

“It Is Glory to Have Broken Such Infamous Orders”

Adams, Jay, and Franklin Midwife the Republic

Historian Samuel Flagg Bemis called it “the greatest victory in the annals of American diplomacy,” and he was not exaggerating. The treaty that ended America’s Revolutionary War in 1783 was all the rebels could have hoped for. Great Britain, the former mother country, not only recognized American independence but agreed to generous boundaries: the newborn United States was to stretch from the Atlantic seaboard to the Mississippi River and from Canada to the frontier of Spanish Florida, meaning that, in addition to the area comprising the original thirteen colonies, Americans gained title to a trans-Appalachian domain they had neither conquered nor occupied. The British moreover acknowledged American rights to fish in the waters off Newfoundland and granted extensive onshore curing and drying privileges. In addition, London pledged to withdraw its military forces from U.S. territory “with all convenient speed” and affirmed that navigation of the Mississippi from its source to the ocean would be open to British and American subjects. The government of George III and Prime Minister William Petty Fitzmaurice, Earl of Shelburne, even gave ground on an issue that had stymied peace negotiations: rather than insisting that British Loyalists in the United States be compensated for property lost during the revolution, they accepted American assurances that Congress would “earnestly recommend” indemnification, an arrangement that diplomats on both sides of the Atlantic knew amounted to royal abandonment of the Tories. America’s overseas representatives won every point they considered requisite, while Britain effectively surrendered. In Paris, Foreign Minister Charles Gravier, comte de Vergennes, marveled at the outcome, writing to his

undersecretary that British “concessions . . . exceed all that I should have thought possible.”¹

Yet the men who brought off this diplomatic miracle – John Adams, Benjamin Franklin, and John Jay – received scorching criticism in the American Continental Congress. Legislators could find no fault with the pact itself, but many were chagrined by what Secretary for Foreign Affairs Robert Livingston termed “the management of it.” The 1778 treaty of alliance between the United States and France, a bond essential for American victory in the revolution, had stipulated that neither country could conclude a settlement with the British without prior consent by the other power. Furthermore, Congress had ordered its envoys in Paris to place themselves under French control during the peacemaking process. The American diplomats, however, had not consulted Vergennes or any other French official before drawing up and signing preliminary articles of peace; indeed, they had not even informed their ally that negotiations toward that end were underway. Adams, Franklin, and Jay had shut the French out, and Livingston was aghast. “I am persuaded that the old maxim ‘honesty is the best policy’ applies with as much force to states as to individuals,” he spluttered to President of Congress Elias Boudinot after the good ship *Washington* docked in Philadelphia bearing the provisional treaty. Could Congress ratify a document drafted in defiance of its own instructions and solemn commitments?²

Several congressmen demanded that the diplomats be censured. Charles Carroll of Maryland thought that “unless something expressive of our disapprobation” was done, the peace commission’s handiwork would “be an indelible stain on our character.” New York’s Alexander Hamilton urged the “necessity of vindicating our public honor by renouncing . . . the conduct of our ministers.” Two delegates from Virginia were especially adamant. “The separate and secret manner in which

¹ Samuel Flagg Bemis, *The Diplomacy of the American Revolution*, Second Edition (Bloomington: Indiana University Press, 1965), 256; Preliminary Terms of Peace between Britain and the United States, 30 November 1782, *Treaties and Conventions Concluded between the United States of America and Other Powers since July 4, 1776* (Washington, D.C.: U.S. Government Printing Office, 1889), 370–373; Vergennes to Gérard, 4 December 1782, *The Revolutionary Diplomatic Correspondence of the United States*, Francis Wharton, ed. (Washington, D.C.: U.S. Government Printing Office, 1889) (hereafter RDC), 6:107.

² Livingston to Peace Commissioners, 25 March 1783, RDC, 6:339; Livingston to Boudinot, 18 March 1783, *ibid.*, 6:315.

our ministers proceeded with respect to France,” James Madison said, was “inconsistent with the spirit of our alliance and a dishonorable departure from the candor, rectitude, and plain dealing professed by Congress.” If, after having “repeatedly assured” Vergennes that they would “take no step in negotiations but in concert and in confidence with him,” Madison’s colleagues did not “disclaim the policy followed by our ministers,” America would “be considered by all nations as devoid of constancy.” John Mercer went further. Just arrived in Philadelphia after service in the Continental Army and intent on proving himself rhetorical heir to Patrick Henry, Mercer delivered a scenery-chewing harangue against the “chicane and low cunning” exhibited by the commission, so contrary to “the honesty and good faith which became all nations, particularly an infant republic.” The diplomats’ behavior was “a mixture of follies which had no example,” he said, a “tragedy to America, and a comedy to all the world beside.” It proved that the United States had “at once all the follies of youth and the vices of old age.” Mercer warned that unless Congress made plain their “inexpressible indignation” at the commission’s “treachery,” they would “realize the case of those who kicked down the ladder by which they had been elevated.” When Hugh Williamson of North Carolina questioned whether such brickbats should be applied to men who had, after all, “shown great ability,” Mercer shot back that his “language with respect to the ministers” was “justified by their refusal to obey instructions.”

This obloquy filled many pages in Madison’s record of congressional debate, and an observer could be forgiven for concluding that Adams, Franklin, and Jay did in fact face censure or worse. But, Madison noted, it gradually became apparent that, for all the remonstrances showered on the diplomats, “a large proportion” of legislators were “against any measure which seemed in any manner to blame” them for acting as they did. Connecticut’s Oliver Wolcott spoke for the majority when he expressed confidence that Congress would “never censure ministers who had obtained such terms for this country.” Richard Henry Lee also felt it “highly improper to censure ministers who had negotiated well.” Although he detested Franklin and had no desire to help America’s most celebrated figure win further acclaim, Lee reminded his fellow Virginians that “in particular emergencies” a diplomat might consider it expedient to “swerve from strict instructions” in order to obtain the best outcome. That appeared to be the case here, with the policy of hard and fast fidelity to France running counter to “our interests.” Most outspoken in his defense of the peace commissioners was South Carolina’s John Rutledge.

Adams, Franklin, and Jay had “done right,” he affirmed. They had “maintained the honor of the United States after Congress had given it up” by making any peace treaty subject to French approval. In Rutledge’s opinion, “instructions ought to be disregarded” whenever they conflicted with the public good. He himself “would never be bound by them” if he found them “improper.”

Mercer, thunderstruck, excoriated “the dangerous tendency of the doctrine maintained by Mr. Rutledge with regard to instructions.” Did the legislators intend to embrace this doctrine and let the commission’s misconduct go unpunished? How could the United States conduct a coherent foreign policy if its diplomats felt free to flout orders? More important, how could Americans, who prided themselves on being above Old-World Machiavellianism, countenance an act of bad faith worthy of the slipperiest intriguer in the most corrupt European country? Mercer was certain that “His Most Christian Majesty,” Louis XVI of France, would never so “betray or injure us.” The least Congress could do was censure Adams, Franklin, and Jay and repudiate the preliminaries they had concluded behind French backs.

Debate continued off and on for nearly two weeks, and the halls of Congress echoed with some of the feistiest commentary yet voiced in that chamber. At one point, a delegate asked François Barbé-Marbois, head of the French legation in America, if the court of France planned to file a complaint about the diplomats’ double-dealing, to which the Frenchman responded that “great powers never *complained*, but they *felt* and *remembered*,” a barely disguised threat that lent force to the arguments advanced by Mercer and Madison. Hugh Williamson, torn between joy at British concessions and dismay at American perfidy, proposed a compromise that avoided “harsh treatment of the ministers” but still communicated to them Congress’s unhappiness, thereby leaving them to “get over the embarrassment as they should find best.” Some congressmen dismissed this as a slap on the wrist; others thought it insulting treatment for patriots who had ably served their country. Neither side could win out, and Congress never went on record as commending or condemning its negotiators.

It did, however, ratify the preliminaries, which stood as tacit endorsement of the commission’s maneuvering – and which might have been prompted by the appearance in numerous newspapers of reports of what Adams, Franklin, and Jay had wrought. (Congressional proceedings were supposed to be secret, but members leaked information when it served their ends.) To no one’s surprise, the provisional treaty was popular with

the American people. Congress would have diminished its prestige had it rejected so felicitous an agreement. Britain's "terms," Madison admitted, were "extremely liberal."³

An ocean away, the envoys could only guess at congressional response to their disobedience. Adams, the most anxious and pessimistic of America's first generation of diplomats, was uncharacteristically sanguine. When Henry Laurens, who had joined the commission at the last moment, ventured that "John Adams & Co. may be hanged" as traitors, Adams replied, "I cannot think our country will hang her ministers merely for their simplicity in being cheated into independence, the fisheries, and half of the Great Lakes." But if Congress were foolish enough to "get J. A. hanged," Adams said, he was "pretty well prepared for this, or to be recalled, or censured, . . . or slandered, just as they please." Adams knew he had acted properly. Had he and his cohorts not forsaken the French, he insisted, "our country would have lost advantages beyond computation."⁴

Jay, possibly the best lawyer in America, justified the commission's actions with some ingenious reasoning. He admitted that "Congress positively instructed us to do nothing without the advice and consent of the French minister, and we have departed from that line of conduct." They had done so, however, assuming "the object of that instruction" to be "the supposed interest of America, and not of France." From Jay's perspective, "we were directed to ask the advice of the French minister because it was thought advantageous to our country that we should receive and be governed by it." Yet everything Jay had observed since arriving in Paris in mid-1782 convinced him that Vergennes's "plan for a treaty for America was far from being such as America would have preferred." The French wanted America independent, but they had no desire to see another great power rise in the West. They sought to keep the United States weak, confined between the Allegheny Mountains and the sea, a French satellite. Since this agenda was contrary to American interests, Congress's instructions were not binding, and the commission was under no obligation to obey them. Jay's conscience was clear.⁵

³ Reports of Debates during the Congress of Confederation, 12–24 March 1783, *Papers of James Madison*, Gaillard Hunt, ed. (New York: J. & H. G. Langley, 1841), 1:380–412 (emphasis in the original).

⁴ Adams to Laurens, 12 March 1783, *RDC*, 6:284–285; Adams to Livingston, 9 July 1783, *ibid.*, 6:531.

⁵ Jay to Livingston, 19 July 1783, *The Life of John Jay: With Selections from His Correspondence and Miscellaneous Papers*, William Jay, ed. (New York: J. & J. Harper, 1833) (hereafter *LJJ*), 1:174–178.

Franklin's was not. Alone among the commissioners, he felt pangs of regret. In his five-and-a-half years in France, he had developed considerable affection for his host country; unlike Adams and Jay, he was fond of the French and adapted to the ceremony, complex etiquette, and subtle diplomatic traditions of Paris and Versailles. Furthermore, he was aware of how invaluable French aid had been to American victory. Whereas Adams and Jay tended to downplay France's contribution, their elder colleague knew the United States owed its metamorphosis from colony to republic to Louis XVI. Rather than questioning French motives, Franklin was more likely to express vehement – often toadying – gratitude and preface even the mildest criticism of America's ally with a surfeit of compliments and affirmations of eternal allegiance. Nonetheless, he had joined Adams and Jay in end-running the government that kept America afloat from Lexington to Yorktown. The commissioners had concluded an Anglo-American treaty without the blessings or even the knowledge of the French because London offered such tempting, and apparently time-sensitive, terms. Had they erred? Had the territorial and other gains been worth the sacrifice of American rectitude? Franklin could not be certain. "We did what appeared to all of us best at the time," he wrote Livingston, "and if we have done wrong, Congress will do right . . . to censure us."⁶

The New World's paramount philosopher finally took refuge in a kind of bemused fatalism. As he had warned his fellow envoys over a year earlier, any treaty they managed to put together, no matter how favorable for the United States, would have its detractors. "I have never known of a peace that did not occasion a great deal of popular discontent, clamor, and censure," Franklin pronounced, citing the Treaties of Utrecht and Aix-la-Chapelle. Even the Pact of Paris ending the Seven Years' War, "the most advantageous and glorious for England that ever she made" was "violently decried" and its authors "as violently abused." So the American commissioners should not expect universal applause. "[T]he blessing promised to peacemakers," said Franklin, "relates to the next world, for in this they seem to have a greater chance of being cursed."⁷

That forecast proved wrong. Although a few legislators kept up their attacks on the diplomats after ratification of the provisional treaty, most of Franklin's countrymen recognized it for the magnificent accomplishment it was. (Tellingly, Hamilton, one of the commission's critics on the

⁶ Franklin to Livingston, 22 July 1783, *RDC*, 6:581.

