Continental Congress, XIX, 152-153.

[31] Wharton, Op. cit., p. 743.

Nevertheless, he carried out the instructions of Congress, and added that whatever might have been his own sentiments they had never influenced him to deviate from the policies of Congress.[32]

He submitted a formal proposition for a treaty of amity and alliance to Floridablanca, on September 22, 1781, which contained the following article bearing on the subject of free navigation of the Mississippi:

> The United States shall relinquish to his Catholic Majesty, and in the future forebear to use, or attempt to use, the navigation of the Mississippi from the thirty-first degree of north latitude--that is from the point where it leaves the United States--down to the ocean.[33]

The issue was thereby put squarely before Floridablanca. Had that statesman been willing to accept the American alliance and the recognition of the independence of the English colonies, Jay's proposition could not have been better, but it was evident that he was still unwilling to recognize the independence of the United States. He preferred to pursue the war against Great Britain without the American alliance, and to leave the question of the Mississippi for future settlement, for he refused to do any more than discuss the proposed treaty through an under secretary, although Jay had stated that if Spain refused his offer, the United States would reserve all rights to the navigation of the Mississippi River.[34]

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[32] Ibid., p. 744.

[33] Ibid., p. 761.

[34] Ibid., p. 761.

A few months later Jay received a letter from Benjamin Franklin asking him to come to Paris to assist in the peace negotiations with Great Britain, and Jay, being disgusted with the policy of the Spanish Court, soon departed for Paris.[35]

Floridablanca, when commenting on Jay's departure from Spain, said: "His two chief points were: Spain recognize our independence: Spain give us money." However, the Spanish minister was unwilling to let the American negotiations drop, due to his country's interest in the Mississippi question; therefore, he authorized Aranda, Spanish Ambassador at Paris, to discuss the matters with Jay, but not to agree upon anything before referring it to Madrid. On August 3, 1782, a conference took place between the two and they dealt principally with the western and southern boundaries of the United States which, incidentally, is closely connected with the Mississippi River question. Jay insisted upon the boundary as prescribed by Congress, and Aranda protested vigorously, saying that the Americans were asking for entirely too much. When Jay asked him where he thought the line ought to be, he promised to take a map and work out a boundary line and send it to Jay. When the American minister received the map a few days later, it contained a red line which, according to description, outlined the western boundary of the United States as follows:

> . . . from a lake near the confines of Georgia, but east of the Flint River, to the confluence of the

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[35] Ibid., V, p. 380.

> Kanawa River with the Ohio, thence round the western shores of Lakes Erie and Huron, and thence round Lake Michigan to Lake Superior.[36]

Jay took this map to Franklin and the two held a conference with Vergennes in which they both protested very heavily to the extravagence of the Spanish claims. "Vergennes," said Jay, "was very cautious and reserved, but Mr. Rayneval, who was also present, thought we claimed more than we had a right to."[37]

Aranda now appealed to Vergennes to intervene in Spain's interest regarding the settlement of the boundary. The French minister did very little other than to reason with the Americans, and try to get them to accept a line above the Ohio River a little farther west than the proposed line of Aranda, but still distant from the Mississippi River. He referred Aranda to Rayneval, his chief assistant, as one who was more familiar with the territories of America. Together Rayneval and Aranda worked out a line satisfactory to the Spanish ambassador. This line limited the claim of Spain to the region south of the Ohio River. After it was approved by Vergennes, it was then presented to Jay as the "personal ideas of Rayneval for a means of settling the issues between Spain and the United States." It has long since been known in history as the "famous Rayneval Memoir" on the territorial settlement of the west. The boundary line as proposed by Rayneval in his memoir was:

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[36] Bemis, Pinckney's Treaty, p. 39.

[37] Ibid., p. 40.

> . . . a line should be drawn from the eastern angle of the Gulf of Mexico, which makes the section between the two Floridas, to Fort Toulouse, situated in the country of the Alabamas; from thence the river Loneshatchi should be ascended, from the mouth of which a right line should be drawn to the Fort of Factory Quenasse; from this last place the course of the river Euphasee is to be followed till it joins the Cherokee; the course of the last river is to be pursued to the place where it receives the Pelisippi; this last to be followed to its source, from thence a right line is to be drawn to the Cumberland River whose course is to be followed until it falls into the Ohio. . . .
>
> As to the course and navigation of the Mississippi they follow with property, and they will belong, therefore to the nation to which the two banks belong. If, then, by future treaty of peace, Spain preserves West Florida, she alone will be the proprietor of the course of the Mississippi from the thirty-first degree of latitude to the mouth of this river.[38]

The United States, as is well known by every school boy, refused to submit to such a curtailment of territory, as it was simply a device erected by Spain to cut the United States off from the use of the Mississippi River. It must be pointed out however, that Vergennes, although this plan was drawn up by his private secretary, never put it forth as the official proposal of the French for the settlement of the boundary and Mississippi questions between the United States and Spain.[39] Therefore, he was not disappointed when the United States commissioners received from Great Britain the western and southern boundaries as laid down by the Continental Congress. The treaty of peace between the United States and Great Britain stipulated further:

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[38] Wharton, op. cit., VI, 26-27.

[39] Ibid., p. 29.

> The navigation of the Mississippi from its source to the ocean, shall forever remain free and open to the subjects of Great Britain and the citizens of the United States.[40]

The same day on which the above treaty was signed, Great Britain also signed a treaty with Spain by which the territories of East and West Floridas were ceded to the Spanish without mentioning their boundaries. The peace negotiations of 1783 were thus concluded without a Spanish recognition of the independence of the United States and without the settlement of the navigation of the Missouri River.[41]

Since Great Britain had ceded the Floridas to Spain without mentioning the boundaries, Spain was perfectly justified in contending that the boundaries of West Florida as taken by her were exactly what they had been when in the hands of the British, and that nothing in the treaty between the United States and Great Britain could change those boundaries without Spain's consent. However, Spain did not stop with just claiming the boundaries of the Floridas as they were under the British, but claimed territory north of the Ohio River, even as far north as the Great Lakes.[42]

On the Mississippi question, Spain with good reason contended that her conquest of the Floridas placed a bar of Spanish territory across the lower Mississippi over which the United States could not pass, even though the right had been

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[40] William M. Malloy, Treaties and Conventions, (Washington, D. C., 1910), I, 589.

