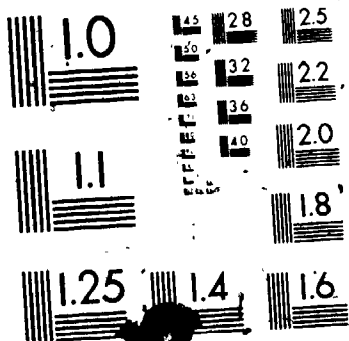


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FROM THE ST. LAWRENCE TO LAKE SUPERIOR :
PETER BUELL PORTER, THE ANGLO-AMERICAN JOINT COMMISSION OF 1816-1822
AND THE CHARTING OF THE CANADIAN-AMERICAN BOUNDARY



M. F. SCHEUER

A thesis submitted to the Faculty of
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of the requirements for the degree of
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Department of History

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Ottawa, Canada

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ABSTRACT

The Anglo-American Joint Commission of 1816-1822 was created by Article VI of the Treaty of Ghent of December, 1814. Under the provisions of the treaty the Commission was directed to establish the international boundary between the United States and British North America from the point at which the forty-fifth degree of north latitude strikes the St. Lawrence River to the water communication connecting Lake Huron and Lake Superior. The Commission executed its assignment and, in doing so, succeeded in delineating a line which has been adjusted only marginally over the course of the last century and a half. The efforts of the Commission under Article VI definitively established a vital section of the Canadian-American boundary, stabilized the international situation in a portion of the Great Lakes region and served to develop and secure the place of arbitration, through the vehicle of the joint commission, in the diplomatic affairs of the North Atlantic Triangle.

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CHAPTER I :

Introduction

In the conduct of Canadian-American relations the settlement of disputes through the utilization of joint commissions has long been a standard method of procedure. Before Canadian Confederation Great Britain and the United States employed joint commissions to resolve the questions and controversies arising out of the American Revolution and the War of 1812. Joint commissions were also used in the period before 1867 to delineate the international boundary between British North America and the United States.

During the three decades following Confederation joint commissions were established at sporadic intervals in attempts to settle a wide variety of problems threatening the continuance of amicable relations between the United States and Canada. One such organization, the Joint High Commission of 1871, produced the Treaty of Washington. This treaty encompassed an agreement which provided for the creation of several joint commissions to arbitrate such outstanding problems as the question of access to the North Atlantic fisheries. The treaty also provided for the arbitration of the Alabama Claims. The Treaty of Washington went a long way toward putting Anglo-American relations on the road to recovery after the traumas endured during and just after the American Civil War.¹

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- 1.) For the results of the negotiations conducted by the Joint High Commission of 1871 see Goldwin Smith. The Treaty of Washington, 1871. A Study in Imperial History. Ithaca, New York: Cornell University Press, 1941 and James P. Baxter, III, "The British High Commissioners at Washington in 1871," Proceedings of the Massachusetts Historical Society, LXV, (1936), pp. 334-357.

A later Joint High Commission, that of 1898-1899, appeared to hold the promise of resolving all of the difficulties then disturbing Canadian-American relations until Sir Wilfrid Laurier, Canada's Prime Minister, withdrew as a consequence of the Commission's inability to settle satisfactorily the dispute over the Alaskan boundary.² The central characteristic of these pre-1900 joint commissions was that they were created for limited periods and designed to deal with specific sets of problems.

After the turn of the century the use of joint commissions rapidly became indispensable in the conduct of Canadian-American relations. The most important development in the commissions themselves after 1900 was the fact that several of them were established on a permanent basis. During the "slate-clearing" era of Anglo-Canadian-American relations, from 1906 until 1913, a number of permanent Canadian-American regulatory commissions were created.³ Once these procedures were institutionalized

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- 2.) For a discussion of the negotiations of the Joint High Commission of 1898-1899 and an estimate of the role played upon its deliberations by the dispute over the Alaskan boundary see C.P. Stacey, Canada and the Age of Conflict, Volume I: 1867-1921. Toronto: Macmillan, 1977, pp. 85-92 and Joan M.V. Foster, "Reciprocity and the Joint High Commission of 1898-1899," CHAR, (1941), pp. 87-98.
 - 3.) For good synopses of the "slate-clearing" era see Alvin C. Gluek, "Pilgrimages to Ottawa: Canadian-American Diplomacy, 1903-1913," CHA Historical Papers, (1968), pp. 65-83 and Peter C. Neary, "Grey, Bryce and the Settlement of Canadian-American Differences, 1905-1911," CHR, XLIX, 4 (December, 1968), pp. 357-380.

with organizations possessing definite and continuing jurisdiction, they quickly proved themselves invaluable to the conduct of Canadian-American diplomacy. While the activities of the International Joint Commission in the regulation of shared boundary waters have provided the most dramatic examples of the positive results emerging from the joint commission approach to international problems in North America, other such joint organizations have operated with equal success and efficiency.⁴ Practical achievement has led to the proliferation of these permanent organizations so that by 1977 there were a total of seventeen bilateral Canadian-American commissions in existence. Contemporary joint commissions deal with a range of subjects which includes the protection and propagation of the Pacific salmon, the maintenance of the international boundary separating the United States from Canada and the management of the air defense of the North American Continent.⁵

The purpose of the present study will be to assess the work of one of the earliest of these joint commissions, namely the Anglo-American

4.) For a description of the complex of Canadian-American commissions which has evolved since 1900 see Roger F. Swanson, Intergovernmental Perspectives on the Canada-United States Relationship. New York: New York University Press, 1978 and F.J.E. Jordan, "The I.J.C. and Canada-United States Boundary Relations," in Canadian Perspectives on International Law and Organization. R. St. John Macdonald, et. al., (eds.). Toronto: University of Toronto Press, 1974, pp. 522-543.

5). The topics mentioned here are the responsibility, respectively, of the Pacific Salmon Commission, the International Boundary Commission and the North American Air Defense Command. See Swanson, Roger F., Intergovernmental Perspectives on the Canada-United States Relationship, pp. 137-138.

Boundary Commission of 1816-1822. This particular commission was established under the provisions of the Treaty of Ghent of December, 1814. It was charged with the responsibility of delineating the international boundary between the United States and British North America from a point on the St. Lawrence River, through Lakes Ontario, Erie and Huron, to the water communication separating Lake Huron from Lake Superior.⁶

The joint boundary commission of 1816-1822 is of interest and importance, in the first instance, because it successfully defined a major section of the international boundary through the St. Lawrence River and the Great Lakes basin. The Great Lakes are the largest such system of lakes in the world and, in addition, they constitute the world's largest body of fresh water. In total, the Great Lakes encompass an area of some 95,000 square miles and the system supports a drainage basin of more than 261,680 square miles.⁷ The area immediately adjacent to the Great Lakes-St. Lawrence waterway became, by the middle decades of the nineteenth century, the most important economic region in North America. This development was stimulated by significant growth in the area's population, the construction of an efficient canal-based transportation system and the tremendous growth in the period of Canadian-American commerce across the lakes. The joint commission of 1816-1822 aided the economic development of the region by establishing the international boundary through a portion of the Great

6.) Treaty of Ghent, 24 December 1814, Article VI.

7.) Piper, Don C. The International Law of the Great Lakes. Durham, North Carolina : Duke University Press, 1967. pp. 5 and 8.

Lakes-St. Lawrence waterway, thereby eliminating the possibility of further Anglo-American disputes over the location of the border. The final demarcation of the boundary helped to secure peace, which, in time promoted uninterrupted economic and commercial growth in the region.

The joint commission of 1816-1822 is also of interest because it provides an excellent example of the arbitral approach to international relations. The employment of arbitration procedures, whether through the agencies of joint commissions or single arbiters, had been practiced in western Europe as early as the years of the Middle Ages.⁸ Between that time and the last decade of the eighteenth century the arbitration of international disputes was attempted at various times with results that have been described as "insignificant" at best.⁹ During the final decade of the eighteenth century, however, the procedure of international arbitration was modernized and revitalized through the provisions of the Jay-Grenville Treaty of 1794.¹⁰ The joint commissions created under the Jay-Grenville Treaty were the direct predecessors of the Ghent commissions and, indeed, the latter commissions built upon the precedents established by the former.

Because the joint commission of 1816-1822 was one of the first such organizations established, it provides a good opportunity to witness the

8.) Corbett, Percy E. Law in Diplomacy. Princeton, New Jersey: Princeton University Press, 1959. p. 138.

9.) Nussbaum, Arthur. A Concise History of the Law of Nations. New York: The Macmillan Company, 1947. p. 212.

10.) Corbett, Percy E., Law in Diplomacy, pp. 139-149.

evolution of some of the techniques and procedures which would become fundamental to the successful operation of future joint commissions. Several of these techniques and procedures had been previously provided for by the Jay-Grenville Treaty. Under the provisions of 1794, for example, both Great Britain and the United States agreed to accept the joint decision of their commissioners as final and binding.¹¹ This agreement eliminated the need for any unilateral action by either government, in regard to the disputes under consideration, which might be interpreted by the other as being hostile. Following this precedent, the provisions of the Treaty of Ghent pledged both governments to accept the joint findings of their commissioners as "final and conclusive".¹²

The commissions created by the Treaty of Ghent were invested, in addition to the precedents inherited from the Jay-Grenville Treaty, with at least two innovative characteristics which were to become standard features of future joint commissions. Under Article IV of the treaty, a third party arbitrator, "a friendly sovereign or state" in the words of the treaty, was provided for in the event that the two commissioners failed to formulate a mutually acceptable conclusion.¹³ The interposition

11.) Jay-Grenville Treaty, 19 November 1794, Article V.

12.) Treaty of Ghent, 24 December 1814, Article IV.

13.) Ibid.

of an arbitrator was yet another check against the possibility of either government feeling itself forced to initiate unilateral action. This provision was entirely in harmony with the prevailing spirit of the Treaty of Ghent which, like the earlier Jay-Greenville Treaty, "turned on the great question of avoiding war."¹⁴

The second innovative characteristic of the Ghent commissions was provided for by Article VIII of the treaty. Under this article provision was made for both nations to share equally the expenses incurred by the joint commissions as they carried out their responsibilities.¹⁵ By including this feature in the treaty the Ghent negotiators sought to prevent either nation from complaining that it was incurring a disproportionate amount of expense in the course of the boundary-making process. The sharing of expenses, by stressing the co-operative nature of the venture, was another device designed to lessen the chances for conflict or breakdowns during the execution of the commissions' assignments. After the considerable achievements scored by the Ghent commissions, cost-sharing and third party arbitration provisions became standard features of those future Anglo-American and Canadian-American agreements which served to establish

14.) Burt, A.L. The United States, Great Britain, and British North America. From the Revolution to the Establishment of Peace after the War of 1812. New Haven, Connecticut: Yale University Press, 1940. p. 152.

15.) Treaty of Ghent, 24 December 1814, Article VIII.

later joint commissions.¹⁶

While the surveys were being conducted along the boundary several additional principles of joint commission procedure were established. These principles had not been set down by the Treaty of Ghent but they were nonetheless to become norms of procedure for future commissions. The first of these ad hoc developments involved the solidification of the commissioner's position as the undisputed head of his respective section of the commission. Early in the tenure of the commission of 1816-1822 the authority of the American Commissioner was challenged by the American Agent, the latter wishing to establish himself as the dominant voice in regard to the assignment and subsequent direction of the activities of the American surveyors. The American Commissioner successfully repulsed the Agent's attempt to undermine his position and in doing so he finalized, virtually for all time, the commissioner's predominant position within his own section of the commission.

16.) For an example of the continuity of these provisions see the Boundary Waters Treaty of January, 1909. Article X of that treaty provides for the appointment of an "umpire" in the event that the "said Commission is equally divided or is otherwise unable to render a decision or finding" Article X also states that the umpire "shall have the power to render a final decision." In regard to the expenses of the commission, Article XII of the Boundary Waters Treaty provides that "all reasonable and necessary joint expenses of the Commission, incurred by it, shall be paid in equal moieties by the High Contracting Parties." See International Joint Commission. Rules of Procedure and Text of Treaty. Washington, D.C. : United States Government Printing Office, 1968. pp. 17-18.

Another technique which developed in the same ad hoc manner was one which involved the beginning of a trend toward establishing the commission's leadership on something resembling a non-national or unitary basis. This development was most noticeable in regard to the direction of the commission's surveyors. This factor can be easily overstated and it would certainly be incorrect to maintain that national animosities were entirely negated, but it is nonetheless accurate to state that at times during the operations of the commission of 1816-1822 one or the other of the commissioners directed the work of both sections of the commission. In particular, Peter B. Porter, the American Commissioner under the sixth article, felt it necessary on several occasions to issue instructions to David Thompson, the chief surveyor of the British Section. This was especially true in the period between the fall of 1819 and the summer of 1821. The first British Commissioner under Article VI had died in September, 1819 and his successor was slow to take up his duties. During this span of twenty months Porter issued directives to the British surveying party, both through the British Agent and directly to Thompson, in order to ensure that the work of the commission continued. Porter's instructions were apparently accepted and implemented without question by the members of the British Section.¹⁷ Once the second British Commissioner assumed his

17.) Several of Porter's instructions to the British Section can be found in his papers at the Buffalo and Erie County Historical Society in Buffalo, New York. The first has the British Agent, Colonel John Hale, acknowledging Porter's instructions; the second has Hale seeking Porter's approval for a plan devised by David Thompson; and the third has Porter assigning Thompson a surveying schedule for the 1819 season. See Colonel John Hale to Peter B. Porter, (19 October 1819); Colonel John Hale to Peter B. Porter, (20 December 1819); and Peter B. Porter to David Thompson, (28 July 1821) in Peter B. Porter Papers, Reel 7, Documents E-83, E-84 and E-119.

responsibilities Porter reverted to his status as the head of the American Section and from that point forward issued direct orders only to his own subordinates. Although it was circumstances, more than anything else, that conspired to give Porter command of both sections for a time, his actions in that period did establish a precedent upon which further non-national developments in the character of joint commission direction have been based.¹⁸

While a limited amount of non-national behavior emerged during the work of the Commission under Article VI, these manifestations were not enough to neutralize the tensions engendered by the rivalry between Great Britain and the United States. Throughout the period embraced by the commission's operations, Anglo-American relations were far from being smooth and harmonious as points of friction remained from the American

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- 18.) These non-national developments have continued to broaden through the course of the last century and a half. The importance of the evolution of this concept in commission procedure has been recently noted by the present Chairman of the Canadian Section of the International Joint Commission.

"We can attribute, I think, the achievement of the Commission to three principal factors. I do not mention it, I may say, in my paper, so perhaps I am now speaking generally for myself. The first factor, I think, was the emergence very early of the idea that no commissioner in this independent international organization sits as a delegate of his country. He is appointed as a member of the Commission and he takes a declaration under the treaty to be faithful to the treaty regime."

See "Excerpts from Chairman Maxwell Cohen's remarks to the Standing Committee on Fisheries and Forestry. Friday, 26 May 1978", p. 26:5.

Revolution and the War of 1812. Although a variety of successful negotiations were conducted between the two nations during the first half of the nineteenth century they were not generally fruitful because of the innate attachment of the English-speaking peoples, but, rather, because the arrangements they produced were usually thought of as "the wisest alternatives to war."¹⁹ The potential destructiveness of conflicting nationalisms was always present and often only barely concealed in the Anglo-American negotiations conducted between 1800 and 1850. The joint commission of 1816-1822 was not immune to this nationalistic rivalry and, in fact, the commission fulfilled its assignment under the sixth article in spite of the repercussions of this rivalry.

Throughout its tenure the commission of 1816-1822 encountered instances of truculent nationalism. Even in their most fundamental task, that of engaging men to serve as surveyors and chainmen, the commissioners were confronted by the animosities of a populace which had not yet forgotten the hatred generated by two Anglo-American wars. In his search for competent surveyors the American Commissioner heard from several individuals who appeared to be more interested in fighting the British than in establishing the boundary. One such martially-spirited applicant

19.) Jones, Howard. To the Webster-Ashburton Treaty. A Study in Anglo-American Relations, 1783-1843. Chapel Hill, North Carolina: University of North Carolina Press, 1977. p. xii.

wrote to Porter in the following manner.

I take the liberty of addressing you a line of congratulations on the subject of your recent appointment ... to meet the British Commissioner and permanently establish the Northern boundary line of our government; this line when designated by proper marks; the Tyrant of the World (that claim to the North) must forever consider (even if compulsory) as sacred to liberty and the divine rights of humans; knowing as I do your innate disposition to cherish those who accompanied you amid the Thunder of Cannon and the continued clash of Armies on the Niagara Frontier where the earth trembled and the blood flowed (as from a spontaneous fount) until the boasted Wellingtons were compelled to flee before an inferior force of the Yeomanry of my Country. 20

Fortunately, Porter was more interested in delineating the boundary than in renewing hostilities with Britain and this particular applicant did not receive an appointment to the commission. The letter, however, does provide a good example of the deep-seated anglophobia which was prevalent in the United States at that date.

The effects of this Anglo-American rivalry were also manifested in the distrust exhibited by each nation in regard to what each considered to be the true intentions of the other. Although the negotiators at Ghent had written that the purpose of the treaty was to promote "a firm and universal peace between His Britannic Majesty and the United States", neither side was entirely convinced that the treaty would provide for perpetual peace.²¹ This perceived uncertainty was emphasized in the remarks made by Major Joseph Delfield, the American Agent, while he was engaged

20.) Samuel Satterlee to Peter B. Porter, (19 September 1816).
Peter B. Porter Papers, Reel 6, Document E-2.

21.) Treaty of Ghent, 24 December 1814, Article I.

in surveying along the boundary. After reporting upon the geographical and topographical features of a spot on the St. Lawrence River known as Bluff Point, Delafield went on to assess the strategic and military value of the location.

The formation of this point is singularly adapted for defense as well as offense Heavy guns on Bluff Point would command the Canada shore to the swamp, and oblige an enemy to extend their route through the interior at great expense in roads and etc. The command of the river is complete.... 22

This concern for the attainment of favorable military positions on the border would remain an important consideration for Delafield and the Americans along the entire route from the St. Lawrence to Lake Superior. The British would also evidence a concern for military advantage at a later date in regard to the disposition of Wolfe Island in the St. Lawrence and the islands in the Detroit River.

The Anglo-American Joint Boundary Commission of 1816-1822 is, in sum, historically important for at least three major reasons. First, the commissioners were successful in definitively establishing a large section of the international boundary separating the United States from British

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- 22.) McElroy, Robert and Thomas Riggs, (eds.). The Unfortified Boundary: A Diary of the First Survey of the Canadian Boundary from St. Regis to the Lakes of the Woods by Major Joseph Delafield. New York: Privately Printed, 1943. 19 and 20 September 1817, p. 172. (Hereafter this work will be cited as the Delafield Diary, together with the page number and the date of the entry where appropriate.)

North America. This accomplishment in itself justifies a thorough examination of the commission's work. Secondly, the operations of the joint commission afford an excellent opportunity to analyze the early development of what has become a peculiarly Anglo-American and Canadian-American vehicle for the conduct of diplomatic relations. A review of the commission's activities will also allow for an assessment of the strengths and weaknesses of the powers vested in the commissioners by the Treaty of Ghent. Thirdly, an analysis of the commission's work emphasizes that joint commissions seldom, if ever, function within a diplomatic vacuum. The commissions are a part of the general diplomatic environment of their time. As a result, the agenda of problems to which the commissions must address themselves is often longer than the schedule originally assigned to them under the provisions of the agreement by which they were created. In the case of the boundary commissioners of 1816-1822 the additional problems they encountered primarily stemmed from the mutual distrust which existed between Great Britain and the United States as a consequence of two recent wars. The difficulties caused by this mutual distrust were not officially assigned to the commission by the Ghent negotiators but the commissioners had to confront them just as surely as they had to confront the problem of locating the point at which the forty-fifth degree of north latitude strikes the St. Lawrence River.

The remainder of the thesis will observe the following plan.

Chapter II will discuss the rather limited history of Anglo-American joint commissions until the date of the conclusion of the Treaty of Ghent. The second chapter will also devote some attention to the peace negotiations at Ghent and, more particularly, to the importance attached by the negotiators to a definitive delineation of the international boundary between the United States and British North America. Chapter III will sketch the organization, powers, duties and personnel of the joint commission created under the sixth article of the treaty. Chapter IV will focus upon an analysis of the problems encountered by the commissioners in their efforts to demarcate the boundary. Chapter V will discuss the problems which were not directly related to the actual physical delineation of the boundary, but which the commissioners were forced to overcome. In Chapters IV and V it is the author's intention to provide separate analyses of the substantive and procedural problems faced by the boundary commissioners, under the ~~sixth~~ sixth article. Chapter VI will offer some overall assessments, evaluations and conclusions.