⁷ Franklin to Laurens, 25 May 1782, *RDC*, 5:560.

floor of Congress, sent a private letter to Jay conveying his “warmest approbation of your conduct.”) When the definitive treaty, identical to the preliminary version, was borne back to the United States in November 1783, Congress ratified it unanimously. Jay and Franklin returned home to rapturous receptions, and only Adams’s assumption of his duties as the first U.S. minister to Great Britain prevented him from receiving a similar hero’s welcome. None of the diplomats suffered any political damage as a consequence of their having disobeyed orders. Franklin lived to participate in the Constitutional Convention and hold the prestigious office of president of Pennsylvania, a position equivalent to today’s governorship. Jay went on to serve as secretary of foreign affairs and chief justice of the Supreme Court. And Adams, of course, became president.⁸

Contemporary reaction to the commissioners’ exploits presaged most scholarship on Revolutionary War diplomacy. Generations of historians have hewed to the Bemis line, lauding Adams, Franklin, and Jay for their “astounding diplomatic victory,” a settlement “as advantageous to their country as any in their history.” Authors differ as to which Founding Father deserves credit for this masterstroke – in some versions Franklin restrains his two headstrong comrades and preserves the Franco-American partnership until independence is won; in others Jay, or Adams, or both, strong-arm a timid Franklin into closing a deal with the British before America’s ally can undercut U.S. war aims – but the story line remains constant: the Americans, despite holding a weak negotiating hand, overcome their naïveté, capitalize on European rivalries, exploit time and distance factors, and, most significantly, violate Congress’s orders when circumstances call for it. As a result of their cunning, the United States enters the family of nations as a world power with boundaries outstripping those of any republic since ancient Rome. Richard Morris is only slightly more effusive than most scholars when he writes of Adams, Franklin, and Jay, “a free people is eternally in their debt.”⁹

⁸ Hamilton to Jay, 25 July 1783, *The Papers of Alexander Hamilton*, Harold C. Syrett, ed. (New York: Columbia University Press, 1962), 3:416.

⁹ Stacy Schiff, *A Great Improvisation: Franklin, France, and the Birth of America* (New York: Henry Holt and Company, 2005), 327; David McCullough, *John Adams* (New York: Simon & Schuster, 2001), 285; Richard B. Morris, *The Peacemakers: The Great Powers and American Independence* (New York: Harper & Row, 1965), 459. For other accounts in this vein, see Elmer Bendiner, *The Virgin Diplomats* (New York: Alfred A. Knopf, 1976); Thomas Fleming, *The Perils of Peace: America’s Struggle for Survival after Yorktown* (New York: Smithsonian Books, 2007); Lawrence F. Kaplan, *Colonies*

Overlooked in the literature is the fact that the commissioners set a precedent that shaped America’s foreign policy for the next two centuries and ensured that U.S. diplomacy would differ from that practiced by representatives of any other government. In defying the orders of stateside superiors, and in profiting so immensely thereby, both in terms of their personal fortunes and the welfare of their country, Adams, Franklin, and Jay made it likelier that future U.S. diplomats would step out of line. Censure – or hanging – might have nipped this rebelliousness in the bud, but it would also have kept the United States from receiving everything its leaders demanded with regard to the West, the fisheries, the Loyalists, the Mississippi, and other matters deemed essential to national survival. Congress therefore followed the remunerative path of least resistance, and the architects of peace escaped punishment. American independence was, to a great extent, founded on diplomatic insubordination.

“DIMINISH THE POWER OF ENGLAND AND PROPORTIONATELY
RAISE THAT OF FRANCE”

The United States could never have won its revolution singlehanded. Outmatched by the mother country in wealth, population, and military power, America would have been crushed had Vergennes not persuaded Louis XVI to covertly supply George Washington’s army in the summer of 1776. Thereafter Paris moved war goods westward in such quantity that French powder comprised 90 percent of the American stock for the first two years of the revolution. France also provided uniforms, medicine, muskets, and even cannons with the king’s monogram graven upon them. In the pivotal Battle of Saratoga, nearly all of the rebels’ arms and ammunition came from French merchants. And France did more than furnish military articles: it emptied its treasury making loans to the American government; it safeguarded American commerce on the high seas by protecting rebel vessels from seizure by British warships; and Vergennes permitted American privateers to operate out of French ports and dispose of prizes on French soil, a breach of France’s duties as a neutral. When France shed that fictive status, declaring war on Britain in

into Nation: American Diplomacy, 1763–1801 (New York: Macmillan, 1972); David Schoenbrun, *Triumph in Paris: The Exploits of Benjamin Franklin* (New York: Harper & Row, 1976). For rare exceptions to the orthodox treatment, see Jonathan R. Dull, *A Diplomatic History of the American Revolution* (New Haven: Yale University Press, 1985), 144–151; Perkins, “Peace of Paris,” 190–229.

1778, its contribution to the American cause swelled. The French fitted out thousands of troops for combat. A joint Franco-Spanish armada threatened to invade southern England, obliging the British to keep many of their ships close to home instead of employing them in America. French attacks on the British East and West Indies diverted more men-of-war. At Yorktown, the final engagement, it was not only French ground forces but the appearance of a French fleet in adjacent waters that made impossible General Charles Cornwallis's reinforcement or escape. Indeed, more Frenchmen participated in the battle of Yorktown than Americans. By almost every historian's reckoning, French assistance tilted the scales of war in favor of the fledgling republic.¹⁰

This succor, however, was not prompted by love for Americans or zeal for democracy, despite myths to that effect. Although a few French intellectuals did enthuse over the noble savages fighting for liberty in the New World, and while the young firebrand Gilbert du Motier, Marquis de Lafayette, drew notice in Paris with his pleas on behalf of Washington's ragtag army, King Louis and his court viewed the rebels with mistrust, a natural response given French values, interests, and history. France was a Catholic country ruled by an absolute monarch; if the mostly Protestant Americans succeeded in their insurrection, they planned to establish a republic, which could serve as a dangerous example to France's colonial subjects in the Caribbean and elsewhere. Moreover, Americans had fought against the French in four previous wars, the last of which – known as the Seven Years' War in Europe and the French and Indian War in America – ended with a crushing French defeat. France lost nearly all of its North American possessions, including Canada and Louisiana, and suffered reverses in Europe and India as well. No French statesman could forget that the rustics extolled by Lafayette had helped Britain to its greatest victory to date and enabled their then-mother country to achieve a position of unprecedented political supremacy at France's expense.

Yet it was precisely the humiliation of this thrashing, and the belief that Americans played an essential role in bringing it about, that underlay

¹⁰ For representative works, see R. W. Van Alstyne, *Empire and Independence: An International History of the American Revolution* (Hoboken, NJ: John Wiley and Sons, 1965); Edward S. Corwin, *French Policy and the American Alliance* (Princeton: Princeton University Press, 1916); J. H. Plumb, "The French Connection: The Alliance That Won the Revolution," *American Heritage* 26 (1974): 4; James Brown Scott, *The United States and France: Some Opinions on International Gratitude* (New York: Oxford University Press, 1926); William C. Stinchcombe, *The American Revolution and the French Alliance* (Syracuse, NY: Syracuse University Press, 1969).

French policy after 1763. From the moment Britain took the French sword in surrender, Étienne François, duc de Choiseul, Vergennes's predecessor in the foreign office, made *revanche* his prime objective. He rebuilt France's navy, improved its army, carried out financial reforms, and, above all, tried to sow dissension between America and Britain. His logic was compelling. Britain had replaced France as the strongest nation on earth. The chief source of Britain's strength was its colonial empire, in particular its holdings in North America. Therefore, if France deprived Britain of these possessions, it would redress the balance of power in its favor.

American complaints about Parliamentary overbearance in the 1760s struck Choiseul as a heaven-sent opportunity to effect a schism. He dispatched several missions across the Atlantic for that purpose, instructing his agents to gauge the popular temper in the middle colonies, the south, and especially New England. How intense was American wrath over the Sugar Act, the Stamp Act, the Townshend Acts? Were American vows to defy these measures sincere? If so, would the colonists welcome trained officers and engineers from a foreign power? Choiseul accumulated scores of reports on America's military resources, its strong points and entrenched forts, and its potential leaders. For a time, he thought the bonds of imperial loyalty so frayed that a few expressions of encouragement from Paris would suffice to ignite revolt. Parliament's repeal of its most offensive duties, however, and the consequent easing of tensions between crown and colonies made Choiseul revise his opinion. He left office convinced that the Americans remained allegiant to Britain and would not seek independence until the distant future.¹¹

Needless to say, he was wrong. Vergennes confronted a different situation, becoming foreign minister during the fraught period between the Boston Tea Party and the assembly of the first Continental Congress, when a series of ill-considered decrees reinvigorated anti-British feeling in America. The ministry of Frederick, Lord North, dubbed these the Coercive Acts, colonists called them “intolerable acts,” but regardless of their label they had an effect opposite from what was intended: instead of bringing America to heel, they sparked protests from Georgia to New Hampshire. Vergennes did not initially appreciate how close Britain was to an imperial civil war – during his first few months in office, he

¹¹ Most scholarship on Choiseul's policy is in French, but a useful English-language examination is C. H. Van Tyne, “French Aid before the Alliance of 1778,” *American Historical Review* 31 (October 1925): 21–31.

concentrated on Eastern European affairs – but the shots heard round the world in mid-1775 caught his attention. Lexington made reconciliation unlikely; Bunker Hill made it impossible. Here was a chance to humble the British and reverse the verdict of 1763.

Vergennes connived with the playwright, journalist, and sometime arms contractor Pierre-Augustine Caron de Beaumarchais to set up a sham trading company through which military supplies could be funneled to the colonists, and he overcame Louis XVI's opposition to this project by assuring him the risks were slight. Paris would maintain a posture of neutrality, he insisted. Absent some direct provocation it was doubtful that the cash-strapped British would renew hostilities with their arch-enemy. If the American rebellion succeeded, as Vergennes thought it might, France would glean the fruits of victory without the hazards of combat. And what fruits! In a *mémoire* remarkable for its frankness, Vergennes explained why American independence would redound to Louis's benefit: "First, it will diminish the power of England and proportionally raise that of France. Second, it will cause irreparable loss to English trade, while it will considerably extend ours. Third, it presents to us as very probable the recovery of a part of the possessions which the English have taken from us." While conceding the unattractiveness of American political principles, Vergennes saw nothing to fear from them. Republics were by nature weak and fractious, he noted. Americans, once independent, would be unable to menace European dominions in the New World.¹²

So persuasive were Vergennes's arguments that he not only got Louis to transfer 1 million livres worth of munitions from the royal arsenals to the bogus firm of Roderigo Hortalez and Company; he convinced Louis's uncle and fellow Bourbon monarch, Charles III of Spain, to match the contribution. (Spain had fought alongside France in the Seven Years' War and paid a similar price for losing.) Ships laden with money, arms, ammunition, and clothing began sailing to the colonies before any American diplomat set foot in France – indeed, even before the Continental Congress issued its Declaration of Independence.¹³

¹² Vergennes cited in Samuel Flagg Bemis, *A Diplomatic History of the United States* (New York: Henry Holt, 1946), 20.