[41] Bemis, Pinckney's Treaty, p. 42.

[42] Ibid., p. 51.

granted her by Great Britain.[43] Spain argued that her reconquest of the Floridas thoroughly cancelled the navigation concessions which Great Britain had made to the lower reaches of the river. The year after the peace settlement of 1783, the governor of Louisiana was instructed to proclaim that, until the boundaries of Louisiana and the Floridas should be settled, the United States would not be allowed to navigate the Mississippi River within the Spanish territory. The United States had to rest its claim to article eight of the Treaty of Paris of 1783, which, as was shown, gave the United States the right of free navigation of the Mississippi River. However, Great Britain had ceded something to America which she no longer possessed. Although the claim of this country to the navigation of the said river was not altogether precisely defined or argued in full until the beginning of the negotiations with Spain in 1784, it was based upon the conception that the transfer of territory from Great Britain had carried with it the same rights as that country had enjoyed regarding the navigation of the Mississippi.[44]

During the year before the Revolution began the frontiersmen from the Atlantic seaboard had crossed the mountains in large numbers and settled in the Mississippi river valley. The war checked this migration but slightly, and at the close of hostilities, the settlers poured across the mountains into

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[43] Ibid., p. 51.

[44] Blair and Rives, Diplomatic Correspondence of the United States, 1783-1789, (Washington D. C., 1833) First Edition, I, 136.

the great valley. It was the pressing demands of these settlers for the free navigation of the Mississippi that made the question one of utmost importance to the United States. The whole Mississippi valley depended upon the navigation of the river which was the only outlet for commerce of the section.

In October, 1784, Floridablanca informed the American commissioners at Paris that a special minister plenipotentiary would be sent to the United States, to reside near Congress, furnished with all powers to settle the Mississippi River navigation and the boundary issue. For this mission Don Diego de Gardoqui had already been selected when the announcement was made.[45]

According to Gardoqui's instructions, he was not to relinquish the right of navigation of the Mississippi to its mouth, and he was to get the boundary settled so as to give Spain more territory than was stipulated by the boundary line in the treaty of 1783.[46]

Armed with these instructions, Gardoqui was presented to Congress in July, 1768, and was ceremoniously received; John Jay was appointed to confer with him, but was specifically instructed to include in any treaty the right of the United states, "to their territorial bounds and the free navigation of the Mississippi River from its source to its mouth as established by the treaty with Great Britain,"

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[45] Ibid., p. 512.

[46] Bemis, op. cit., p. 74.

and not to conclude any treaty until it had been approved by Congress.[47]

The two commissioners soon entered a series of long oral negotiations, which lasted throughout the fall and winter of 1785 and 1786. In the first conference, Jay insisted on the American claims to the right of free navigation of the Mississippi from its source to its mouth. He requested entrance for American commerce into the Spanish-American colonies, and Gardoqui replied that it was impossible to grant either of these privileges.[48]

From the very first the Spanish envoy was impressed with the difficulty of securing the consent of Congress to any exclusion from the Mississippi River. Gardoqui felt that if he had Jay alone to deal with he could have an easy time settling the question to Spain's fullest satisfaction. He felt that he could influence Jay by huge entertainments and elaborate gifts.[49]

"Fifty thousand people already have their homes in the Mississippi river valley," wrote Gardoqui to Galvex, the viceroy to Mexico, "and their future prosperity depends upon the navigation of the Mississippi river." He felt that if he could only get Congress to relinquish that right, that the colonists would revolt from the United States and take matters into their own hands to secure the right of naviga-

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[47] Journals of the Continental Congress, XXIX, 658.

[48] Bemis, Op. cit., p. 80.

[49] Ibid., p. 81.

tion of the river.[50]

The two plenipotentiaries continued their oral negotiations and Gardoqui was of the opinion that he was about to secure Spain's demands, since Congress seemed anxious to restrain the Georgia frontiersmen and other westerners from aggressive action in the disputed territory, or from attempting to force the Spanish government to grant them the right of free navigation on the Mississippi River.[51] The potential menace to the Spanish provinces of the western settlements of Kentucky and Tennessee, especially when they were denied the use of the Mississippi, was the subject of frequent dispatches by Gardoqui to Floridablanca. It eventually caused Gardoqui to suggest that the demand for the navigation of the Mississippi River would sooner or later have to be met by Spain.[52]

After much negotiation the two agreed to work out the draft of a treaty of commerce which should provide for reciprocal advantages to both countries, the settlement of the Mississippi question, and a treaty of alliance for thirty years in which Spain would accept commercial reciprocity between the United States and the peninsula domains of Spain. Each party was to guarantee the other's territory in America.[53]

Such were the contingent articles to which Jay agreed,

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[50] Ibid., p. 82.

[51] Ibid., p. 85.

[52] Ibid., p. 87.

[53] Ibid., p. 88.

and which Gardoqui recommended to his country for acceptance provided the United States would relinquish its claim to the navigation of the Mississippi. The whole proposal was a notable attempt toward an entangling alliance, the same being made attractive to the eastern states by the commercial articles on reciprocity.

On the 23rd day of May, 1786, Jay received an unsigned and unofficial paper from Gardoqui in which the case of Spain was summarized,[54] and on the 25th of the same month he received a signed letter from Gardoqui requesting that Congress be given the following information regarding the navigation of the Mississippi:

> The period is arrived that we have wished for many months when there would be a full meeting of Congress, that you might refer to them the difficulty which you have manifested to me respecting the claim to navigate the river Mississippi. . . the King will not permit any nation to navigate between the two banks belonging to His Majesty.[55]

Having laid down this condition, Gardoqui elaborated upon the advantages which the United States had already enjoyed because of the "good and generous disposition" of the King.[56]

On May 31, 1786, a letter from Mr. Jay, dated May 29, 1786, was presented and read to Congress, in which he expressed the difficulties he was having with the Spanish agent in regard to the Mississippi question.[57]

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[54] Journals of The Continental Congress, XXXI, 467-468.