CHAPTER II:

To the Ghent Commissions

The "organizational network"¹ of joint commissions found in the contemporary conduct of Canadian-American relations has its origins in the years immediately following the close of the American Revolution. When the British and American peace commissioners gathered in Paris in 1782 one of the most important questions confronting them dealt with the necessity of establishing a satisfactory boundary between the United States and Britain's remaining possessions in North America. The commissioners discussed a number of alternative locations for the line but they soon realized that the Great Lakes-St. Lawrence waterway formed a more or less natural boundary.² In Article II of the Treaty of Paris of 1783 the commissioners described an international boundary based upon the Great Lakes-St. Lawrence system.³

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- 1.) This happy phrase is borrowed from R.F. Swanson's Intergovernmental Perspectives on the Canada-United States Relationship, p. 136.
 - 2.) Piper, Don C., The International Law of the Great Lakes, p. 8.
 - 3.) Treaty of Paris, 30 November 1782, Article II. The portion of Article II which deals with the Great Lakes-St. Lawrence waterway describes the boundary in the following manner.

"From the northwest angle of Nova Scotia, viz., that angle which is formed by a line drawn due north from the source of the St. Croix River to the highlands which divide those rivers that empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean, to the northwesternmost head of the Connecticut River; thence down along the middle of that river to the 45th degree of north latitude; from thence by a line due west on said latitude until it strikes the river Iroquois or Cataraguy the St. Lawrence; thence along the middle of said river to Lake Ontario; through the middle of said lake until it strikes the communication by water between that lake and Lake Erie; through the middle of said lake until it arrives at the water communication between that lake and Lake Huron, thence along the middle of said water communication into Lake Huron, thence through the middle of said lake to the water communication between that lake and Lake Superior;"

Although the second article is written in a manner which suggests that the negotiators were absolutely sure of the exact location of the border, this hardly proved to be the case. Almost before the recently-concluded treaty could be printed and distributed, a series of arguments and confrontations developed between American citizens and British subjects all along the line. Most intensely disputed was that portion of the boundary which separated the American territory of Maine from the British provinces of Nova Scotia and New Brunswick. This dispute was destined to bedevil Anglo-American relations until the conclusion of the Webster-Ashburton Treaty in August, 1842.⁴

The decade following the Treaty of Paris witnessed the evolution of an ever-increasing number of Anglo-American irritations which had, by the year 1794, festered to the point where the rattle of sabres could once again be heard in the distance.⁵ Illicit American trade with the British West Indies, the reluctance of Great Britain to withdraw from the posts she held within the western territory of the United States, the pre-revolutionary debts claimed by British merchants from their American clients, and the continuing debate and friction over the true location of the Maine-New Brunswick border were all factors contributing to the

4.) Webster - Ashburton Treaty, 9 August 1842, Article I.

5.) The steady deterioration of Anglo-American relations in the 1783-1794 period is most ably analyzed in Ritcheson, Charles R. Aftermath of Revolution. British Policy Toward the United States, 1783-1795. Dallas, Texas: Southern Methodist University Press, 1969.

deterioration of the Anglo-American relationship.⁶ In addition to these difficulties the war then raging between Great Britain and France further exacerbated Anglo-American relations. The naval war between those two powers was causing a severe disruption in the conduct of neutral America's maritime commerce. Both the French and British navies interfered with the American merchant marine, but a lingering resentment of England and a general sympathy for France as a result of the aid she had rendered during the Revolution combined to bring a hail of American condemnation down upon the heads of the British government.⁷

In the late summer of 1794 President George Washington sent John Jay, then the Chief Justice of the United States Supreme Court, to London in what amounted to a last, desperate attempt to prevent the renewal of Anglo-American armed conflict. In London Jay met repeatedly with Lord Grenville, Britain's Foreign Secretary, and from their meetings emerged a "Treaty of Amity, Commerce and Navigation between His Britannic Majesty and the United States". The treaty was signed on 19 November 1794. Among other matters the treaty provided for the withdrawal of British garrisons from American territory,⁸ permission for the United States

6.) See Campbell, Charles S. From Revolution to Rapprochement. Great Britain and the United States, 1783-1900. New York: John Wiley and Sons, Inc., 1974. pp. 6-8.

7.) See Charles Ritcheson's introduction to Part IV- "The Re-establishment of an Anglo-American Community" in The American Revolution: The Anglo-American Relation, 1763-1794. Charles R. Ritcheson, (ed.). Reading, Massachusetts: Addison-Wesley Publishing Company, 1969. p. 199.

8.) Jay-Grenville Treaty, 19 November 1794, Article II.

to conduct trade with the British West Indies,⁹ and the settlement of debts owed to British merchants by American citizens.¹⁰

In addition to resolving these simmering Anglo-American difficulties the Jay-Grenville Treaty is also vitally important in the history of Anglo-American and Canadian-American joint commissions. After discussing several possible methods with which to settle the disputes they were considering both Jay and Grenville agreed upon the use of joint commissions. In this decision it appears that John Jay provided most of the motivating force, and, in effect, convinced Lord Grenville to give the joint commission method a chance. By 1794 John Jay had been directly associated with the concept of joint commission diplomacy for fifteen years. In 1779 he had persuaded the Continental Congress, of which he was then president, to make provision for special Anglo-American commissions to fix the northeastern boundary between Massachusetts and British North America in the event that the question was not satisfactorily resolved by the peace negotiators. Although the Congress sanctioned the provisions suggested by Jay the commissions proved to be unnecessary as the negotiators at Paris agreed to establish the boundary at the St. Croix River rather than leaving the conflicting claims in the area to be

9.) Ibid., Article XII.

10.) Ibid., Article VI.

settled after the conclusion of peace.¹¹

Again in the spring of 1785 Jay, then Secretary for Foreign Affairs, urged the Congress to enter into an agreement with Great Britain whereby several joint commissions would be created and empowered to settle all disputes over the location of the northeastern boundary of the United States. Jay suggested that "each party would name half the commissioners, and that they were all to be foreigners or half were to be American citizens and half British subjects." Jay also wished the commissioners to have the power to issue a final and binding decision. The Congress adopted Jay's proposals and the American Minister in London, John Adams, approached the British government on the subject. Adams' initiative was turned down by the British, however, because they were not at that time prepared to submit their claim to arbitration.¹²

Although twice rebuffed, Jay's persistence or, as A.L. Burt calls it, "the voice of sweet reasonableness", finally prevailed in 1794 when

11.) Burt, A.L., The United States, Great Britain and British North America. From the Revolution to the Establishment of Peace After the War of 1812, pp. 38-39.

12.) Ibid., pp. 77-78.

the joint commission method was included in the treaty that bears his name.¹³ The treaty provided for the creation of four separate joint commissions and assigned to each a specific problem for consideration and decision. The first was to deal with the question of the debts incurred by Americans in Great Britain before the Revolution; the second was to determine the amount to be paid to the United States by Great Britain for the seizure of American vessels during her conflict with France; the third was to determine the true location of the St. Croix River in the Maine Territory; and, the fourth was to identify another section of the boundary between Maine and New Brunswick.¹⁴ The joint commissions created by the Jay-

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- 13.) Ibid., p. 77. Burt goes on to stress that Jay's accomplishments had ramifications which went far beyond the solution of the Anglo-American problems of his own day.

"The treaty of 1794 was epoch-making; and it appropriately bears Jay's name. Though both negotiators were equally anxious for a settlement of the disputes between their governments, the Englishmen deserves less credit than the American. The former followed while the latter led, and he led along a memorable way. It was the way of arbitration, long neglected but by him established anew.... By persuading Grenville to accept the joint commission method as a cure for festering international sores, he did more than turn the difficult diplomatic corner of the day. He ushered in a new era in the history of diplomacy. His treaty inaugurated the modern use of the judicial process in international affairs. It was a happy circumstance that this innovation occurred so early after the establishment of the United States. Nowhere else has it been so useful as in the regulation of Canadian-American relations, and here it has been indispensable." [Ibid., p. 157]

- 14.) Campbell, C.S., From Revolution to Rapprochement, p. 7.

Grenville Treaty were the first of their kind and, as a result, the treaty can be accurately depicted as " the beginning of the modern history of arbitration."¹⁵

The most significant portion of the Jay-Grenville Treaty, in so far as the present study is concerned, lies in Article V. The provisions of this article created a joint commission and assigned to it the task of resolving a boundary conflict along the line separating Maine from New Brunswick. The pertinent sections of Article V declare that,

Whereas doubts have arisen what river was truly intended under the name of the river St. Croix, mentioned in the said treaty of peace of 1783, and forming a part of the boundary therein described, that question shall be referred to the final decision of commissioners, to be appointed in the following manner, viz.,

One commissioner shall be appointed by His Majesty and one by the President of the United States, by and with the advice and consent of the Senate thereof, and the two said commissioners shall agree on the choice of a third; or, if they cannot agree, they shall each propose one person, and of the two names so proposed, one shall be drawn by lot in the presence of the two original commissioners....¹⁶

15.) Jones, Howard, To the Webster-Ashburton Treaty, p. 7.

16.) Jay-Grenville Treaty, 19 November 1794, Article V. The membership of this joint commission included Thomas Barclay, a Nova Scotian lawyer and a United Empire Loyalist, as Great Britain's commissioner, David Howell, Professor of Law at Brown University, as the American commissioner and Egbert Benson, a judge of the New York Supreme Court, as the third commissioner. The third commissioner was chosen upon the agreement of the two original commissioners and therefore lots were not drawn. It should also be noted that Benson was Barclay's cousin but was nominated for the position of third commissioner by David Howell. On this and on later joint commissions all the commissioners together would be known as the "Board of Commissioners". See H. George Classen. Thrust and Counterthrust. The Genesis of the Canada-United States Boundary. Chicago: Rand McNally and Company, 1965. p. 10 and Percy E. Corbett. The Settlement of Canadian-American Disputes. New Haven, Connecticut: Yale University Press, 1937. p. 7.

The commission established under Article V was to determine which river in the territory of Maine should be rightfully designated as the St. Croix. The exact location of the river was of great significance in that the peace treaty of 1783 had named the St. Croix as the starting point for the line separating the United States from British North America. Article II of that treaty describes the international boundary as running in part, "from the northwest angle of Nova Scotia, viz. that angle which is formed by the line running due north from the source of the St. Croix River", to and along the highlands separating New England and Quebec and thence westward to the St. Lawrence.¹⁷ While the directions laid down in Article II for the drawing of the boundary were phrased in a clear and explicit manner the demarcation of the line proved to be a far from simple process. Problems arose from the fact that the peace negotiators at Paris had been working with maps which had been drawn by cartographer John Mitchell more than twenty years earlier and which were somewhat less than accurate.¹⁸

17.) Treaty of Paris, 30 November 1782, Article II.

18.) Howard Jones has noted that,

"At the Treaty of Paris in 1783 the negotiators use a 1775 impression of John Mitchell's 'Map of British and French Dominions in North America' drawn in 1755. This was the best map of the time, but a lack of surveyors had forced the cartographer to guess at the location of many rivers and to omit mountains and other important 'land features'."

See Jones, Howard, To the Webster-Ashburton Treaty, p. 5.

As affairs worked out the trust which the negotiators had placed in Mitchell's map proved to be badly misplaced. Many of the islands, streams, lakes and highlands located on Mitchell's map were nowhere to be found once the surveyors set out to mark the boundary. With no accurate map to work from the demarcation process soon became a matter of each side making wildly excessive demands in the hope that the eventual territorial distribution would reflect at least some of their claims. The center of controversy raged about the true location of the St. Croix River. The name "St. Croix" was not in local use and as a result no one was really sure which of the two rivers flowing into Passamaquoddy Bay was meant by the Treaty of 1783 to be designated as the St. Croix.¹⁹ Naturally enough the participants in the conflict each chose the river which best suited their interests. By 1790 the British were advancing a claim for the Schoodic River in western Maine, while the Americans were demanding the Magaguadavic River in eastern Maine. Between these two rivers lay an area of seven or eight thousand square miles of timber-rich territory. Also at stake was a tract of coastline which provided easy access to the North Atlantic fisheries.²⁰

The commissioners operating under the auspices of the treaty's fifth article met on a number of occasions between 1796 and 1798 and took a great deal of testimony regarding the St. Croix controversy. The commissioners

19.) Classen, H. George, Thrust and Counterthrust, p. 9.

20.) Jones, Joward, To the Webster-Ashburton Treaty, p. 5.

issued their decision on 25 October 1798 and in it they unanimously established the Schoodic River as the true location of the river designated as the St. Croix in the Treaty of Paris.²¹ The decision in favor of the British claim was based, at least in part, upon the fact that the commission had unearthed the brick remains of Champlain's camp on an island in the Schoodic.²² While upholding the British claim the commissioner's decision under the fifth article did not finally settle the dispute over the northeastern boundary. Another commission established by the Jay-Grenville Treaty failed to eliminate a second "gap" in the international boundary. The Treaty of Paris had described this section of the border as running from the source of the St. Croix River to the "highlands" separating New England from Quebec.²³ The joint commission created to

21.) Allen, H.C. Great Britain and the United States. A History of Anglo-American Relations, 1783-1952. New York: St. Martin's Press, Inc., 1955. p. 289. Allen goes on to note that the unanimous decision of the commissioners was "peculiarly significant" because the commission consisted of two American and only one British member. The commissioners had decided in favor of the British claim even though the two Americans had had it in their power to win all of the American claim had they voted on nationalistic lines. The two American commissioners resisted this temptation and, as Allen says, their "decision against the American claim was a very happy augury for the future of Anglo-American relations."

22.) Classen, H. George, Thrust and Counterthrust, p. 10.

23.) Treaty of Paris, 30 November 1782, Article II.

locate these highlands failed to complete its assignment successfully. The "highlands" called for in the Treaty of Paris turned out to be yet another of John Mitchell's phantom geographical features. The highlands marked on his map simply did not exist.²⁴

In sum, the joint commission functioning under Article V fulfilled its duties in a very satisfactory manner. The commission had gathered evidence supporting the conflicting claims, presided over a vociferous and at times heated debate and, in the end, rendered a decision acceptable to both governments. In the process of accomplishing its duties the commission had succeeded in defusing a potentially explosive situation. The disagreement over the true location of the St. Croix River involved much more than the mere distribution of seven or eight thousand square miles of timber land. The debate over the St. Croix provided the focal point upon which two rival nationalisms clashed. The British claim in the Maine territory was advanced by a group of Nova Scotians and New Brunswickers who were in large measure late residents of the United States. The majority of these Loyalists had emigrated to the Maritime colonies during the American Revolution and many of them had seen action in Britain's military forces in the course of that war.²⁵ Because of the sacrifices they

24.) Jones, Howard, To the Webster-Ashburton Treaty, p. 7.

25.) It is interesting to consider that the British commissioner under Article V, Thomas Barclay, was a staunch Loyalist. Barclay had been born in New York City in 1753. He was educated at King's College in that city and he later studied law under the direction of John Jay. During the American Revolution Barclay saw action as an officer in the "Loyal American Regiment". After the war Barclay moved to Nova Scotia with his family. In 1785 he was elected to represent Annapolis in Nova Scotia's House of Assembly. In 1793 he was elected to the speakership of that House. Barclay was appointed as Britain's consul general in New York City in 1793. For more information regarding Thomas Barclay see Wallace, W. Stewart. The Macmillan Dictionary of Canadian Biography. Toronto: Macmillan, 1963. p. 33.

had made and the services they had rendered, the Loyalists fully expected His Majesty's Government to respect and maintain their claims in regard to the St. Croix. The expectations of the Loyalists placed Britain into a position from which compromise would be difficult and surrender impossible.

The government of the United States was placed in a somewhat similar predicament by those of its citizens who were advancing the American position in Maine. The people of New England were fiercely proud of their newly-acquired independence and they would hardly have looked favorably upon a central government which was willing to relinquish their claims. The fact that any compromise would directly benefit those they considered to be traitors only served to strengthen the determination of the New Englanders to stand by their original demands. Under these circumstances the ability of Washington to manoeuvre and negotiate was, like that of Whitehall, severely restricted.

Facing this potentially disastrous conflict of nationalisms Jay and Grenville sought a path out of the dilemma through the utilization of joint commissions. By referring the St. Croix River matter to such a commission the negotiators eliminated the need for unilateral action by either government. In Article V both Jay and Grenville agreed that their respective governments would accept the joint decision of the commissioners

as final and binding²⁶ and they thereby further reduced the likelihood of any situation arising which might necessitate unilateral, violent action. The joint commission under Article V responded splendidly to the challenge placed before it and in doing so set an invaluable precedent for the future conduct of diplomacy in the North Atlantic Triangle.

The desperate attempt to preserve peace which was embodied in the Jay-Grenville Treaty succeeded for nearly twenty years. The general Anglo-American peace of this period was, however, ultimately eroded. Among the factors which contributed to this gradual deterioration were Britain's continuing interference with America's maritime commerce, the Royal Navy's propensity for impressing American sailors and the bellicosity of anglophobic nationalists in the United States. The American Congress declared war upon Great Britain on 1 June 1812 and conflict ensued for the next two and one-half years. Anglo-American peace was re-established on 24 December 1814 with the conclusion of the Treaty of Ghent.

By the late summer of 1814 both Britain and the United States had become anxious to terminate hostilities. In the course of the negotiations leading to the Ghent treaty, however, the representatives of both nations

26.) Jay-Grenville Treaty, 19 November 1794, Article V. The relevant portion of the article reads as follows,

"The said Commissioners shall by a Declaration under their Hands and Seals, decide what River is the River St. Croix intended by the Treaty.... And both parties agree to consider such decision as final and conclusive, so as that the same shall never thereafter be called into question or made the subject of dispute or difference between them."

quickly discovered that "the only way of getting a treaty at all was by postponing, shelving, or even ignoring most of the vital issues."²⁷ With this realization in mind the negotiators treated none of the primary causes of the War of 1812 in the final text of the treaty. Among the issues so ignored were the interference with America's maritime commerce, the impressment of American sailors, American fishing rights in the territorial waters of British North America, and Britain's right to navigate the entire length of the Mississippi River.²⁸ In regard to the major causes of the war the treaty was silent. The negotiators were forced to be content with restoring the *status quo ante bellum* and with dealing as best they could with the strictly North American aspects of the Anglo-American relationship.²⁹

From among these peculiarly North American problems the Ghent negotiators attached particular importance to attaining the accurate demarcation of the international boundary separating the United States from British North America. The portion of the international boundary dealt with at Ghent traversed an area stretching from Passamaquoddy

27.) Allen, H.C., Great Britain and the United States. A History of Anglo-American Relations, 1783-1952, p. 341.

28.) Ibid., p. 345.

29.) Burt, A.L., The United States, Great Britain and British North America. From the Revolution to the Establishment of Peace after the War of 1812, p. 352.

Bay on the coast of Maine to the most northwestern point of the Lake of the Woods. Embraced within this distance was the Great Lakes-St. Lawrence waterway. Both Great Britain and the United States considered this waterway to be a natural avenue of trade and commerce as well as a natural line of defense. Both nations were therefore eager to settle the location of the boundary and thereby secure their possessions and allow for the efficient economic exploitation of the Great Lakes basin by their nationals.

Even before the end of the War of 1812 the Americans had displayed their desire for a definite settlement of the boundary. In June, 1813 American Secretary of State James Monroe wrote to John Quincy Adams, an individual who had been designated to serve as a peace minister in the forthcoming negotiations with Britain, that

it will be proper for you to make provision for settling the boundary between the United States and Great Britain on the St. Lawrence and the Lakes, from the point at which the line between them strikes the St. Lawrence to the North western corner of the Lake of the Woods.... The settlement of this boundary is important from the circumstance that there are several Islands, in the River and Lakes of some extent and great value, the dominion over which is claimed by both parties. It may be an advisable course to appoint commissioners on each side, with full powers, to adjust on fair and equitable considerations this boundary....³⁰

Monroe was concerned, it seems, chiefly with two matters along the boundary. First, he wanted to attain for the United States those islands of

30.) James Monroe to John Quincy Adams, et. al., (23 June 1813) in Diplomatic Correspondence of the United States, Volume I: Canadian Relations, 1784-1820. William R. Manning, (ed.), Washington, D.C.: Carnegie Endowment for International Peace, 1940. p. 242 (Hereafter this work will be cited as Manning, (ed.), Canadian Relations, I.)

