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Diplomatic disobedience in American history 1781-1807

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DIPLOMATIC DISOBEDIENCE IN AMERICAN HISTORY
1781-1807

by

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Introduction

Under most circumstances, disobedience of orders is regarded as a serious crime. In the military, it is grounds for giving the most severe punishment available. In business, it may result in dismissal. In some cases, however, disobedience may lead to better results than would have been attained through absolute obedience. In these cases, the offense is often overlooked, or even rewarded.

In the field of diplomacy, disobedience of instructions has been so commonplace an occurrence as to justify its being called characteristic. Diplomats, unlike unruly soldiers and recalcitrant children, have usually been able to get away with straying from their instructions unscathed, especially if the end attained thereby is favorable.

The United States of America owes much to its disobedient diplomats. They secured for this country its independence and original boundaries and later gained the expansion of these boundaries.

This paper examines early examples of such disobedience. It deals with the acts themselves, the viewpoints of the givers and the violators of instructions, and the overall significance to the United States.

The Peace of Paris

The United States began its life through an act of diplomatic disobedience when ministers John Adams, John Jay, and Benjamin Franklin concluded the Treaty of Paris with Great Britain in violation of Congressional instructions.

John Adams had been designated by the Continental Congress in 1779 as Minister Plenipotentiary to treat for peace with Britain. [1] In May of 1781, Congress added the names of John Jay, Benjamin Franklin, Henry Laurens, and Thomas Jefferson to that of Adams, forming a commission for that purpose.[2] Franklin, the American minister to Paris at that time, was the only one already at the seat of the negotiations. Jay was minister to Spain and Adams was in Holland negotiating a treaty. Laurens was detained *en route*, and Jefferson never left America.

The instructions given to the commissioners had been the subject of a long and involved debate in the Continental Congress. Originally, the negotiators were "at liberty to secure the interests of the United States in such a manner as circumstances may direct."[3] This blank check, however, was withdrawn, largely at the instigation of the Chevalier de la Luzerne, French minister to the United States, who was acting under orders from French Foreign Minister Vergennes.

In late May of 1781, Luzerne reported to Congress that he had a message from France. A committee was

appointed to confer with the minister. After doing so, the committee reported that the French thought it necessary that the American ministers be prescribed "a perfect and open confidence in the French Ministers and a thorough reliance on the King."[4] The ministers should further be directed, according to Luzerne's message, " to take no step without the approbation of His Majesty; and...to receive directions from the Count de Vergennes or from the person who might be charged with negotiating in the name of the King." [5] The committee recommended that Congress instruct the ministers as Luzerne had indicated. [6] After much heated debate, Luzerne had his way. [7] It is now known that his influence over Congress was due in large part to the several pressures, including bribery, which he exerted on the members.

The final instructions, issued on June 15, 1781, ordered the commissioners to

> make the most candid and confidential communications upon all subjects to the ministers of our generous ally the King of France; to undertake nothing in the negotiations for peace or truce without their knowledge and concurrence, and ultimately to govern yourselves by their advice and opinions. [8]

Except for insisting that the ministers get an acknowledgement of independence from Britain before treating, Congress "left everything to its commissioners in

Europe under the tight control of the Court of France."[9]

As might be expected, the commissioners were not overly ecstatic about the nature of their instructions. According to Charles Francis Adams, grandson of the original commissioner, "the odious restriction had been received...with the most painful and indignant sensations."[10] He reports that his grandfather actually drafted a letter of resignation to Secretary of Foreign Affairs Robert R. Livingston, but thought the better of it after a few hours contemplation.[11] In the letter that Adams finally did send, he professed to disbelieve that Congress actually meant that he should completely confide in and obey the French ministers, despite the wording of the orders. If such were indeed the design of Congress, he wrote, "I hereby resign my place in the commission and request that another person be immediately appointed in my stead."[12] John Jay went even further. Upon receiving his copy of the instructions, he not only drafted a letter asking to be relieved, he sent it.[13] His request, however, was denied by Congress.

The instructions were soon broken. Franklin was the first to violate them. At the very beginning of his talks with Lord Shelburne, he proposed that the British cede Canada to the United States. He covered his proposal by urging that it be kept secret from the French, who might oppose it.[14] When Jay arrived from Madrid, however, Franklin took the position in which most

historians have pictured him from the beginning - that of a man urging adherence to instructions.