¹³ For France's military subsidies under the guise of private trade, see Maurice Lever, *Beaumarchais*, trans. Susan Emanuel (New York: Farrar, Straus, and Giroux, 2009); Brian N. Morton and Donald C. Spinelli, *Beaumarchais and the American Revolution* (Lanham, MD: Lexington Books, 2003); Joel Richard Paul, *Unlikely Allies: How a Merchant, a Playwright, and a Spy Saved the American Revolution* (New York:

By the time of Franklin’s arrival in Paris in December 1776, then, French assistance was an established fact. Franklin’s task – and that of his two colleagues, Silas Deane and Arthur Lee – was to transform covert support into recognition of American independence and a Franco-American alliance. This was no easy assignment. Franklin, Deane, and Lee, the first accredited diplomats in U.S. history, had their introductory encounters with Vergennes in the wake of a British campaign that saw King George’s redcoats seize New York City and almost apprehend General Washington. Given that setback, and other recent rebel defeats, Vergennes was hardly eager to raise France’s profile in America. The near destruction of the Continental Army on Brooklyn Heights served as a vivid reminder of British military power, and the program of rearmament inaugurated by Choiseul was not yet complete. Premature recognition of the United States, much less official French commitment to the rebel cause, was likely to bring on war. Vergennes consequently preferred to keep his country’s aid *sub rosa*. Not even the tumultuous reception accorded Franklin in Paris, where the Sage of Philadelphia attracted crowds so massive that the curious bought tickets to view him from afar, could budge the French court. Franklin may have been the most famous man in the world after Voltaire, but his philosophical writings and electrical experiments meant nothing to Vergennes, who judged all events by the criterion of what was good for France. Until the Americans gave some sign that they could hold their own against British forces, the foreign minister saw no reason to chance a replay of the conflict that had shorn France of its great-power status less than twenty years before.¹⁴

Historians disagree about what caused Vergennes to change his mind. For a long time they identified the Battle of Saratoga as the deciding factor. Major General Horatio Gates’s victory in the Hudson Valley, they argued, won Americans new respect at Versailles and made an alliance with the United States look more propitious. Recent treatments deemphasize Saratoga’s importance and contend that Vergennes had decided by late 1777 that war with Britain was inevitable. If France was going to

Riverhead Books, 2009). The best treatment of Vergennes’s foreign policy is Orville T. Murphy, *Charles Gravier, Comte de Vergennes: French Diplomacy in the Age of Revolution* (Albany: State University of New York Press, 1982).

¹⁴ Franklin’s taking of Paris by storm is one of the most written-about episodes in American diplomatic history. The better accounts include Claude-Anne Lopez, *Mon Cher Papa: Franklin and the Ladies of Paris* (New Haven: Yale University Press, 1966); Schiff, *Great Improvisation*; Schoenbrun, *Triumph in Paris*; Gordon S. Wood, *The Americanization of Benjamin Franklin* (New York: Penguin Books, 2004).

have to fight its ancient foe again anyway, he felt, it was better to do so at once, when the British were hemorrhaging men and money in America, rather than later, when London would have both hands free. Vergennes moreover seems to have concluded that France's fleet was ready to engage Britain on the high seas. Whatever his motivation, he persuaded his sovereign to move from surreptitious aid to open conflict, and on 6 February 1778, Franklin, Deane, and Lee joined Conrad Alexandre Gérard, Vergennes's chief assistant, at the Hotel de Lautrec in Paris to initial the historic treaty. After the four men affixed their signatures, Gérard traveled by carriage to Versailles to hand the document to Vergennes, who presented it to the king. Louis gave it his blessing. While the Continental Congress had yet to ratify the alliance, their assent was certain. France and America had become cobelligerents. Echoing Bemis almost word-for-word, historian Edmund Morgan dubs this "the greatest diplomatic victory the United States has ever achieved."¹⁵

Perhaps, but it was not an unmixed blessing. There were, in fact, two treaties signed that day. The first, a treaty of amity and commerce, followed almost exactly the principles laid down by John Adams two years earlier, when he drafted his Plan of 1776, a definition of maritime rights that formed the basis of what later became America's policy of "freedom of the seas." Franklin had brought a copy of Adams's plan to Paris to guide him in negotiations, and the French acquiesced to every provision: the treaty included rules protecting neutral commerce in wartime and permitted American ships free entry into French ports; it also granted the United States most-favored-nation status. More consequential than these agreements was France's recognition of America as an independent country. Franklin, Deane, and Lee had at last achieved this cherished objective.¹⁶

¹⁵ Edmund S. Morgan, *The Birth of the Republic, 1763–1789*, Second Edition (Chicago: University of Chicago Press, 1977), 83. For the orthodox view of Saratoga's significance, see Helen Augur, *The Secret War of Independence* (New York: Greenwood Press, 1955), 251; Bemis, *Diplomacy of the American Revolution*, 58–61; Piers Mackesy, *The War for America, 1775–1783* (Cambridge: Harvard University Press, 1964), 147; Van Tyne, "French Aid before the Alliance of 1778," 40; Van Tyne, "Influences Which Determined the French Government to Make the Treaty with America, 1778," *American Historical Review* 21 (April 1916): 531–534. For studies giving less weight to American heroics in the woods of northern New York, see Dull, *Diplomatic History of the American Revolution*, 89–96; Jonathan R. Dull, *The French Navy and American Independence: A Study of Arms and Diplomacy, 1774–1787* (Princeton: Princeton University Press, 1975), 89–94; Van Alstyne, *Empire and Independence*, 132–133.

¹⁶ Treaty of Amity and Commerce, 6 February 1778, *Treaties and Other International Acts of the United States of America*, Hunter Miller, ed. (Washington, D.C.: U.S. Government Printing Office, 1931) (hereafter *TOIA*), 2:3–29. See also Plan of a Treaty with France,

The second accord, a treaty of conditional and defensive alliance, was to take effect only in the event that French recognition triggered war between France and Britain. (Since it was inconceivable that George III and North would respond to such provocation with anything less than a call to arms, all signatories considered this pact in force before the ink was dry.) Article 2, the clause most important to Americans, stipulated, “The essential and direct end of the present defensive alliance is to maintain effectually the liberty, sovereignty, and independence absolute and unlimited of the said United States.” America’s diplomats paid a steep price for that article. Although Vergennes disclaimed any intention of reconquering Canada, the United States had to recognize French acquisitions in the Caribbean and guarantee “from the present time and forever” all territories on the North American continent France might obtain at the peace table. Vergennes moreover insisted on a clause stating that “Neither of the two Parties shall conclude either Truce or Peace with Great Britain without the formal consent of the other first obtain’d.” If, in other words, London decided to cut its colonies loose, the Americans could not declare victory and disband their army; they had to keep fighting until Paris’s aims were satisfied.¹⁷

“OUR GENEROUS ALLY”

Fear of overseas involvement, especially in European affairs, is a persistent theme in United States history. It predates the 1778 treaties. Those agreements, however, and the events that flowed from them brought Americans’ fear to the level of pathology, made “entangling alliances” the most hot-button term in their foreign-policy lexicon, and underlay such bedrock American texts as Washington’s Farewell Address and the Monroe Doctrine. So keenly did Americans resent the obligations imposed upon them by the Faustian bargain of 1778 that they did not become party to another formal alliance for a century and a half.¹⁸

To Franklin, Deane, and Lee, though, this limitation on the United States’ freedom of action was essential for military victory, and they

24 September 1776, *Journals of the Continental Congress, 1774–1789*, Galliard Hunt, ed. (Washington, D.C.: U.S. Government Printing Office, 1912) (hereafter *JCC*), 5:765–789.

¹⁷ Treaty of Conditional and Defensive Alliance, 6 February 1778, *TOIA*, 2:35–41.

¹⁸ The classic study of American political isolationism in the early national period remains Felix Gilbert, *The Beginnings of American Foreign Policy: To the Farewell Address* (Princeton: Princeton University Press, 1961).

concluded, with good reason, that Vergennes had been something of a soft touch in not demanding more by way of *quid pro quo*. Congress felt the same; after ratifying the pacts in early May, it instructed its ministers to convey “grateful acknowledgements . . . to his Most Christian Majesty for his truly magnanimous conduct respecting these states in the said generous and disinterested treaties.” Pro-French feeling was high among Americans on both sides of the Atlantic – for a time.¹⁹

Several developments combined to dampen this enthusiasm. Charles III, initially reluctant to join his cousin Louis in hostilities against Britain, realized by early 1779 that the war presented an excellent chance to recover Gibraltar, the famous fortress on the southern tip of the Iberian Peninsula that the British had taken from Spain seventy-five years earlier. While Charles would neither ally his kingdom with the United States nor commit himself to American independence, he did sign the Convention of Aranjuez, a Franco-Spanish accord that, among other things, bound the French to do battle until Gibraltar was once again attached to Spanish soil. In some ways this partnership proved advantageous to the Americans: by pooling their fleets, France and Spain gained naval superiority over Britain, and their maneuvers in the English Channel compelled George III to divert resources from the American theater. On the other hand, the two Bourbon kings saddled the United States with a potentially fatal burden. Franklin, Deane, and Lee had guaranteed that their nation would not make a separate peace without French approval, and France was now obliged to wage war until the Spanish flag flew over Gibraltar. Hence, Americans found themselves tied, indirectly, to a problem in which they had no strategic or economic interest. Little did Adams, who hailed the Franco-American alliance in 1778 as “a rock upon which we may safely build,” anticipate that events on an actual rock in the Mediterranean could derail his country’s revolution!²⁰

¹⁹ Congressional Resolution, 4 May 1778, *RDC*, 2:569. Vergennes’s magnanimity was calculating. He wanted to stay on good terms with the neutral maritime powers of Europe, and he feared that a too-selfish French policy in the New World would jeopardize those relations, possibly driving countries like Portugal and the Netherlands into the British camp. See Corwin, *French Policy and the American Alliance*, 21–22, 170–172; Bemis, *Diplomacy of the American Revolution*, 65; Murphy, *Charles Gravier*, 256–257.

²⁰ Adams to Wharton, 4 August 1778, *RDC*, 2:676. For a Spain’s role in turning a localized North American insurgency into a global conflict, see Thomas E. Chavez, *Spain and the Independence of the United States: An Intrinsic Gift* (Albuquerque: University of New Mexico Press, 2002); Anthony McFarlane, “The American Revolution and the Spanish Monarchy” in *Europe’s American Revolution*, Simon P. Newman, ed. (New York:

Just as distressing was the fact that French cobelligerency did not lead to an upturn in U.S. military fortunes. The war continued to go badly for the rebels despite the dispatch of French soldiers and ships of the line to America. Indeed, the first joint Franco-American campaign was a fiasco, as French Admiral Charles Hector d’Estaing and rebel General John Sullivan failed to coordinate their forces at Newport, Rhode Island, thereby missing the opportunity to overrun the British garrison there. French attempts to blockade New York Harbor likewise came a cropper. Vergennes began receiving despondent reports from Gérard, who arrived in Philadelphia five months after the treaties’ signing as the first French minister to the United States and who was appalled by the indiscipline of Washington’s army. The revolution was near collapse, he wrote. No matter what Versailles did, these frontier outposts would never make good their escape from the British Empire. Gérard’s verdict seemed borne out when the British shifted their focus south and took Savannah with a loss of only seven men. A combined French and American siege to recapture the city flopped; miscommunication kept the allies from acting in concert, and insufficient secrecy ensured that the defenders knew their enemy’s every move beforehand. Allied casualties were nearly six times those suffered by the British, who maintained their hold on Georgia’s capital.²¹

Congress, frustrated by these reverses and put off by the hauteur of the French officers sent to America, nonetheless saw no alternative other than to beseech Vergennes for more money, men, and *matériel*. American entreaties grew especially shrill after the British seized Charleston in the spring of 1780, taking almost 5,000 continental troops prisoner, the largest surrender of a U.S. armed force until the Civil War. Another British victory followed at Camden, where Gates, hero of Saratoga, allowed his army to be outflanked by a numerically inferior enemy. The British also made territorial gains in Virginia. For Americans, this was the bleakest time in the war, and their desperation affected their compact with France. William Stinchcombe, author of the most thorough study of Franco-American policy during the revolution, notes, “The 1778 alliance

Palgrave, 2006), 26–50; Buchanan Parker Thomson, *Spain: Forgotten Ally of the American Revolution* (North Quincy, MA: Christopher Publishing House, 1976).

²¹ Dull, *French Navy and American Independence*, 120–124, 161; Orville T. Murphy, “The View from Versailles: Charles Gravier Comte de Vergennes’s Perceptions of the American Revolution” in *Diplomacy and Revolution: The Franco-American Alliance of 1778*, Ronald Hoffman and Peter J. Albert, eds. (Charlottesville: University Press of Virginia, 1981), 131–140.

changed from a relation of partnership, although assuredly not on an equal basis, to one of dependence by 1780."²²

Vergennes was quick to capitalize on this change, using his increased leverage to direct the war effort toward French rather than American ends. When Congress called for a joint expedition into Canada, Vergennes vetoed the proposal because he preferred to see the rebels' northern neighbor remain under British control. Having ceded French claims to the region, and seeking to maximize French influence over an independent United States, Vergennes concluded that it was in his country's interest for the new republic to be as insecure as possible. British retention of Canada, he advised Gérard, would keep the Americans "uneasy" and "make them feel to an even greater extent the need which they have for friendship and alliance with the king."²³

This consideration also led Vergennes to discourage plans to extend the United States's western boundary to the Mississippi River, a congressional aim that became doubly odious in French eyes when the Spanish government objected to it. Charles III had no desire to share navigation of that vital waterway with the Americans, much less give up what he considered Spanish possessions on its east bank. Vergennes therefore informed Congress through Gérard that Versailles would not interpret Article 11 of the 1778 treaty of alliance, a mutual guarantee of territory acquired as a result of the war, to include land west of the Alleghenies. Vergennes moreover refused to assist the Americans in any campaign to capture East or West Florida. The Spanish foreign minister, José Monino y Redondo, conde de Floridablanca, wanted to keep the United States away from the Gulf of Mexico, and, as Gérard flatly told American legislators, Versailles valued Spain more highly than America in the contest with Britain. If Congress compelled the French to choose between Spain and the United States with regard to territorial claims, Louis XVI's Bourbon ally would receive preference. In other words, Vergennes envisaged the sovereign American republic as a narrow coastal strip hemmed in by the dominions of two empires.