"some extent and great value" which were located in the waters along the border. Secondly, Monroe wished to eliminate any chance for future Anglo-American conflict over the subject of the border by definitely deciding upon the ownership of those border areas over which "dominion" was claimed by both nations. Perhaps with the fair measure of success of the joint commission procedure created by the Jay-Grenville Treaty in mind Monroe suggested a similar expedient be resorted to regarding the still disputed sections of the boundary.³¹

In a subsequent letter to Adams and his fellow peace commissioners Monroe developed to a greater extent the official American position in regard to the Great Lakes-St. Lawrence waterway. In this letter Monroe ascribed one of the central causes of the War of 1812 to the problems which had existed between the United States and Great Britain along the lakes. These problems, Monroe believed, were caused by two factors, namely, the indeterminate situation along the frontier and the pressure exerted in the lakes area by the expansion of American population and commerce. Monroe's letter to Adams is lengthy but it deserves to be quoted fully because it accurately summarizes the position of the American government in regard to the waterway along its northern frontier.

Experience has shown that Great Britain cannot participate in the dominion and navigation of the Lakes, without incurring the danger of an early renewal of the war. It was by the means of the Lakes that the British Government interfered with and gained an ascendancy over the Indians, even within our own limits. The effect produced by the massacre of our citizens after they were made

31.) The achievements recorded by the joint commissions established under the Jay-Grenville Treaty are succinctly described in Campbell, C.S., From Revolution to Rapprochement, pp. 7-8.

prisoners, and of defenceless women and children along our frontiers, need not be described. It will perhaps never be removed, while Great Britain retains in her hands the Government of those Provinces. This alone will prove a fruitful source of controversy; but there are others. Our settlements had reached before the war from our northern boundary, with Lower Canada, along the St. Lawrence, to the South western extremity of Lake Erie, and after peace it cannot be doubted, that they will soon extend by a continued population to Detroit, where there is now a strong establishment and to the Banks of the Michigan, and even of the other Lakes, spreading rapidly over all our vacant Territory. With the disposition already existing, collisions may be daily expected, between the inhabitants on each side, which it may not be in the power of either Government to prevent. The cupidity of the British traders will admit of no control. The inevitable consequence of another war, and even of the present, if persevered in by the British Government, must be to sever these Provinces by force from Great Britain. Their inhabitants themselves, will soon feel their strength, and assert their independence. All these evils had therefore better be anticipated, and provided for, by timely arrangement between the two Governments, in the mode proposed. 32

The "mode proposed", of course, was the joint commission and Monroe and the American government were counting on this method of diplomacy to secure power and permit economic and commercial development.³³

Although not for identical reasons, the government of Great Britain was equally concerned with arranging for the accurate delineation of the border. The British were eager to establish an international boundary that would enable them effectively to defend British North America from American expansionism. From the very beginning of the peace negotiations

32.) James Monroe to John Quincy Adams, (28 January 1814) in Manning, (ed.), Canadian Relations, I, pp. 217-218.

33.) Monroe proposed the creation of joint commissions in his letter to Adams of 23 June 1813, op. cit.

at Ghent the British plenipotentiaries expressed their government's concern with the question of who would ultimately control the Great Lakes-St. Lawrence waterway. In a surprisingly frank, and somewhat unrealistic, letter, the British representatives placed their views regarding the frontier before their American counterparts.

The British Government considers the lakes from Lake Ontario to Lake Superior both inclusive to be the natural military frontier of the British possessions in North America. As the weaker power on the North American continent, the least capable of acting offensively, and the most exposed to sudden invasion Great Britain considers the military occupation of these lakes as necessary to the security of her dominions. A boundary line equally dividing the waters with a right in each nation to arm both upon the Lakes and upon their Shores is calculated to create a contest for naval ascendancy in peace as well as war. The power which occupies these Lakes should as a necessary result have the military occupation of both Shores. In the furtherance of this object the British government is prepared to propose a boundary. But as this might be construed as an intention to extend their possessions to the Southward of the Lakes (which is by no means the object which they have in view) they are disposed to leave the territorial limits undisturbed and as incident to them the free commercial navigation of the Lakes provided that the American government will stipulate not to maintain or construct any fortification upon, or within a limited distance of the shores or maintain or construct any armed vessel upon the Lakes in question, or on the rivers which empty themselves into the same. 34

While phrased in a calm and undramatic manner the British note requested actions from the United States which, if carried out, would have amounted to a major withdrawal of sovereign rights. In an almost nonchalant tone the British ministers declared that the perfect solution to the problem

34.) British Ministers to Negotiate Peace with the United States to the United States' Peace Ministers, (19 August 1814) in Manning, (ed.), Canadian Relations, I, p. 633.

of who was going to control the international boundary would be for the Americans to initiate a complete withdrawal of their military presence from along the shores of the Great Lakes-St. Lawrence waterway. While not coming out and directly stating that this American withdrawal would be accompanied by a British move to fill the void thereby created, the British ministers insinuated as much by noting that the power controlling the lakes "should as a necessary result have the military occupation of both shores." Realizing that their ideal would hardly be acceptable to the Americans, the British announced themselves to be "disposed" to "leave territorial limits undisturbed" if the American government simply agreed to withdraw all forces and dismantle all fortifications to an agreed distance inland and to similarly denude boundary rivers of fortifications. Apparently the British assumed that their pledge to maintain the status quo in so far as the distribution of territory was concerned would be a fair exchange for an American decision to all but cede the lakes to Britain. The British seemed to consider their suggestions reasonable and, indeed, they might have been had Great Britain been in a position to dictate a draconian peace to the United States. In late 1814, however, Britain was not in a position to dictate the terms of peace.³⁵

35.) By the late summer of 1814 the British were as anxious as the Americans to terminate the war. Among the various factors leading to this position were the general war-weariness of British public opinion and Wellington's opinion that the war could not be pressed to a successful military conclusion. See Allen, H.C., Great Britain and the United States. A History of Anglo-American Relations, 1783-1952, pp. 341-345.

Before proceeding to the American response to the first British proposal regarding their northern frontier a word should be said about the underlying tone of the note. The suggestions made by the British peace envoys not only failed to provide an adequate basis for discussion and compromise but also helped to widen the rift between Great Britain and the United States. In suggesting that the United States abandon her sovereign rights along the shores of the Great Lakes the British were treating the Americans with the same contempt often manifested by an aristocrat in his first encounter with a nouveau riche. Throughout the first half of the nineteenth century British diplomats would continue to treat their American counterparts as decidedly second class international citizens. The Americans, not surprisingly, would take offense at what they considered to be British condescension and react with a truculent nationalism which did not make for amicable Anglo-American relations. This clash of nationalisms would time and again block North Atlantic comity in the years before 1850.³⁶

After having just fought two wars with Britain in less than forty years it is hardly startling that the American negotiators at Ghent were reluctant to have their nation effect a complete military withdrawal from its northern frontier. The American delegation appears to have been

36.) For an excellent discussion of this era of conflicting nationalisms see Jones, Howard, To the Webster-Ashburton Treaty, especially Chapter IX, "The Maintenance of National Honor", pp. 161-174.

astounded by the British proposals and they were not placated by Great Britain's assurance that the extension "of their possessions to the Southward of the Lakes ... is by no means the object which they have in view."

In a somewhat ill-tempered and exasperated manner the American ministers responded to the British proposal on 24 August 1814.

As little are the Undersigned instructed or empowered to accede to the propositions of the British government, in relation to the military occupation of the Western Lakes ... they are no less at a loss to discover by what rule of perfect reciprocity, the United States can be required to renounce their equal right of maintaining a naval force upon the Lakes, and of fortifying their own shores while Great Britain reserves exclusively the corresponding rights to herself. That in point of military preparation, Great Britain, in her possessions in North America, ever has been in a condition to be termed with propriety the weaker power, in comparison with the United States, the Undersigned believed to be incorrect in point of fact. In regard to the fortification of these shores, and to the forces actually kept on foot upon these frontiers, they believe that the superiority has always been on the side of Great Britain. If the proposal to dismantle the forts upon her shores, strike forever her military flag upon the Lakes, and lay her whole frontier defenceless, in the presence of her armed and fortified neighbor had proceeded, not from Great Britain to the United States, but from the United States to Great Britain, the Undersigned may safely appeal to both the bosoms of His Britannic Majesty's Plenipotentiaries for the feelings with which, not only in regard to the interests, but to the Honour of their Nation, they would have received such a proposal. What would Great Britain herself say, if in relation to another frontier, where she has the acknowledged superiority of strength, it were proposed, that she should be reduced to a condition even of equality with the United States. 37

For some reason the British delegates either missed or chose to ignore the exercised tone of the Americans' letter and in their reply

37.) United States' Peace Ministers to Britain's Peace Ministers, (24 August 1814) in Manning, (ed.), Canadian Relations, I, p. 639.

they failed entirely to address themselves to the very apt hypothetical situation posed by the Americans. The British negotiators followed the American response of 19 August with a message which basically expressed the same position they had maintained in their initial note. Indeed, in their second note the British developed their original suggestions with even greater audacity. The tone of this note is reproofing and leaves the impression that the British were growing increasingly agitated with the need for acquainting the Americans with what they considered to be simple and irrefutable necessities. In their note of 4 September 1814 the British negotiators explained that they had

... proposed that the military possession of the Lakes from Lake Ontario to Lake Superior should be secured to Great Britain because the command of those Lakes would afford to the American Government the means of commencing a war in the heart of Canada, and because the command of them on the part of Great Britain has been shown by experience to be attended with no insecurity to the United States.

When the relative strength of the Two Powers in North America is considered, it should be recollected that the British Dominions in that quarter do not contain a population of five hundred thousand souls, whereas the territory of the United States contains a population of more than seven millions; that the naval resources of the United States are at hand for attack, and that the naval resources of Great Britain are on the other side of the Atlantic. 38

The fact that both major naval and military engagements had been fought during the War of 1812 along the entire length of the Great Lakes-St. Lawrence waterway, especially in the Niagara region, appears to have altogether escaped the attention of Britain's peace ministers. They

38.) British Peace Ministers to United States' Peace Ministers,
(4 September 1814) in Manning, (ed.), Canadian Relations, I, p. 643.

also seem to have expected the Americans to have forgotten the location of these recent events.

Having suitably reacquainted the American delegates with Britain's views, the British negotiators went on to offer their conclusion in regard to the situation and to submit what Whitehall considered to be adequate compensation for the wholesale eradication of American military forces and facilities from the vicinity of the northern frontier.

The military possession of these Lakes is therefore not necessary for the protection of the United States.

The proposal for allowing the territories on the southern banks of the Lakes ... to remain in the possession of the Government of the United States, provided no fortifications be erected on the shores and no armament permitted on the waters, has been made for the purpose of manifesting the security and not acquisition of territory is the object of the British Government, and that they have no desire to throw obstacles in the way of any commerce which the People of the United States may be desirous of carrying on upon the Lakes in Time of Peace. 39

The British, in their letters of 19 August and 4 September, had bluntly and succinctly described their view of the situation prevailing in the lakes region. Britain's government considered the control of the Great Lakes-St. Lawrence waterway as being a vital element in its ability to defend British North America and it argued that a similar control of the waterway was unnecessary for the security of the United States. With this view of matters the British felt that the business to be conducted

39.) Ibid.

at Ghent would be greatly expedited if the Americans would simply accept their position regarding the lakes. The British appear to have missed, whether deliberately or otherwise, the entire thrust of the American note of 24 August and they continued to insist that the United States surrender a portion of its sovereign rights and territory. Still more exasperated, and now completely out of patience, the American negotiators responded indignantly to the second British note on 9 September 1814 and thereby ended this series of exchanges. The American note rejected Britain's position and solution out of hand and went on to declare that any idea of Great Britain securing the exclusive military control of the lakes was completely "inadmissible".⁴⁰ The American envoys added that the British argument was one "that they cannot subscribe to, and would deem it useless to refer to their Government, any arrangement even provisional containing either of these proposals."⁴¹

With the negotiations initiated along the lines suggested by the British on 19 August having reached a climax with outright American rejection, the negotiators were forced to seek other means with which

40.) United States' Peace Ministers to Britain's Peace Ministers, (9 September 1814) in Manning, (ed.), Canadian Relations, I, p. 659.

41.) Ibid. The two "proposals" the American negotiators speak of in this note are: A.) American withdrawal from the shores of the lakes to a designated distance inland and B.) the complete and unilateral disarmament by the United States in the Great Lakes-St. Lawrence region. These proposals had been made by the British envoys in their letter of 19 August 1814, op. cit.

to settle Anglo-American differences regarding the international boundary in the lakes region. The peace ministers settled, as had Jay and Grenville in 1794, upon the use of joint commissions to resolve these differences. Provisions for the establishment of such commissions were included in Articles IV, V, VI and VII of the Treaty of Ghent.

CHAPTER III:

The Joint Commission Under Article VI :

Organization, Powers, Duties and Personnel.

After having concluded their fencing session over the disposition of the Great Lakes, the negotiators at Ghent moved ahead and sought to settle the final location of the international boundary. Britain's representatives, accepting the fact that the United States would agree to neither unilateral withdrawal nor unilateral disarmament, sought to establish a boundary that could be effectively defended and one which would also assure that the inhabitants of British North America would have equal access to the Great Lakes-St. Lawrence waterway system. The British were also anxious to establish a line which would allow the traders of the Hudson's Bay Company to continue to exploit the fur-rich lands which lay west of Lake Superior and the Lake of the Woods.¹

Along the shores of the Great Lakes Britain was content to accept a line which would ensure her subjects equal access to the waterway. The military anxieties of the British were focused primarily, although not exclusively, in the northeastern area of the territory of Maine. At Ghent the British negotiators were determined to arrange to have the boundary line drawn due north from the St. Croix River so as to avoid cutting the St. John River into British and American sections. Britain's concern over the St. John stemmed from the fact that if the river was divided between the two nations direct communications between the Maritime colonies and Lower Canada would be severed.² In the immediate postwar

1.) Nicholson, Norman L., The Boundaries of the Canadian Confederation. Toronto: Macmillan, 1979. p. 92.

2.) Classen, H. George, Thrust and Counterthrust, p. 12.

period the British government was exceedingly unwilling to have its North American possessions isolated from one another.

The aims of the United States along its northern frontier were adequately summarized in James Monroe's letter to John Quincy Adams of 23 June 1813.³ The Americans desired a final demarcation of the boundary in order to assure that there would be no future Anglo-American conflict over its location. In turn, this final delineation would help to create the peaceful environment in which the expansion of American commerce and population could continue unhindered.

With these respective goals in mind the British and American negotiators produced a treaty patterned after the precedents established in 1794 by the Jay-Grenville Treaty. The Treaty of Ghent sanctioned the creation of four joint commissions and assigned to them the responsibility for demarcating the international boundary from Passamaquoddy Bay to the most northwestern point of the Lake of the Woods. The negotiators compartmentalized this length of boundary into four neat sections.⁴ The first commission was to locate the boundary among, and decide upon the ownership of, the islands in Passamaquoddy Bay.⁵ The second was to draw the line from the St. Croix River to the St. Lawrence River.⁶ The third commission was to establish the

3.) This letter is quoted at some length in Chapter II, n. 30.

4.) Classen, H. George, Thrust and Counterthrust, p. 13.

5.) Treaty of Ghent, 24 December 1814, Article IV.

6.) Ibid., Article V.

line from the St. Lawrence River, through Lakes Ontario and Erie, to the water communication separating Lake Huron from Lake Superior.⁷ The fourth commission was to carry the line from Lake Huron, through Lake Superior, to the most northwestern point of the Lake of the Woods.⁸ Two of the four joint commissions eventually proved successful in their work. The commission under Article IV settled matters satisfactorily in Passamaquoddy Bay and the commission under Article VI succeeded in drawing an acceptable "middle line course" through the St. Lawrence River and Lakes Ontario, Erie and Huron. The commissions under Articles V and VII failed to reach agreement.⁹ Article VI of the Treaty of Ghent is of particular importance to this work as it provided for the creation of the joint commission that is under consideration here.

The commission under the sixth article was authorized by the two governments to demarcate the international boundary from the point at which the 45th degree of north latitude strikes the St. Lawrence, through Lake Ontario, the Niagara River, Lake Erie, the Detroit River, Lake St. Clair, the St. Clair River and Lake Huron, to the water communication separating the last named lake from Lake Superior. This effort at boundary-making was to be done in conformity with the provisions of Article II of the Treaty of Paris of 1783.¹⁰

7.) Ibid., Article VI.

8.) Ibid., Article VII.

9.) Boggs, S. Whittemore. International Boundaries. A Study of Boundary Functions and Problems. New York: AMS Press, Inc., 1966. pp. 43-44.

10.) Piper Don C., The International Law of the Great Lakes, p. 10. For the relevant text of Article II of the Treaty of Paris see Ibid., p. 8, n. 3.

As can be readily seen from the content of the correspondence addressed to the American delegation by the British negotiators at Ghent, Great Britain had never been happy with the boundary line established in 1783. In fact, one of Britain's primary aims in the War of 1812 had been to force a revision of the boundary in a manner which would more nearly satisfy its interests in North America. By late 1814, however, the British had not achieved a military position from which they could dictate a revision and this factor, combined with Wellington's staggering estimate of the cost of continuing the war, made them unwilling to press the conflict toward that end.¹¹ As a consequence, the British government did not continue to push for the revisions they desired along the Great Lakes waterway once they encountered determined resistance from the American negotiators. In essence then, the completed Treaty of Ghent simply called for a more precise delineation of the boundary established in the peace treaty of 1783.¹²

Article VI began by noting that the Treaty of Paris described the international boundary as running from the point at which the forty-fifth degree of north latitude struck the St. Lawrence westward to Lake Superior

along the middle of the said river into Lake Ontario, through the middle of said Lake, until it strikes the communication between that Lake and Lake Erie, thence along the said communication

11.) Classen, H. George, Thrust and Counterthrust, p. 13. For a discussion of Wellington's crucial role in determining Britain's final decision regarding peace and war in North America see H.C. Allen, Great Britain and the United States. A History of Anglo-American Relations, 1783-1952, pp. 340-341.

12.) Piper, Don C., The International Law of the Great Lakes, p. 10.

into Lake Erie, through the middle of said Lake, until it arrives at the water communication into the Lake Huron, thence through the middle of the said Lake to the water communication between that Lake and Lake Superior. 13

This description of the boundary was exactly that which had been set down in 1783 and, according to a member of the American section of the commission under Article VI, the Ghent commissioners referred throughout their work "to the true intent and meaning of that treaty."¹⁴

Article VI then went on to explain that since the conclusion of peace in 1783 several "doubts have arisen what was the middle of the said Rivers, Lakes, and Water Communications, and whether certain islands lying in the same were within the dominions of His Britannic Majesty or of the United States."¹⁵ Having thus reviewed the existing ambiguities the article proceeded to establish a joint commission and to enumerate its duties

In order, therefore, to finally decide these doubts, they shall be referred to Two Commissioners, to be appointed, sworn, and authorized to act exactly in the manner directed with respect to those mentioned in the next preceeding article Article IVThe said Commissioners shall, by report or declaration, under their hands and seals, designate the boundary through the said rivers, lakes and water communications, and decide to which of the Two Contracting Parties the several islands within the said rivers, lakes, and water communications, do respectively belong,

13.) Treaty of Ghent, 24 December 1814, Article VI.

14.) Bird, William A., "Reminiscences of the Boundary Survey Between the United States and the British Provinces," in Publications of the Buffalo Historical Society. Buffalo, New York: Peter Paul Book Company, 1896. p. 2.

15.) Treaty of Ghent, 24 December 1814, Article VI.

in conformance with the true intent of the said treaty of 1783. And both parties agree to consider such designation final and conclusive. 16

With the Treaty of Ghent duly ratified in February, 1815 the two governments began making their respective appointments to the joint commissions thereby created. By the end of January, 1816 President Madison had completed the appointment of the requisite number of American boundary commissioners. Standing ready to begin operations Madison and the American government soon discovered that Great Britain had not acted with equal despatch in the matter of appointments. In April, 1816, with the British commissioners still not named, Secretary of State James Monroe wrote to Charles Bagot, Great Britain's minister at Washington, requesting

that he will have the goodness to communicate the information relative to the appointment of commissioners by the British government, for the purpose of establishing the boundary between the United States and the British provinces, according to the stipulations of the Treaty of Ghent, and in case such appointment

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- 16.) Ibid. The organization of the joint commissions established under the Treaty of Ghent was provided for in Article IV, the relevant text of which follows.

"...in order, therefore, finally, to decide upon these claims, it is agreed that they should be referred to two Commissioners, to be appointed in the following manner, viz.: -One Commissioner shall be appointed by His Britannic Majesty, and one by the President of the United States, by and with the advice and consent of the Senate thereof; and the said two Commissioners so appointed shall be impartially sworn to examine and decide upon the said claims, according to such evidence as shall be laid before them on the part of His Britannic Majesty and of the United States respectively. The said Commissioners shall meet at St. Andrews, in the Province of New Brunswick [Article IV was specifically setting up the commission for Passamaquoddy Bay], and shall have power to adjourn to such other place or places as they shall think fit."

has been made, who are the said Commissioners, and at what time they will be prepared to enter on the duties which have been assigned to them respectively. 17

Monroe's note apparently spurred the British to action as they announced their first appointments in June, 1816.