Jay quickly formed a distrust of the French diplomats, basing his distrust upon the suspicion that they were not really supporting America all the way, but were merely using her as a pawn in their game with Britain.[15]

The apparent difference of opinion between Franklin and Jay was illustrated by the matter of Richard Oswald's commission. By it, Oswald (the British agent empowered to treat with the Americans) was given the power to treat with any of the enemies of Great Britain, but not specifically with the United States of America. In fact, the commission spoke of the United States as "colonies" and "plantations". Jay did not like this, thinking that agreeing to treat with an agent so empowered would be to act as a deputy of a rebellious province, not as an agent of an independent and sovereign nation. Vergennes tried to persuade Jay to go ahead and negotiate with Oswald under that commission, and Franklin supported him, citing the instruction that the commissioners were to take the advice of the French. [16] Jay was finally convinced not to press the matter, and the commission was accepted. [17]

When Adams arrived from Holland, one of his first actions was to proclaim to his colleagues his support of Jay's viewpoint. [18] Jay's distrust of the French, meanwhile, had been considerably strengthened by the

knowledge that Vergennes's secretary had recently made a secret trip to London. He suspected a sell-out, and favored entering immediately into separate negotiations with the British. [19] Franklin reminded Jay of their instructions, to which Jay replied

> with the words of those letters I am too familiar. I am likewise familiar with the means by which they were forced upon a subservient Congress. If that body has lost its sense of independence and honor, I hope it will never be said that her agents abroad suffered the same miserable surrender....If those instructions conflict with the fundamental honor and dignity of America, I would break them. [20]

Adams again concurred with Jay. Franklin seems to have played the part of the devil's advocate. He urged adherence to instructions, yet he had already done many things without the knowledge of the French Court, and, as has already been noted, he was the first to begin separate and secret talks. This lends credence to the suggestion that his urgings to stick to instructions were merely for the sake of appearances. Whatever his real position at the time, he eventually agreed with his colleagues to go ahead and negotiate without the knowledge of the French ministers. "Thus the three commissioners broke their specific instructions from Congress. Both Franklin and Jay had long since broken them." [21] The Americans went ahead and negotiated a separate treaty, the first article of which recognized the independence and sovereignty of the United States. [22]

According to James Madison, Member of the Continental Congress from Virginia, "the separate and secret manner in which our ministers had proceeded with respect to the British ministers affected different members of Congress differently."[23] Most of the members were quite pleased with the treaty itself, but many were worried about the secret manner in which the negotiations had been carried on. [24]

Luzerne quickly informed the Secretary of Foreign Affairs and several members of Congress of the displeasure of the French court. Shortly thereafter, John Francis Mercer ofVirginia argued that the ministers had insulted France, and gave expression to Luzerne's viewpoint. "The conduct of our ministers throughout", Madison records him as saying"was a mixture of follies which had noexample, and was a tragedy to America and a comedy to all the world besides."[25] Mercer called for the recall and censuring of the commissioners. Congressman John Rutledge of South Carolina, on the other hand, defended the actions of the ministers. Arthur Lee of Virginia "thought it highly improper to censure ministers who had negotiated so well, and said that it was agreeable to practice and necessary to the end proposed for ministers to swerve from strait instructions." He thought they had done what was best. Lee went on to condemn the instruc-

tions given to the plenipotentiaries as "the greatest to this country which it has ever exposed itself to", and said they "could not be viewed without irritation and disgust." [26] After much debate, Congress ratified the preliminary articles to the treaty on April 15, 1784 by a unanimous vote of the nine states present.[27]

The overall consensus in Congress was that, while the ministers' conduct was not completely above reproach, their accomplishments overshadowed what sins they might have committed. Most modern historians have borne out that view. "That the American commissioners were entirely right in maintaining their freedom of action would seem scarcely susceptible of a doubt. Still less can it be questioned that they did wisely in thus acting." [28] According to Samuel F. Bemis

> the historians now privileged to read documents unknown to the members of the Continental Congress can have nothing but praise for the work of the plenipotentiaries in Paris. ...The greatest victory in the annals of American diplomacy was won at the outset by Franklin, Jay, and Adams. [29]

The Louisiana Purchase

In April of 1802, President Thomas Jefferson wrote to Robert R. Livingston, American minister to France, of the importance of New Orleans to 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-eights of our territory must pass to market, and from its fertility it will ere long yield more than half our whole produce and contain more than half our inhabitants. [30]