[55] Ibid., p. 469.

[56] Ibid., p. 470.

[57] Ibid., XXX, 323.

On August 3, 1786, Congress called Jay before it to explain the nature of the difficulties which he was having with Gardoqui.[58] When the American representative appeared before Congress on that date, he presented both the unsigned paper and the letter from Gardoqui, mentioned heretofore, and followed with an address in defense of the position which he had taken. He also gave a summary of the articles of the proposed treaty of commerce, followed by an earnest appeal to remove the restricted instructions of August 25, 1785, regarding the demands of the United States for the free navigation of the Mississippi River, because he felt that it was an utter impossibility to reach an agreement of any kind since Spain objected so strenuously to that demand of the United States.[59] Of this he said to Congress:

> Circumstanced as we are, I think it would be expedient to agree that the treaty should be limited to twenty-five or thirty years, and that one of its articles should stipulate that the United States would forbear to use the navigation of that river (meaning the Mississippi) below their territories to the ocean. . . the navigation of the Mississippi is at this time not very important, and will not probably become so in less than twenty-five or thirty years, and a forbearance to use it while we do not want it is no great sacrifice.[60]

Thus it seems that Gardoqui's unorthodox means of influencing Mr. Jay had the desired effects, for the American representative had completely changed his mind regarding the navigation of the Mississippi.

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[58] Ibid., XXXI, 467.

[59] Ibid., pp. 473-485.

[60] Ibid., pp. 480-481.

Congress offered a resolution to repeal the instructions above referred to, but it failed to carry, although it received the vote of seven of the north and eastern states, being opposed by five of the southern states (Delaware was absent). In substance it had passed, receiving seven out of the twelve votes in Congress, but since it required a vote of at least nine states to ratify a treaty, the above vote was virtually accepted as a defeat of the resolution. The vote was strictly sectional, and the southern states were horrified at the idea of giving up the navigation of the Mississippi River for commercial privileges which would benefit the eastern and northern states.[61] Of this James Monroe wrote to Patrick Henry:

> This is one of the most extraordinary transactions I have ever known. A minister negotiating expressly for the prupose of defeating the object of his instruction, and by a long train of intrigues and management seducing the representatives of the states to concur in it.[62]

This strong sectional minority, more than enough to block any two-thirds vote, rallied to the defense of Mississippi, and Charles Pinckney, of South Carolina, delivered a reply to Jay, in which he expressed the view point of the South and West. In this speech, delivered on August 16, 1786, Pinckney said in part:

> It is to forebear the assertion of the right of the United States to navigate the river Mississippi, for the term of twenty-five or thirty years.

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[61] Ibid., p. 595.

[62] Stanislaus Murry Hamilton, Writings of James Monroe, (New York and London, 1898), I, 144-151.

> It is said that the treaty will not be concluded without this stipulation: That the navigation is unimportant, and that a forbearance will be no sacrifice, as Spain excludes us by force, and will continue to do so: that it would be disgraceful to continue the claim without asserting it. . . The right of the United States to navigate the Mississippi has been so often asserted, and so fully stated by Congress, that it is unnecessary to say anything upon this subject.[63]

The Mississippi question continued to monopolize Congress throughout the summer of 1736, and finally culminated in its decision to accept the vote of seven to five on the question of the repeal of Jay's instruction as an affirmative vote, even though the southern states made it very apparent that they would block any sort of a treaty that did not give them the right of the navigation of the Mississippi.[64]

Although Jay was now free to negotiate a treaty upon the terms that he had recommended to Congress, he was also very well aware of the fact that any treaty that bartered away America's right to navigate the Mississippi River would be rejected by the block of five southern states in Congress, since it took at least nine to ratify a treaty. He informed Gardoqui of this fact, and the latter set about to change the leaders of Congress in the same manner in which he had changed Jay. Of this Mr. Bemis said:

> Neither the lavish hospitality of the zealous Gardoqui, nor the already fashioned opinion of Washington, nor the recommendations of Jay, nor the

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[63] Journals of The Continental Congress, XXXI, 942-943.

[64] Bemis, op. cit., p. 101.

> royal gifts of stallions and jackasses could make conquest of the logic with which the geography of North America had convinced the majority of the southern delegates that the rapidly increasing population of their backlands demanded for economic salvation the control of the Mississippi and its outlet to the sea.[65]

Jay, not being able to secure from Gardoqui the right of navigation of the Mississippi was, by the spring of 1787, losing his prestige with Congress, for it tried to transfer negotiations from the United States to Madrid, thereby giving it a chance to remove Jay, and send Jefferson, who at that time was in Paris, to the Spanish capital. However, Jay succeeded in convincing Congress that such a move would be useless.[66]

Meanwhile the proposed articles of the treaty of commerce and alliance, as agreed upon by Jay and Gardoqui, and that the latter had forwarded to the King, were being drafted in the form of a treaty. When the treaty was finished and returned to Gardoqui, it contained an article that proposed to establish an Indian buffer state between the United States and Spanish Louisiana. For this reason Gardoqui returned the treaty to Madrid and requested that it be revised leaving out the Indian state. This request was complied with, and the following article was included on the navigation question:

> The United States will not navigate the Mississippi below its riparian possessions, and will forgo all claims to navigate it where it flows between two Spanish banks, until this question be taken up and

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[65] Ibid., pp. 113-114.

[66] Ibid., p. 115.

examined by some particular convention.[67]

The revised treaty did not reach the United States untill the latter part of 1787, but since the Continental Congress had almost ceased to be a functional body, and the new constitution was very recently completed, no action was taken upon the treaty.