In his note to Bagot Monroe also stated that President Madison had appointed Major General Peter B. Porter, of Black Rock, New York, to serve as the American Commissioner under Article VI of the treaty.¹⁸

As early as September, 1815 Secretary Monroe had advised Porter that he was to be the President's choice for the position.

The President taking into view your patriotic and useful services in the late war and entertaining a high opinion of your qualifications has appointed you one of the commissioners for running the boundary line between the United States and the British provinces to the north as stipulated by the Treaty of Ghent.¹⁹

A formal commission of appointment was issued on 16 January 1816, signifying the Senate's approval of Madison's choice, and Porter took his oath of office before Smith Thompson, New York's Chief Justice, later in the month.²⁰

17.) James Monroe to Charles Bagot, (12 April 1816) in Manning, (ed.), Canadian Relations, I, p. 242.

18.) Ibid. Monroe's letter also indicated that Porter would serve as the American Commissioner under Article VII of the Treaty of Ghent once his duties under the sixth article were completed.

19.) James Monroe to Peter B. Porter; (9 September 1815). Peter B. Porter Papers, Reel 6, Document E-1.

20.) Moore, John Bassett. History and Digest of the International Arbitrations to which the United States Has Been a Party, Volume I. Washington, D.C. : Government Printing Office, 1898. p. 163. (Hereafter this work will be cited as Moore, J.B., History and Digest, I.)

Peter Buell Porter was born in Litchfield, Connecticut in 1773. He graduated from Yale in 1791, read for the law, and opened a frontier legal practice in Canandaigua, New York in 1795. From 1795 until 1809 Porter became increasingly important in the political life of his adopted state. He served first as the clerk of Ontario County, an area then embracing most of the western part of the state, and subsequently for a single term as a member of New York's Legislative Assembly. In 1810 Porter left Canandaigua and moved to Black Rock, New York, a village near Buffalo. At Black Rock he became a partner in the firm of Porter, Barton and Company, a transportation concern which held a monopoly in the carrying business between Lewiston, New York, below Niagara Falls, and Schlosser, New York, above the cataract.²¹ Porter's business activities in western New York caused him to be especially interested in the location of the international boundary. That portion of the line to be drawn between Lake Ontario and Lake Erie was of particular concern to him in that its future location might well serve to either promote or retard the prosperity of Porter, Barton and Company.

Also in 1810 Porter took up another position which tended to heighten his interest in the location of the boundary. In that year the New York Legislature appointed Porter as a member of the State's commission on inland navigation. This commission was established to conduct a survey

21.) Malone, Dumas; (ed.). The Dictionary of American Biography, Volume XV. New York: Charles Scribner's Sons, 1943. p. 99. (Hereafter this work will be cited as Malone, D. (ed.), D.A.B., XV.)

of an overland route for a proposed barge canal from Lake Erie to the Hudson River. The commission, whose activities were interrupted by the War of 1812, eventually reported in favor of a state-owned canal and drafted the plans from which the Erie Canal was later designed.²² Porter was extremely interested in the work of the commission because he hoped to arrange to have the western terminus of the canal located in the harbor of his home village of Black Rock.²³ The location of the western terminus at this point would, of course, have been a great advantage to Porter, Barton and Company and Porter lobbied actively for this goal throughout the years during which he was a member of both commissions.²⁴

22.) Ibid.

23.) From the abstract to Joseph Grande's doctoral dissertation entitled "The Political Career of Peter Buell Porter, 1797 - 1829", Ph.D., University of Notre Dame, 1971.

24.) Porter's continuing drive toward this end was obvious enough to be noted by another member of the American section of the boundary commission. In his diary Major Joseph Delafield wrote that "Black Rock, but a small settlement, was burned during the war. General Porter has an elegant new house there, and himself and Barton and Company are principal proprietors; they expect ultimately to rival Buffalo on account of their harbor." See Delafield Diary, 27 August 1817, p. 165.

At times, in fact, Porter allowed his interest in the canal to take precedence over his work on the boundary.²⁵

In 1809 Porter was elected to serve as a Congressman from New York in the federal House of Representatives. During the years of his congressional service, 1809-1813, Porter drew attention to himself primarily as the result of his views and opinions on two subjects. The first area of his concern centered upon the topic of federally-funded internal improvements. Porter became a leading advocate of federal grants of public lands to those individuals involved in endeavors to construct roads and canals throughout the United States.²⁶ While apparently

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- 25.) Porter's abiding concern with the work of New York's canal commission was expressed in an 1822 letter, a full six years after his appointment to the boundary commission, to Anthony Barclay, then the British Commissioner.

"By the mail of last evening was received that the New York Canal Commissioners have appointed a meeting at this place [Black Rock, New York] on the Sixth of June next, at which they have requested the attendance of every member of their Board and all of their principal Engineers for the purpose of examining and finally deciding on the important question of fixing the site for the proper Harbor for the western termination of the Erie Canal. The question involves considerations of great moment to the public at large, to the village in which I reside, and to me personally. Indeed I do not know of a question that could offset my individual interests so seriously, and I am extremely anxious to be present when it is agitated and decided as I have paid great attention to the subject for several years past, and believe it to be in my power to impart much information which the Commissioners could hardly obtain from any other quarter. It most unfortunately happens however that the meeting of our own Board is appointed at Utica on the 3rd of June, so that it will be impossible for me to attend the Canal Commissioners unless I can make some arrangement with you for varying the time of our meeting, which it is the object of this letter to propose."

See Peter B. Porter to Anthony Barclay, (12 May 1822). Peter B. Porter Papers, Reel 7, Document E-138-5.

- 26.) Malone, D., (ed.), D.A.B., XV, p. 99.

sincere in his belief in the positive effects of federal funding, Porter could hardly have failed to appreciate the benefits which might accrue to him and his state if federal aid could be secured for the Erie Canal project and for the construction of a harbor at Black Rock.

The second area of Porter's interest while in Congress involved his leadership of a faction within that body known as the "War Hawks". The War Hawks were a bloc of representatives who were willing to risk war with Great Britain in order to acquire that nation's respect for the neutral rights of the United States.²⁷ As a leader of this faction Porter supported this position, further advocating that the United States prepare to seize Canada from Great Britain in compensation for British seizures of American ships and their impressment of American sailors. Porter's position as the chairman of the House of Representatives'

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- 27.) Clement Eaton, in his biography of Henry Clay, describes the "War Hawks" in the following manner.

"In the first session of the House of Representatives [the first session of 1811] over which Clay presided there was elected a group of War Hawks, young men, chiefly from the West and South, who advocated a declaration of war against Great Britain. Animated by a sense of patriotism and regard for the nation's honor, they resented the arrogant treatment of American sailors and the violation of American maritime rights by Great Britain. Some of them, . . . , were stimulated to martial fervor by a belief that the British in Canada had given aid and encouragement to Indian attacks on the northern frontier."

See Eaton, Clement. Henry Clay and the Art of American Politics. Boston : Little, Brown and Company, 1957. p. 24.

Foreign Relations Committee made his voice particularly effective in the agitation of the War Hawks' cause.²⁸ Porter resigned his seat in Congress early in 1812 and returned to New York to aid in the State's preparations for the coming war.²⁹

During the War of 1812 Porter commanded a force composed of federal troops, disaffected British North Americans, militiamen from New York and Pennsylvania and friendly Indians from the Six Nations. Porter's unit was stationed along New York's Niagara Frontier and saw action in the engagements at Chippewa, Lundy's Lane and Fort Erie. Porter handled his unit with considerable skill and was about to be appointed to high rank in the American Army when the war ended.³⁰ Returning to Congress

28.) Perkins, Bradford. Prologue to War. England and the United States 1805-1812. Berkeley, California: University of California Press, 1961. p. 344.

29.) There appears to be some controversy in regard to the motivation behind Porter's resignation from Congress in 1812. The D.A.B. holds that Porter left Congress and returned to New York in order to aid in the preparation of the state's defenses. Bradford Perkins, on the other hand, argues that Porter's motivation was at least partially financial in nature and that "the New Yorker scampered off to the easier and more lucrative task of selling supplies to the Army." The D.A.B. notes that Porter served as New York's Quartermaster General from May until October, 1812. See Malone, D., (ed.), D.A.B. XV, p. 99 and Perkins, Bradford, Prologue to War. England and the United States, 1805-1812, p. 407.

30.) Malone, D., (ed.), D.A.B. XV, p. 100. For a good discussion of the disaffected Canadians under Porter's command, known collectively as the "Canadian Volunteers", see Graves, Donald E., "The Canadian Volunteers, 1813-1815," Military Collector and Historian, XXXI, 3 (Fall, 1979). pp. 113-117. Graves argues that the goal of the British North Americans in Porter's unit was to "overthrow British rule in Canada and to establish the country as part of the American republic."

late in 1814 Porter served there until 1816 when he resigned to become New York's Secretary of State. In 1817 Porter was defeated by Dewitt Clinton in the election for the governorship of New York.³¹ At the time of his appointment to the joint commission under Article VI Porter was involved primarily in activities designed to advance the fortunes of Porter, Barton and Company. Politically, Porter, in 1816, can be accurately labeled as an intense nationalist and a proponent of expansion. The duties assigned to the boundary commission seemed to promise Porter an opportunity to advance both his economic fortunes and his political ideals.

After a rather lengthy delay the British Government announced, in June, 1816, the appointment of Colonel John Ogilvy of Montreal to serve as its commissioner under the sixth article of the Treaty of Ghent. Ogilvy's commission was dated 30 June 1816 and he took the necessary oath of office shortly thereafter before Jonathan Sewell, the Chief Justice of the Province of Lower Canada.³²

Colonel John Ogilvy was a Montreal merchant and fur-trader who had been born in Scotland about 1769. Ogilvy had emigrated to Lower Canada in 1790 and had become a partner in the trading firm of Parker, Gerrard and Ogilvy shortly thereafter. In 1798 Ogilvy merged his firm with that of Forsyth, Richardson and Company to form the XY Company. Ogilvy directed this expanding organization and in 1804 he merged it with the

31.) Malone, D., (ed.), D.A.B., XV, p. 100.

32.) Moore, J.B., History and Digest, I, p. 163. Ogilvy's commission, like Porter's provided that he would serve as Britain's Commissioner under Article VII once his duties under Article VI were completed.

Northwest Company. At the time of his appointment to the boundary commission Ogilvy was a wealthy individual with a substantial interest in the Northwest Company.³³ Ogilvy's financial holdings made him particularly anxious to see that the international boundary be located as far to the south as was possible. A line thus established would ensure the continued prosperity of the British fur companies, while a line drawn too far to the north would make their future economic welfare an uncertain thing at best. Ogilvy was therefore faced with a two-fold task, namely, to assure adequate navigational rights for British subjects in the Great Lakes region and to provide access to the fur-rich western lands of North America for British traders.

From the rather sketchy records which are available in regard to John Ogilvy it appears as though he was a rather swashbuckling individual. Until his death in September, 1819 Ogilvy travelled all along the frontier in the company of the surveying crews operating under his direction. As the result of these excursions Ogilvy was able to offer expert opinions drawn from first-hand experience in his discussions with the American Commissioner. Ogilvy was an energetic man, accustomed to the enterprising ways of the fur trade, and disposed to work amicably with his

33.) Wallace, W. Stewart. The Macmillan Dictionary of Canadian Biography. Toronto : Macmillan, 1963. p. 561.

assistants, the members of the American party and Peter B. Porter.³⁴ Ogilvy's experience in the fur trade also enabled him to get along well with the various Indian tribes residing along the boundary. The American Agent related that local Indians presented no impediment to the surveyor's progress because Ogilvy held "great sway" over them.³⁵ Ogilvy's one continuing problem during his career as a boundary commissioner stemmed from his inability to cope with the interference and close bureaucratic supervision of the "desk-bound penny pinchers in London."³⁶

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- 34.) David P. Adams, the chief surveyor of the American party, when writing to inform Porter that the surveyors had finished their work for the 1818 season also noted that Ogilvy had been instrumental in the success of the surveyors work during the summer, and that he and Ogilvy had ended the season with some joint work around Kingston, Upper Canada.

"On the 11th of this month I took leave from Colonel Ogilvy, at Kingston, whither he had taken me in his boat from Garden Island, where he, his party and myself had spent some hours in working on a Line of Verification, which, when finished, was to be the last of their operations for this season. All that was required in the acts of the Board, has been strictly performed; and our parting was affected in the most friendly manner."

See David P. Adams to Peter B. Porter, (17 November 1818).
Peter B. Porter Papers, Reel 6, Document E-33.

- 35.) Delafield Diary, 28 May 1817, p. 140.
- 36.) Classen H. George, Thrust and Counterthrust, p. 99.

With their commissions in hand Porter and Ogilvy set about the task of designating the permanent members of their sections. The individuals to be selected would handle the day-to-day work of surveying and marking. Porter's appointments included Major Donald Fraser of the United States Army as the American section's secretary and David P. Adams and William A. Bird as the section's chief and assistant surveyors respectively. To the British section of the commission Ogilvy appointed Stephen Sewall of Montreal as secretary and David Thompson and Alexander Stevenson as chief and assistant surveyors.

The appointment of David Thompson as the chief British surveyor was the most interesting of the selections made by the two commissioners. Thompson was born in England in 1770. He came to Canada in 1784 and soon entered the employ of the Hudson's Bay Company. Thompson remained with the Hudson's Bay Company until 1797 when he joined the Northwest Company, the firm with which Ogilvy was to become associated in 1804. From 1797 until 1812 Thompson was engaged in trading and exploring on the western plains and Pacific slope of North America. During this period Thompson became the first white man to descend the Columbia River from its mouth to its source. Thompson, in his western travels, made traverses of his courses and observed various points for latitude and longitude. Upon leaving the western country in 1812 Thompson prepared a map of the territories he had explored which served as the basis for many subsequent maps of the area.³⁷ At the time of his appointment to the boundary

37.) Wallace, W. Stewart, The Macmillan Dictionary of Canadian Biography, p. 745.

commission Thompson was probably the most famous and respected explorer and cartographer in British North America. With both Thompson and Ogilvy on the commission the interests of the Northwest Company were sure to be kept in clear sight.

The permanent membership of the commission was completed with the appointment of an agent by each nation. Article VII of the Treaty of Ghent authorized both governments to designate an individual "to manage the business in behalf of their respective governments."³⁸ These agents, in short, were to protect their nation's interests during the course of the commission's proceedings. To the commission established under Article VI President Madison named Colonel Samuel Hawkins to serve as the agent of the United States. Great Britain failed to appoint an agent to the first meeting of the boundary commission.

38.) Treaty of Ghent, 24 December 1814, Article VIII.

CHAPTER IV :

The Joint Commission Under Article VI :

Survey, Negotiation and Compromise.

The first meeting of the joint commission established under the sixth article of the Treaty of Ghent took place at Albany, New York on 18 November 1816. During this meeting Porter and Ogilvy decided that they would, since the Board of Commissioners had not yet been fully organized and because the year was so far advanced, postpone the commencement of the commission's work until the spring of 1817.¹ The Albany meeting, therefore, dealt mainly with preliminary matters such as the exchange of credentials and oaths of office and the adoption of several resolutions governing the employment of surveyors, chainbearers and boatmen.² At the close of the session Porter and Ogilvy agreed that "to prevent unnecessary delay, the next meeting [of the commission] shall be on the spot where their active duty is to commence; and the parties accordingly adjourn, to meet at St. Regis on the tenth of May next."³ Because of inclement spring

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- 1.) Moore, J.B., History and Digest, I, pp. 163-165. The unorganized state of the Board of Commissioners in the fall of 1816 was the result of the failure of the British Government to appoint an agent to its section of the commission. This condition prevailed in the spring of 1817, but the commissioners decided to proceed with their work without waiting for an appointment. The British Government finally designated Colonel John Hale of Montreal to serve as its agent on 1 June 1818.
 - 2.) Ibid.
 - 3.) United States National Archives, Diplomatic Branch. Records Relating to the Commissions Established Under Articles VI and VII of the Treaty of December 24, 1814, Between the United States and Great Britain. R G 75, Entry 131, "Journal of the Proceedings for the Period 18 November 1816 - 22 June 1822.", 18 November 1818, p. 1. (Hereafter these records will be noted as "U.S.N.A., R G 75" together with the appropriate entry number. When an entry number is cited for the first time the specific title of that particular entry will be included in the citation; thereafter only the entry number will be used.)

weather and the poor condition of the roads adjacent to St. Regis, New York however, the boundary commission was unable to reconvene until 17 May 1817.

As the surveying parties prepared to set out from the commission's camp at St. Regis in the spring of 1817 the first task which they were assigned involved the location of "the point at which the 45th degree of North Latitude, continued west from the Connecticut River, strikes the river Iroquois or Cataraguy [the St. Lawrence River] ." ⁴ This particular point was of some consequence in that it served the dual function of providing the spot from which the boundary drawn under the sixth article was to begin and the point at which the line defined under the fifth article of the treaty was to terminate. ⁵ With the importance of this point in mind, Porter and Ogilvy resolved,

- That, in as much as the establishment of the said point is common to both commissions (being the place where the lines of boundary to be run by the two Boards connect) it is desirable not only that it be ascertained with great astronomical precision but that the same mathematical point should be adopted by both; and that this board, therefore deems it to be its duty not to proceed to any ultimate award relative to the said point until it should have consulted the other. ⁶

In order to facilitate the establishment of the point in question Porter and Ogilvy wrote to the Board of Commissioners under Article V suggesting that the two commissions co-operate in the designating process. ⁷

4.) U.S.N.A., R G 75, Entry 131, 29 May 1817, p. 12.

5.) Treaty of Ghent, 24 December 1814, Articles V and VI.

6.) U.S.N.A., R G 75, Entry 131, 3 June 1817, p. 13.

7.) Ibid.

Replying for his Board, Thomas Barclay, the British Commissioner under the fifth article, accepted the offer and arrangements were subsequently made for a series of joint astronomical observations.⁸ The requisite point proved somewhat elusive and, in the end, five different sets of observations were executed before the exact location was agreed upon late in the summer of 1818.⁹

8.) See Thomas Barclay to the Commissioners under the 6th and 7th Articles of the Treaty of Ghent, (14 June 1817) and C.P. Van Ness to the Commissioners under the 6th Article of the Treaty of Ghent, (4 August 1817). Peter B. Porter Papers, Reel 6, Documents E-12-4 and E-12-11. (C.P. Van Ness was the American Commissioner under the fifth article of the treaty.)

9.) David Thompson, the chief British surveyor and astronomer under the sixth article, described the complicated process involved in establishing this point in the following letter to Sir Robert Peel and Lord Stanley.

"In the Spring of the Year 1817, President Munro [sic] sent Professor Elliott to determine the place where the 45th parallel of North Latitude intersects the River Cataraugy -- This was done unknown to the Commissioners under the treaty of Ghent. Mr. Elliott placed a stone on a rising ground at St. Regis and returned to Washington. In the early part of the Summer of 1818 the Commissioners under the 5th and 6th Articles of the Treaty of Ghent, agreed to determine the place of the 45th parallel of Latitude. For the 5th Article on the part of Great Britain, as astronomer, was Mr. John Tiaiks - a German - On the part of the United States, Professor Hepler a Swiss. After about 6 weeks, they adopted the stone placed by Mr. Elliott as the Boundary of the 45th degree of Latitude. Mr. David P. Adams, the United States Astronomer and myself for Great Britain, under the 6th Article, determined the 45th degree of North Latitude to be 102 yards South of the stone placed by Mr. Elliott."

The point just south of Elliott's stone was eventually adopted by both commissions. See David Thompson to Sir Robert Peel and Lord Stanley, (no date). Archives of British Columbia, David Thompson Collection, AB.40 T 37.9, Letter No. 2. (These letters appear to have been written by Thompson about 1840.)

With this point fixed, the two surveying parties entered upon the task of conducting "a complete and perfect survey, ... of the River St. Lawrence into and to include all the islands in the northerly end of Lake Ontario"¹⁰ The Commission's survey of the St. Lawrence developed into an excruciatingly slow process due chiefly to the very large number of islands which clogged the river from the starting point of the boundary near St. Regis to Lake Ontario. The surveyors of the two nations worked through their respective sections of the St. Lawrence during the summer seasons of 1817, 1818 and 1819¹¹ and succeeded in tracing a boundary among that river's "intricate labyrinth of islands."¹²

The efforts of the surveyors in the Thousand Islands section of the St. Lawrence were greatly assisted by a pair of decisions made by Porter and Ogilvy during their meeting at St. Regis in May, 1817. The Commissioners had first decided that they would try to adhere as closely as possible to a "middle line" approach to the drawing of the boundary.¹³ In the

10.) Bird, William A., "Reminiscences of the Boundary Survey Between the United States and the British Provinces," p. 4.