Jefferson's note was spurred by the news that Spain had ceded the Louisiana Territory, including New Orleans, to France. Little trouble had arisen over New Orleans while it was in Spanish hands, but Jeffersonthought it would be impossible for the United States and France to continue as friends if the latter held this strategic post. He bewailed this state of affairs, especially since France had long been such a consistent, almost a natural friend of the United States. Jefferson ended his note to Livingston by suggesting that France be persuaded to cede New Orleans and the Floridas to the United States. [31]

Jefferson's letter was only one expression of the general feeling among Americans at that time. Letters expressing alarm at the situation abounded. All was not empty wailings with no action attached, though. Even before word of the final act of cession had gotten back to the United States, Secretary of State James

Madison was telling Livingston to do all he could to block it. In case the cession had already taken place, Livingston was to try to buy West Florida and New Orleans.[32]

Once it was clear that Louisiana was in the possession of France, American interest picked up still further. On May 1, 1802, Madison instructed Livingston to find out how much France would want for New Orleans and the Floridas, mentioning that "the cession of Louisiana to France becomes daily more and more a source of painful apprehensions." [33]

These apprehensions were increased when Spain cancelled the American's right of deposit in New Orleans and stopped all American trade through it. [34] This led to an even greater desire for New Orleans on the part of the Americans, for now it had been dramatically demonstrated what the possession ofthis port by an unfriendly power could mean. Jefferson decided that the United States must control New Orleans, or at least have an insured right of deposit. With this in mind, he asked the Senate on January 11, 1803, to approve his nomination of James Monroe and Robert Livingston as Ministers to treat with France for the purchase of New Orleans. [35] The Senate approved the nominations the next day. [36] Monroe left America for France shortly thereafter, carrying with him his and Livingston's instructions.

The instructions, dated March 2, 1803, gave the

commissioners the power "

> to treat with the governmentof the French Republic on the subject of the Mississippi and the territory eastward thereof and without the limits of the United States. The object in view is to procure by just and satisfactory arrangements a cession to the United States of New Orleans and West and East Florida, or as much thereof as the actual proprietor can be prevailed on to part with.[37]

Madison went on in the letter of instruction to outline a proposed treaty, by which France would cede all her land east of the Missippi in return for commercial advantages in the area. [38] In order to facilitate the negotiations, Congress appropriated two million dollars for the use of the commissioners.[39]

Monroe arrived in Paris on April 12 to find that negotiations had been proceeding quite well without him. [40] Livingston had been involved in the Louisiana question for about a year, and had been making an increasing amount of progress. As soon as he found out that the cession had taken place, he began investigating the possibilities of a purchase of the territory by the United States. After receiving Madison's May 1 instructions which ordered him to find out how much France wanted for New Orleans and West Florida, Livingston began searching for an entrance to serious negotiations. He was, however, hindered by the French officials' persistant refusal to acknowledge that the cession from Spain had actually taken place.[41]

Taking another tack, he wrote bact to Madison that he might have more success if he could make a concrete

offer rather than asking a price. [42] He then began making non-specific offers to French officials, but the Frenchmen still refused to admit that they owned Louisiana.[43] Livingston, having seen a copy of the treaty of cession, knew that the French were lying, so he continued his efforts. He was additionally hampered by having to deal in unofficial generalities, since Madison, though urging him to spare no efforts to get the desired land, had not even given him the power to offer a price, much less negotiate a treaty. [44]

From the tone and wording of the notes sent by Madison, Livingston concluded that he had been left to his own devices, and that those devices could officially be only of an argumentative nature.[45] Therefore, while continuing to press for a cession through unofficial channels, he began to use his position as minister as a lectern from which to offer arguments to the present owners in favor of making the cession. Noting that public sympathy for keeping and colonizing Louisiana had risen greatly in the wake of a government propaganda campaign, he tried to combat it with what has been called "One of the ablest and most forceful of his public papers."[46] This paper, entitled "Is it Advantageous for France to Take Possession of Louisiana", argued that Louisiana as a colony would be more trouble than it was worth. If, however, France should cede the territory, particularly New Orleans, to the United States, then she

would have all the commercial advantages of a colony without the managerial headaches. [47]