Spain's policy now changed to one of trying to win the Westerners over to the Spanish by holding out to them the free navigation of the Mississippi.[68] This change is marked in history by the Spanish conspiracy of James Wilkinson, who in 1787, went from Kentucky down to New Orleans, and while he was there negotiated with the Spanish authorities in an attempt to secure Spain's protection and friendship. Upon his arrival at New Orleans, he took an oath of allegiance to the King of Spain, and then recited the grievances of the Kentuckians, chief among which was the inability of Congress to secure for them the right of navigation of the Mississippi River. If they could not obtain help from Spain, they would appeal to Great Britain.[69]

These and various other plots of Spanish conspiracy tended to awaken the northern states to the fact that the Mississippi river valley might revolt; therefore, they changed their views regarding the navigation of the Mississippi, and

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[67] Ibid., p. 122.

[68] Samuel Cole Williams, History of The Lost State of Franklin, (New York, 1933), p. 263.

[69] William R. Shepherd, "Wilkinson and The Beginnings of the Spanish Conspiracy," American Historical Review, IX,490-506.

it is doubtful whether the treaty sent over to Gardoqui, had it been considered, would have received as much support in Congress as it would have a year earlier.[70]

When Gardoqui sailed for Spain in October, 1789, the Constitution of the United States had been definitely adopted and the new government put into operation. It was then the problem of the Federal government to take up the negotiations to secure the right of free navigation of the Mississippi from Spain, and thereby prevent a revolt and a quick disruption of the Union.

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[70] Bemis, op. cit., p. 164.

CHAPTER III

ATTEMPTS OF THE FEDERAL GOVERNMENT TO SECURE FREE NAVIGATION OF THE MISSISSIPPI, 1789-1803

Nothing was done toward taking up the Spanish negotiations for the settlement of the Mississippi question and the boundary until the arrival of Thomas Jefferson, Washington's secretary of state, who had spent six years at the Court of France. During his stay there, he had not failed to note the condition of the European balance of power on the eve of the French Revolution, and he was of the opinion that a general war would soon break out in that continent.[1] He was also convinced that Europe's quarrels could be used to a good advantage by the United States. He believed that this country could force Spain, in case the latter became entangled in a European conflict, to relinquish the navigation of the Mississippi River and accede to the thirty-first degree north latitude as the boundary line in question.[2]

The very situation which Jefferson had predicted loomed on the horizon soon after he became secretary of the State Department in Washington's cabinet, and he and the chief executive thought that the time was ripe to approach Spain with demands for the navigation of the Mississippi River. Regarding this, Jefferson wrote a letter addressed to William Carmichael, the United Charge D'Affairs in Spain, on August 2, in which he said:

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[1] Paul Leicester Ford, The Writings of Thomas Jefferson, (New York and London, 1895), First Edition, V, 23.

[2] Ibid., p. 23.

> . . . that the resumption of negotiations is not desired on our part, unless he (the Spanish Minister of Foreign Affairs) can determine, in the first opening of it, to yield the immediate and full enjoyment of that navigation.[3]

Jefferson also made an appeal to France to assist the United States in securing this right of navigation from Spain, but that country was so engaged in the revolution that she could be of no assistance, yet at the same time she could not go to the aid of Spain.[4] The Nootka Sound incident had very recently shattered the Family Compact.

Juadenes and Via, the young attaches whom Gardoqui had left here to represent the Spanish interests in this country, informed Jefferson in December, 1791, that Spain would be glad to resume negotiations at Madrid on the subjects of the navigation of the Mississippi and the boundary.[5] As a result, Washington adopted Jefferson's recommendation and sent William Short, who had recently been appointed as minister to the Hague, to Madrid to assist Carmichael in negotiating a treaty of navigation and boundaries. Short arrived in Madrid armed with a lengthy state paper in which Jefferson set forth the arguments to support the claims of the United States to the right of the navigation of the Mississippi River. He wrote this paper mainly to impress the western settlers of the sincerity of their secretary of state to

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[3] Ibid., pp. 216-217.

[4] Ibid., p. 216.

[5] Bemis, op. cit., p. 182.

secure for them that right.[6]

Short did not arrive in Madrid until a year and a half following Floridablanca's invitation to the United States to negotiate at the Spanish Court. During that time, the European complexion had changed considerably due to the French Revolution, and Spain had become the staunch ally of Great Britain in the first coalition against France.[7] Spain no longer feared an Anglo-American alliance, and as a result the expected overthrow of the balance of power in Europe which Jefferson had hoped to make good use of was of no value to the United States, since just the opposite of what he had expected happened--Spain allied with Great Britain.

During this time, Floridablanca had been replaced by the youthful Godoy, as the Spanish Minister of Foreign Affairs. As soon as he came into power, he deputized none other than Gardoqui to negotiate with the United States representatives, regarding the questions involved.[8] The commissioners of this country were unable to confer with Gardoqui, being put off first with one excuse and then another. Month after month this continued, until Thomas Pinckney, regular minister to London, was appointed to serve as envoy extraordinary to Spain for the settlement of the long pending issues between the two countries. This appointment was made on November 21,

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[6] Ford, op. cit., pp. 461-481.

[7] Bemis, op. cit., p. 92.

[8] Ibid., p. 196.

1794.[9]

Pinckney did not actually leave London until late in the spring of 1795. As to the chief purpose of his mission, Pinckney received no additional instructions, but was referred to the set that Jefferson had given to Messrs. Short and Carmichael. Pinckney's full power designated him, "envoy extra-ordinary and sole commissioner plenipotentiary," with powers to negotiate and sign a treaty or treaties concerning the navigation of the Mississippi River, the boundary line, and the general commerce between the two nations.[10]

Jay's treaty, which had just been concluded with England, was on its way to America, and luckily for Pinckney, its contents were not revealed to Spain prior to his arrival at Madrid. Godoy thought there was something in the treaty pertaining to an alliance between Great Britain and the United States that would be injurious to the Spanish interests in America. As a matter of fact, there was no such alliance in the treaty at all, but this was not known to Godoy.[11]

Another reason for the abrupt change in the Spanish policy, which came about simultaneously with Pinckney's arrival at Madrid, was the upheaval of the situation in Europe. Prussia and the Netherlands had left the coalition against France, and on July 22, 1795, the treaty of Basle, which

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[9] American State Papers and Foreign Relations, I, 469. (cited hereafter as A. S. P. F. R.)