11.) The Commissioners adopted a surveying procedure whereby each surveying party was assigned alternate sections of the boundary. The surveyors then proceeded in a rather "leap-frog" fashion with each party checking the other's work. See Classen, H. George, Thrust and Counterthrust, p. 98.

12.) Major Donald Fraser to Peter B. Porter, (19 September 1818). Peter B. Porter Papers, Reel 6, Document E-30.

13.) Piper, Don C., The International Law of the Great Lakes, p. 9.

international law current in the early nineteenth century the "middle line" in a given body of water was simply designated as that line which was equidistant from both shores.¹⁴

Although the Commissioners agreed that they would employ the middle line approach as one of their guidelines they also realized that it could not be applied in a completely inflexible manner. The boundary which was to be delineated under the sixth and seventh articles traversed a distance of approximately 1,715 miles.¹⁵ Along this course, which consisted almost totally of bodies of water of differing shapes and sizes, lay more than two thousand islands.¹⁶ If the middle line rule had been rigidly applied along the entire length of the boundary, without variation, a significant number of the border islands would have been divided into British and American areas of jurisdiction. Both Commissioners regarded this result as very undesirable in that the division of individual islands in this

14.) Ibid. In the international law current in the first half of the nineteenth century the "middle line" approach to boundary-making was apparently accepted as the norm. Piper quotes a relevant section from Vattel's Les Droit des Gens as follows, "If a lake lies between two States, it is held to be divided between them by a line through the middle of the lake."

15.) The distance covered under Article VI totalled 956 miles, while that under Article VII totalled 759 miles. For an exact breakdown of the respective distances see Boggs, S. Whittemore, International Boundaries. A Study of Boundary Functions and Problems, p. 40.

16.) Peter B. Porter to John Quincy Adams, (12 February 1822). Peter B. Porter Papers, Reel 7, Document E-135-2.

manner "would lead to collisions between the citizens and subjects of the two Governments, furnish facilities for breaches of the Revenue laws, and the means of escaping from punishment for other crimes."¹⁷

With these difficulties in mind, Porter and Ogilvy concluded that they would modify the middle line rule by agreeing that the boundary would be run entirely through the water and that no island would be divided between the two nations.¹⁸ Whenever it was possible, therefore, the commission would use the middle line approach, but when the middle line threatened to divide an island into two sections the boundary line would be shifted to one side or the other to avoid it. In short, the Commissioners "determined that to whatever Power the greater part of an intersected island should belong, that Power should have the whole of the island."¹⁹ The commission proceeded in the manner described by Thompson and established a sort of "debit and credit" account of the amount of island acreage awarded to each nation as a result of the attempt to maintain a boundary which ran exclusively through the water.²⁰ In this way the Commissioners sought

17.) Peter B. Porter to James Monroe, (10 December 1818). U.S.N.A., R G 75, Entry 141, "Letters Received from the United States Commissioner, 1815-1828".

18.) Piper, Don C., The International Law of the Great Lakes, p. 11.

19.) The words are those of British surveyor David Thompson and are quoted in James White, "Boundary Disputes and Treaties," in Adam Shortt and Arthur G. Doughty, (eds.). Canada and Its Provinces, VIII. Toronto: Edinburgh University Press, 1913. p. 829.

20.) Bird, William A., "Reminiscences of the Boundary Survey Between the United States and the ~~British~~ Provinces," p. 7.

to assure an equitable division of the islands located in the boundary waters.²¹

The survey of the St. Lawrence was completed during the early summer of 1819 with very little disagreement arising between the two parties in regard to the disposition of the river's myriad islands. The only significant point of difference arose over the ownership of Wolfe Island, which lay in the river about four miles off Kingston, Upper Canada. The Commissioners had initially scheduled the island to be awarded to the United States but protests emanating from the British Government led to the cancellation of this arrangement.²² Britain's sudden opposition was prompted by the

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- 21.) Ibid., pp. 7-8. W.A. Bird, a surveyor in the American Section of the commission, described a particular application of this "debit and credit" principle in the following manner.

"This plan of dividing the doubtful islands operated favorably in our immediate vicinity, as Grand (or Long) Island in the St. Lawrence, containing about 30,000 acres, was given to the British side. The Commissioners came into the Niagara River with much the larger quantity of doubtful island territory on that side. There was therefore no hesitancy in appropriating Grand Island in the Niagara River to the United States. That island (other things being equal) would have been questionable, as the largest surface of water is on the American side, although the quantity of water is about three-fifths on the British side."

- 22.) After surveying Wolfe Island Colonel Hawkins noted in his diary that "a bysecting [sic] line would throw its greatest part South of our national boundary" and thereafter it would rightfully be placed under the jurisdiction of the United States. Hawkins also seems to have had a slight premonition in regard to the question of final ownership of the island when he wrote that, given the position and strategic importance of Wolfe Island, "it is probable that title to this Island will be confidently asserted by both Governments." See U.S.N.A., R G 75, Entry 143, "Report of the United States Agent Concerning the Boundary Line from St. Regis to Lake Superior, 16 February 1817".

Admiralty's vigorous objection to American control of Wolfe Island. As it happened, Kingston harbor was the site of Great Britain's strongest naval installation on the Great Lakes and the Admiralty feared that if the island went to the United States the Americans would proceed to fortify it and thereby control access to and egress from the harbor. Should this occur, Britain's naval and military facilities at Kingston would be effectively neutralized. The Admiralty advised Anthony Barclay,²³ the British Boundary Commissioner, of its concern and requested him to make every possible effort to prevent the acquisition of Wolfe Island by the United States.²⁴ Barclay viewed the matter as being one of "primary consideration" and after holding several conversations with Porter he was able to inform his government that he had "succeeded in inducing the American commissioner

23.) Colonel John Ogilvy had died at Amherstburgh, Upper Canada on 28 September 1819 while engaged in the direction of the work of the British surveyors in and around the area of the Detroit River. Upon Ogilvy's death Porter ordered the suspension of all surveying activities for the balance of the 1819 season. In Ogilvy's place the British government appointed Anthony Barclay, a Nova Scotian lawyer and the son of Thomas Barclay, the British Commissioner under Article V of the Treaty of Ghent. Barclay took up his duties on 3 June 1820. See U.S.N.A., R G 75, Entry 131, 3 June 1820 and Moore, J.B., History and Digest, I, p. 165.

24.) White, James, "Boundary Disputes and Treaties," p. 829.

in appropriating this momentous island to Great Britain."²⁵ In order to obtain this result Barclay had concluded an arrangement with Porter which involved the cession of Wolfe Island by the United States in return for Britain's cession of Grand Island in the Niagara River and the Long Sault Islands, including Barnhart Island, in the St. Lawrence near Cornwall.²⁶ This exchange settled the problem of Wolfe to the satisfaction of both nations.²⁷

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- 25.) Barclay described the basis for Britain's interest in Wolfe Island in the following manner.

"The island lies in the River St. Lawrence, immediately and in full view of the Dockyard, and Fortifications and Town of Kingston. In point of extent and fertility, also, it is the first island adjacent to the boundary. It contains 31,283 Acres. His Majesty's Dockyard at Kingston is the most important establishment in those provinces, and I deem it an object of primary consideration, to secure everything which might preserve or contribute to its advantages."

Quoted in Classen, H. George, Thrust and Counterthrust, p. 102.

- 26.) White, James, "Boundary Disputes and Treaties," p. 829.
- 27.) While the British and American governments were quite pleased with the arrangement regarding Wolfe Island, Barclay came under strong criticism from several people in Lower Canada for allowing the Long Sault Islands, and especially Barnhart Island, to pass into the control of the United States. Barclay received a memorial from a group of Canadians, resident in the vicinity of Cornwall, in which they asserted that the loss of the islands was injurious to their trade and commerce. Barclay paid little heed to the memorial because he believed that it originated from a group of smugglers who feared the loss of the Long Sault Islands because "these islands have served as the principal depots for smuggling along the whole frontier." Apparently the Canadians had influence with neither Barclay nor the British government for the exchange of islands was eventually included in the awards made under Article VI. See Classen, H. George, Thrust and Counterthrust, p. 102 and U.S.N.A., R G 75, Entry 131, 18 June 1822, "Decision of the Commissioners Under the Sixth Article of the Treaty of Ghent".

With the St. Lawrence tangle successfully unravelled, the Commission's surveyors proceeded to move through Lake Ontario during the summer of 1819.²⁸ By the middle of July Porter was writing to the Secretary of State in decidedly optimistic manner,

I have the satisfaction to inform you that, by tomorrow night, we shall have completed the survey of the Niagara Strait and the sections of the two lakes connected with it, and shall immediately thereafter proceed to the islands at the west end of Lake Erie - and that we entertain strong hopes of being able to progress in the course of the season, as far as Lake Huron. 29

As it turned out Porter's favorable forecast was only partially accurate. The survey of the Niagara River was completed on schedule and the work parties did indeed move on to the western end of Lake Erie. At that end of the Lake, however, the surveyors encountered difficulty in delineating the boundary through the Detroit River. "I apprehend some difficulty," Porter wrote "in settling the boundary at this place", and, indeed, the

28.) Commissioners Porter and Ogilvy had entered their plan for surveying during the 1819 season in the Commission's journal as follows.

"Resolved, that on the arrival of the Surveyors (who are daily expected from Lake Ontario where they have been engaged in completing some unfinished business of last year) they proceed to the survey of the Niagara River and its islands, and, on the completion thereof, continue the survey of the line to the West, upon the plan hitherto pursued - paying particular attention to the accuracy of the survey from Point-au-plait and Sandusky upwards through the water communications between Lakes Erie and Huron."

The water communications between the two last mentioned lakes included Lake St. Clair, the St. Clair River and the Detroit River. See U.S.N.A., R G 75, Entry 131, 4 June 1819, p. 34.

29.) Peter B. Porter to John Quincy Adams, (19 July 1819). Peter B. Porter Papers, Reel 6, Document E-74.

problem in the Detroit River would prove to be the most complex and potentially disrupting one to be addressed by the commissioners under Article VI.³⁰

In the mouth of the Detroit River lay four islands ; Bois Blanc, Sugar, Stoney and Fox. Of these islands only Bois Blanc which was closest to the Canadian shore, was of any consequence, with the others being more or less "mere specks" in the river.³¹ Disagreement arose between Great Britain and the United States over the disposition of these islands primarily as the result of two considerations. First, as had been the case with Wolfe Island in the St. Lawrence, each side was concerned with the strategic military value of the islands.³²

The military security of the area immediately adjacent to the Detroit River had been a matter of great concern to both the British

30.) Peter B. Porter to John Quincy Adams, (24 May, 1820).
U.S.N.A., R G 75, Entry 141.

31.) Classen, H. George, Thrust and Counterthrust, p. 102.

32.) Ibid.

and American governments since the conclusion of the Treaty of Paris in 1783.³³ In the half century following the end of the American Revolution Detroit stood as a focal point for the trade and commerce which flowed westerly along the Great Lakes waterway and for the fur traders who were carrying their valuable pelts back toward Montreal and New York City from the western reaches of the continent. In addition to these economic factors, the War of 1812 had amply demonstrated that the area in and around Detroit provided a location which was particularly vulnerable to invasion either by Yankees storming into Upper Canada or by British North Americans driving into the Old Northwest. Practical wartime experience had made clear to both nations the benefits which might accrue from a strong military

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- 33.) The military dimension of the disagreement over the location of the boundary through the Detroit River emphasizes once again the concern of each government over the possible hostile intentions of the other. This military factor was a matter of concern to the boundary commissioners operating under Article VI throughout the course of their proceedings. R.A. Preston has pointed out that the three major invasion routes into and from Canada are located near or along the length of boundary covered by the sixth article. These routes are located up the Richilieu River towards Montreal and then to Quebec in the east and Kingston in the west, across the Niagara Frontier and across the Detroit River. In addition, therefore, to deciding upon the ownership of thousands of islands and plotting a boundary through the continent's major waterway system, the boundary commissioners were also forced to weigh each of their decisions in the light of military and strategic considerations. For more information regarding the potential invasion routes through the Great Lakes region see Preston, Richard A. The Defense of the Undefended Border. Planning for War in North America 1867-1939. Montreal : McGill - Queen's University Press, 1977. pp. 13-14.

establishment in the vicinity of Detroit. Finally, the British valued Detroit, along with the remainder of the Northwest posts, for the contact it provided with the Indian tribes resident within the boundaries of the United States. Through such posts as Detroit, Niagara and Michilimackinac the British sought to maintain friendly relations with the Indians, cultivate an anti-American bias among the tribes, and thereby place a roadblock in the path of further westward expansion by the United States.³⁴

All of these factors, therefore, influenced the negotiations which occurred between Porter and Barclay in regard to the final disposition of the islands in the Detroit River. Each commissioner feared that the islands would be fortified if they fell to the control of the other's nation and, once fortified, would be able to control the river and the opposite shore. Neither side wished to see the other achieve a military

34.) See Ritcheson, C.R., Aftermath of Revolution, pp. 319-321; Burt, A.L., The United States, Great Britain and British North America, pp. 381-386; Allen, H.C., Great Britain and the United States, pp. 272-273; and, Campbell, C.S., From Revolution to Rapprochement, pp. 30-31.

preponderance in the area.³⁵

The second complication in regard to the Detroit River involved the issue of navigational rights between and amongst the river's islands. As the river flowed past Sugar, Fox, Stoney and Bois Blanc Islands it yielded three navigable channels: one in the eastern section of the river, one in the western section and one running approximately through the middle of the river. The eastern channel would, if chosen for the location of the boundary, give the islands in question as well as the exclusive control of navigation on the river to the United States. The western channel would

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- 35.) The near predominance of military considerations in regard to the dispute over the ownership of the islands in the Detroit River is clearly revealed in the tone and content of the following letter written by the American Agent to the Secretary of State.

"The territorial value of the Islands in dispute, is trifling but their control of the Detroit River, in both a civil and military sense, attaches to them some consequence....

It seems, that most importance is given to these Islands, by the British Commissioner, because of their military control of Detroit. This may be a subordinate consideration on the part of the United States, still it receives additional insight from the fact that it is intended by the British authorities in the Canadas, to concentrate their naval depots on the Upper Lakes, at the mouth of the Detroit, when Bois Blanc, shall be declared to be, a British island. This circumstance is not mentioned, as having any bearing upon the merits of the question, but to explain, that if these islands, are relinquished, the British Government will not only have, a civil jurisdiction over the two best channels of the Detroit, but a military force on the spot to act in concert...."

See Major Joseph Delafield to John Quincy Adams, (18 December 1821). U.S.N.A., R G 75, Entry 142, "Letters Received from the United States Agent, 1816-1828".

bestow identical advantages to Great Britain. The middle channel would divide the four islands and thereby create a navigable passage flanked on the west by American territory and on the east by British territory. Not surprisingly, Porter initially chose the eastern channel while Barclay clearly favored the western.³⁶

Barclay's demand for the western channel was apparently not open to compromise. Even before the Board of Commissioners convened after the close of surveying in the Detroit River, Barclay had informed Porter of his determination to secure the western channel for Britain.³⁷ Once the

36.) Porter's choice would have given all four islands in question to the United States; Barclay's choice would have given all four to Great Britain. The middle line would have given Bois Blanc to Britain and Sugar, Fox and Stoney to the United States. It is interesting to note that neither Commissioner initially chose the best navigable channel through the Detroit River. According to Porter the middle channel was the best in that it was able to accommodate lake vessels drawing up to twelve feet of water. It appears that both Commissioners were originally willing to settle for a channel which was, while still navigable, decidedly inferior to the best one available. In this instance, however, appearances were deceiving. The channels originally claimed by Porter and Barclay would have given their respective nations not only the channel claimed and all four islands, but, also, control of the middle channel which was the best for navigation. One is forced to conclude, therefore, that each Commissioner's initial claim was based upon a desire to attain complete strategic military control of the islands in and the navigation on the Detroit River. Military considerations appear to have been paramount in the minds of both Commissioners. For a discussion of the three navigable channels in the Detroit River and their respective qualities and deficiencies see Peter B. Porter to John Quincy Adams, (17 December 1821). U.S.N.A., R G 75, Entry 141.

37.) Classen, H. George, Thrust and Counterthrust, p. 102.

Board began its deliberations in December, 1821 it became immediately apparent that Colonel John Hale, the British Agent, fully supported the British Commissioner on this question. Hale told the Board that it was his opinion

that upon the Map exhibited by the Surveyors a line drawn along the middle of said water communication [the Detroit River] measured from the main shore on each side, appeared to pass to the westward of both the said Islands Sugar and Stoney : that is to say, leaving every part of them on the British side of the middle line so drawn. The undersigned therefore feels it his duty to claim both Islands for Great Britain not only in the spirit but according to the very letter of the aforesaid Treaty.... 38

Several days later Hale added that the view he had announced in regard to Sugar and Stoney Islands applied "with additional force in support of the claim of Great Britain" to Bois Blanc Island.³⁹

The potential for deadlock over this issue became clearly evident in the reaction of the American Agent to Barclay's demand for the western channel. Major Delafield indignantly informed his British counterpart that the United States could not accept Britain's proposal because

...the channel on both sides would be bounded by the territory of the one party, and consequently become the empire and jurisdiction of one party; and the navigation of the river subject to its control. It is not meant that this channel which is a highway free and common to all can be by any power usurped for its individual and exclusive use. 40

Delafield went on to argue that, in place of the British plan, the boundary

38.) U.S.N.A., R G 75, Entry 131, 5 December 1821, p. 60.

39.) Ibid., 8 December 1821, p. 72.

40.) Delafield Diary, "Introduction", pp. 53-54.

should be drawn through the eastern channel of the river⁴¹ and that the American claim was

intended to comprise the Island of Bois Blanc; the jurisdiction to the middle of the eastern channel; between the Island and the Canada main shore; and over the subordinate channels, flats and territory west of the Island of Bois Blanc, to the main shore of the United States, together with Sugar and Stoney Islands. 42

Evidently Delafield did not feel that the complete control guaranteed to the United States by a boundary established through the eastern channel amounted to the usurpation of a "free and common" highway for exclusive use.

With the commission facing imminent deadlock, Porter and Barclay began to cast about for an acceptable compromise. Porter supported Delafield's contentions, but he appears to have believed that Britain's arguments were not without merit. In a letter to Secretary of State John Quincy Adams Porter described the position he had taken in regard to the Detroit River islands, intimating as well that compromise might be the most advisable course for the United States to pursue.

By [reference] to the map enclosed, you will perceive that, between the two channels or passages selected by Mr. Barclay and myself respectively on the true course of the Boundary along the Detroit River, there is another channel or passage, separating Bois Blanc Island on the east from Sugar, Fox and Stoney Islands on the west, which is broader, and discharges a greater quantity of water than either of the two we have respectively assumed. And it is possible, but, I hope not probable, on a reference of this subject

41.) Major Joseph Delafield's reply to the British Agent's Assertion vis. Bois Blanc Island, et. al., (13 December 1821). Peter B. Porter Papers, Reel 7, Document E-125-12.

42.) U.S.N.A., R G 75, Entry 131, 5 December 1821, p. 64.

to the umpire provided by the Treaty of Ghent, he may adopt this intermediate passage as the line instead of taking either the one contended for by Mr. Barclay or by myself : and the effect of such a decision would be, to give one of the islands in difference (Bois Blanc) to the British and the other three to the United States. 43

After having suggested to Adams that there was a chance that a third party arbitrator might decide against the American claim, Porter went on to announce that he had approached the British Commissioner as to the possibility of designating the middle channel of the river as the location of the boundary. "Mr. Barclay did not agree," Porter wrote, "but before the end of the meeting..., he intimated to me his full belief that, if an opportunity could be afforded to him to consult his government, he should be authorized to accept the proposition"⁴⁴ Porter had thus made the first step toward a compromise solution and it was now up to Barclay and his government to respond.

Barclay's superiors in the British government appear to have been initially reluctant to accept Porter's compromise offer because they believed that an arbitrator was certain to uphold their Commissioner's assertions regarding the boundary and the islands in the Detroit River. Once Barclay explained that the issue might completely disrupt the Commission's proceedings, however, the British government began to reconsider its position. Also influencing Britain's willingness to

43.) Peter B. Porter to John Quincy Adams, (9 February 1822).
Peter B. Porter Papers, Reel 7, Document E-135-1.