Such constraints were bad enough, but they paled beside the instructions Vergennes obliged Congress to send to Franklin and his colleagues in August 1781. Vergennes was dissatisfied with the commission's existing

²² Stinchcombe, *American Revolution and the French Alliance*, 134. See also Robert Middlekauff, *The Glorious Cause: The American Revolution, 1763–1789*, Second Edition (New York: Oxford University Press, 2005), 442–463.

²³ Vergennes cited in Stinchcombe, *American Revolution and the French Alliance*, 27.

orders, issued in 1779, a time when America’s military prospects had seemed more promising. The earlier charge gave the diplomats considerable license, directing them to govern themselves “by the alliance between His Most Christian Majesty and these states, by the advice of our allies, by your knowledge of our interests, and by your own discretion, in which we repose the fullest confidence.” That was too much slack for Vergennes, who wanted the envoys under his thumb, particularly after Congress named John Adams to replace Deane. Adams’s impatience with the *politesse* of Versailles, his oft-voiced conviction that France was not doing enough to aid America, and his seeming ingratitude toward the monarchy that had opened its coffers and veins to keep the revolution afloat infuriated Vergennes, who predicted that the prickly New Englander “will only incite difficulties and vexations, because he has an inflexibility, a pedantry, an arrogance, and a conceit that renders him incapable of dealing with political subjects.” Efforts to get Adams recalled came to nothing, but Vergennes had enough clout with Congress to ghostwrite what amounted to a diplomatic straitjacket.²⁴

A rough draft of the new instructions included the command:

You are to make the most candid and confidential communications upon all subjects to the ministers of our generous ally, the King of France; to undertake nothing in the negotiations for peace or truce without their knowledge and concurrence; and to make them sensible how much we rely upon His Majesty’s influence for effectual support in every thing that may be necessary to the present security or future prosperity of the United States of America.

Even the most imaginative diplomat would have had trouble finding elbowroom in that passage, but it was insufficiently stringent for Anne-César, Chevalier de la Luzerne, Gérard’s successor as French minister to America. Luzerne persuaded the committee tasked with revising the orders to insert a safeguarding codicil, so that the final version read: “You are . . . to undertake nothing in the negotiations for peace or truce without their knowledge and concurrence; *and ultimately to govern yourselves by their advice and opinion, endeavoring in your whole*

²⁴ Congressional Instructions, 14 August 1779, *RDC*, 3:302; Vergennes to Luzerne, 7 August 1780, *Documents of the Emerging Nation: U.S. Foreign Relations, 1775–1789*, Mary Giunta, ed. (Wilmington, DE: Scholarly Resources, 1998) (hereafter *DEN*), 74. Accounts of Adams’s bull-in-a-china-shop conduct during his early months in Europe include James H. Hutson, *John Adams and the Diplomacy of the American Revolution* (Lexington: University Press of Kentucky, 1980), 33–74; McCullough, *John Adams*, 187–215, 225–242.

conduct to make them sensible how much we rely upon His Majesty's influence for effectual support . . ." ²⁵

"Never in history," Bemis thundered in 1935, "has one people voted to put its entire destiny more absolutely, more trustfully, under the control of a foreign government." A recent appraisal by Bradford Perkins comes to the same conclusion, to wit, that "the instructions of 1781 were a disgrace." Why would Congress forfeit American honor by handcuffing its ministers like this? Certainly, the state of the war was a factor; many legislators felt that French support was so essential that ensuring its continuance outweighed all other considerations. Madison took this position when he conceded that the instructions were "a sacrifice of national dignity" but went on to affirm that it was "a sacrifice of dignity to policy." The "situation of affairs," he said, rendered the "sacrifice necessary." A number of congressmen, however, were actuated by baser motives. As historians have shown, Luzerne, in addition to being a more industrious diplomat than the oft-bedridden Gérard, was also more unscrupulous; from the moment his frigate docked in Boston Harbor, he began a study of the corruptibility of Congress and identified men whose loyalty was for sale. By a judicious use of bribes, he induced those legislators to vote according to France's wishes. He even took credit for the election of Robert Livingston over the Francophobe Arthur Lee as secretary of foreign affairs, and while that boast cannot be substantiated, many congressmen were in fact on Luzerne's payroll. There seems little doubt that congressional approval of the new instructions derived in great part from French funds sprinkled in the right places. The fact that the instructions sailed through in less than a week, whereas the 1779 mandate took the assembly eight months to hammer out, lends credence to Walter LaFeber's contention that Congress had become "a slave to Vergennes" by the summer of 1781. ²⁶

²⁵ Report of Committee, Instructions to the Ministers Plenipotentiary to Negotiate a Peace, 8 June 1781, *JCC*, 20:617; Deliberations, 11 June 1781, *ibid.*, 20:626 (emphasis added). Some congressmen tried to strike that clause as "too abject and humiliating," but their motion failed.

²⁶ Bemis, *Diplomacy of the American Revolution*, 190; Perkins, "Peace of Paris," 196; Congressional Actions on Engagements with France, 8 August 1782, *RDC*, 5:647; Walter LaFeber, *The American Age: U.S. Foreign Policy at Home and Abroad, 1750 to the Present*, Second Edition (New York: W. W. Norton & Company, 1994), 24. For Luzerne's backstairs influence with Congress, see George Dangerfield, *Chancellor Robert R. Livingston of New York, 1746-1813* (New York: Harcourt, Brace, and Company, 1960), 114, 135-148, 153; Morris, *Peacemakers, 197-198, 209-217*; Stinchcombe, *American Revolution and the French Alliance*, 85-88, 153-169.

Vergennes’s victory was not yet complete. Since he had been unable to eliminate Adams from the peacemaking process, he strove to dilute the New Englander’s influence by expanding the U.S. commission and giving it a stronger pro-French tinge. Congress bridled at this suggestion, but a few days of lobbying by Luzerne sufficed to overcome most resistance, and on 11 June 1781 the legislators added Thomas Jefferson, Henry Laurens, and John Jay to the American team in Paris. Lee having returned home to take a congressional seat, this meant that the number of commissioners had risen to five, three of whom – Franklin, Jefferson, and Jay – enjoyed reputations as Francophiles. (Laurens, a hardliner in the Adams mode, was acceptable to Luzerne if Versailles could count on his proposals being overruled by the majority.) As it happened, Jefferson never left his estate at Monticello until the war was over, Laurens was a prisoner in the Tower of London for almost all of the negotiations, and Jay, despite his French ancestry, turned out to be more anti-Gallican than Adams – but Vergennes had no way of knowing this when he received the tidings from Luzerne. He could be forgiven for thinking the American commission was in his pocket.²⁷

Ironically, Congress handed the checkreins to Vergennes just five months before Yorktown changed the complexion of the war, forcing North’s resignation and ushering in the ministry of Charles Watson-Wentworth, Second Marquess of Rockingham, who was sworn to a restoration of peace. For the rebels, the outlook suddenly appeared brighter, and some congressmen began having second thoughts about the emasculating instructions they had issued. All motions for revision or repeal were defeated, though, for obvious reasons. Apart from Luzerne’s generosity, which continued to weigh in the calculations of powerful legislators like John Witherspoon of New Jersey, there was the uncomfortable truth that Yorktown did not lessen America’s dependence on France. Quite the contrary: if, as Robert Ferrell observes, Saratoga had been “almost a French victory,” that was even truer of the war’s final battle. Indeed, Admiral de Grasse originally intended to accept Cornwallis’s surrender himself, and was only persuaded by Lafayette at the last moment to let Washington share in the glory. No American could

²⁷ Deliberations, 11 June 1781, *JCC*, 20:628; Deliberations, 14 June 1781, *ibid.*, 20:648. Many leading figures in the American press were also recipients of French gold, among them Tom Paine, and they generated a steady stream of articles favorable to France from mid-1779 until the war’s conclusion. See Schoenbrun, *Triumph in Paris*, 346–347; Stinchcombe, *American Revolution and the French Alliance*, 118–132.

pretend that the continentals had achieved this result unaided. Still less could anyone imagine that the United States was capable of fending for itself if London elected to prolong hostilities, which was a possibility in late October 1781. Contemporaries did not invest Yorktown with the finality we assign it today: Rockingham's government was shaky; many members of Parliament continued to advocate a policy of bringing the colonies to submission; and the British, despite their defeat in the Chesapeake, still fielded 30,000 troops in North America, held New York and most of the major southern ports, and remained masters of the greatest navy on earth. The flush of victory after Yorktown could not obscure these facts.²⁸

Moreover, Rockingham had only pledged to end the war; he had said nothing about granting American independence. It was rumored that he sought to conclude a treaty of union like the one England had with Scotland, whereby both countries recognized the same king. In addition, even if Britain acknowledged the nationhood of its former colonies, that would not cancel out America's obligation to fight on until Versailles – and, by extension, Madrid – came to terms with London. Charles III's determination to capture Gibraltar had not diminished; the American Revolution might conceivably drag along until Spanish forces overran that naval choke point, a dubious prospect even if French forces fought at their side. And a Bourbon reconquest of the rock would still result in the United States taking its place among the nations of the world as a littoral with almost indefensible borders.

In all, America's diplomats faced a fearful challenge – or, rather, the challenge was fearful if they chose to face it. They could have simply followed instructions. That was Luzerne's expectation when he wrote to Vergennes in triumph after Congress dispatched its new charge to the peace commission. "[T]hese changes appear suitable to fulfill the desired objective," Luzerne exulted. "In fact, I view the negotiations as presently being in the hands of His Majesty." Had Franklin, Adams, and Jay been typical eighteenth-century envoys, they would have sought and obeyed French advice at every turn of the peacemaking, deferring to Vergennes's wisdom even when the foreign minister proposed policies contrary to American interests. To do otherwise would fly in the face of accepted diplomatic practice, as Franklin himself acknowledged in a letter to Livingston. "There is, I imagine, no minister who would not think it safer

²⁸ Robert H. Ferrell, *American Diplomacy: A History* (New York: W. W. Norton & Company, 1959), 11; Bendiner, *Virgin Diplomats*, 206.

to act by orders than from his own discretion,” the Philadelphian wrote his stateside boss.²⁹

Yet this was not a time for playing it safe, and the American commissioners had no intention of serving as Versailles’s stooges after six years of war. French efforts to lead them by the nose would prove as unavailing as had British attempts to crush their rebellion.

“DOCTOR DOUBLEFACE”

Jay, Adams, and Franklin reacted differently to the 1781 instructions. Gouverneur Morris, a former congressman and Jay’s friend, predicted that the stiff-necked New Yorker would be so appalled by Congress’s willingness to “prostitute the very little dignity our poor country is possessed of” that he would refuse to serve, and this nearly proved true. From his post in Madrid, where he had spent two-and-a-half years endeavoring unsuccessfully to obtain Spanish recognition of American independence, Jay composed a courteous but still searing letter to Livingston in which he confessed that his new assignment “embarrasses me.” “I know it to be my duty, as a public servant, . . . faithfully to execute my instructions without questioning the policy of them,” he wrote. Nonetheless, the stipulation requiring America’s diplomats to take their leads from Versailles “occasions sensations I have never before experienced, and induces me to wish that my name had been omitted.” He swore that “personal pride” had nothing to do with it, noting, “My ambition will always be more gratified in being useful than conspicuous.” *National* pride was the issue: “As an American I feel an interest in the dignity of my country, which renders it difficult for me to reconcile myself to the idea of the sovereign, independent States of America submitting, in the persons of their ministers, to be absolutely governed by the advice and opinions of the servants of another sovereign.”