[10] Ibid., p. 469.

[11] Ibid., p. 470.

brought peace between France and Spain, was secretly signed in Switzerland. As a result of all this, Godoy was ready to treat with Mr. Pinckney, regarding the navigation of the Mississippi River and the boundary line for fear of what England might do to Spain for deserting the Anglo-Spanish alliance.[12]

In the first discussion which Pinckney had with Godoy, the Spanish minister informed the United States minister that the King of Spain was anxious to establish a triple alliance with the United States and France, the same to be a part of the separate peace with France.[13] Godoy stated further that he could come to no conclusions on the principal points of the American demands until he had received an answer to the propositions for the suggested alliance which he had sent to the President of the United States the previous July. Pinckney thought this only a means of obtaining further delay, but this idea was somewhat shattered when he received notice from Mr. Randolph, Secretary of State, of the famous propositions with an exact copy of them.[14]

In the next conference with Godoy, which was held at San Illdefonso, Pinckney informed him emphatically that he was not authorized to make any such treaty of alliance and

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[12] Bemis, op. cit., p. 307.

[13] A. S. P. F. R., I, 535.

[14] Ibid., p. 534.

guaranty of Spanish possessions in America.[15] Of this Pinckney wrote to Randolph, August 11, 1795:

> With this declaration, the duke appeared much mortified, conceiving, as was natural, that the proposals, though informally made, had been considered and rejected by our government. I then proceeded to state how ready the United States were to enter into every other friendly stipulations, urged the arguments that occurred to me for an immediate settlement of the points in controversy; the result was that he promised to proceed with me in our negotiations. . . I urged the fixing of a day to proceed to the business, which he said was impossible, as he wished some further information, but promised to appoint an early day. This, however, not immediately taking place, I requested in three or four days a further conference, in which he still urged that he was not prepared, but said that he would very shortly enter into the business; and from his conversation, I collected that he had really been looking into the subject.[16]

On August 5, 1795, a copy of the secret treaty of Basle with France arrived at the Spanish Court. It was immediately ratified and sent back to Paris, and the war had ended without Godoy's hoped for triple alliance.[17] The day following the public announcement of the peace with France, Godoy informed Pinckney that their business would be settled speedily to their joint satisfaction. Of this Pinckney wrote:

> On Sunday. . . he told me that our business should be very speedily settled to our satisfaction; that I might consider it perfectly in that point of light, as his Majesty was determined to sacrifice something of what he considered as his right, to testify his good will to us. . . my present opinion is, that the new position of Spain with respect to England will induce them to come to a decision with us.[18]

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[15] Ibid., p. 535.

[16] Ibid., p. 535.

[17] Ibid., p. 535.

[18] Ibid., pp. 535-536.

At a meeting of the Council of State, on August 14, 1795, it was decided to proceed with the United States on the basis of conceding the right of navigation of the Mississippi River, and consenting to the thirty-first degree north latitude as the boundary line.[19] Godoy, the nervous Prince of Peace, was cowering before the anticipated vengeance of a deserted ally, which had already made a mysterious treaty with the United States. That treaty might possibly force open the navigation of the Mississippi, and take away from Spain her vast province north of Mexico. For this reason, it seemed very essential to Godoy that Spain conciliate the American republic.[20]

The Prince of Peace, actively and earnestly, began to negotiate with Mr. Pinckney, and, with the Mississippi navigation question and the boundary line conceded by Spain, the chief difficulties were out of the way. However, one point remained to be settled. Pinckney's instructions regarding the Mississippi cautioned him to avoid, if possible, accepting the navigation of that river as a grant from Spain rather than an acknowledgement of a right, and to secure the cession of a port or at least a landing place in the Spanish territory near the mouth of the river.[21]

On August 15, 1795, Pinckney presented a sketch of a proposed treaty of friendship, commerce, and navigation,

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[19] Bemis, op. cit., p. 314.

[20] Ibid., p. 315.

[21] A. S. P. F. R., I, 254-257.

with a separate article on the navigation of the Mississippi River, which read:

> That the navigation of the Mississippi be recognized as free to both nations, and all the facilities for its use be mutually accorded.[22]

Godoy asked for a full length draft of the treaty, and the negotiations on the details of this draft lasted for four weeks.[23] In these communications, Pinckney relinquished the commercial demands of the United States regarding reciprocity and the most-favored nation privilege, but insisted strenuously to the right of deposit at the mouth of the Mississippi River. He objected to Godoy's wording of the article on the navigation of the Mississippi River. Of this Mr. Pinckney said:

> In the eleventh and twelveth lines, the words "**solo et exclusivament**" (alone and exclusively) should be omitted, for Spain could scarcely confide in the good faith of the United States, nor in this convention, which she is about to conclude with them, if they agreed to an article which would be an infraction of another treaty, previously made. Now by the treaty of peace between the United States and Great Britain, concluded in 1783, it was stipulated that the navigation of the river Mississippi shall continue free to the subjects of Great Britain and to the citizens of the United States. It appears that the following provision would have all of the desired effect: It is nevertheless agreed, that nothing contained in this article shall be construed or interpreted, to communicate the right of navigating this river, to other nations or persons, than to the subjects of His Catholic Majesty and the citizens of the United States.[24]

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[22] Bemis, op. cit., p. 318. (Mr. Bemis commented on this as follows: "I have not been able to locate Pinckney's full draft, nor Godoy's counter draft, either in Spain or the United States, in Pinckney's papers, nor in Short's papers.")

[23] A.S.P.F.R., I, 539-540.

[24] Ibid., p. 540. In Pinckney's, Notes on the Project of A Convention Proposed by His Excellency, The Prince of Peace.

It is important to notice, however, that this qualification desired by Pinckney to remove contravention of the Mississippi article of the treaty of peace between the United States and Great Britain, in 1783, was not written into the final draft of the treaty.