In December of 1802, Livingston opened a new facet of the unofficial negotiations by working through Napoleon's brother Joseph. In the course of these talks, he proposed that France should cede New Orleans, West Florida, and Louisiana above the Arkansas river to the United States. This would leave the presumably more valuable lower Louisiana in the hands of the French, would create a buffer between it and British Canada, and would satisfy the United States' need for a gulf outlet.[48] Joseph seemed less than hostile to the suggestion. Livingston continued to press for the land. Here, he was exceeding his instructions. None of the notes from Madison had mentioned obtaining any territory across the Mississippi, yet he had made several strenuous attempts to do just that. [49]

It is worthwhile to note here that the offer of the trans-Mississippi area was not dropped upon Livingston like a bombshell by the French, as is popularly thought. Rather, it was Livingston himself who first broached the subject. [50]

In early January of 1803, the negotiations through Joseph came to an end, when Joseph told Livingston that henceforth he would have to negotiate through Foreign Minister Talleyrand, who alone had the power to make the desired arrangements. Livingston immediately made the

same offer to Talleyrand that he'd made to Joseph. His offer was not definitely refused, but was put off by Talleyrand, who professed a refusal to mix politics with economics. He justified this on the grounds that the offer not only dealt with the cession, a political factor, but the payment, an economic one. [51]

It was at this point that Monroe's appointment was approved. On January 18, Madison wrote Livingston of thennaming of the commission, and gave him a general idea of what was desired.[52]

Now, another factor entered the picture. The Peace of Amiens between Britain and France was becoming more and more fragile every day. The likelihood of renewed warfare was great. Then news reached Paris of the Ross resolutions in theUS Senate, which empowered the President to seize New Orleans. On March 28, a letter arrived in Paris from the French Ambassador to the United States saying that the American West was in great turmoil, and that the one thing to be avoided at all costs was driving America into an alliance with the British.[53]

In the face of these developments, Napoleon on April 10 summoned his Finance Minister Barbé-Marbois and told him of his fear of a British seizure of Louisiana in time of war. He had therefore, he said, decided to sell the territory, and he ordered Barbé-Marbois to begin negotiations immediately, without even waiting for Monroe, whose arrival was expected any day. [54]

On April 11, Talleyrand called Livingston to his

headquarters and offered him all of Louisiana. Livingston, perhaps a bit shaken by the offer, replied that The United States didn't want it all, but Talleyrand said that without New Orleans, it was useless to France. Rejecting Livingston's initial offer as being too little, he sent him home to sleep on the proposal, adding that the offer he had made was not official. Livingston, however, was sure that it was indeed official.[55] Monroe arrived the next day ready to begin negotiations, only to find that Livingston had already done the bulk of the work. [56]

Livingston wrote home about the new developements. He stressed the view that, since the instructions had never contemplated such an opening, he should go ahead and buy, despite the limitations which his commission put on him. He stated his intention to violate his instructions and buy the whole territory. [57] Monroe, less familiar with the situation and more inclined to follow the letter of his instructions, had hesitated to go that far,[58] but by the time of Livingston's letter, he had come around to his fellow-commissioner's viewpoint. The then united ministers went ahead with the negotiations and concluded three treaties on the matter, one giving Louisiana to the United States, one providing for payment for the territory, and one providing for the assumption of French debts to Americans by the United States. Altogether, the United States paid about fifteen

million dollars for Louisiana, [59] although, due to interest charges on the stock with which the bill was paid, the final price for the territory was almost twice what the agreement had specified. [60] Although the treaties were actually signed between April 29 and May 2, All three bore the date of April 30. [61]

The signed treaties arrived in Washington on July 14, bringing with them a great constitutional question.[62] Jefferson had been debating the constitutionality of the purchase ever since the idea of buying territory first occurred to him. At first, he worked on an amendment to the Constitution that would allow it,[63] but due to the adverse reaction to the treaty by the French people who "if we give them the least opening... will declare the treaty void" he thought it necessary to go ahead and ratify the treaty without delay, then appeal to the people to approve an amendment legalizing the already-made purchase.[64]

By a special proclamation, Jefferson convened Congress on October 17 instead of at its usual time. [65] When Congress convened, Jefferson submitted the treaties and asked for immediate ratification.[66] The treaties set off the expected storm in the Senate, especially among the Federalists. Timothy Pickering of Massachusetts said the president had no authority to make the purchase.[67] James White of Delaware agreed, and said that, should Louisiana be taken in "it will be the greatest curse that

could at present befall us." [68] William Plumer of New Hampshire worried that "the treaty does not contain a single covenant or assurance that the French title was good, and that they will guarantee the country to the United States." [69] He also worried that the spreading of the population into such a vast area would lead to sectionalism and eventual dissolution of the union.[70] White agreed, and said that fifteen million was too much to pay anyway. [71]