On the other hand, Jay was far from the scene of action and, by his own admission, imperfectly informed. Events in North America or elsewhere may have so altered the strategic calculus as to necessitate Congress’s new approach. For the present, then, Jay felt “it would not be proper to decline this appointment.” He did, however, ask Livingston “to take an early opportunity of relieving me from a station where . . . I must necessarily receive and obey the directions of those on whom

²⁹ Luzerne cited in Stinchcombe, *American Revolution and the French Alliance*, 161; Franklin to Livingston, 5 December 1782, RDC, 6:111.

I really think no American minister ought to be dependent." Although he would not leave Congress in the lurch, he deplored the spectacle of America "casting herself into the arms of the King of France," a policy he doubted would "advance either her interest or reputation" with Versailles. "What the sentiments of my colleagues on this occasion may be," he concluded, "I do not as yet know."³⁰

That last line must have been written tongue in cheek. No one acquainted with Adams could have failed to anticipate his sulfurous response. He did not receive the news until later – indeed, as we shall see, until after Jay and Franklin had worked out the essentials of a peace settlement between Britain and the United States – but his diary left no confusion as to where he stood. "I am disgusted, affronted, and disappointed," he wrote. "I have been insulted, and my country has joined in the injury; it has basely prostituted its own honor by sacrificing mine." Adams found the new orders "servile and intolerable," roared that Congress had "surrendered their own sovereignty to a French minister," and concluded, "Blush! Blush! ye guilty records. Blush and perish! . . . How can such a stain be washed out? Can we cast a veil over it and forget it?" Not for the Duke of Braintree Jay's polite disapproval; some offenses were too grievous to be borne.³¹

By contrast, Franklin accepted the instructions without complaint. In fact, he seemed pleased, telling the president of Congress, "I have had so much experience of his majesty's goodness to us, . . . that I cannot but think the confidence well and judiciously placed, and that it will have happy effects." As directed, Franklin showed a copy of the orders to Vergennes, who already knew about them but pretended to learn their contents for the first time. The comte expressed "satisfaction," said Congress "never would have cause to regret" entrusting its fate to Versailles, and assured Franklin that Louis XVI had "the honor of the United States at heart, as well as their welfare and independence." Franklin's reply was a cascade of honeyed words. He praised the "sincerity" of the "upright and able" Vergennes and noted that the French court "never promised me anything" that it did "not punctually perform." America's diplomats would, he said, "submit dutifully" to the commands of their government.³²

³⁰ Morris to Jay, 17 June 1781, *LJJ*, 130; Jay to Livingston, 20 September 1781, *RDC*, 4:716–717.

³¹ Diary Entry, 18 February 1783, *WJA*, 3:359

³² Franklin to McKean, 13 September 1781, *RDC*, 4:709.

Franklin appeared to do just that when the Earl of Shelburne, secretary of state for colonial affairs under Rockingham, sent the Scottish slave merchant Richard Oswald to Paris to unofficially sound out the U.S. commissioners about the possibility of a separate Anglo-American peace. Shelburne had been a critic of George III's policy toward America since the beginning of the Revolution, and while he had yet to reconcile himself to independence, he adopted a more accommodating approach than had his predecessor under North. He felt that by lavishing the rebels with concessions, he might persuade them to accept an arrangement that kept America in the empire, but with its own parliament (the so-called “Irish solution”). Above all, he was determined to prevent Versailles from reestablishing a foothold in the New World, and he recognized that the surest way to accomplish that objective was to drive a wedge between America and France. He was therefore willing to be generous with respect to boundaries, debts, and other issues certain to arise at the negotiating table, and he chose Oswald as his envoy because he believed the Scot – elderly, philosophical, and pro-American – was a man after Franklin's heart.³³

Franklin, however, brought Oswald up short by informing him upon arrival that the United States would not negotiate with Britain “but in concert with France.” He then took Oswald to Versailles, where Vergennes told him the same thing through an interpreter: any attempt to divide the allies was doomed; if the British wanted peace with America, they had to satisfy French demands. Vergennes looked over to Franklin, who nodded his assent. To all appearances, the American was a puppet, and that did not bode well for British negotiators since there was no other high-ranking U.S. diplomat in Paris at the time with whom to deal. With Jay en route from Madrid and Adams in the Netherlands soliciting a loan, Franklin was the entire American commission. Oswald must have left Versailles feeling defeated.³⁴

The next day, though, as Oswald prepared to return to London, Franklin dropped his flunky's mask. He paid Oswald a call, ostensibly to say goodbye but really because he wanted to talk to him out of French earshot. It was his impression, he said, that the British aimed at “much

³³ For Shelburne's policymaking as secretary of state and prime minister, see C. R. Ritcheson, “The Earl of Shelburne and Peace with America, 1782–1783: Vision and Reality,” *International History Review*, 5 (August 1983): 322–345.

³⁴ Diary Entry, 1 July 1782, RDC, 5:537–539. Franklin kept a diary of this period, including copies of his correspondence, and it is one of the principal sources for historians studying American diplomacy during the final act of the Revolutionary War.

more than a mere peace” between their nation and its former colonies. They desired “*reconciliation* with the Americans,” and, since he sought the same outcome, he would speak frankly. Britain had inflicted “cruel injuries” on the United States, burning American towns and massacring women and children. This had created “impressions of resentment” that would “long remain” unless London did something to indemnify its victims. Franklin knew the perfect reparation. “Britain possesses Canada,” he observed, and if Britain gave this snow-clad landmass to the Americans, they might forgive and forget. If Britain continued to hold onto it, though, “that would necessarily oblige us to cultivate and strengthen our union with France.” In other words, transfer of Canada could relax or dissolve that union – the 1778 treaty of alliance and Congress’s 1781 instructions notwithstanding.

Franklin neither cleared this proposal with Vergennes before making it nor informed him of it afterward. As noted above, Vergennes aimed to keep Canada British, both for the purpose of limiting U.S. expansion and ensuring that the new republic remained dependent upon France. He would have vetoed Franklin’s suggestion had the doctor run it by him, but Franklin did not, thereby violating the letter and spirit of Congress’s orders. When Oswald seemed receptive to the idea of surrendering Canada in the interest of Anglo-American relations, Franklin gave him a letter to pass along to Shelburne. “I desire no other channel of communication between us than that of Mr. Oswald,” Franklin told the colonial secretary. The Scot was “a wise and honest man,” and Franklin hoped he would be formally commissioned to negotiate a peace that would “expedite the blessed work which our hearts are engaged in.”³⁵

Shelburne rejected Franklin’s Canada scheme, but he retained Oswald as his go-between and in a short time came to the conclusion – “*decidedly* tho’ *reluctantly*,” as he put it – that Britain would have to set the colonies free. There was one condition. “[I]f America is to be independent,” he declared, “she must be so of the whole world. No secret, tacit, or ostensible connections with France.” Towards that end, he sent Oswald back across the Channel with a quid pro quo offer: “the allowing of American independence” in exchange for “England being put into the same situation that she was left by the peace of 1763.” London would relinquish sovereignty over the United States, but it expected to retain everything else

³⁵ Diary Entry, 1 July 1782, *RDC*, 5:539–542 (emphasis in the original); Franklin to Shelburne, 18 April 1782, *ibid.*, 5:538–539. See also Grenville to Fox, 4 June 1782, *ibid.*, 5:474–477.

it had possessed at the end of the Seven Years’ War. The French would receive no territory in North America.³⁶

This was a blatant attempt to sever the Franco-American alliance, and if Franklin had felt bound by his instructions he would have broken off the discussion and reported Shelburne’s ploy to Vergennes. He did neither. Perhaps he rationalized that his talks with Oswald did not constitute formal negotiations, since the Scot as yet lacked full plenipotentiary powers, but the deal Shelburne proposed was so clearly adverse to French interests and so obviously designed to pry America from Versailles’s grasp that not even a tortured interpretation of the 1781 orders could excuse the U.S. commissioner’s keeping Vergennes in the dark.

Within a short time, then, Franklin and Oswald had established the relationship that would endure until the signing of a preliminary treaty in late November. They bargained seriously one-on-one; their speeches and silences at Versailles were a façade. Complicating matters was the fact that Shelburne was at that moment engaged in a turf war with Charles James Fox, secretary of state for foreign affairs, over control of Britain’s geopolitics, and Fox soon dispatched his own envoy to Paris. His choice of representative – Thomas Grenville, son of former prime minister George Grenville, whose Stamp Act precipitated the American Revolution – was either a slap in the face to the U.S. commissioners or indicative of gross naïveté. Franklin, though, handled the matter with aplomb. He greeted Grenville cordially, pronounced him an “intelligent, good-tempered, and well-instructed young man,” and listened with apparent attentiveness to his proposals. He also treated him to a shameless display of hypocrisy. After a two-hour meeting at the palace at which Franklin nodded while Vergennes repeatedly told the British minister that London could expect no separate peace from either France or the United States, Franklin lectured Grenville during the carriage ride back to Paris on what he termed “the general subject of benefits, obligation, and gratitude.” People often had “imperfect notions of their duty on those points,” the doctor said, and could become “ingenious in finding out reasons and arguments to prove that they had been under no obligation at all.” He was happy to note that Americans did not engage in such casuistry.³⁷

³⁶ Shelburne to Oswald, 27 July 1782, *DEN*, 91 (emphasis in the original); Shelburne cited in George C. Herring, *From Colony to Superpower: U.S. Foreign Relations since 1776* (New York: Oxford University Press, 2008), 30; Shelburne to Franklin, 27 April 1782, *The Private Correspondence of Benjamin Franklin*, William Temple Franklin, ed. (London: Henry Colburn, 1817), 2:161–162.

³⁷ Diary Entry, 1 July 1782, *RDC*, 5:550–556.

The inconvenience of dealing with Grenville ended on 1 July, when Rockingham died and George III directed Shelburne to assume the post of prime minister. Fox resigned, Grenville lost his commission, and Oswald became the sole British agent in Paris. With the field thus cleared, Franklin felt it time to present Oswald with specific terms for peace, which he read to him from a memorandum that has been lost to history; the only account we have of it is in Oswald's report to Shelburne. According to the Scot, Franklin divided his terms into *necessary* and *advisable* provisions. The necessary articles were "full and complete" American independence, withdrawal of British troops from American soil, acknowledgment that the United States extended from the Great Lakes to the Mississippi, and "freedom of fishing on the banks of Newfoundland." Advisable articles included an official British apology for "distressing" the Americans and the "giving up [of] every part of Canada." When Oswald asked Franklin to turn over his memorandum, the doctor declined; he did not want to leave proof that he had broken faith with his ally. He moreover recommended that Oswald introduce both the necessary and advisable terms to Shelburne as his own suggestion rather than Franklin's. Vergennes was again left out of the loop.³⁸

As the events just described make clear, Franklin, not Jay or Adams, first violated the instructions of 1781. Franklin was a subtler statesman than his fellow commissioners, but he was no less devoted to American interests, and although he never went on record as opposing Congress's directive to be guided by French advice, he never heeded it either, except rhetorically. To be sure, his circumvention of Vergennes did not approach the blatancy of Jay's subsequent efforts – the comte knew of Franklin's meetings with Oswald, even if he did not know what the two men discussed – and Franklin liked the French, whereas Jay and Adams held them in contempt. Nonetheless, when presented with an opportunity to secure British recognition of American independence and liberal boundaries for the United States, Franklin did not allow fondness for his hosts or respect for congressional prerogatives to divert him. In the spring and summer of 1782, he lived up to the "Doctor Doubleface" sobriquet coined by his detractors in Britain. His correspondence during these months, whether with superiors back home, adversaries in London, or abettors on the Continent, teemed with expressions of gratitude to Louis XVI and affirmations of American loyalty to the 1778 alliance, while his

³⁸ Oswald to Shelburne, 10 July 1782, *DEN*, 88–90. See also Bemis, *Diplomacy of the American Revolution*, 207.

actions demonstrated a readiness to defy Congress and Versailles if such behavior benefited his country.³⁹

A vivid example of this dissonance between word and deed was Franklin’s reply to David Hartley, a member of Parliament and longtime acquaintance who wrote to ask whether there was any truth to rumors that “America was disposed to enter into a separate treaty with Great Britain.” Since Hartley played no role in the negotiations, Franklin did not address him with the candor he showed Oswald and Shelburne. Instead, he affected indignation, declaring, “I never had such an idea, and I believe there is not a man in America . . . that would not spurn at the thought of deserting a noble and generous friend for the sake of a truce with an unjust and cruel enemy.” How could anyone imagine that Franklin and his associates were capable of “treachery to our first friend,” France? “Congress will never instruct their commissioners to obtain a peace on such ignominious terms,” the doctor pronounced, “and although there can be few things in which I would venture to disobey their orders, yet if it were possible for them to give me such an order as this, I certainly should refuse to act, I should instantly renounce their commission, and banish myself forever from so infamous a country.” As Franklin wrote these lines, of course, he was disobeying Congress’s instructions in order to facilitate the treachery he inveighed against.⁴⁰

“LET US THINK FOR OURSELVES”

It was therefore not so much the strategy as the tone of American diplomacy that changed when Jay joined the talks in late July. He had arrived in Paris a month earlier, but an attack of influenza confined him to his bed and left Franklin in command of relations with Great Britain, an assignment the doctor managed so dexterously that Shelburne swallowed the bitter pill and told Oswald he was prepared to make peace on the basis of Franklin’s necessary conditions. Oswald expected the American diplomats to be ecstatic when he brought this news, but Jay was more interested in the language of Oswald’s just-drafted commission. He noted that the document, written by Shelburne and signed by George III, empowered Oswald “to treat with commissioners named by the said

³⁹ Sarah Knott, *Sensibility and the American Revolution* (Chapel Hill: University of North Carolina Press, 2008), 248.