In reply to Godoy's neglect to include an article on the right of deposit at the mouth of the Mississippi River, Pinckney demanded such a stipulation and contended that the United States was entitled to more than that. He said that Spain should cede to this country a space of ground for the establishing of a depot where American vessels that came from the sea might discharge their cargoes with those that arrived from the neighboring ports on the river.[25] He stated further that in case Spain would make such a cession the United States would not press damage claims for the large damages already sustained by the twelve years of interruption of the free navigation of the Mississippi River.[26]

On October 7, 1795, Godoy sent Pinckney a brief note asking him to sign the treaty.[27] This Pinckney refused to do without securing what he termed one of the principal objects of his mission, "the right of deposit at the mouth of the Mississippi river." He was soon able to get Godoy to agree to this concession, and, consequently, the Treaty of Amity, Limits, and Navigation was signed at San Lorenzo,

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[25] Ibid., p. 541.

[26] Ibid., p. 541.

[27] Ibid., p. 542.

October 27, 1795. Article IV concerning the navigation subject was as follows:

> . . . And His Catholic Majesty was likewise agreed that the navigation of the said river (Mississippi), in its whole breadth, from its source to the ocean, shall be free only to his subjects and the citizens of the United States, unless he should extend this power to other nations by convention.[28]

Then in the second section of article XXII, it was stipulated:

> His Catholic Majesty will permit the citizens of the United States, for the space of three years from this time, to deposit their merchandise and effects in the port of New Orleans, and to export them from thence. . . and his Majesty promises either to continue this permission if he finds during that time that it is not prejudicial to the interests of Spain, or if he should not agree to continue it there, he will assign to them on another part of the banks of the Mississippi an equivalent establishment.[29]

The final article is worthy of notice. Pinckney's powers authorized him to make, sign, and send to the President of the United States for his ratification by and with the advice and consent of the Senate. This article, number XXIII, read:

> The present treaty shall not be in force until ratified by the contracting parties, and the ratification shall be exchanged within six months from this time or sooner if possible.[30]

Thus it may be seen that this article textually ignored the Senate, but a treaty like this one encountered no opposition in that body. It was unanimously ratified as soon

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[28] Ibid., p. 547.

[29] Ibid., p. 549.

[30] Ibid., p. 549.

as submitted, and forthwith returned to Spain where the ratifications were exchanged, April 25, 1796, barely within the six months' period. With this exchange of ratifications the long sought for recognition of the right to navigate the Mississippi River, and to deposit goods at its mouth was finally obtained by the new Federal government of the United States.

The settlers of the interior along the Mississippi River valley were highly elated to learn that the Federal government had secured for them the right of free navigation of that river and the right of deposit at its mouth. Prior to this time, they had protested to Congress in the form of resolutions, asking that the government secure these rights;[31] they had conspired through Wilkinson, Innis, Murry, and Nicholas, with the Spanish authorities, who endeavored to seduce the people of the western territory to revolt and declare their independence from the Federal Union for the same purpose. However, these settlers were loyal to the Union after these rights had been secured for them, as was soon demonstrated.

Hardly had the treaty of 1795 been ratified, than the Baron de Carondelet, commander-in-chief and governor of Louisiana and East and West Florida, tried to lead the settlers to believe that the King of Spain did not intend to carry out the provisions of the treaty relating to the free

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[31] Ibid., p. 454.

navigation of the Mississippi River.[32] Of this he said:

> . . . it may be confidently asserted. . . that his Catholic Majesty will not carry the above mentioned treaty (The Treaty of San Lorenzo, 1795) into execution; nevertheless the thorough knowledge I have of the disposition of the Spanish government justifies me in say that, so far from it being His Majesty's wish to exclude the inhabitants of this western country from the free navigation of the Mississippi, or withhold it from them by the treaty, it is positively his intention, as soon as they shall put it innis power to treat with them, by declaring themselves independent of the Federal Government and establishing one of their own, to grant them privileges far more extensive, give them a decided preference over the Atlantic states in his commercial connections with them, and place them in a situation infinitely more advantageous in every point of view, than that in which they would find themselves, were the treaty to be carried into effect.[33]

To back this tempting offer and to smother difficulties, money had been sent up the Mississippi and Ohio Rivers, and Mr. Power, as special agent of the Spanish authorities at New Orleans, had several interviews with Mr. Wilkerinson and delivered him ten thousand dollars, which was sent up the river concealed in barrels of sugar and bags of coffee.[34] All of these allurements, however, failed to produce their expected results, because Time, Washington's administration, and a number of favorable circumstances headed by the treaty of San Lorenzo, had consolidated the Union and won the loyalty of the West. So, in 1796, when Power returned from a trip up the Mississippi River he reported to the Governor at New Orleans that the people of the western interior were

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[32] Gayarre, op. cit., pp. 354-366.

[33] Ibid. p., 363.

[34] Ibid., p. 364.

perfectly satisfied with the conditions and accomplishments of the Federal government.[35]

By the close of the year 1796, Washington's administration had, by the Jay's Treaty with England, secured possession of the Northwest, and, by the Treaty of San Lorenzo with Spain, secured the right of free navigation of the Mississippi River. France and Spain were no longer enemies as a result of the Peace of Basle, but the Spanish government had broken with England through a shattering of the First Coalition against France. The United States were swinging away from the French alliance and seeking the friendship of the English.[36] To Spain and France, there seemed to be a menace in this new relationship, toward the Spanish-American colonies; therefore, it became the policy of France to press to a conclusion the negotiations for the Louisiana Territory. France attempted to persuade Spain, in 1796, that Louisiana was a dangerous possession for her, and for the protection of the best interests of both of these countries, especially for Spain, the Province of Louisiana should be ceded to France. This Spain resolutely refused to do at that time.[37] However, France continued her attempts at retrocession, in which she even took steps in America toward getting the settlers of Louisiana to revolt

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[35] Ibid., pp. 364-365.

[36] Frederick Johnson Turner, "The Policy of France toward The Mississippi Valley in the Period of Washington and Adams," American Historical Review, (New York, 1905), X, 267.

