

The Treaty of Paris
By
Pierre F. de Ravel d'Esclapon

Tonight the John Jay Homestead opens an exhibit to celebrate the 225th anniversary of the Paris Treaty. Why should we commemorate that particular treaty? Why, unlike so many other peace treaties, has it not been consigned to the dustbins of history?

To answer this question, let us review first what was the international situation that led to the negotiation of that treaty, second who were the players and what were their objectives, third whether the negotiators, particularly the American peace commissioners, got what they had been instructed to get and finally let us reflect on the place of the Paris treaty in the pantheon of peace treaties.

The path to peace starts in late 1777 when London learns of Burgoyne's surrender at Saratoga and sends an emissary to Ben Franklin in Paris.¹

In February 1778, the Treaty of alliance between France and the United States is signed: neither will make a separate peace with Britain and the independence of the United States a prerequisite to peace. The treaty is silent on the territorial extent of the new nation.

In 1779, Congress appoints Adams sole peace negotiator while Franklin remains as minister to Paris. Adams, based in Amsterdam, manages to annoy everyone with his abrasive personality, and especially Vergennes the French foreign minister, who persuades Congress to remove Adams as sole commissioner. On June 15, 1781, Congress appoints 5 commissioners: Franklin, Jefferson, who did not participate, Henri Laurens, Adams and Jay with the instructions to do nothing "without the knowledge and concurrence of the King of France".²

The turning point in the negotiations is Cornwallis' surrender at Yorktown in October 1781 which, according to Professor John Brooke, "broke the morale of the governing classes and paralyzed the national will to make war".³

After Yorktown, Britain, at war with France, Spain and The Netherlands, is ready to negotiate but her government is split between North, the Foreign Secretary, ready to grant independence immediately⁴ and Shelburne the Colonial Secretary, who wants to use independence as a bargaining chip. Both are united in the overarching purpose of negotiating a separate and quick peace: split the

Franco-American Alliance asunder and prevent the reestablishment of French colonies in North America.⁵ To that end both North and Shelburne are prepared to make significant concessions to the Americans. The British Cabinet agrees to the grant of independence and to concessions on May 23, 1782.⁶

Shelburne knew Franklin well: he had hosted him several times in his country estates in England. He sends a wily old Scots merchant Richard Oswald to Paris. Oswald knew America, having lived there for over 7 years, had extensive land holdings in the South and, last but not least, was Henri Laurens' business partner.⁷ Indeed, it was Oswald who put up the bail to get Laurens released from the Tower of London in exchange for Cornwallis.

North sends his own man, Grenville, also an admirer of Franklin's. But after a short while, internal British politics result in Shelburne having the lead for the negotiations.⁸

The Treaty of Paris is quite unique in that the personality of its negotiators played an enormous role in the shaping of the final product. Both sets of negotiators utterly disregarded their instructions. Contrary to the Cabinet's wishes, Shelburne instructed Oswald to use independence as a bargaining chip.⁹ The Americans flout their obligations by reaching a separate peace without consulting the French.

Why? and what was then accomplished?

Shelburne, the Jesuit of Berkeley Square, was uncomfortable with the vastness of America and with the colonies' flirtations with republicanism. He was afraid those radical ideas would spread to other parts of the Empire. Yet, he was a visionary and anticipated, even looked forward to, the special relationship between America and Britain writing in July 1782: "I have never made it a secret of the deep concern I feel in the separation of countries united by blood, by principles, habits and every tie short of territorial proximity".¹⁰ He further writes that if reunification cannot be accomplished the separation "should be done decidedly, so as to avoid all future risk of enmity and lay the foundation of a new connection better adapted to the present temper and the interests of both countries".

For Shelburne, as for his envoy Oswald, the foundation of the new relationship is trade not dominion.¹¹ In view of Shelburne's and Oswald's dispositions towards America, the technical points of the treaty – boundaries, fishing rights, repayment of British creditors and loyalists – were not so difficult as to dim the prospects of a successful conclusion.

Once convinced of the sincerity of the British peace overtures, Franklin calls Jay to Paris. Jay, smarting from the studied subtle snubs of Spain, arrives in Paris at the end of June and promptly falls ill with influenza for a month. Jay, the reluctant rebel, was very different from his easy-going friend Gouverneur Morris. Jay was "vain, obstinate, indefatigable and dogmatic".¹² In the words of one of his friends Jay's character was "much perverted by the study of law".¹³ These traits are evident when Jay starts work, mostly alone since Franklin was incapacitated for most of September and October with kidney stones.¹⁴

From August to the end of September, Jay demands that Oswald's commission which authorized him to negotiate with commissioners named by the "Colonies" be changed to named by "The United States" and, in return for the immediate recognition of independence he signals a willingness to abandon France. In September, Jay becomes increasingly suspicious of French intentions. He suspects France is in league with Spain to thwart the American aspirations. When he learns that Vergennes sent his deputy Rayneval on a secret mission to London he suspects the worst and drops his demand for immediate recognition of independence, settling instead for the word "territories" instead of "Colonies" and a

description of the commissioners as representing the Thirteen United States of America.¹⁵

In the end, the 2 months' delay in the earnest start of the negotiations gave Britain an opportunity to recoup some of its losses in the battlefield. She became victorious at Gibraltar which stiffened her resolve in the talks.