⁴⁰ Franklin to Hartley, 15 January 1782, *RDC*, 5:112. See also Franklin to Hartley, 16 February 1782, *ibid.*, 5:169–170.

colonies or plantations . . . in North America.” That was unacceptable, Jay declared. He, Franklin, and the absent Adams represented a sovereign nation made up of free states. There were no colonies on the eastern seaboard. What kind of trickery was this?⁴¹

Oswald argued that Jay was being unnecessarily legalistic. As long as Britain conferred independence in the final treaty, as Shelburne intended to do, what difference did it make what titles were used during negotiations? Franklin agreed. While admitting that he was no lawyer, he thought this a technicality that should not hold up the peace process. Jay stood fast. Formal titles mattered, he said. If Shelburne was sincere in his claims, he ought to have no hesitation acknowledging America’s independence from Britain *prior* to a treaty. Independence was not a gift for London to give the United States as the price of peace. Americans had already won their independence. Now the diplomats had come together to hash out the terms of that independence. Jay wanted Oswald’s commission revised to mention a country calling itself the United States of America. He moreover wanted independence “expressly granted by act of Parliament.” When Oswald protested that this was impracticable because Parliament had recessed for the summer, Jay said that George III could recognize American independence “by proclamation.” Jay did not care how this issue was resolved, but resolved it must be before he would negotiate. He was too fervent a patriot to move forward on anything other than an equal footing.

Accustomed to dealing with Franklin, Oswald found Jay’s combativeness deplorable, and Jay made matters worse by remarking how much better the situation would be for all parties if the king had liberated his North American colonies years ago, “before such deep wounds had been given to the bias and attachment which then subsisted all over the country in favor of Great Britain.” According to Oswald’s notes of the meeting, Jay then “ran into a detail of particulars too unnecessary and unpleasant here to be repeated.” He spoke “with such a freedom of expression and

⁴¹ My treatment of Jay’s role in the negotiations draws for the most part upon his report to Livingston on 17 November 1782, which one historian describes as the most important document in the archives “detailing the steps leading up to the preliminary treaty with England and emphasizing the success of the American commissioners.” Henry P. Johnston, *The Correspondence and Public Papers of John Jay* (New York: G. P. Putnam’s Sons, 1890), 2:366. Also crucial is *The Diary of John Jay during the Peace Negotiations of 1782, Being a Complete and Faithful Rendering of the Original Manuscript, Now Published for the First Time*, Frank Monaghan, ed. (New Haven: Bibliographical Press, Yale University, 1934).

disapprobation of our conduct,” the Scot wrote, “as shows we have little to expect from him in the way of indulgence.” Franklin stopped by Oswald’s lodgings after this encounter to assure his friend that Jay meant no harm, that he was impetuous and suffering from the aftereffects of flu, and that in the long run the British would appreciate his keen legal mind. There was, however, no mistaking the chill that had descended on the heretofore pleasant Anglo-American dialogue.⁴²

If Oswald aggravated Jay’s suspicions, the Spanish ambassador to France – Pedro Pablo Abarca de Bolea, conde de Aranda – made him downright panic-stricken. Ironically, Aranda was one of the few Spaniards Jay liked; after meeting the conde for the first time in late June 1782, Jay described him as “frank,” “candid,” and “sagacious.” Yet their first discussion of peace terms revealed how far apart the two were. Aranda got down to business, spreading a map of North America on a table and proposing that he and Jay establish a demarcation line between Spanish territory and the lands the United States expected to control in the post-war period. With his finger, Jay traced along the Mississippi River from its source almost to its mouth and then drew a boundary east along the 31st parallel to the border between Florida and Georgia. Aranda’s smile faded. When Jay asked what Spain offered by way of alternative, Aranda said he needed time to think it over. A few days later, a courier delivered Aranda’s map to Jay’s quarters. The conde had drawn a longitudinal line nearly 500 miles to the east of the Mississippi, so that what are today the states of Indiana, Illinois, Tennessee, Kentucky, and Mississippi fell within the Spanish zone. An appalled Jay wrote Livingston that this line “would leave near as much country between it and the Mississippi as there is between it and the Atlantic Ocean.” Jay saw little prospect of reconciling the two visions of America’s western border.⁴³

Unsurprisingly, Oswald’s commission and Aranda’s boundary line were the two subjects under review when Jay and Franklin met with Vergennes at the palace on 10 August. Also in attendance was Joseph

⁴² Draft commission, 25 July 1782, *RDC*, 5:613; Richard Oswald: Minutes of His Conversations with Benjamin Franklin and John Jay, 7 August 1782, 11 August 1782, 13 August 1782, *DEN*, 91–94; Oswald to Townshend, 7 August 1782, *The Works of Benjamin Franklin*, Jared Sparks, ed. (Philadelphia: Childs and Peterson, 1840), 9:378; Oswald cited in George Pellew, *John Jay* (Boston: Houghton Mifflin, 1890), 9:159.

⁴³ Jay to Montmorin, 26 June 1782, *RDC*, 5:524; Jay to Livingston, 17 November 1782, *ibid.*, 6:22–24; Jay cited in Norman A. Graebner, Richard Dean Burns, and Joseph M. Siracusa, *Foreign Affairs and the Founding Fathers: From Confederation to Constitution, 1776–1787* (Santa Barbara: ABC-CLIO, 2011), 16.

Mathias Gérard de Rayneval, undersecretary of state for foreign affairs, a man for whom Jay contrived an immediate dislike. On both issues, the Frenchmen gave advice that seemed to go against American interests. Vergennes told Jay and Franklin to accept the British commission as it stood. The term *colonies* “signified little,” he said. What, after all, was in a name? Whenever British plenipotentiaries communicated with Versailles, they used an ancient form of address designating George III king of France as well as king of Britain, and that was no obstacle to French diplomats negotiating with them. Besides, if Oswald received the American commissions, in which Jay and Franklin were identified as representatives of the United States, that would constitute recognition of the United States as an independent nation. Franklin, impressed, said that the arrangement the comte proposed “would do.” Jay disagreed. He had no use for “all this singular reasoning,” he complained, and Vergennes’s formula did not satisfy him. It was “descending from the ground of independence to treat under the description of colonies.”

Jay and Franklin concurred when it came to the western boundary, both denouncing what they called the “extravagance” of Aranda’s line. They not only refused to give up any territory east of the Mississippi to Spain; they demanded the right of free navigation on that mighty river. (Franklin had earlier proclaimed that “a neighbor might as well ask me to sell my street door” as to “sell a drop of its waters.”) Vergennes made no reply to these statements, but Rayneval did. According to Jay’s memorandum, the undersecretary “thought we claimed more than we had a right to,” a view Jay was certain Rayneval’s boss shared. The meeting adjourned with ill feeling all around.⁴⁴

What took place in the next few hours is the stuff of legend, a thrice-told tale worth retelling here because it underscores the novelty of the path America’s diplomats chose. Franklin and Jay began arguing on the ride to Passy, a village just outside Paris where Franklin had lived since early 1777. Jay insisted that Vergennes was colluding with the Spanish to keep the United States small and weak, and that the comte’s enjoinder to accept Oswald’s commission was an attempt to postpone British acknowledgment of U.S. independence until France and Spain had “made all their uses of us.” If the American commissioners did what Vergennes recommended, Jay said, Spanish reconquest of Gibraltar (an unlikely prospect)

⁴⁴ Jay to Livingston, 17 November 1782, *RDC*, 6:14–15, 22–23; Franklin to Jay, 2 October 1780, *Selected Letters of John Jay and Sarah Livingston Jay*, Landa M. Freeman, Louise V. North, and Janet M. Wedge, eds. (Jefferson, NC: McFarland & Co., 2005), 94.

and French recovery of all North American territory lost in the Seven Years' War (an impossible one) would have to precede the birth of a sovereign United States – meaning, in effect, that America might never become independent. Jay asked why, if this was not Vergennes's objective, he was "advising us to act in a manner inconsistent with our dignity"? The comte had "too much understanding not to see the fallacy of" his ratiocination.

Franklin felt his colleague was being unfair to the French. While admitting that Spain sought "to coop us up within the Allegheny mountains," he saw no reason to ascribe such malice to Versailles, whose representatives had "hitherto treated us very fairly." He observed that Vergennes's counsel was susceptible to a more benign interpretation: maybe the comte was just trying to please two allies. Furthermore, Franklin said, French advice that the Americans receive Oswald's commission could be taken as evidence of a desire to hasten British confirmation of U.S. independence, not defer it.

The debate continued at Franklin's house, where the two men moved into the study, Jay puffing furiously on his churchwarden pipe. When Franklin again contrasted Spanish covetousness with French altruism, Jay fired back that there was no difference between Madrid and Versailles. "I have no faith in any court in Europe," he declared. "Let us forget the pretty sentiments that they profess to entertain. We know they are motivated by self-interest." And, he pointed out, it was not in the self-interest of either Spain or France that "we should become a great and formidable people." Therefore, "they will not help us to become so." Jay said that he and Franklin should insist upon the Mississippi as the United States's western boundary despite Aranda's claims, and that they should refuse to treat without prior British acknowledgment of American independence, no matter what Vergennes prescribed.

Franklin assured Jay that he was of like mind with respect to the Mississippi. "It is true that we owe Spain nothing," he said. But challenging Vergennes over Oswald's commission seemed dastardly recompense for an ally who had underwritten America's revolution for six years and whose troops had contributed to the victory at Yorktown. "Have we any reason to doubt the good faith of the king of France?" Franklin asked. Jay shot back, "We can depend upon the French only to see that we are separated from England." Beyond that, American and French interests diverged. "Let us be grateful to the French for what they have done for us," Jay contended, "but let us think for ourselves. And, if need be, let us act for ourselves."

The doctor then turned to the elephant in the room. Congress had ordered its diplomats to comply with French wishes, he observed, and Vergennes's counsel was unequivocal. Did Franklin need to remind Jay of the text of the 1781 instructions? Jay grimaced. "With the wording of those letters I am too familiar," he said. "I am likewise familiar with the means by which they were forced upon a subservient Congress," meaning French bribery. Raising the obvious question, Franklin asked, "Would you deliberately break Congress's instructions?" Jay replied, "Unless we violate these instructions, the dignity of Congress will be in the dust." Franklin bore down. "Then you are prepared to break our instructions," he said, "and intend to take an independent course now." Jay, in high dudgeon, thundered, "If the instructions conflict with America's honor and dignity, I would break them – *like this!*" He then flung his pipe into the fireplace.⁴⁵

It is a classic story. Did it really happen that way? Probably not. As Richard Morris notes, both Franklin and Jay kept diaries, and neither contains an entry relating to this exchange. Jay did mention it in a letter to Livingston, but only in passing, and his account ended with Franklin's remark that the 1781 instructions required "our acquiescence in the advice and opinion of the [French] minister"; he said nothing about what came next. While Jay's son William wrote about the pipe shattering years later, there are no contemporary reports of the commissioner's famous gesture. The dialogue, too, has the feel of having been embellished for posterity; it does not read like spontaneous discourse between human beings. Most implausible is Franklin's purported astonishment that Jay would dare betray America's French ally when, as we have seen, the doctor had been double-crossing Vergennes for months before Jay came to the negotiating table.⁴⁶

⁴⁵ Jay to Livingston, 17 November 1782, *RDC*, 6:15–16, 49; Jay to Livingston, 18 September 1782, *RDC*, 5:740; Franklin and Jay cited in Fleming, *Perils of Peace*, 221–222; Frank Monaghan, *John Jay* (New York: Bobbs-Merrill, 1935), 195–196; Morris, *Peacemakers*, 309–310 (emphasis in the original).