44.) Ibid.

re-evaluate her stance was the realization that a reference to a third party arbitrator would mean the expenditure of additional time and money. Confronted with the possibility of a breakdown in negotiations and further expense and delay the British government directed Barclay to attempt to settle the Detroit River controversy along the lines suggested by the American Commissioner.⁴⁵

Armed with his government's approval, Barclay notified Porter that he would accept the middle channel compromise on the condition that the United States would agree not to fortify the three islands, Sugar, Fox and Stoney, which would fall into its possession.⁴⁶ Barclay presented his acceptance of Porter's compromise offer in terms which were, to say the least, aggressive. "In his [Barclay's] zeal to carry his point," Porter noted later, "and in a mistaken belief that this could be effected by tendering ultimate propositions, he has committed himself in such a manner as to make it difficult for him to retreat."⁴⁷ Porter's initial impulse was to respond negatively to Barclay's proposition, but, upon reflection, he decided that the "condition... was not in my power, had I been so disposed to accede to"⁴⁸ Believing that he had the authority

45.) Piper, Don C., The International Law of the Great Lakes, pp. 13-14.

46.) Peter B. Porter to John Quincy Adams, (17 December 1821).
U.S.N.A., R. G 75, Entry 141.

47.) Ibid.

48.) Ibid.

neither to accept nor reject the British Commissioner's terms Porter referred the entire matter to Secretary of State Adams. While the British position was being discussed in Washington, Barclay sought to place a little more pressure upon the United States by informing Porter that, since the American government had not yet responded favorably to his terms, he was ready to prepare and issue a separate report, as provided for by the Treaty of Ghent, thereby terminating operations under Article VI without achieving the desired results.⁴⁹

Secretary Adams regarded the condition proposed by Barclay as being "beyond the authorities of the Commissioners" and as being of a type which "this Government itself can agree to only in the form of a Treaty, Convention, or arrangement..., to which the advice and consent of the

49.) Barclay's ultimatum was entered in the Commission's journal as follows,

"Mr. Commissioner Barclay stated to the Commissioner of the United States, that as an agreement between them, upon the whole Boundary under the 6th Article appeared impracticable, he was ready to exchange Reports of the points of difference with Mr. Commissioner Porter at as early a period as he should appoint."

See U.S.N.A., R G 75, Entry 131, January, 1822, p. 109.

Senate would be necessary to give it effect."⁵⁰ Although unable to accede officially to Barclay's condition Adams was just as unwilling as the British government to be the cause of a breakdown in the Commission's negotiations. To avoid such a disruption, therefore, Adams concluded an informal arrangement with the British Minister at Washington, Stratford Canning, to allow for the implementation of Porter's compromise. Adams described the agreement in a letter to the American Minister in London.

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- 50.) John Quincy Adams to Richard Rush, (5 January 1822) in William R. Manning, (ed.). Diplomatic Correspondence of the United States, Volume II : Canadian Relations, 1820-1835. Washington, D.C.: Carnegie Endowment for International Peace, 1942. pp. 7-8. It is interesting to note that although the two Commissioners were at loggerheads over the question of the fortification of the islands it was upon their mutual suggestion that the matter was referred to Adams and Canning.

"In this awkward situation we have agreed, at our meeting this day, as the most probable means of bringing the commission to an amicable termination, to refer the unsettled question to yourself [Adams] and Mr. Canning the British Minister at Washington; and to adopt such line, in the Detroit Section, as you may both advise; or, in case you should decline the responsibility of determining the line, to avail ourselves separately of your counsel and advice as to the best means of effecting the objects we have in view."

In addition, Porter suggested the compromise regarding fortifications which was eventually adopted by Adams and Canning.

"It is possible (and I think it would be desirable on our part) that the Ministers of the two Governments at Washington, may agree that no military works shall be erected on any of the Islands at the mouth of the Detroit River - and in such case it would seem from the last proposition of Mr. Barclay, that we should no longer differ about the line...."

See Peter B. Porter to John Quincy Adams, (17 December 1821). U.S.N.A., R G 75, Entry 141.

But to remove as far as we can the scruple of Mr. Barclay, I have informed Mr. [Stratford] Canning that we have no objection to the principle of disarming the Islands as well as the Waters, provided that the stipulation is made reciprocal, and applicable to all Islands at the mouth of the Detroit River.... 51

- 51.) John Quincy Adams to Richard Rush, (5 January 1822) in W.R. Manning, (ed.), Canadian Relations, II, pp. 7-8.

Although Secretary Adams tossed off his phrase about "the scruple of Mr. Barclay" rather flippantly there was more to Barclay's adamant stand regarding the Detroit River situation than mere personal stubbornness. In the era of Anglo-American relations stretching from 1783 until 1871 mutual trust was not a trait often manifested in North Atlantic negotiations. While neither nation trusted the other to any considerable degree, the British were especially sensitive to what they regarded as American unreliability in the realm of international intercourse. This lack of trust in the ultimate intentions of the Americans entered directly into Barclay's view of the problem in the Detroit River. The British Commissioner realized that a controlling American military presence in the river would be very detrimental to Britain's strategic interests there. He was, therefore, particularly reluctant to accept any verbal American assurances that the islands would not be fortified in the present or in the future. Barclay insisted that a definite agreement be made at a fairly high governmental level before he would accept Porter's compromise offer. Barclay's suspicions regarding the true intentions of American diplomacy are succinctly expressed in a letter written by David Thompson on the subject of getting explicit American agreement to the decisions made by the commission under Article VI. Thompson warned that it was essential to attain clear and binding agreement on the part of the United States because,

"It is the policy of the United States to leave all their exorbitant Claims to the operations of time which familiarizes and softens the claim, and may perhaps give them a favorable opportunity to seize what they know will not be granted. The leading men of the United States (and public opinion is wholly with them) all hold it as a maxim that no Foreign Power has any rights to any part of North America, and every means must be employed to expel this Foreign Power -"

Barclay shared Thompson's assumptions and the distrust and suspicion displayed by both men in the 1816-1822 period remained operative in British government circles until late in the nineteenth century. While these attitudes endured they placed an obstacle in the path of Anglo-American reconciliation. For the text of the letter quoted above see David Thompson to Sir Robert Peel and Lord Stanley, (no date). Archives of British Columbia, David Thompson Collection, AB 40 T 37.9, Letter No. 4.

The conclusion of the Adams-Canning arrangement allowed the Commissioners to reach a mutually satisfactory agreement in regard to the location of the boundary through and the ownership of the islands in the Detroit River. In the Commission's journal, Porter and Barclay explained the factors which had allowed them to break the Detroit River deadlock in the following manner,

That he [Barclay] has nevertheless received instructions from His Majesty's Ministers, rather to concede to the United States, the possession of three Islands, Namely Sugar, Fox and Stoney, which form the ground of controversy, than to break off the amicable negotiations on foot, between the respective Commissioners, and for an object of such small importance to either Government, incur the great expense and delay which must result from any reference to a Third Power.

The undersigned therefore is ready to cede Sugar, Fox and Stoney Islands, to the United States; provided the Commissioner of the United States agree to appropriate the island of Bois Blanc to His Majesty; and to establish the line, in the water passage between Bois Blanc and the three before mentioned Islands.

The Commissioner of the United States having also communicated with his Government in relation to the points in difference, has received and examined with much satisfaction the proposals of his colleague; and duly appreciating the friendly dispositions by which they have been produced, has concluded to accept the offer to adopt as the Boundary, the channel between Bois Blanc Island on the one side and Sugar, Fox and Stoney Islands on the other. 52

Although the compromise arrangement was accepted by both nations the final agreement had to be phrased in a manner which would prevent either

52.) U.S.N.A., R G 75, Entry 131, 18 June 1822, pp. 117-119.

nation having to admit that its original claims were either inaccurate or extravagant. In this regard Porter took immediate exception to Barclay's use of the word "cede". "In acceding to this [Barclay's] proposition, however," Porter wrote, "he [Porter] wishes it to be distinctly understood, that he does not accept Sugar, Fox and Stoney as a cession from the British Government, nor does he on the contrary offer Bois Blanc as such."⁵³

Porter reaffirmed the intention of the American Government to accept the compromise, but he emphasized

that no part of this arrangement, shall be considered as an abandonment by either of the Commissioners of any principles which they may have heretofore assumed for the establishment of the Boundary. ⁵⁴

Barclay quickly accepted the qualification desired by Porter and, in turn, the British Commissioner entered a statement similar to Porter's into the Commission's journal.⁵⁵ With each nation's honor successfully protected, the Commissioners drew the boundary through the middle channel of the Detroit River. Bois Blanc Island was assigned to Great Britain while Sugar, Fox and Stoney Islands went to the United States.

53.) Ibid.

54.) Ibid.

55.) Ibid. In his reaffirmation of his original claim Barclay declared that "the undersigned wishes it to be clearly understood that he does not hereby depart from any of the principles which as His Majesty's Commissioner, he has asserted, and which formed the general and practical basis of the arrangement, so far as the said Boundary line has been agreed upon."

While the controversy over the Detroit River had been raging, the Commission's surveying parties had proceeded to execute the remaining surveys through Lake Huron to the water communication between that lake and Lake Superior. With these surveys completed, and the Detroit River problem resolved, the tasks required of the Commission under Article VI were entirely fulfilled. The Commissioners met for the final time under the sixth article at Utica, New York on 22 June 1822. On that date Porter and Barclay issued a joint report and, as they had pledged to do in the provisions of the Treaty of Ghent, both governments subsequently accepted the report as being final and conclusive.⁵⁶

56.) See Moore, J.B., History and Digest, I, p. 166 and "Decision of the Commissioners Under the Sixth Article of the Treaty of Ghent", U.S.N.A., R G 75, Entry 131, 18 June 1822.

CHAPTER V :

The Joint Commission Under Article VI :
Some Problems of Internal Strife and
Congressional Interference

In addition to the diplomatic and geographical difficulties encountered during the demarcation of the international boundary, the two Commissioners were forced to confront several problems which did not directly relate to the boundary but which endangered not only their own efforts but also the development of the joint commission approach to diplomacy. The commission under the sixth article was challenged chiefly by two problems, one emanating from within the commission and the other from sources external to it. The first resulted from a conflict between the American Agent and the Board of Boundary Commissioners and the second one from an investigation conducted by a committee of the United States House of Representatives into the activities of the American Commissioner and his section of the commission.

(I.)

Almost immediately upon the opening of the commission's St. Regis meeting Porter was confronted with a challenge to his position and authority as the head of the American Section. On 26 May 1817, Colonel Samuel Hawkins presented his credentials as the American Agent to the Board of Commissioners.¹ The Treaty of Ghent had provided for the appointment of two agents whose duty it would be "to manage the business on behalf of their respective governments."² Hawkins had been appointed by the President

1.) U.S.N.A., R G 75, Entry 131, 26 May 1817, p. 9.

2.) Treaty of Ghent, 24 December 1814, Article VIII.

and confirmed by the Senate in April, 1816 and he arrived in St. Regis eager to take up his duties and, if possible, to expand their scope. Hawkins' desire to augment his duties and responsibilities constituted a significant threat to Porter, and, indeed, also to Colonel Ogilvy, for if Hawkins was to succeed in his quest for greater power he could do so only at the expense of the commissioners' ability to effectively direct the activities of their respective sections and the commission as a whole. Hawkins' wish to enlarge his duties led him directly to a clash with Porter over the question of whose responsibility it would be to assign and manage the work of the American surveying party.

Just prior to Hawkins arrival at St. Regis, Porter and Ogilvy had drawn up affidavits which placed the surveyors and the commission's various other employees fully under the control of the commissioners.³ Both commissioners were anxious from the very start of their work to ensure that they retained exclusive direction of the commission's activities.⁴ Hawkins, however, had somewhat different ideas in this regard. In one of

3.) Delafield Diary, p. 138.

4.) Porter explained the determination of the commissioners to maintain total control of the activities of their organization in a letter to the Acting Secretary of State. "In short," Porter wrote, "the Commissioners deemed the existence of some paramount authority for settling all incidental difficulties, as indispensable to the successful operation of this, as it is to those of every other similar tribunal" See Peter B. Porter to Richard Rush. (24 June 1817). U.S.N.A., R G 75, Entry 141.

his first appearances before the Board of Commissioners the American Agent announced that he was of the opinion that "his duties require that the surveyors should receive his instructions...."⁵ Hawkins believed that he and his British counterpart should direct the activities of the commission's surveyors and then submit the information they had gathered and the maps they had drawn to the commissioners for their consideration. In Hawkins' view the commissioners were to sit as judges while the agents were to act as advocates. The conflict between the American Agent and Porter and Ogilvy derived chiefly from the fact that the two commissioners viewed the role of the agent as being that of a counselor to the commission while Hawkins considered it as being that of an advocate for his nation.⁶ In a rather lengthy letter to the Board Hawkins framed his argument in the following manner.

The American Commissioner is impressed with the belief - (a belief which seems to be sanctioned by the commissioner of His Britannic Majesty) - that the Board has the sole right to direct the surveyors in the active performance of their multifarious duties; and upon a report of the Surveyors made directly to the Board, to declare decisions without the express intervention of either of the Agents provided by the Treaty

5.) Delafield Diary, p. 139.

6.) Ibid. In essence, Porter and Ogilvy wished the agents to function as legal advisers to the commissioners, to guide them through the legal niceties of boundary-making. Hawkins, on the other hand, sought to establish a role for the agents which seemed to promise that they would base their arguments on nationalistic grounds. Porter feared that if Hawkins view prevailed the commission would lose its ability to promote compromise and equity. For this reason Porter fought to define the agent's role as being one of "counseling" rather than "advocating".

As by the terms of the oath prescribed by the Treaty it becomes the solemn duty of the commissioners to decide claims according to the evidence to be laid before them; and as Agents are appointed in [the provisions] of the same instrument to manage the business of their respective governments before the Board, it need hardly be expressed, that the evidence upon which decisions are to be founded, must be laid before them by the Agents; who are of consequence to collect and prepare the facts upon which the claims they make are predicated and are to be substantiated.

...it is the duty of each Agent to represent the interest and support the claims of his Government; to keep a constant and careful guard - the one, that the general good is not violated by the infraction of public law; and the other, that the rights of his country are not relinquished or impaired by any inattention to its claims.

To reconcile the duties of the commissioner and Agent upon any other construction of the Treaty would be difficult, if not impossible. Were the commissioner to be engaged in the collection of his own testimony, it would present the novel instance of a Judge descending from the Bench (where he should sit an impartial arbiter of justice) to search for, and carry back with him ex parte materials of an investigation upon which decisions of high national moment are to be made and which it is vain to say, he is not interested. In truth, with the attributes of a Judge, it is impossible to confound the attributes of an advocate, without losing sight of the most salutary principles of jurisprudence.

Under this view of the subject it is believed, that whenever the official labors of the surveyors are to constitute the basis for adjudication, such labors are to be under the direction of the Agent; without such control his hands are tied; and to act on behalf of his Government as his reason would dictate, and his instructions demand, would be impossible. 7

Behind this legalistically-phrased argument lay the simple fact that

7.) Colonel Samuel Hawkins to the Board of Commissioners, (29 May 1817).
Peter B. Porter Papers, Reel 6, Document E-12-3.

Hawkins desired to direct the work of the American surveyors.⁸ Hawkins explained his position a little more bluntly when he advised another member of the American Section that "he and his co-agent represent the power and sovereignty of their respective governments in regard to the demarcation of the boundary; ... that the two agents agreeing ... the Commissioners are bound to adopt."⁹ Hawkins was willing to grant final voice to the commissioners only when the agents failed to agree.¹⁰

Hawkins' argument and demands posed a very serious threat not only to the viability of the commission to which he was attached, but, also, to the viability of the entire joint commission approach to North Atlantic diplomacy. There was a dual menace embodied in Hawkins' letter. In the first instance, if Hawkins' proposals were accepted they would serve to undermine drastically the ability of the commissioners to direct and control the activities of their organization. Secondly, in the event that Hawkins' suggestions were implemented, the joint commission would be transformed into something resembling a court of law in which the

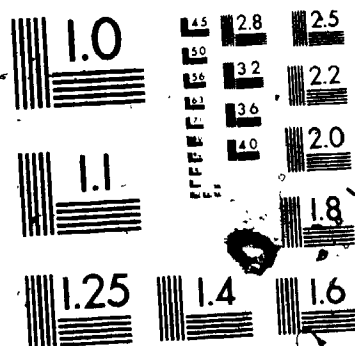
8.) Hawkins' affinity for the language of the law stemmed from the fact that he was a qualified lawyer. Before coming to the boundary commission, in fact, Hawkins had served as the district attorney for the federal judicial district of New York which included Dutchess County. See Bird, William A., "Reminiscences of the Boundary Survey Between the United States and the British Provinces", p. 11.

9.) Delafield Diary, p. 39.

10.) Ibid.

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commissioners would serve as judges and the agents as advocates. If these rules were adhered to an adversary relationship might quickly develop between the two sections of the commission, a relationship which, in turn, might promote heated debate, extreme positions and generally inconclusive results. This was precisely the type of situation which the negotiators at Ghent had sought to avoid through the utilizations of joint commissions. Above all the Ghent negotiators had intended to create, in the joint commission, a mechanism wherein differences of opinion and viewpoint could be outlined, argued, documented and compromised to the mutual satisfaction of both the commissioners and their governments. This intention was enunciated in the Treaty of Ghent in those provisions in which both governments agreed to accept the decisions rendered jointly by the commissioners as "final and conclusive".¹¹ The central goal of the joint commission method of diplomacy was to neutralize conflict, not to engender it.

Porter recognized the dangers inherent in the Agent's proposals but he refrained from taking any immediate action to thwart him. Porter hesitated because he wished to avoid an open break with Hawkins if it was at all possible. Seeking to forestall temporarily a direct confrontation with Hawkins, Porter arranged with Ogilvy to have the Board of Commissioners

11.) Treaty of Ghent, 24 December 1814, Article II.

adopt a resolution which announced,

that the Board will be ready on all proper occasions to receive, hear and consider all evidences, claims, statements, suggestions and other communications, connected with the execution of its duties, as the Agents appointed on behalf of their respective governments may deem proper to exhibit. 12

This resolution appeared to fulfill at least some of Hawkins' demands, but, in reality, it amounted to little more than window dressing. By including the phrase "on all proper occasions" the commissioners reserved to themselves the option of deciding when or if they would accept the functions of the agent as they had been described by Hawkins.¹³ Although lacking in substance, Porter's subterfuge delayed the onset of an open clash with Hawkins.¹⁴

While thus seeking to stave off Hawkins' attack on his authority Porter also sought support for his position from sources outside the commission. In late June, 1817 Porter wrote to Richard Rush, then Acting Secretary of State, outlining the position assumed by Hawkins and explaining the attitudes held by himself and Colonel Ogilvy. The

12.) U.S.N.A., R G 75, Entry 131, 9 June 1817, p. 15.

13.) Delafield Diary, 16 June 1817, p. 145.

14.) On the same day on which Porter and Ogilvy adopted the resolution designed to placate Hawkins they also entered into the commission's journal another resolution in which they sought to further strengthen their prerogatives. In the second resolution the commissioners noted "That, as regards these as well as any further rules and regulations which may be adopted, the Board reserves the right to amend, alter, or rescind them, or any part of them, at its pleasure." See U.S.N.A., R G 75, Entry 131, 9 June 1817, p. 15.

proposition that the agents should control the activities of the surveyors

Porter wrote,

would have been received (to say the least) with astonishment had it not been accompanied by an observance that it was the form of oath adopted by the Board of Commissioners under the Treaty of 1794 - , With all the respect, however, which the Board at St. Regis entertains for the Commissioners of 1796, it could not consent to commit an act of suicide, by divesting itself of the only means which the treaty had confided to it for the proper execution of its duties.

...the difficult task of deciding what persons were necessary to be employed, without any knowledge of the objects of their employment, could hardly have been intended to be imposed on the commissioners; and they felt no hesitation in determining that, in confiding to them a discretion as to the persons to be employed, the treaty, also, confided to them, as a necessary consequence, a discretion as to the purposes for which they were to be employed. 15

While Porter's letter was a balanced and effective refutation of Hawkins' contentions he was apparently preaching to the converted in so

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- 15.) Peter B. Porter to Richard Rush, (24 June 1817). U.S.N.A., R G 75, Entry 141. In this letter Porter also dismissed as illogical and contradictory Hawkins' attempt to draw an analogy between the joint commission and a court of law.

"The Agent, with a view to illustrate and establish his right to the direction of the Surveyors, has initiated an analogy between the Board of Commissioners and a court of civil judicature - the judges being represented by the Commissioners, the attorneys by the Agents, and the witnesses by the Surveyors. I attach little weight to the conclusions drawn by the Agent from his analogy; yet I cannot but remark that I think him unfortunate for selecting it ...; for, from my little acquaintance with the proceedings of courts, I have never understood that attorneys have the control of witnesses; but, on the contrary, that the court always superintended their examination and directed what questions were proper to be put, and what were not admissible... it is the court that supervises the process, and directs what facts are to be ascertained by the jury, and what questions are to be answered by the witnesses."

far as Richard Rush was concerned. Even before the arrival of the American Commissioner's letter Rush had advised President Monroe that Hawkins' position in the dispute was untenable.