Despite the seemingly gargantuan and definitely verbose opposition, the Senate ratified the treaties three days after they had been submitted by a vote of 24-7. [72]

Despite the loud wailings of the opposition, (Plumer mourned that "the United States are now doomed to pay a large sum for a wilderness world which, I fear, will prove worse than useless to us" [73]), the general feeling towards the treaties was one of approval. Madison wrote to the commissioners that

> in concurring with the disposition of the French government to treat for the whole of Louisiana, although the western part of it was not embraced by your powers, you were justified by the solid reasons which you give for it, and I am charged by the President to express to you his entire approbation for your doing so. [74]

He went on to say that the instructions had not mentioned the western part because getting it had been far beyond their wildest expectations. "There can be little doubt", he concluded, "that the bargain will be regarded as on

the whole, highly advantageous" [75] Jefferson told Livingston that "your treaty has obtained nearly a general approbation." [76]

The Ministers themselves were quite pleased with their work. Monroe said "I flatter myself that the terms will be thought reasonable when compared with the immense advantages resulting from the acquisition." [77] Livingston called the treaties "the noblest work of our lives". [78]

History has generally accepted Monroe's prediction and Livingston's statement. The Louisiana purchase was the key move in the beginnings of America's continental expansion. In economic terms, the purchase of Louisiana was as good a bargain as the deal that gave Manhattan to the Dutch for twenty-four dollars worth of trinkets. "We can afford to overlook any defects in the treaty details, and forever hold in gratitude the illustrious men who, by their diplomatic skill, their earnestness of purpose, and well-directed efforts, achieved one of the greatest triumphs in the world's history." [79]

The Monroe - Pinkney Negotiations

After completingthe Louisiana negotiations, Monroe moved on to London to become Minister to England, and thus set himself on the track towards another instance of diplomatic disobedience.

No sooner had he arrived, than he was ordered to present several protests to the British government about impressment of American seamen.[80] Clearly, British abuses of American naval rights were already causing enough irritation to warrant official action.

On January 5, 1804, Secretary of State Madison wrote to Monroe about a plan for a treaty with the British dealing with such matters as impressment, seizures of American ships, blockades, contraband definitions, and trade. Madison wrote

> The essential objects for the United States are the suppression of impressments and the definition of blockades. Next to them in importance are the reduction of the list of contra band and the enlargement of the neutral trade with hostile colonies. Whilst you keep in view, therefore, those objects, the two last as highly important and the first two as absolutely indispensable, your discretion, in which the president places great confidence, must guide you in all that relates to the inferior ones. [81]

In England, a new ministry had taken office, so Monroe couldn't begin negotiations immediately. As soon as the ministry was established, though, he met with each member of the cabinet, making a special point to protest impressments. [82] His efforts did not meet with any resounding success. By July 1, he was not even sure that

any treaty at all could be obtained. [83] He continued his protests over each new British action, but was either ignored, or brushed off with statements that impressments were necessary to recover deserters[84] and that his arguments were not valid but only "modern and theoretical". [85]

Despite the brush-offs, he began to get somewhat optimistic. In September, he wrote to Jefferson that he didn't expect much on the impressment question, but that on every other point, America's wishes had already been substantially gratified, "In practice though not by treaty."[86] To Madison, he wrote "the truth is, that our commerce never enjoyed in anywar as much freedom, and indeed, favor from this government as it does now." [87]

In America, British abuses were continuing, despite Monroe's opinion. In November, Jefferson in his fourth Annual Message complained strongly of infringements on American laws made in American ports by unfriendly vessels,[88] and later that month he went so far as to draft a bill authorizing the use of force on vessels committing "insults in our harbors."[89]

In April of 1805, in the wake of continued British aggressions, Madison wrote Monroe that "the United States may justly regard the British captures and condemnations of neutral trade with Colonies of the enemies of Great Britain as violations of right."[90] He told Monroe to press harder for a settlement.