[37] Ibid., pp. 268-269.

and accept French rule. In his farewell address, September 17, 1796, George Washington informed the West:

> . . . it must of necessity owe the secure enjoyment of its indispensable outlets for its own productions, to the weight, influence, and future maritime strength of the Atlantic side of the Union, directed by an indissoluble community of interests as one nation. Any other tenure by which the West can hold this essential advantage, whether derived from its own separate strength, or from an apostate and unnatural connexion with any foreign Power, it must be intrinsically precarious--The inhabitants of our Western Country have lately had a useful lesson. . . they have seen, in the negotiation by the Executive, and in the unanimous ratification by the Senate, of the treaty with Spain, and in the universal satisfaction at that event throughout the United States . . . they have been witness to the formation of two treaties, that with Great Britain and that with Spain, which secure to them everything they could desire. . . towards confirming their prosperity. Will it not be their wisdom to rely for the preservation of these advantages on the union by which they were procured? Will they not henceforth be deaf to those advisers, if such they are, who would sever them from their brethern and connect them with aliens?[36]

In these words, Washington sensed the danger of the French Government to incite revolt among the Westerners, and pleaded with these settlers to stay with the union that was able to secure for them the privileges for which they had fought so long.

France was unsuccessful in these attempts to incite revolt, although a great deal of sympathy was gained from the inhabitants of the Mississippi river valley toward the cause of the French Revolution, but nothing of very great importance ever came of this.

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[36] A. S. P. F. R., I, 36.

The strained relation between the United States and France over the Genet episode, followed by the famous XYZ affair, and the spectacular rise of Napoleon in Europe made the Louisiana territory ripe for the picking by 1800.[39] Therefore, the province of Louisiana was transferred from Spain to France by the secret treaty of San Ildefenso, October 1, 1800, but only rumors of such a treaty reached the United States; and in a letter from Rufus King, dated November 20, 1801, and addressed to the secretary of state, it was stated:

> I am in hopes that I shall soon be able to obtain and send you a copy of the treaty ceding Louisiana to France: this will enable us to determine whether it includes New Orleans and the Floridas.[40]

Thus we see that the question bothering the United States, enshrouded in the secrecy of the treaty, was whether or not New Orleans and the Floridas had been included in the cession to France. In the same letter, Mr. King enclosed a copy of the treaty signed at Madrid, March 21, 1801, by which the Prince of Parma (son-in-law of the King of Spain) was established in Tuscany;[41] this had been in consideration for the grant of Louisiana to France, and that grant was thereby confirmed by this treaty, which established the Spanish Princess and her husband on the throne of the King-

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[39] Turner, op. cit., pp. 276-277.

[40] A. S. P. F. R., II, 511.

[41] Ibid., p. 512.

dom of Etruria.[42]

When Jefferson was quite convinced, by the spring of 1802, that the French would soon take possession of the Louisiana territory, New Orleans, and possibly the Floridas, he expressed his alarm in a letter dated April 18, 1802 and addressed to Robert Livingston, the United States minister to France, in which the President said:

> The cession of Louisiana and the Floridas by Spain to France works most sorely on the United States. . . There is on the globe one single spot, the possessor of which is our natural and habitual enemy. It is New Orleans, through which the produce of three-eighths of our territory must pass to market. . . The day that France takes possession of New Orleans fixes the sentence which is to restrain her forever within her low water mark. . . From that moment we must marry ourselves to the British fleet and nation.[43]

On October 16, 1802, Juan Ventura Moralles, the acting intendant of Louisiana, withdrew the American right of deposit at New Orleans in violation of the treaty of San Lorenzo. According to article XXII of that convention, the privilege was granted for only three years, but it had been continued at the expiration of that time. By the above article, Spain reserved the right to revoke the deposit at New Orleans, but in the same article she bound herself in that event to give the Americans an equivalent establishment elsewhere on the banks of the river. It was this part of the treaty which Moralles was attempting to evade, and

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[42] Ibid., p. 512.

[43] Ford, op. cit., VIII, 144-145.

thereby violate the agreement.[44]

In consequence of this action by Moralles, Jefferson was informed that if he did not act immediately, the western people would take things into their own hands, which of course meant revolt. Jefferson knew that the independence of the West made it ready for lawless ventures, and he also knew the real importance of the Mississippi River and the pationate regard in which the West held it. New Orleans lay unprotected at the mercy of a frontier expedition, and an attack would produce either the calamity of a war with France or the dissolution of the Union.[45] Jefferson did not believe that the United States had a constitutional right to purchase part of the Louisiana territory from France, yet he realized that was the only plausible solution to the situation, so he drew up in his own handwriting, an amendment to the constitution, which would give the government that right. This amendment was never incorporated into that document, for events moved too rapidly for it to be accomplished.

On January 11, 1803, Jefferson sent a message to the Senate nominating Robert R. Livingston and James Monroe as ministers to the Court of France, and Charles Pinckney and James Monroe to the Court of Spain, with full powers to form treaties, "enlarging and more effectually securing our rights

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[44] A. S. P. F. R., I, 549.

[45] James R. Richardson, Messages And Papers of The Presidents, (Washington, D. C., 1904), I, 342.

and interests in the river Mississippi and in the territories eastward thereof."[46] Livingston was already in France and in the thick of a discussion regarding the purchase of New Orleans.[47] On January 18, 1803, James Madison, Secretary of State, informed Mr. Livingston that James Monroe had been appointed minister plenipotentiary at Paris with instructions to procure a cession of New Orleans and the Floridas to the United States.[48] It was not then known in the United States that the Floridas were not included in the cession to France.

Monroe arrived in Paris April 12, 1803, but before he arrived Napoleon had definitely decided to sell the whole of Louisiana to the United States in order that it might not fall into the hands of the English.[49]

Two days prior to Monroe's arrival in Paris, Napoleon called Barbe-Marbois and another councillor and informed them of his intentions to sell all of Louisiana to the United States, and the following day directed Marbois to interview Livingston regarding such a transaction. He closed his instructions to Marbois with, "I require a great deal of money for this war, and I would not like to commence it with new contributions."[50]

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[46] A. S. P. F. R., II, 475.