I have carefully examined Colonel Hawkins' paper in connection with the Treaty of Ghent, and I think that he has the wrong side. I take the Agent as being an officer having neither independent nor coordinate powers. Being altogether ancillary to the Board, he must necessarily be under its direction. 16

With the assurance of support from both the State Department and the White House Porter was ready to bring his conflict with Hawkins into the open and to a final conclusion.

The contest for ascendancy between Hawkins and the two Boundary Commissioners was decided in early August, 1817. At that time President

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- 16.) Richard Rush to James Monroe, (23 June 1817). U.S.N.A., R-G 75, Entry 142, "Letters from the United States Agent, 1816-1828". Rush's opinion in 1817 appears to have been in complete harmony with what both the British and American governments thought to be the proper role for the agent to have exercised on the commissions established under the treaty of 1794. Several documents pertaining to the commission operating under the fifth article of the Jay-Grenville Treaty contain passages which confirm that both commissioners considered the agents to be subordinate to the commissioners and as counselors and advisers to the commission. In his instructions to James Sullivan, the American Agent under Article V, Secretary of State Timothy Pickering emphasized that the agent's primary role was one of "diligent research and enquiry" designed to "collect... arrange and enforce, the evidence in support of the claim of the United States." Likewise, Thomas Barclay, in a letter to Britain's Foreign Secretary Lord Grenville, stressed the fact that he had instructed the British Agent, Ward Chipman, to prepare a report "arranging the evidence in support of the claims of the British Government which can in any degree tend to elucidate their justness and force." There is no evidence to suggest that either government, in the 1796-1798 period, placed the direction of the commission's surveyors under the control of the agents. Colonel Hawkins appears, therefore, to have built his case in part upon a misreading of the precedents of 1796-1798 and in part upon a desire for personal aggrandizement. For the passages above see Moore, J.B., History and Digest, I, pp. 8,n.2 and 9, n.1.

Monroe was touring the northern frontier of the United States in search of suitable sites for the construction of fortifications.¹⁷ In the midst of this tour Porter arranged for himself and Hawkins to meet with the President at Hamilton, New York and discuss with him their respective views of the controversy between them. Major Joseph Delafield, a member of the American party and a confidant of both the commissioner and the agent, described this meeting and its outcome in his diary

General Porter and Colonel Hawkins severally had interviews with the President relative to the questions which arose some time ago as to the performance of their respective duties as Commissioner and Agent. On the 1st instant at Hamilton the President stated in amount that it was of national importance that the gentlemen should concur: ... and that although Colonel Hawkins had done perfectly right in remonstrating to the Government as he had done, and was also justified in the grounds he had taken by former precedent, still he advised that the Commissioners should proceed....¹⁸

17.) Delafield Diary, 31 July 1817, p. 160.

18.) Ibid., 2 August 1817, p. 160. The precedent to which Delafield is referring to in this diary entry was outlined by Hawkins in a letter to the Board of Commissioners.

"This course accords with the only precedent furnished for this subject in the diplomatic History of the two nations. The Board of Commissioners appointed under the Treaty of 1794, administered an oath to the surveyors employed by them to obey such instructions as they might receive from the Agents appointed to manage the business."

The precedent claimed by Hawkins and the one recognized by Monroe were not one and the same. The Commissioners under the Jay-Grenville Treaty allowed the agents to direct the day-to-day activities of the surveyors, they did not, however, allow the agents to plan the course of surveying. The formulation of a schedule and the designation of areas for survey remained the prerogatives of the commissioners. In the letter above Hawkins is again misrepresenting the precedents of 1796-1798. In his decision Monroe conceded that a precedent had been set for the routine direction of surveying by the Agents, he did not confirm Hawkins' position that the surveyors had been under the complete control of the agents. For the passage quoted above see Samuel Hawkins to the Board of Commissioners, (29 May 1817). Peter B. Porter Papers, Reel 6, Document E-12-3.

By directing the commissioners to "proceed" Monroe had delicately, and yet effectively, placed the influence of his office behind Porter's view regarding the proper roles to be played by the commissioner and the agent. In doing so the President reinforced the position of the commissioner as the undisputed head of his section and blocked the adoption of Hawkins' proposals which would almost certainly have fragmented commission leadership. Hawkins agreed to abide by Monroe's decision, but his personal relations with Porter were driven well past the breaking point.¹⁹ As a result of the very hostile nature of their relationship both Porter and Hawkins agreed to absent themselves from the day-to-day field work of the commission.²⁰

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- 19.) Relations between the two men grew so bitter that Hawkins apparently felt moved to make an attempt to destroy Porter's credibility as the American Commissioner by insinuating that he was personally corrupt and that other members of the American Section were in the pay of Great Britain. Porter explained the situation to his chief surveyor in the following manner.

"When at New York, last week, I was informed that Colonel Hawkins had recently exhibited to the Government certain complaints against me, connected with the official discharge of my duty as Commissioner; and amongst other things, to my great surprise, that he had intimated (but how this circumstance was connected with a charge against me I was not informed) that Colonel Ogilvy the British Commissioner had either directed or through some other person, had made some corrupt or improper offer or attempt to induce you to depart from the line of your duty and integrity as astronomical surveyor."

See Peter B. Porter to David P. Adams, (4 March 1819): Peter B. Porter Papers, Reel 6, Document E-12-4.

- 20.) Delafield Diary, 27 June 1818, pp. 191-192.

Hawkins proceeded to travel about the eastern United States seeking support for his view of the agent's role while Porter returned to his home in the village of Black Rock and directed the activities of the American Section from there. In the end, Hawkins was unable to garner any significant support for his views and resigned as the American Agent in 1820. Major Joseph Delafield was appointed to succeed Hawkins in May, 1821.²¹

In sum, Porter, with the able assistance and co-operation of Colonel Ogilvy, successfully overcame the challenge presented to the Board of Commissioners by Hawkins. With the timely aid of President Monroe, Porter had been able to maintain and, indeed, to enhance the role of the commissioner as the head of his section and that of the commissioners as the joint heads of the commission. In addition, and perhaps more importantly, Porter had successfully prevented the transformation of the joint commission from an agency for effective arbitration to a quasi-court in which adversary confrontations could be expected to develop. This potential modification had been from the very beginning the basis of Porter's resistance to Hawkins' demands. Porter explained his apprehensions to Acting Secretary of State Richard Rush in the following letter.

But the Commissioners foresaw that the questions likely to arise in the discharge of their duties (with the exception of such as would fall exclusively within the province of the surveyors) were not questions of science, but of expediency, and often perhaps

21.) Moore, J.B., History and Digest, I, p. 165.

subjects for compromise; and could be much better understood and settled from ocular observation aided by the labors of Surveyors, than by the clearest elucidations of legal or diplomatic talent. 22

Porter's accomplishments allowed for the work of the commission to proceed in a satisfactory manner and established strong precedents regarding the legitimate authority of the commissioners upon which future Anglo-American and Canadian-American joint commissions would base their operations.

(II.)

In addition to dealing with the multitude of problems inherent in the boundary negotiations, Porter was forced to wage a continuing struggle against a parsimonious and suspicious Congress which was determined to examine both the expenses and the methods of operation of the commission. On 27 March 1818 the House of Representatives formed a select committee to conduct an investigation into the expenses of all the joint boundary commissions operating under the provisions of the Treaty of Ghent. The committee was instructed "to inquire into the nature and causes of said expenses, and into the principles upon which the commissioners

22.) Peter B. Porter to Richard Rush, (24 June 1817).
U.S.N.A., R G 75, Entry 141.

under the sixth and seventh articles of said treaty have proceeded in the execution thereof,"23 Although concerned with the expenses of each of the Ghent commissions, the members of the House were particularly interested in those incurred by Porter's commission. The House was also eager to scrutinize the principles of procedure employed by Porter while directing the activities of the American Section of the commission.

The added concern of the select committee with the expenses and procedures of the commission under the sixth and seventh articles stemmed from "certain insinuations" regarding Porter's personal conduct which had come to the attention of the Congress.²⁴ The charges against Porter were two in number. The first claimed that Porter was "engaged in speculations on lands, the property and jurisdiction of which it is to be decided by the Board of Commissioners"²⁵ Specifically, Porter had been accused of conspiring with David A. Ogden, a Congressman from New York,

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- 23.) "Disputed Boundary with Great Britain. Communicated to the House of Representatives, 11 April 1818", Misc. 456 (15-1) ASPO 38, p. 512. (The notation "ASPO" is an abbreviation for the volumes of United States Government documents published in the American State Papers Series. The full citation for the volume in which the document referred to here can be found is as follows: United States Government. American State Papers, Class X, Miscellaneous, Volume II. Washington, D.C. : Gates and Seaton, 1834. pp. 512-516.
- 24.) Thomas Claiborne to Peter B. Porter, (7 April 1818). Peter B. Porter Papers, Reel 6, Document E-25.
- 25.) Peter B. Porter to John Spencer, (16 April 1818). Peter B. Porter Papers, Reel 6, Document E-26.

to purchase certain islands in the St. Lawrence River which he would be placed within American territory once the international boundary was drawn.²⁶ The second charge directed against Porter maintained that he "had acted improperly in the disbursement of part of the money which the Government had advanced him towards paying the expenses of the commission."²⁷ The gist of this accusation was that Porter had sought to derive a personal profit from the funds advanced to him by depositing them in a bank in Buffalo, New York in which he owned an interest. Seeking information in regard to both the commission's expenditures and the charges of personal malfeasance, Thomas Claiborne, the chairman of the Select committee, wrote to Porter, on 31 March 1818,

to request that you will be pleased to prepare a statement of the manner in which the Commissioners under the 6th and 7th Articles of the Treaty of Ghent, have proceeded to execute that duty as well in relation to the principles for their government, as also to the character of their expenses, together with any other information he may be pleased to communicate. 28

In responding to the committee's inquiry regarding his Section's expenses Porter explained that the work of the joint commission during the

26.) "Disputed Boundary with Great Britain, ... ", Misc. 456 (15-1) ASPO 38, pp. 514-515.

27.) Ibid.

28.) Thomas Claiborne to Peter B. Porter, (31 March 1818). Peter B. Porter Papers, Reel 6, Document E-24.

first year of its existence had been especially difficult and time consuming. He pointed out that before the surveyors could proceed a mode of operation had to be agreed upon between the two Commissioners and that the "projection and experiment" involved in this decision cost the commission both time and money.²⁹ Porter also noted that another significant problem confronted by the commission during its first year centered upon the fact that the surveying parties were working in a section of the St. Lawrence River which was clogged with islands. The surveyors were forced to chart each island and then, in turn, the Commissioners had to decide on which side of each island the boundary would pass and to which nation each island would be awarded.³⁰ According to the chief American surveyor the commission's work in the St. Lawrence had been "the slowest and most irksome part of our present business."³¹ While

29.) "Disputed Boundary with Great Britain, ...", Misc. 456 (15-1) ASPO 38, p. 513.

30.) The secretary of the American Section of the commission described the difficulties encountered in the St. Lawrence in the following manner.

"I arrived in camp on the 4th instant and found all in health, but not in such good spirits as might be desired, from the circumstances of their having a much more intricate labyrinth of islands to survey than the British had below: There is upwards of 1100 islands ... in what is called the 1,000 Isles...."

See Major Donald Fraser to Peter B. Porter, (19 September 1818). Peter B. Porter Papers, Reel 6, Document E-30.

31.) David P. Adams to Peter B. Porter, (6 January 1819). Peter B. Porter Papers, Reel 6, Document E-42-1.

admitting that the St. Lawrence surveys had been agonizingly slow and expensive, Porter sought to justify the large expenditures of time and money by asserting that "the line cannot be correctly designated but by a map; that, being a water line, it must be delineated by relation to the shores and islands, and this cannot be done but by actual survey."³²

After having defended the costs incurred by his commission Porter attempted to placate the investigating committee by intimating that the surveying process would progress at a much faster rate once the work in the island-infested St. Lawrence was completed.³³

Porter next moved to refute the charges of personal impropriety

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- 32.) "Disputed Boundary with Great Britain, ...", Misc. 456 (15-1) ASPO 38, p. 513. In his response to the committee's inquiries Porter was building upon a position which he had established during the previous year. Porter believed that the work being conducted by the commission under Article VI would prove to be of great economic and commercial importance to both Great Britain and the United States. For this reason Porter insisted upon the necessity of conducting an accurate survey. "We are aware," Porter wrote,

"that the execution of a correct survey will considerably increase the expenses and protract the completion of the commission, but we derive a satisfaction in the belief that the extra expense will be more than compensated in the collateral advantages of such a work to the citizens of the two countries. This great chain of waters is rapidly becoming the commercial thoroughfare for a vast proportion of the interior population of the United States, and a chart containing (as we propose that ours shall do) all the information necessary to the safe navigation of these extensive waters, will be of immense practical use to the commerce of the western people,...."

See Peter B. Porter to John Quincy Adams, (3 November 1817). U.S.N.A. RG 75, Entry 141.

- 33.) "Disputed Boundary with Great Britain, ...", Misc. 456 (15-1) ASPO 38, p. 513.

which had been made against him. Although eager to disprove both charges, Porter was particularly concerned with demonstrating the falsity of the accusation regarding his supposed speculations in the St. Lawrence River islands. If the spuriousness of this charge was not made evident Porter's credibility as the American Commissioner would be compromised. "I cannot permit," Porter wrote, "a charge which so seriously affects my probity as a public officer to remain subject to even the least doubt or obscurity."³⁴

The charges relating to Porter's personal conduct appear to have originated, at least in part, from Colonel Samuel Hawkins, the American Agent. After agreeing to absent himself from the commission's work sites Hawkins undertook a propaganda campaign designed to portray Porter as personally corrupt and to demonstrate that several members of the American Section were in the pay of Great Britain.³⁵ While Hawkins would ultimately fail in his attempt to discredit Porter his insinuations did not fall entirely upon deaf ears. Evidence that his allegations garnered some attention in the House of Representatives can be seen in the final report of the select committee which noted that the charges against Porter were based in part upon testimony provided by Colonel Hawkins.³⁶

34.) Peter B. Porter to John Spencer, (16 April 1818). Peter B. Porter Papers, Reel 6, Document E-46.

35.) Peter B. Porter to David P. Adams, (4 March 1819). Peter B. Porter Papers, Reel 6, Document E-48.

36.) "Disputed Boundary with Great Britain, ...", Misc. 456 (15-1) ASPD 38, p. 515.

In addition, therefore, to negotiating with the British Commissioner and resisting the encroachments of a financially frugal Congress, Porter was forced to attempt to refute and thereby overcome the potentially harmful effects of malicious statements made by a disgruntled rival.

Appearing before the select committee on 8 April 1818 Porter declared that both charges of malfeasance which had been made against him were totally without foundation. During this session of the committee Porter categorically denied that he had entered into any sort of speculation concerning the islands in the St. Lawrence River and added that the only island along the entire boundary in which he had any interest was located in the Niagara River.³⁷ Porter explained that Colonel Hawkins had misinterpreted a chance remark by Major Joseph Delafield and had therefore based his testimony regarding the supposed speculations upon a specious premise. Porter concluded his remarks on the charge of speculation by introducing an affidavit prepared by Major Delafield which fully

37.) The speculation in which both Porter and D.A. Ogden were concerned was located in the area surrounding the present-day site of Ogdensburg, New York. Porter's other major personal land holdings were located in the tracts controlled by the Holland Land Company in the southwestern region of New York State and in the vicinity of Detroit. Neither of these tracts appear to have included any island territory. See "Disputed Boundary with Great Britain,...", Misc. 456 (15-1) ASPQ 38, p. 515 and Delafield Diary, p. 159.

supported the explanation he had just offered to the committee.

District of Columbia : Joseph Delafield having been sworn says that in explanation of that part of Colonel Hawkins' affidavit which alludes to a conversation that he had with him respecting certain speculations in which D.A. Ogden, Esq. and General P.B. Porter were interested, he states that during the past summer on descending the St. Lawrence from Ogdensburg to Hamilton in company with Mr. Ogden, much disappointment was expressed by him, in having been prevented from proceeding to Detroit, to intend sic to business of importance there, in which General Porter as well as himself was concerned.

That Mr. Ogden observed at the same time that this business related to a purchase of lands made by him; and in which General Porter was the proprietor of one share. That he understood the speculation to have been a purchase by Mr. Ogden of the Indian reservations in the Holland Company's tract : and not to have any relation whatever to his purchase of the islands in the St. Lawrence - 38

Regarding the charge that he had misappropriated government funds, Porter found that Hawkins was once again behind the accusation. Porter had taken the monies advanced to him by the government and deposited them in the Branch Bank at Buffalo, New York. From this account Porter had written several bank drafts to cover various expenses incurred by the American Section of the commission. Among these drafts was one issued to Colonel Hawkins, in the amount of one thousand dollars, in partial payment of his salary as agent. When Hawkins sought to cash this draft in New York City he found that the city's banks discounted the note

38.) Delafield Diary, p. 159.

at the rate of three percent. Soon thereafter Hawkins also discovered that a number of other drafts written by Porter for commission expenditures had been similarly discounted. In Hawkins' mind these discounts constituted sufficient evidence of financial malfeasance by Porter and he began to circulate rumors to that effect. Attempting to drive one final nail into the coffin which he was seeking to fabricate for the American Commissioner, Hawkins also insinuated that Porter owned an interest in the Branch Bank at Buffalo and that he had deposited the government's funds there in order to derive a personal profit.³⁹

As he had done in regard to the charge of land speculation Porter announced to the select committee that the accusation of financial misconduct was totally lacking in substance. Porter explained that the Branch Bank at Buffalo was a specie-paying institution and that his drafts on the bank were discounted in New York City as a consequence of the expense and risk involved in the transportation of specie through the rugged wilderness areas of upstate New York. Porter went on to note that he had expected that all of the drafts he had written would be cashed at locations in the western part of the state, where the Branch Bank's notes were generally accepted at par. He also added that at the time the drafts were issued he was unaware of the three percent discount then prevailing in New York City. Porter concluded his testimony by informing the committee that he had disposed of his personal interest in the Branch

39.) "Disputed Boundary with Great Britain, ...", Misc. 456 (15-1).
ASPO 38, p. 515.

prior to the commencement of the commission's operations.⁴⁰

Porter's testimony completed the investigation mandated by the House of Representatives and the members of the select committee submitted their report on 11 April 1818. In their report the committee exonerated Porter of both charges of personal misconduct. Regarding the supposed misappropriation of the funds entrusted to his custody the committee accepted Porter's explanation of the effect of the discount levied on his drafts by the banks in New York City and noted that "he Porter had sold out his interest in the Branch Bank some months before the transaction."⁴¹ The committeemen also announced that they were of the "opinion that he Porter derived no advantage from the transaction."⁴² The select committee was equally decisive in its rejection of the charge of land speculation made against Porter. "The committee are satisfied," the report declared,

that General Porter is in nowise concerned or interested in any island in the St. Lawrence; nor is there any proof that he has any interest in any but one upon the whole boundary line, to wit, in the Niagara; and it seems that there is some doubt whether that belongs to him or to his brother, and this island is, perhaps, three hundred miles above where they have been surveying. The mistake most probably occurred in this way: Mr. Ogden, of the House of Representatives, lays claim to many of the islands in the St. Lawrence. He also claims a large tract of land on the main land sic in New York, having no island attached to it, in which General Porter is concerned. It appears that these two speculations have been confounded, and that the rumor of General Porter being concerned in the island speculation has arisen from the circumstance of his being concerned in the other. 43

40.) Ibid.

41.) Ibid.

42.) Ibid.

43.) Ibid.

Turning to the expenses incurred by the commission operating under Article VI, the select committee was somewhat less willing to accept Porter's contentions in their entirety. The committee's criticisms of the commission's expenditures fell into two general categories : first, those incurred as a result of the amounts of manpower and time necessitated by the surveying procedures then being utilized and, second, those which arose from the payment of the salaries due to the members of the American Section of the commission. The committee was particularly critical of the salaries being paid to the commissioner and agent of the American Section.

In their report the Committee rejected Porter's assertion that the boundary could be definitively established only by conducting exhaustive surveys along the entire boundary and then accurately plotting the results of those surveys on detailed maps. The committee agreed with Porter's contention that the surveying procedure being used by the commission in the St. Lawrence⁴⁴ was the "most precise and accurate one" available, but it also noted that this method "must be extremely slow in its execution, and must involve immense expense."⁴⁵ Basically, then, the committee was

44.) The chief American surveyor, David P. Adams, described the mode of operation adopted by the Commissioners as follows.