Near this time, Monroe went on a special mission to

Spain. He had hoped to be able to go home upon his return to England, but when he came back to London, he found that several more American vessels had been captured on the high seas. He protested strongly, and had two conferences with British officials, but no agreement was reached.[91]

On October 18th, Monroe told Madison that he'd made another protest, this one accusing the British government of deliberately ordering the seizures, although he had been previously told that the government had issued no such orders.

> With respect to our other concerns with Great Britain, I am sorry to say that I do not see any prospect of arranging them on just and reasonable terms at the present time. No disposition has been shown to prescribe by treaty any restraint on the impressment of our seamen.[92]

He added that he thought these provocations were intended as a test to see how far the US would go. If the United States stood firm, he thought the abuses would stop.[93]

In his fifth Annual Message, given on December 3, 1805, Jefferson complained further about armed vessels harassing American shipping. [94] In a special message the following month, he noted the increase in the number of impressments by the British.[95] Then, on February 5, the Senate passed a resolution condemning the seizures as "unprovoked aggression upon the property of the citizens of the United States, a violation of their neutral rights, and an encroachment upon their

national independence." [96] The resolution also asked that the president demand restoration and reparation for the seizures and make a treaty settling the differences between the two nations. It further recommended that it would be advisable to pass an act restricting importation of British goods. [97] The following month, the non-importation act of 1806 was passed along the same lines as were recommended by the Senate resolution.[98]

Early in 1806, Prime Minister Pitt died. Reluctantly, the King asked Lord Grenville and Charles James Fox, neither of whom he liked, to form a government. [99] The new ministry which had Grenville at its head and Fox in charge of Foreign Affairs, took charge the first week in February.[100]

On the 11th, Monroe had an interview with Fox and came away very optimistic about the chances of a settlement.[101] He immediately began negotiating for one. [102]

Jefferson also became optimistic. He thought the war problems Britain was having, the change in her ministry, and the damage which the non-importation act should do to her economy would make it to her interest to come to terms with the United States. [103] On April 2, he told Senator William Plumer that the prospects for a treaty were "very flattering indeed!" [104] With these pleasant thoughts in mind, and considering the not-so- pleasant fact of continued British offenses off the American coast, Jefferson on April 19, 1806 nominated William Pinkney to

join Monroe in forming a special commission

> for settling all matters of difference between the United States and the United Kingdoms of Great Britain and Ireland relative to the wrongs committed between the parties on the high seas or other waters and for establishing the principles of navigation and commerce between them. [105]

Monroe and Pinkney's commission authorized them

> to treat with the British government concerning the maritime wrongs which have been committed, and the regulation of commerce and navigation between the parties. [106]

They were further instructed to refer to Monroe's instructions of January 5, 1804 as a general guideline. Jefferson called a settlement of the impressment issue "a necessary preliminary to any stipulation requiring repeal of the non-importation act."[107] The commissioners were also to get indemnity payments for seizures and settle the differences over neutral trade rights.[108]

As soon as the word of Pinkney & Monroe's appointment got to England, the British suspended negotiations until Pinkney could get to London, [109] Once Pinkney arrived, negotiations resumed. Fox still seemed most inclined towards accomodation. Monroe worried, however, that he was not supported in his desire to settle the disputes by the rest of his government.[110]

In early November, it looked like the Americans might get a renunciation of impressment on the high seas, the the British stiffened their position. On November 5, they announced that they were breaking off negotiations on impressments. [111] Desiring to keep

the talks, the commissioners wrote home that they had decided to disobey their instructions and abandon the insistence on a ban on impressments.[112] The British, apparently surprised by the Americans' agreement to give way on impressments, went ahead and negotiated in earnest,[113] and on December 31, a treaty was signed.[114]

Before the final signing the commissioners had written to Jefferson that they had made agreements "on such terms which, we trust, our government will approve."[115] Jefferson quickly wrote back that "our government" did not approve at all. Any treaty not dealing with impressments, he wrote, would not be ratified.[116] Madison wrote that

> The President thinks it more eligible under all circumstances that if no satisfactory or formal stipulation on the subject of impressments be attainable, the negotiation should be made to terminate without any formal compact whatever.[117]

When the treaty arrived, it met with great disfavor. There was no favorable action taken on colonial trade, the definitions of contraband were quite unsatisfactory, and, worst of all, there was nothing about impressments. The commissioners expressed the hope that maybe this agreement would settle things so that later negotiations might clear up unsatisfactory points. Monroe justified their action by pointing that failure to sign the treaty would probably have led to a war, and the United States was not prepared for war.[118] To Jefferson, he wrote "I trust it will be seen that we have gained something, and on the whole done as much as could reasonably have

been expected." [119]