[47] Ibid., p. 552.

[48] Annals of Congress, 7th Congress, 2nd Session, 1802-1803, pp. 1063-1064.

[49] James H. Perkins, Annals of The West, (St. Louis, 1850). Second Edition, p. 530.

[50] Thomas M. Marshall, A History of the Western Boundary of Louisiana, (Berkeley, California, 1914), p. 7.

On the night of April 13, 1803, Livingston and Marbois met and remained in conference until after mid-night.[51] The Frenchman informed Livingston that Napoleon had declared his readiness to part with the whole of Louisiana provided the United States would pay one hundred million francs and assume in addition to that the claims of the American citizens against the French government. Livingston advised Marbois that the United States would be perfectly satisfied with New Orleans and the Floridas; therefore, it would not give any such huge sum for the whole territory. He suggested that the United States might be ready to purchase the whole province provided the price was reduced to a reasonable amount. As a result, Marbois made another offer of sixty million francs, in addition to which the United States assume the American claims to the amount of twenty million francs. Livingston still insisted that the price was too high, but since Marbois had promised that France would help the United States procure the Floridas, the American minister assured the French representative that he would do all in his power to persuade Monroe to accept this offer.[52]

Following Mr. Monroe's presentation to Napoleon, Livingston informed Marbois that after careful consideration they had decided to offer fifty million francs for the whole of the Louisiana territory, including in that amount the American debts. Marbois complained that this was entirely

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[51] A. S. P. F. R., II, 552.

[52] Ibid., pp. 552-554. (Livingston to Madison, April 13, 1803).

too low.[53] The American commissioners, unable to get Marbois to yield, soon agreed to pay the sixty million francs, assuming at the same time the American claims to the amount of twenty million francs.[54] This was equivalent to about fifteen million dollars. The treaty was arranged and signed on April 30, 1803, in which the whole of the Louisiana territory was to pass into the hands of the United States.[55] The treaty was signed on May 2, 1803, and the agreement relative to the American claims was signed a few days later, but both of them were antedated to April 30, 1803.[56]

The treaty arrived in Washington, D. C. on July 14, 1803, and on October 19, 1803, it was ratified by the United States Senate, and the ratifications were exchanged on October 21, 1803.[57]

The following words from Napoleon, after the conclusion of the treaty give a good insight into his reflections on the subject. To Marbois, he said:

> This accession of territory, strengthens forever the power of the United States, and I have just given to England a maritime rival that will sooner or later humble her pride.[58]

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[53] Ibid., p. 554.

[54] Ibid., p. 559.

[55] Ibid., p. 557 and p. 507.

[56] Miscellaneous House Document, vol. 32, 57th Congress, 2nd Session, 1902-1903, Document No. 431, (Washington, D. C., 1903), p. 96.

[57] Annals of Congress, 7th Congress, 2nd Session, pp. 1007-1210.

[58] Perkins, op. cit., p. 532.

During this time another difficulty arose. Spain protested against the right of the French government to sell the Louisiana territory to the United States, because: (1) France had promised, in the secret treaty of San Ildefenso, not to cede the territory to any power other than Spain; (2) France had not yet gained possession of the territory; and, (3) the First Consul was forbidden by the constitution of the French Republic to sell any of the French domain by his own power.[59] However, after some lengthy negotiations, the King of Spain renounced his opposition to the transaction, in a note transmitted to the President of the United States, who in turn presented the same to Congress on November 8, 1803.

The next important step was the regular transfer of the territory from Spain to France, as this transaction accorded by the secret treaty of San Ildefenso, had not been carried out in Louisiana.[60] M. Laussat had been appointed the plenipotentiary of the French Republic, and on the 30th of November, 1803, he met the Spanish commander in the Council Chamber at New Orleans, received in due form the keys to the city, and issued a proclamation to the people of Louisiana informing them of the retrocession of the country to France. At a signal, given by the firing of cannons, the Spanish flag was lowered and the French flag hoisted in its

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[59] A. S. P. F. R., II, 570.

[60] Perkins, Op. cit., p. 533.

place.[61]

On December 20, 1803, the formal transfer, accompanied by the usual pomp and ceremony, of the Louisiana territory was made from France to the United States. The ceremony took place at New Orleans, where the French Republic was represented by Laussat and the United States government by Mr. Clairborne, governor of the territory of Mississippi, and General Wilkinson, in command of the American troops.[62] The treaty of cession, the respective powers of the commissioners, and certificate of the exchange of ratifications were read. M. Laussat then pronounced in these words:

> In conformity with the treaty, I put the United States in possession of Louisiana and its dependencies. The citizens and inhabitants who wish to remain here and obey the laws, are from this moment exonorated from the oath of fidelity to the French Republic.[63]

Mr. Clairborne, in his acceptance of the territory, said to the people of Louisiana:

> This cession secures to you and your descendents the inheritance of liberty, perpetual laws, and magistrates, whom you will elect yourselves.[64]

The ceremony closed with the exchange of flags which was done by raising one and lowering the other at the same time, and, when they met midway, they were kept stationary for a moment while the trumpets and artillery celebrated the

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[61] Gayarre, op. cit., p. 599.

[62] James Alexander Robertson, Louisiana Under the Rule of Spain, France, and The United States, (Cleveland, 1911), II, 218-221.

[63] Perkins, op. cit., p. 534.

[64] Ibid., p. 534.

union. The Stars and Stripes then rose to the full height, and while they waved in the air, the Americans expressed their tremendous joy.[65]

Thus ended the twenty-day French domination of Louisiana, if it can be so called (from November 30, 1803, to December 20, 1803), and in the untiring efforts of the Federal government to obtain the free navigation of the Mississippi River the United States had very unexpectedly and by a fortunate train of circumstances, become the owner of the vast territory of Louisiana, and had extended its boundaries to the Pacific Ocean.

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[65]Gayarre, op. cit., p. 620.

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