"The plan of the survey adopted by each Commissioner were very similar; a connected series of triangles was arranged throughout all the various channels, and an entire concatenation of them was preserved along the whole extent of the work, which contains somewhat more than 40 miles. All the angles were carefully measured and verified at their respective stations...."

See David P. Adams to Hon. Thomas Claiborne, (7 April 1818), quoted in DeLafield Diary, p. 159.

45.) "Disputed Boundary with Great Britain, ...", Misc. 456 (15-1) ASPD 38, p. 513.

not so much concerned that Porter employ the most reasonable mode of demarcation, indeed, it declared itself "not conversant with such subjects",⁴⁶ but rather was concerned only with reducing the commission's expenditures.⁴⁷

In pursuance of this reduction the committee announced that it was

decidedly of the opinion that the accuracy and precision which are produced by the course pursued are not necessary to designate the boundary; they are further impressed with a belief that a map is not required for that purpose, and that even surveying is not necessary, unless in particular situations. 48

46.) Ibid.

47.) Ibid., p. 514. The expenses incurred by the American Section of the commission under the sixth article for the period January, 1816- March, 1818 were broken down in the following manner in the select committee's report.

\$ 8,888.00	- Commissioner's salary for two years.
\$16,038.14	- Agent's salary and expenses for two years.
\$10,357.39	- One-half of the commission's contingent expenses.
<u>\$35,283.53</u>	Total

Although the committee objected to both salaries and expenses it felt powerless to do anything about the latter because the treaty had provided that the "expenses attending the commission shall be defrayed equally by the two parties." It should also be noted that there is nothing in the commission's records which indicates that the British Section of the commission was subjected to any sort of similar investigation by either the House of Commons or the British government. In regard to finances the only difficulties encountered by the British Commissioner and Agent stemmed from their government's insistence that exact and meticulous records of the Section's expenditures be maintained.

48.) Ibid. p. 513.

To promote both speed and thrift in the commission's work the select committee urged Porter to adopt a method of procedure which would serve to locate the best navigable channels along the border and run the boundary line through the middle of them. The committee maintained that this task could be accomplished without surveying by means of simple observation and by sounding the depths of the various channels involved.⁴⁹

Turning to the salaries of the American Commissioner and Agent the criticisms of the select committee were based in part upon what it considered to be an extravagant rate of compensation and partly upon a resentment felt by the House of Representatives at not having been consulted when the salaries were initially established.⁵⁰ Article VIII of the Treaty of Ghent provided that the "Commissioners shall be respectively paid in such a manner as shall be agreed between the two contracting parties,...

49.) Ibid.

50.) Congressional objection to these salaries may have been based upon one additional factor. The election which brought Monroe to the presidency in 1817 also established a Republican majority in the Congress. The Republican sweep of the presidential and congressional races also marked the complete and final destruction of the Federalist party. With Monroe in the White House and a Republican majority in the Congress an amicable relationship between the executive and legislative branches seemed to be a reasonable expectation. This relationship, however, did not develop. The demise of the Federalist party resulted in a general loosening of ties within the Republican party and for the first time the president began to encounter significant opposition from members of his own party in Congress. In his biography of James Monroe, Harry Ammon has noted that this development led many congressional leaders to feel "obliged to oppose administration measures whether they disapproved of them or not." Objections to the salaries paid under Article VI may have been spawned, in part, from this intra-party conflict among Republicans. For more information regarding Monroe's relations with Congress during the period embracing the activities of the commission under Article VI see Harry Ammon. James Monroe. The Quest For National Identity. New York: McGraw - Hill Book Company, 1971. pp. 381-395.

at the time of the exchange of the ratifications of the Treaty." ⁵¹

When the ratifications were duly exchanged on 17 February 1815 Secretary of State James Monroe and the British Charge des Affaires at Washington agreed to fix the salaries of the commissioners under the Treaty of Ghent at the same level as those which had been paid to the commissioners appointed under the Jay-Grenville Treaty of 1794, namely, £1,000 sterling per annum. ⁵² Later, the Secretary of State fixed the salary of the American Agent at £1,000 sterling per annum after learning that the salary of the British Agent had been set at that rate. ⁵³ The House was not consulted in regard to the setting of either salary.

51.) Treaty of Ghent, 24 December 1814, Article VIII.

52.) "Disputed Boundary with Great Britain,...", Misc.456 (15-1) ASPO 38, p. 514. The salary of £1,000 sterling, or \$4,444, per annum paid to the commissioners under the Jay-Grenville Treaty was approximately one-half of the amount paid by the United States to its diplomatic representatives in foreign lands in the early years of the Republic. For example, James Monroe received \$9,000 per annum as his salary for serving as the American minister to France beginning in 1803. This fact makes questionable the select committee's determination that the commissioner's salaries under the Ghent treaty were extravagant. For Monroe's salary see Ammon, Harry, James Monroe. The Quest For National Identity, p. 205.

53.) "Disputed Boundary with Great Britain,...", Misc. 456 (15-1) ASPO 38, p. 514

In their report the select committee refrained from specifically calling for reductions in the salary of either the commissioner or agent. The committee acknowledged that the Treaty of Ghent provided that the salaries of the commissioners were to be borne equally by both nations, but, they added "it [the treaty] does not fix the amount."⁵⁴ The committee suggested that there was nothing sacrosanct about the salaries as they presently stood in that they were based only upon the "understanding" of the Secretary of State and not upon a legislative enactment.⁵⁵ In sum the committee intimated that the salaries would remain at their present levels only so long as they met the pleasure of the House. Although no further action was taken in regard to the salaries in 1818 the House approved legislation reducing the rate of compensation paid to the American Commissioner and Agent from \$4,444 to \$2,500 per annum in February, 1821.⁵⁶ President Monroe was very reluctant to sign the reduction into

54.) Ibid.

55.) Ibid.

56.) The first section of House of Representatives Bill No. 245, dated 3 February 1821, provided for the following reductions

"Be it enacted by the Senate and the House of Representatives of the United States in Congress assembled, that, from the first day of January, 1821 each Commissioner now appointed or who may be appointed agreeable to the provisions of the Treaty of Ghent, shall be entitled to receive at a rate of \$2,500 per annum, and each Agent appointed, or who may be appointed, as aforesaid, shall be entitled to receive at the rate of \$2,500 per annum; which said sums allowed to said officers, respectively shall be full compensation for services and all personal expenses occurred while in performance of the duties of their respective offices;...."

A copy of this bill can be found in the Peter B. Porter Papers, Reel 7, Document E-108.

law but was forced to do so as the House appended to it the legislation appropriating funds for the continuation of the commission's operations. 57

57.) Ibid., Section III. Just prior to passing this bill a committee of the House made it very clear that they thought that the salaries of the Ghent commissioners were excessive. "It is considered," the committee's report stated,

"that the salaries now allowed are far greater in proportion to the services performed, than those which are usually given to any officers of government; that they are subject to the authority and control of Congress, and ought to be reduced."

That a majority of the House were willing to consider forcing the suspension of commission operations if the salaries were not reduced was made evident in the following letter written by the American Agent.

"You will have learned by this time, that I have had an active and perplexing campaign; although the Commission has suffered, the consolation remains, that without my exertions exercised through my friends, we should have been entirely suspended for the want of appropriations in any shape. The prejudice against both Commissions has been extreme. High salaries and unsettled accounts have been the hobbies by which the race has been run by our foes."

It appears that Delafield used influential friends in the House in order to arrange a kind of quid pro quo: Delafield's associates agreed to accept the salary reductions in return for the appropriation of sufficient funds to allow the commission's work to continue. The trade-off arranged for by Delafield's friends prevented the suspension of the commission's operations and also prevented the establishment of a precedent of destructive governmental interference in the joint commission approach to diplomacy. For the passages quoted above see "Report of the Select Committee, 3 February 1821", H. rp. 56 (16-2) 57 (This notation is used in the United States Serial Set Index, Part I which is published by the United States Government. The Serial Set is a series publishing the documents of the Senate and House of Representatives.) and Major Joseph Delafield to Major Donald Fraser, (12 March 1821). Peter B. Porter Papers, Reel 7, Document E-112-3.

After having exonerated Porter on both charges of personal misconduct and criticising the joint commission's salary structure, expenditures and mode of operation, the select committee concluded its report in a rather innocuous manner. Recommending neither drastic reductions in expenditures or salaries nor prescribing an alternative procedure for delineating the boundary, the committee simply resolved,

That the President of the United States be requested to arrange with the British Government some mode of designating the boundary under the sixth and seventh articles of the Treaty of Ghent which shall require less time and expense than the one the commissioners have heretofore pursued. 58

Although the House of Representatives adopted both the report and resolution submitted by the select committee, the operations of Porter's joint commission were not seriously disturbed. President Monroe was apparently satisfied with Porter's assurances that the commission's expenditures of time and money would significantly lessen once the surveying in the St. Lawrence River was completed and he took no action to implement the resolution passed by the House. Porter's able defense of his own personal conduct and his justification of the commission's expenditures of time and money allowed the commission under Article VI to proceed in much the same manner as it had before the commencement of the congressional investigation.

58.) "Disputed Boundary with Great Britain, ...", Misc. 456 (15-1)
ASPO 38, p. 516.

CHAPTER VI :

Conclusion

With the issuance of their joint report in June, 1822 Porter and Barclay were justifiably satisfied with the accomplishments of their joint commission. On the most basic level, the commission had successfully executed surveys along the entire length of the boundary from the starting point on the St. Lawrence River to the water communication separating Lake Superior from Lake Huron, a distance of nearly nine hundred and sixty miles. With these surveys in hand Porter and Barclay plotted a boundary line that passed through Lakes Ontario, Erie, St. Clair and Huron and the St. Lawrence, Niagara, Detroit, St. Clair and St. Mary's Rivers. The Commissioners also utilized the surveys to allocate equitably the more than two thousand islands located in the boundary waters. The establishment of a definitively marked boundary helped to stabilize the international situation in the Great Lakes region. This stabilization, in turn, encouraged the inhabitants of both nations to undertake the economic development of the area adjacent to the boundary. In many ways, the accurate delineation of the international boundary was an essential prerequisite to the economic and commercial development of the Great Lakes region.

The commission operating under the sixth article also made a significant contribution to the joint commission method of conducting Anglo-American diplomacy. The success of the commission provided strong evidence of the viability of this approach to international relations. In this regard the commissioners of both nations must be given full marks for two contributions they personally made to the commission's achievements.

In the first instance, Porter and Ogilvy reinforced and enhanced the position and authority of the commissioners, as the heads of their respective sections and as the joint heads of the entire organization, by thwarting the plans of Colonel Hawkins. Secondly, the resourcefulness of Porter and Anthony Barclay helped to prevent a complete breakdown in the commission's proceedings when they arranged, with the aid of John Quincy Adams and Stratford Canning, an acceptable compromise in regard to the ultimate disposition of the islands and channels in the Detroit River. In the latter case the commissioners ensured the final success of their own commission, while in the former they set a precedent upon which future Anglo-American and Canadian-American joint commissions would base their activities.

In regard to the evolution of joint commission procedures some mention must be made of Porter's struggle with the House of Representatives' select committee and its inquiry. The undiscerning manner in which the House accepted Hawkins' accusations for investigation presented a direct threat to the development of the joint commission approach to North Atlantic diplomacy by raising the spectre of political interference. If the select committee had found the American Commissioner guilty of any official or personal misconduct his credibility with Great Britain would certainly have been destroyed. A guilty verdict might also have prompted future Congresses to investigate the affairs of future joint commissions and commissioners. Fortunately, Porter's able defense of his personal conduct and his justification of the commission's expenditures of time and money

convinced the select committee, which exonerated him, and thereby preserved enough of his reputation for impartiality to allow for the commission's deliberations to continue. Porter's effective refutation of Hawkins' accusations and his dexterous handling of the ensuing Congressional investigation prevented the establishment of a strong precedent of political interference in joint commission proceedings.

It is important at this point to emphasize that the success of the commission under Article VI owed something to the absence of severe external pressures in its proceedings. Aside from the Congressional investigation into Porter's activities and the commission's surveying practices the commission suffered very little from outside interference. Indeed, when outside influence was brought to bear, as in the case of the Adams - Canning arrangement which settled the controversy in the Detroit River, it was requested by the commissioners and it operated in a decidedly positive manner. The semi-isolated atmosphere in which the commission under the sixth article functioned promoted the quiet consideration and resolution of the problem assigned to it by the treaty.

In marked contrast to the success of the commission examined in the present study stands the failure of the joint commission established under the seventh article of the Treaty of Ghent. The commission under Article VII was to delineate the boundary from the eastern end of Lake Superior to the most northwestern point of the Lake of the Woods. Although Porter and Barclay operated under Article VII in much the same manner as they

had under the sixth article they were unable to duplicate the first commission's atmosphere of co-operation and collegiality. The commissioner's were unable to reproduce their earlier success, it can be argued, largely because they were faced with external problems and pressures which had not cropped up during their earlier operations.

Among these external influences, two were of primary importance. The first involved the pressures which were exerted upon each government by the great fur-trading companies. The location of the boundary line from the western shore of Lake Superior to the Lake of the Woods was of crucial importance to both the Hudson's Bay Company and John Jacob Astor's American Fur Company. The location of the line would decide which company would have the better access to and egress from the fur-rich western reaches of the continent. The Hudson's Bay Company and Astor's organization lobbied vigorously, both directly with each boundary commissioner and through friends in their respective governments, to have the line drawn so as to protect and, if possible, to further their interests. The strong influence of each company upon its government acted to block the commissioners from reaching a satisfactory agreement. In effect, Porter and Barclay were hamstrung in their ability to compromise on the boundary, at least in part, because of the pressure brought to bear by the fur companies.


Another outside factor which influenced the commission under Article VII involved domestic politics in the United States. By the time Porter

and Barclay were ready to draw the boundary line under the seventh article in 1827 John Quincy Adams had been president for nearly three years.

At the beginning of his term Adams had appointed Henry Clay to serve as Secretary of State. Adams' selection of Clay had been met with a thunderous roar of disapproval, in fact, the appointment of Clay quickly became known in American politics as the "corrupt bargain". The result of this affair was that during Adams' tenure his support in the Congress and throughout the country gradually melted away. In 1827, on the eve of what promised to be a harrowingly bitter contest with Andrew Jackson, Adams was in no position to allow Porter to agree to any compromise with Barclay over the location of the boundary. Any sort of a compromise might be interpreted by the generally anglophobic American electorate as a sign of weakness towards Great Britain and would surely erase what little chance Adams had for re-election.

Neither of these external matters had anything to do with the delineation of the boundary, but they nonetheless figured prominently in the inability of Porter and Barclay to arrive at an acceptable arrangement. The pressures brought upon both governments by the fur companies and Adams' unwillingness, because of the domestic political situation, to permit Porter to agree to a compromise solution combined to thwart the efforts of the commissioners operating under Article VII. The absence of similar external pressures and influences must, therefore, be counted as one of the major factors which promoted the success of the commission operating under Article VI.

Finally, the commission's successful conclusion of its duties under Article VI amounted to a significant step toward Anglo-American reconciliation. In 1814, after two wars within forty years, relations between Great Britain and the United States were in a condition of total disrepair. Recognizing this state of affairs the negotiators at Ghent decided to build upon the precedents provided by the Jay-Grenville Treaty of 1794. With this goal in mind, the peace ministers took several of the more contentious issues facing the two nations and assigned them to joint commissions for considerations. By doing this the negotiators arranged for the bilateral resolution of these problems and thereby eliminated the need for any unilateral action which either party might interpret as being hostile in intent. While not all of the Ghent commissions were successful in their endeavors, they nevertheless served to secure firmly the place of arbitration through the vehicle of the joint commission in the conduct of diplomacy within the North Atlantic Triangle. The success of several of the Ghent commissions, including the one under Article VI, along with the reaffirmation of the Anglo-American predilection for arbitration, vindicated the judgement of the negotiators at Ghent and placed relations between the United States and Great Britain on the difficult path toward recovery, if not yet rapprochement.



Note on Sources

The major portion of this thesis is based upon materials drawn from two manuscript collections, the Peter Buell Porter Papers and the United States Government's "Records Relating to the Commissions Established Under Articles VI and VII of the Treaty of December 24th, 1814 Between the United States and Great Britain". The papers of Peter B. Porter provide an intimate look at the operations of the joint commission under Article VI and, of course, particularly those of the American Section of the commission. Included in the Porter Papers are copies of his letters with James Monroe, Richard Rush and John Quincy Adams on questions of national policy vis-a-vis the international boundary; with Colonel John Ogilvy, Anthony Barclay and Colonel John Hale concerning the arguments, negotiations and compromises involved in boundary-making; and, with Major Joseph Delafield and David P. Adams regarding the problems caused by the difficult terrain and uncharted regions encountered during the process of boundary delineation. Porter's papers are a valuable source of information on the diplomatic, political, personal and technical aspects of boundary-making.

The records of the United States government regarding the operations of the joint commission under the sixth article are also very useful. Of particular importance in these records is Entry 131, which is the journal of the commission's proceedings. The journal is valuable in several ways. First, the journal records in close detail the problems encountered by the commissioners and the manner in which they were documented, debated and compromised. Secondly, the minutes of the

commission's meetings demonstrate that all three commissioners were fully cognizant of their roles as arbitrators. The minutes depict the various attempts made by the commissioners to accomodate each other's demands in a way which would permit the commission's work to continue. Thirdly, the journal includes a great many of each government's instructions to their respective commissioners. Most of these instructions are presented in summary form, although a few are given in their entirety. Included in the other entries in these records are the letters from the American Commissioner and from the American Agent to the Secretary of State. Some of this material is available in the Porter Papers, but there is much in these entries which is not given there and which therefore serves to further explain and document the activities and decisions of the joint commission. Entry 141, Porter's letters to the Secretary of State, is particularly helpful in regard to the evolution of the compromises which ultimately settled the disagreements over Wolfe Island and the Detroit River.

The David Thompson Collection in the Provincial Archives of British Columbia was also used in this study. The letters in this collection were of limited use, but they did provide some relevant comments by Thompson about the manner in which the United States conducted itself in international relations.

The author did not consult the records of Great Britain's Foreign Office. These records were not consulted because the author felt that he had derived sufficient material regarding the attitudes and instructions

of the British Government from other sources. Among these other sources were the letters of Colonel John Ogilvy, Anthony Barclay and Colonel John Hale in the Porter Papers, the instructions issued by the British Government which are included in either summarized or verbatim form in the commission's journal and several other British documents which are available in the American records pertaining to the commission of 1816-1822. The last-mentioned British documents were photo-copied under the auspices of the Carnegie Endowment for International Peace at the Public Record Office and presented to the United States National Archives in March, 1932.

Of the printed primary sources John Bassett Moore's History and Digest of the International Arbitrations to which the United States Has Been a Party, I is the most valuable. Moore provides a straight-forward factual account of the Commission's operations and mixes in a great many passages from relevant documents. Moore's book is focused exclusively on the diplomatic side of the Commission's activities and offers little or no comment on either the military dimension of boundary-making or the struggle for power which occurred between Porter and Hawkins. The two volumes of American diplomatic correspondence dealing with Canadian relations, edited by W.R. Manning, are useful primarily for the account they render of the Ghent negotiations. The documents published in the volume of American State Papers used in this study amply demonstrate the dangers inherent in Congressional interference in foreign affairs. The documents pertaining to the commission under Article VI clearly display the rather unlimited ignorance of the Congress in regard to that aspect of the nation's international relations.

Secondary literature on the subject of boundary-making is almost nonexistent. The only study devoted exclusively to the subject is H. George Classen's Thrust and Counterthrust. The Genesis of the Canada-United States Boundary. This work is more or less a series of sketches describing the various episodes of Canadian-American boundary-making. Classen is not a professional historian and his book suffers from a lack of analysis and from having neither footnotes nor an adequate bibliography.

Several of the standard monographs on Anglo-American relations contain some material on the work of the boundary commission operating under Article VI. A.L. Burt's The United States, Great Britain and British North America. From the Revolution to the Establishment of Peace after the War of 1812 probably still provides the best overall view of Anglo-American relations in the 1775-1820 period. Burt's study, together with H.C. Allen's Great Britain and the United States. A History of Anglo-American Relations, 1783-1952, provides some interesting and valuable commentary on the role played by John Jay in the establishment of the arbitral method as a vital facet of North Atlantic diplomacy. Burt and Allen also briefly analyze the activities and decisions of the joint commission operating under Article V of the Jay-Grenville Treaty. Charles R. Ritcheson's Aftermath of Revolution. British Policy Towards the United States, 1783-1795 provides an admirable account of the deterioration of Anglo-American relations in the 1783-1794 period.

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