At the same time Jay negotiates with Aranda the Spanish envoy on the issues of Western and Southern borders and on trade. Fortunately, Aranda's demands were rejected by Jay; otherwise President-elect Obama would be the governor of a Spanish province. Aranda wanted all land left of the Toledo to Tallahassee line to be for Spain!¹⁶

Jay calls Adams to Paris who arrives at the end of October. Adams, a pertinacious Puritan, fairly hates Vergennes and does not care much for France, ally or not. As a young man Adams declared that France was "an ambitious and faithless Nation",¹⁷ a view, according to his diary, he still held even after the treaty of alliance and the help France gave in the war of independence. Adams did not get along with Franklin and in his diary entry of October 27th writes that Franklin's cunning "will be to divide us. To this end he will provoke, he will insinuate, he will intrigue, and he will maneuver".¹⁸

Needless to say, in Jay's suspicions against France Adams hears an echo of his own! Let us remind ourselves that suspiciousness bordering on paranoia, then called "jealousy", was considered a virtue in pre-revolution America. Both Adams

and Jay grew up at a time when colonial America feared France and were influenced by the rampant British Francophobia.¹⁹ Indeed, in pamphlets of that time, Frenchmen were depicted as "dwarves, pale, ugly specimens who lived exclusively on frogs and snails".

The negotiations start at the end of October and a preliminary treaty is signed on November 30, 1782. The brashly bellicose Laurens arrives on the eve of the signature.²⁰ A year later, on September 3, 1783, the definitive Anglo-American treaty is signed together with the definitive Anglo-French, Anglo-Spanish treaties and the preliminary Anglo-Dutch one.

The borders are fixed: the 45th parallel to the North, the Mississippi to the West. On the Southern border, since Spain holds West Florida with a border along the 31st parallel Jay drafts a secret article that provides that if Britain obtains by whatever means, possession of West Florida then Britain would get what is today southern Alabama and Mississippi.²¹ When Chancellor Livingston, then Secretary of State learned of the secret article he remarked that this article "shows a marked preference for an open enemy". One can truly wonder at Jay's vindictiveness toward Spain a country, allied to France, which, though not allied with America, had sent her money and materiel.²²

On fisheries, the Americans obtain the "liberty" not the right to fish off Newfoundland and the right to dry the fish on the shores of Nova Scotia.

On the debts owed to British creditors, thanks to Adams, there shall be no lawful impediments to the recovery of the full value of the debts.

The issue of loyalists was of great importance to Britain. In the end, she got much less than she had hoped: loyalists had 6 month to leave and Congress would "earnestly recommend" to the states that they restore loyalists' property.

It is interesting to note that nowhere mentioned is the issue of Indian rights, including the ownership of Indian lands so cavalierly disposed of by the signatories, something that will haunt the United States a century later.

When modern historians look back on Jay's obstinacy with Oswald's commission, on the haste displayed by Jay and Adams who thought France and Spain were working against them behind their backs, there is a sentiment that Jay and Adams could have gotten more, particularly with respect to the northern

boundary,²³ but let us not forget that when Vergennes was apprised of the terms he exclaimed: "The British did not make peace, they bought peace" and allowed that the Americans got far more than he had expected.²⁴

Historians, such as Professor Andrew Stockley of Oxford, having pored over the family papers of Vergennes, over all his correspondence with Louis XVI, with Rayneval and with Shelburne, have concluded that Jay's and Adam's paranoia vis-à-vis France was wholly unjustified.²⁵ Whether this was the way to treat an ally that had become financially exsanguinated in supporting the young nation, I leave to you to decide.²⁶

Should we then conclude, as Professor Jonathan Dull did, that the major diplomatic achievement of the American commissioners was "being in the right place at the right time and doing nothing to obstruct the good fortunes raining on them" ?²⁷

No! I submit to you in conclusion that the enduring importance of the treaty does not lie in boundaries, in fishing rights or in other such like provisions. The importance of the treaty is as the second of the 3 major milestones in the formation of the United States. The first milestone is, of course, the Declaration of Independence and the 3rd is the Constitution.