Jefferson didn't think the treaty good enough. He wrote back that

> the British appear to have screwed every article as far as it would bear, to have taken everything and yielded nothing....If the treaty cannot be put back into acceptable form, then the next-best thing is to back out of the negotiations as well as you can, letting that die away insensibly. [120]

In May, Madison sent the formal notice of Jefferson's rejection of the treaty to Monroe and Pinkney. He ordered that the treaty be renegotiated, and tht no agreement be concluded without a satisfactory provision on impressments, indemnities for seizures, and an acceptable definition of a legal blockade. [121]

Monroe and Pinkney began the renegotiations. Then, on June 22, 1807, The American frigate Chesapeake was attacked by the British frigate Leopard. Word of the action reached Monroe from Madison, who demanded satisfaction from the British. His note revealed the extreme degree of American indignation over the issue.

> This enormity is not subject for discussion. The indignity offered to the sovereignty and flag of the nation, and the blood of citizens so wantonly and wickedly shed, demands, in the loudest tone, an honorable reparation...A formal disavowal of the deed...[is] indispensable. As a security for the future, an entire abolition of impressments from vessels under the flag of the United States, if not already arranged, is also to make an indispensable part of the satisfaction.... The President has an ample right to expect from the British government not only a reparation to the United States in this case, but that it shall be decided without difficulty or delay. Should this expectation fail, and, above all, should

> reparation be refused, it will be incumbant upon you to take the proper measures for hastening home, according to the degree of urgency, all American vessels in British ports....All negotiations with the British Government on other subjects will, of course, be suspended until satisfaction on this be so pledged and arranged as to render negotiation honorable. [122]

The British would not meet American demands, so the negotiations broke off.[123] At that, Monroe fulfilled a long-time wish and sailed for home, leaving Pinkney as Minister to England. [124]

Thus, no treaty with the British was made. Jefferson rejected the one that had been concluded because he thought most of the provisions too highly disadvantageous, and because "no sufficient provision was made against the principal source of irritations and collisions which were constantly endangering the peace of the two nations." [125] Monroe always defended his treaty, calling it "the best treaty which it was possible to obtain of the British government."[126] He always maintained that he had done right, [127] and that the country would have been far better off had his treaty been ratified.[128] Jefferson never blamed the negotiators for the failure, taking every opportunity to "express my conviction that it was all that could be obtained from the British government,"[129] however, he considered the impressment issue so vital that no treaty would be better than one which omitted a provision on it. [130]

A.L. Burt says that Jefferson's insistence on settling the impressment issue kept the United States

and Britain from coming to terms on the other matters that divided them. He sees Monroe and Pinkney as being right in signing the treaty, and Jefferson as being at fault for rejecting it. [131]

The verdict of history tends to agree with Monroe and Jefferson that the treaty was the best that could be obtained. As Bradford Perkins wrote:

> Considering the comparative power of Britain and America, the Napoleonic threat, the later failure ofcommercial warfare to secure a victory over England, considering too America's immense material interest in an arrangement with Britain, Monroe and Pinkney seem justified.... Monroe and Pinkney not only spoke the accents of American realism, they opened the door to peace and uneasy friendship. [132]

Conclusion

Each episode examined in this paper has involved an act of disobedience of orders by diplomats. In two cases, the fruit of the disobedience was accepted. In the other it was rejected. In all three, however, the act of disobedience was condoned by those who had issued the instructions. The act was always seen as being justifiable.

It is relatively easy to see why this disobedience was accepted. John Adams, in a letter of protest about his instructions, summed it up when he said that a deputy, especially one far removed from the seat of his government, was on top of the situation while the principal was not. The deputy is thus, unlike the principal, able to react quickly to changing conditions. Adams thought the deputy to be not only at liberty but duty bound to disobey instructions which no longer fit the situation.[133]

The key factor here is the communications lag. There was no trans-Atlantic cable then, and "despatches are liable to foul play, and vessels are subject to accidents."[134] Communications sometimes took several months to cross the ocean.

Today, improved communications have virtually eliminated any excuse for diplomatic disobedience, but under the circumstances of the eighteenth and early

nineteenth centuries, the bulk of evidence and the verdict of history justifies the contrary actions taken by America's deputies in Europe.

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