⁴⁶ Morris, *Peacemakers*, 310; Jay to Livingston, 17 November 1781, *RDC*, 6:15, 49; Monaghan, *John Jay*, 449; Jay to Morris, 13 October 1782, *RDC*, 5:819. This encounter is such a durable component of the Revolutionary-War narrative that Monaghan titles a chapter "Mr. Jay Smashes His Pipe" and Morris designates one "The Long Clay Pipe of Mr. Jay." See also Bendiner, *Virgin Diplomats*, 226; Jerald A. Combs and Arthur G. Combs, *The History of American Foreign Policy*, Second Edition (New York: McGraw-Hill, 1997), 10; William M. Fowler, Jr., *American Crisis: George Washington and the Dangerous Two Years after Yorktown, 1781–1783* (New York: Walker & Company, 2011), 121–122; James H. Hutson, "The American Negotiators: The Diplomacy of Jealousy" in *Peace and*

Then again, Franklin may have feigned shock to test Jay’s resolve. Was the New Yorker bold enough to overturn centuries of diplomatic tradition and thereby risk dismissal, public disgrace, and perhaps a date with the gibbet? Jay certainly left Passy convinced Franklin was in Vergennes’s thrall. At the end of a dispatch to Livingston lashing the French for duplicity, he wrote, “Dr. Franklin does not see the conduct of this court in the light I do, and he believes they mean nothing in their proceedings but what is friendly, fair, and honorable,” adding, “Facts and future events must determine which of us is mistaken.” Some of the most pungent phrases attributed to Jay at that 10 August meeting – “let us think for ourselves,” “the dignity of Congress will be in the dust” – did issue from his pen on later occasions, and he could have been recycling them.⁴⁷

Furthermore, the standard account of the Franklin-Jay faceoff accurately reflects Jay’s hostility toward continental Europeans in general and the Bourbons in particular. Nearly three years as an unrecognized minister to Spain had left Jay disgusted with His Most Catholic Majesty, Charles III, who dangled the Americans at the end of a line of promises but gave them precious little aid. Jay considered Charles and his grandees lazy, backward, and unscrupulous, and he took an even dimmer view of Versailles. In one of the crowning ironies of the Revolutionary War, Vergennes and Luzerne had intrigued to get Jay appointed peace commissioner because they thought his French lineage would make him sympathetic to their position, but they were unaware that Jay’s paternal ancestors had been Huguenots (Calvinists) who fled France after Louis XIV revoked the Nantes Edict of Tolerance. Two of the most profound cultural inheritances in the Jay family were Francophobia and anti-Catholicism. These were matched by Anglophilia – Great Britain had, after all, offered refuge to the Huguenots – and devotion to the Church of England. Few Americans were less likely to turn into a jelly of obeisance before Louis XVI than John Jay, and none was more eager to forsake Versailles for London. While Jay probably did not dash his long clay pipe into the fireplace on 10 August 1782, he might as well have. That flourish, apocryphal or not, summed up his attitude.⁴⁸

the Peacemakers, 65; Thomas G. Paterson, J. Garry Clifford, Shane J. Maddock, Deborah Kisatsky, and Kenneth J. Hagan, *American Foreign Relations: A History*, Seventh Edition (Boston: Wadsworth, 2010), 1:2; Schiff, *Great Improvisation*, 310.

⁴⁷ Jay to Livingston, 18 September 1782, RDC, 5:740; Adams to Livingston, 31 October 1782, *ibid.*, 5:839.

⁴⁸ For a vivid account of Jay’s Gethsemane in Madrid, see Bendiner, *Virgin Diplomats*, 143–167. For his Huguenot ancestry, see Monaghan, *John Jay*, 13–22.

“RATHER JEALOUS THAN PARTIAL TO AMERICA”

At almost the same time that Jay and Franklin had their colloquy, the Continental Congress took up the question of whether or not “to revise the instructions to the ministers plenipotentiary of the U.S. for negotiating and concluding a treaty of peace.” Legislators weighed in on both sides, and the most passionate advocates for and against revision were two Virginians: Richard Henry Lee and James Madison. Lee appealed to his colleagues’ patriotism, declaring that the instructions, by entrusting Versailles with “the whole, the absolute disposal of our affairs,” were so supine as to “expose us to the contempt and scorn of all the nations of Europe.” What self-respecting people obliged their envoys to submit to such trammels? “Our dignity is stained,” he pronounced. “We must revoke the instructions in order to wipe off that stain and restore its luster.” He also insisted that France’s “long and close connection with Spain” would induce Versailles to give Spanish claims on the North American continent “preference to those of these States.” Since everyone knew Madrid coveted lands west of the Appalachians – and, in fact, sought to make the Mississippi a Spanish river – it was obvious that, unless the instructions were revised, “we shall be so circumscribed in our boundaries that our independence will be a nugatory independence.”

Madison carried the burden of the argument against revision. Yes, he conceded, the instructions looked excessive post-Yorktown and were, perhaps, unworthy of an independent nation. Nonetheless, for Congress to change them would be disastrous to the Franco-American alliance. It would appear an “act of ingratitude” toward France, “awaken her suspicions and jealousies,” and “abate her zeal in our favor.” America could ill afford to estrange Versailles “at this critical moment” with the treasury empty and Britain still seemingly full of fight. Besides, Madison contended, the instructions were not as restrictive as Lee and others made out: “Our ministers may still, notwithstanding the instructions given, state and assert our claims and contend with the utmost earnestness for our rights, and it is only in the last extremity, when all their pleas, all their reasoning, and all their most earnest endeavors prove ineffectual, that they are ultimately to govern themselves by the advice and opinion of the court of France.” Madison could not imagine a case in which, America’s representatives having exhausted every means of persuasion, Versailles still said no.⁴⁹

⁴⁹ Congressional Action on Engagements with France, 8 August 1782, *RDC*, 5:645–651.

Across the Atlantic, Jay *could* conceive of such a situation, and although the non-revisionists triumphed in Congress – the 1781 orders remained unchanged until peace rendered them moot – Congress was not setting policy. Its commissioners were, principally Jay, who seized control of the negotiations in the last week of August when Franklin was incapacitated by a kidney stone. With the doctor laid up, Jay was free to follow through on his threat to suspend talks with the British pending an alteration of Oswald’s powers. He told Oswald that he would not treat with any agent whose commission described the Americans as British subjects, and that until the Scot could show him a document, under the Great Seal of George III, recognizing U.S. independence, there was nothing more to discuss.⁵⁰

Jay’s inflexibility on this issue, while justifiable from a legal standpoint, proved counterproductive. It delayed negotiations for seven weeks, during which Britain’s military fortunes improved, with a commensurate hardening of British peace terms. As it happened, Jay would have been well advised not to stand on ceremony. Had he begun bargaining in earnest in late August, according to several historians, Shelburne’s government would have been more amenable to American pressure and might have agreed to greater concessions. When Jay broke off talks with Oswald, the Bourbon powers were intensifying their two-year siege of Gibraltar with a frontal assault that employed battery-mounted fire boats specially designed for this operation, and for a few days it looked as though the Franco-Spanish forces might succeed. The British garrison on Gibraltar, however, held out until a fleet commanded by one of Britain’s best admirals arrived to lift the siege and inflict defeat on the attackers. By the time Oswald received a new commission from Shelburne removing the colonial designation and mentioning the United States by name, Gibraltar, gateway to the Mediterranean, was firmly in British hands, French and Spanish morale was depressed, and Shelburne had sent Henry Strachey, a veteran foreign-office diplomat with no love for the Americans, to Paris to stiffen Oswald’s negotiating stance. Jay won his point, but at considerable cost.⁵¹

⁵⁰ Walter Stahr, *John Jay: Founding Father* (New York: Bloomsbury Academic, 2005), 156.

⁵¹ Richard Oswald’s Second Commission for Negotiating Peace, 21 September 1782, *RDC*, 5:748. A number of scholars point out that Oswald’s revised commission was not the explicit royal or parliamentary statement of recognition that Jay had demanded. Shelburne’s cabinet merely empowered Oswald “to treat with the commissioners . . . under the title of Thirteen United States,” and then listed the states one by one. This language

In any event, concerns about the wording of Oswald's commission soon faded in importance compared to three developments that spurred Jay to his boldest violation of Congress's orders. First, British agents showed Jay a translated copy of a dispatch the British had intercepted on the high seas from François Barbé-Marbois, chargé d'affaires of the French embassy in Philadelphia, for Vergennes. In it, Barbé-Marbois argued against supporting the American claim to a postwar right to fish in waters off the Grand Banks. If the United States secured that right, Barbé-Marbois noted, New Englanders would cut into France's share of the North American fisheries and Versailles would lose revenue. The Americans should therefore be encouraged to abandon their "pretension" before they, the French, and the British sat down to the anticipated trilateral talks. Barbé-Marbois compounded his affront in Jay's eyes by gloating that the Continental Congress's 1781 instructions left Louis XVI "master of the terms of the treaty of peace." This letter convinced Jay even more forcibly than before that Versailles was not a faithful guardian of the American national interest.⁵²

The second incident that unsettled Jay was a 5 September meeting he had with Rayneval to discuss U.S.-Spanish differences. Rayneval expanded on the point he had made earlier: that the Americans should cut back on their territorial demands, that Spain had legitimate claims to land west of the Appalachians, and that Native Americans who occupied parts of the area deserved a measure of sovereignty too. After delivering what Jay called a "long disquisition," Rayneval suggested a compromise that looked like Aranda's proposal of several months past. He produced a map and drew a line along various rivers, stopping at the intersection of the Cumberland and the Ohio. "The savages to the westward of the

left Parliament and George III free to forswear any acknowledgment of U.S. independence. One historian deems the new commission "an easily discardable, unilateral, purely executive-level document" that should not have been allowed to interrupt talks. Frank W. Brecher, *Securing American Independence: John Jay and the French Alliance* (Westport, CT: Praeger, 2003), 193. See also Dull, *Diplomatic History of the American Revolution*, 148; Perkins, "Peace of Paris," 202–204. For an account of the final Bourbon campaign to wrest Gibraltar from Britain, see Dull, *French Navy and American Independence*, 304–324.

⁵² Translation of an Intercepted and Decyphered Letter from M. Barbé-Marbois to M. Vergennes, 13 March 1782, *Life and Writings of Benjamin Franklin*, William Dean, ed. (New York: Derby and Jackson, 1859), 1:473. Although Barbé-Marbois, Vergennes, and other French diplomats protested that this dispatch was a British forgery, historians have deemed it authentic. See Morris, *Peacemakers*, 325; Carl Van Doren, *Benjamin Franklin* (New York: Viking Press, 1939), 686.

line ... should be free under the protection of Spain,” he said, while “those to the eastward should be free under the protection of the United States.” Since, by this formula, the Americans would not receive a boundary on the Mississippi, it would be foolish for them to assert the prerogatives of a riparian power. Rayneval therefore recommended that they drop all demands for navigation rights. Jay, stone-faced, asked Rayneval to commit these suggestions to paper, and the deputy complied, furnishing Jay the next afternoon with a memorandum whose arrogance of tone made the American see red.⁵³

Far more explosive than these occurrences was the report Jay received on 9 September from Matthew Ridley, a member of the British secret service stationed in Paris. Ridley informed Jay that Rayneval had left on a covert mission to Shelburne two days earlier – that is, hard on the heels of his meeting with Jay. Worse, Ridley revealed that on the morning of his departure for the enemy capital, Rayneval had met with Vergennes and Aranda for “two or three hours” at Versailles. For Jay, the conclusion was inescapable. What purpose could this trip have other than a betrayal of the United States? Why would Vergennes have neglected to inform the American commissioners of his right-hand man’s visit to London unless he and Aranda were plotting to make a separate peace with the British that deprived America of the Mississippi boundary, access to the fisheries, and who could tell what else?⁵⁴

We know now, because the relevant documents have been declassified, that Jay overreacted. Rayneval’s mission did not have the sinister character Jay gave it. It was prompted by an interview Vergennes had with Admiral de Grasse, hero of Yorktown and until recently a British prisoner of war. (De Grasse had been captured after his fleet went down to defeat.) The just-released de Grasse assured Vergennes that the British were willing to negotiate peace with their European rivals on honorable terms, and were in fact prepared to cede Gibraltar to the Spanish if that would expedite matters. To Vergennes, this sounded too good to be true – it was – but he sent Rayneval to London to ask Shelburne whether de Grasse’s message accurately reflected the prime minister’s position.