After the Treaty was ratified, its implementation was so spotty in the states that Congress sent a letter drafted by Jay to the states urging them to repeal state laws inconsistent with the treaty.²⁸

The experience with the implementation impelled the drafters of the Constitution, Adams, Jay, Gouverneur Morris and Hamilton to argue for a strong centralized government and for recognition of treaties as being the supreme law of the land.²⁹

Without that experience, the powers of the Federal government would likely have been more circumscribed, as Jefferson, for one, was arguing.

Thus, the enduring importance of the Treaty lies in being not only the first international treaty signed as an independent nation but more as being the bridge between the Declaration of Independence and the Constitution.

Thank you.

Enjoy the exhibit!

The exigencies of time constraints – a fifteen-minute speech – did not allow me to do justice to the roles and contributions of many others, such as Benjamin Vaughan, Henry Strachey, Alleyne Fitzherbert, Matthew Ridley et al., or to delve into the details of the negotiations.

Interested readers should consult the references listed in the following bibliography.

Bibliography

This is a partial list of the sources used in preparing these remarks.

- [1] Walter Stahr, John Jay (2006)
- [2] Richard B. Morris, The Peacemakers (1965)
- [3] Frank W. Brecher, Securing American Independence John Jay and the French Alliance (2003)
- [4] Walter Isaacson, Benjamin Franklin, an American Life (2003)
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¹ Stockley [7] at 11-15 for a discussion of the early peace overtures.

² Bradford Perkins "The Peace of Paris" in [6] at 194-197.

³ Brooke [11] at 219.

⁴ E. Wright op. cit. at 22.

⁵ Charles R. Ritcheson "Britain's Peacemakers 1782-1783. To an astonishing degree unfit for the task?" in [6] at 81-82; Stockley at 39.

⁶ Stockley at 38.

⁷ Ritcheson op. cit. at 75; E. Wright "The British Objectives 1780-1783" in [6] at 14.

⁸ Stockley at 40-41.

⁹ Stockley at 39.

¹⁰ Shelburne to Oswald 27 July 1782, Lord Edmund Fitz Maurice, Life of William, Earl of Shelburne vol. III, p. 246 (London 1875-1876).

¹¹ Wright *ibid.* Stockley at 58.

¹² James H. Hutson "The American Negotiators, The Diplomacy of Jealousy in [6] pp. 52-53.

¹³ Vardill to Eden, 11 April 1778 quoted by Hutson op. cit.

¹⁴ Hutson op. cit. at 65.

¹⁵ Stockley at 59-60; Stahr [1] at 152-159.; Ritcheson op. cit. at 90.

¹⁶ Stockley at 60; Stahr [1] at 150.

¹⁷ Butterfield, op. cit. I; 36.

¹⁸ Adams Diary, L.H. Butterfield Ed. Diary and Autobiography of John Adams vol. III p. 38 (1961).

¹⁹ Hutson, op. cit. at 55-58 and Hutson "The Origins of the Paranoid Style in American Politics: Public Jealousy from the Age of Walpole to the Age of Jackson: in Hall, Murrin & Tate, Eds; Saints and Revolutionaries in early American History (1984) p. 338.

²⁰ Laurens' only contribution is the provision that the British troupes "should carry off no Negroes or other American property" cf. Stahr [1] at 171.

²¹ The border with a British West Florida would have run from the junction of the Mississippi and Yazoo rivers due east to the Apalachicola River: 2nd Draft of the Treaty as quoted by Stahr [1] at 164-165.

²² Stockley at 69.

²³ The Americans could have gotten the "Nippissing Country", which would have meant that Southern Ontario, including Toronto, would have been American: Stockley at 64.

²⁴ Vergennes to Rayneval 4 December 1782: Doniol, *Histoire de la Participation de la France à l'établissement des Etats-Unis* v.5 p. 185 (Paris 1886). Morris [2] p. 383.

²⁵ Stockley 69-73.

²⁶ The precarious state of French finances had prompted Necker to make secret peace overtures to Lord North in a letter dated December 1, 1780: Philip Stanhope, *History of England: From the Peace of Utrecht to the Peace of Versailles*, p. 80 (1854); George Bancroft, *History of the United States* (1874) p. 444. The distressed state of French finances, aggravated by the help given to America, is generally regarded as one of the proximate causes of the French Revolution.

²⁷ Jonathan Dull [12] p. 238.

²⁸ Jay Report to Congress 6 April 1785 quoted by R. Morris "The Durable Significance of the Treaty of 1783" in [6] at 238.

²⁹ U.S. Constitution Art. VI § 2.