⁵³ Jay to Livingston, 17 November 1782, *RDC*, 6:24; Rayneval to Jay, 6 September 1782, *ibid.*, 6:25; M. de Rayneval’s Memoir Respecting the Right of the United States to the Navigation of the Mississippi, 6 September 1782, *ibid.*, 6:25–27.

⁵⁴ Jay to Livingston, 17 November 1782, *RDC*, 6:28–29; Diary Entry, 9 September 1782, “Matthew Ridley’s Diary during the Peace Negotiations of 1782,” Herbert E. Klingelhoff, ed., *William and Mary Quarterly* 20 (January 1963): 104.

American issues were not on the agenda when Rayneval met Shelburne at the latter's country home in Wiltshire.⁵⁵

Still, one can hardly fault Jay for thinking a plot was afoot. Rayneval's conduct looked shady, as did Vergennes's secretiveness. And it must be noted that while Rayneval's formal instructions did not address the American situation, he did make a number of remarks during his exchanges with Shelburne that smacked of an anti-United States deal. On the first day of their talks, Rayneval told Shelburne, "*We do not want the Americans to share in the fisheries.*" He moreover belittled American claims that their nation should stretch to the Mississippi and insisted that France's commitment to the United States bore only on independence; it did not require Versailles to fight for every territorial, legal, and commercial demand the Americans put forth. Shelburne reported to George III after this discussion, "The point of independence once settled, [Rayneval] appears rather jealous than partial to America upon other points." Rayneval manifested this jealousy repeatedly as he strolled with Shelburne through the earl's wooded park, at one time noting that he had no doubt of Louis XVI's intention to "contain the Americans." He also said that such containment would be easier if the U.S. delegation were kept ignorant of negotiations between Britain, Spain, and France. These were not innocuous statements. While the records of the Rayneval-Shelburne talks include no smoking-gun evidence that Versailles intended to violate the terms of its alliance with America, a reasonable person could infer from what went on that Jay's misgivings had substantial basis in fact.⁵⁶

Furthermore, quite apart from Rayneval's trip to London, Jay was correct in the three larger conclusions he drew and communicated to Livingston in early September: first, "that this court would, at a peace, oppose our extension to the Mississippi"; second, "that they would oppose our claim to free navigation of that river"; and third, that they would seek to "divide" the fisheries with Britain "to the exclusion of all

⁵⁵ Jared Sparks, one of the first historians to examine the paper trail left by diplomats in France, Spain, Britain, and America during the Revolutionary War, exonerated Rayneval of any wrongdoing and lamented that "some grave particulars have crept into our history which have slender foundation in fact and which bestow but scanty justice on the motives, conduct, and policy of the first ally of the United States." *Observations on the Above Letter by Mr. Sparks*, RDC, 6:49–51.

⁵⁶ Rayneval cited in Morris, *Peacemakers*, 329–330 (emphasis in the original); Shelburne cited in Bradford Perkins, *The Creation of an American Empire, 1775–1865* (Cambridge: Cambridge University Press, 1993), 40; *Conferences of M. de Rayneval (Extracts)*, October 1782, RDC, 5:821–822.

others.” Those had been Versailles’s policy goals since the American Revolution began. From the moment the first French ambassador, Gérard, arrived in Philadelphia, Vergennes directed him to support Spanish claims to sovereignty over lands east of the Mississippi. To Gérard’s successor, Luzerne, the comte wrote in October 1782 that American demands for navigation rights were “foolishness not meriting serious refutation.” As for the fisheries, the words of Alleyn Fitzherbert, Shelburne’s assistant, make plain French designs for postwar North America. Fitzherbert recalled years later, “M. de Vergennes never failed to insist on the expediency of a concert of measures between France and England for the purpose of excluding the American states from these fisheries, lest they should become a nursery for seamen.” Jay was right to assume that the French wanted to keep the United States a miniature East Coast nation with no access to the river that was the key to future aggrandizement, and that they sought to deprive Americans of a resource so essential to the U.S. economy that, by the time of the peace treaty’s signing, the value of the fishing business in Massachusetts alone was nearly \$2 million.⁵⁷

Animated, then, by a mix of well-founded surmise and anti-Bourbon bias, Jay resolved to steal a march on Vergennes. His instrument was one Benjamin Vaughan, who seemed at first blush a curious choice, being not only an Englishman but a protégé of Shelburne whom the prime minister had sent to Paris to spy on the American delegation. Vaughan, however, possessed qualifications that lent themselves to Jay’s purpose. His mother was from Boston and he was dedicated to preserving Anglo-American amity despite the sundering of the colonial tie. He was related to Henry Laurens, the then-absent American peace commissioner, by marriage. He was an impulsive young man with a taste for adventure. Most important, he was among Franklin’s most ardent admirers. In 1779 he had published an edition of the doctor’s writings in London, and he fell under the spell of his idol after arriving on the Continent, regularly signing letters to him “Your ever devoted, affectionate, and obliged [friend].” Jay perceived that Vaughan’s allegiance to Franklin, and by extension to the United States, eclipsed his commitment to Shelburne, and that he would agree to

⁵⁷ Jay to Livingston, 17 November 1782, *RDC*, 6:27, 29; Vergennes cited in Richard Kluger, *Seizing Destiny: The Relentless Expansion of American Territory* (New York: Alfred A. Knopf, 2005), 155; Fitzherbert cited in *Narrative and Critical History of America*, Justin Winsor, ed. (Boston: Houghton Mifflin, 1888), 7:120; Richard B. Morris, “The Durable Significance of the Treaty of 1783” in *Peace and the Peacemakers*, 243–244.

undertake a risky mission if it might help subtract America from Britain's list of enemies.⁵⁸

Accordingly, Jay dispatched Vaughan to London bearing a message for Shelburne that put in plain language what Franklin had been insinuating through his correspondence with the prime minister and his parleys with Oswald: the American commissioners were willing to establish a bilateral negotiating track from which the French were excluded, and they would sign a separate peace with Britain provided they got good terms. Jay told Shelburne that "a little reflection must convince" him that it was in the interest of France, but not of Britain or the United States, to delay an Anglo-American settlement. Vergennes wanted the Americans to keep fighting their former mother country because that would oblige George III to maintain a force in North America that he could otherwise unleash on his continental adversaries. But neither the British nor the Americans benefited from this policy. Parliament had already granted U.S. independence, so what was the purpose in prolonging a conflict between peoples united by blood? And why should Americans battle redcoats for European ends like the retrocession of Gibraltar? These considerations, Jay wrote, highlighted "the obvious interest of Britain immediately to cut the cords which tied us to France." Shelburne could cut those cords if he satisfied the Americans on a few points.

First, the fisheries: "we could not make peace," Jay said, at the "expense" of Britain dividing the fisheries with France and shutting out the United States. Such an arrangement "would irritate America, would perpetuate her resentments, and induce her to use every possible means of retaliation by . . . imposing the most rigid restraints on a commerce with Britain." This was a shrewd hortatory tactic by Jay, who knew his man. Shelburne was a free-trade zealot, a convert to the principles of Adam Smith. Although he regretted Britain's loss of sovereignty over its American colonies, he considered territorial empire less essential to British greatness than the maintenance of an environment in which trade could thrive. Jay stressed commercial advantages in his other two demands as well. It would be "impolitic," he declared, "to oppose us on the point of boundary and the navigation of the Mississippi," because a United States extending to that river and free to ply its waters would furnish Britain with a market that could not fail to enhance its already dominant position

⁵⁸ Vaughan cited in Fleming, *Perils of Peace*, 216. For Vaughan's role in crafting the 1783 peace, see Charles R. Ritcheson, "Britain's Peacemakers, 1782–1783: 'To an Astonishing Degree Unfit for the Task?'" in *Peace and the Peacemakers*, 72–77.

in Europe. No Anglo-French entente promised such benefits. Vergennes aimed to reduce British power, not magnify it; that was the reason he had allied France with the United States to begin with. Why would the British conciliate the French behind American backs when it was so much more profitable to conciliate the Americans behind French backs?

There was, of course, a problem. Vergennes, along with Franklin, had for months been drumming into the ears of Shelburne’s envoys the message that France and the United States were bound by a treaty that forbade either party to enter into a peace with the enemy without the other’s concurrence. Did not that treaty prohibit the settlement Jay was proposing? Here Jay’s legal skills failed him, as he resorted to sophistry. Although the American commissioners were “determined faithfully to fulfill our treaty and engagements with this court,” he wrote, it was “*a different thing to be guided by their or our construction of it.*” He left unexplained what possible construction of the 1778 alliance, a pact barring bilateral settlements, could allow for a bilateral settlement. Shelburne took the hint. The Americans were offering to violate their treaty in exchange for generous concessions, but then again, it appeared, so were the French. Jay bet that Shelburne would see greater value in an Anglo-American double-cross than an Anglo-French one. He was right.

As might have been expected, Jay did not inform Vergennes or Congress of Vaughan’s mission. Less predictably, he did not tell Franklin about it, and he revealed why in a report to Livingston written over a month later. “It would have relieved me of much anxiety and uneasiness to have concerted all these steps with Dr. Franklin,” he said, “but on conversing with him about M. Rayneval’s journey, he did not concur with me in sentiment respecting the objects of it, but appeared to have a great deal of confidence in this court.” In other words, Franklin did not believe Rayneval had gone to London to stab the Americans in the back, and he did not find Vergennes’s silence on the matter as troubling as Jay did. Moreover, Jay observed, the doctor was “much embarrassed and constrained by our instructions.” Jay, feeling no such inhibition, had therefore decided to forge ahead alone. At the denouement of the American Revolution, U.S. foreign policy had become a one-man show, and that man was disobeying orders.⁵⁹

⁵⁹ Jay to Livingston, 17 November 1782, RDC, 6:29–32 (emphasis in the original). For Shelburne the free trader, see Bernard Semmel, *The Rise of Free Trade Imperialism: Classical Political Economy, the Empire of Free Trade, and Imperialism, 1750–1850* (Cambridge: Cambridge University Press, 1970), 30–32.

"I AM OF YOUR OPINION"

Jay's solo act did not last long. Franklin emerged from his sickbed in early October to rejoin the talks, and Adams arrived in Paris from Amsterdam on the twenty-sixth of that month. By the time the U.S. commission became a trio, though, the outlines of a separate Anglo-American treaty had already been established.

Vaughan got back from London in late September with word of Shelburne's enthusiastic reaction to Jay's proposal, and the pace of negotiations accelerated. On 8 October, Jay and Oswald completed the first draft of America's first peace treaty. It contained all of the "necessary" conditions Franklin had listed in July plus a demand for navigation rights on the Mississippi, and Jay fended off Oswald's efforts to include provisions for compensating Loyalists or paying debts owed to British creditors. When Jay presented this document to a still-bedridden Franklin, the doctor approved it but urged that it be shown to Vergennes before submitting it to Shelburne. Jay refused. Vergennes deserved "no such confidence," he said. Franklin objected. Still, he went along.⁶⁰

Oswald crossed the Channel confident of the draft's acceptance, but political motives compelled Shelburne to reject it. He did not believe his government could survive unless he made some gesture on behalf of the creditors and Tories. His counterproposal laid down a number of conditions, among them the demand that Americans discharge their debts in specie, not continental currency. He also insisted on compensation for Loyalists whose property had been destroyed, and he denied U.S. fishermen the right to dry their catches on Newfoundland shores "on account of the danger of disputes." Although he sought to adjust Jay's suggested boundary between Nova Scotia and Maine so as to give Britain more land, he was flexible on this point, advising Oswald that if Jay and Franklin proved obdurate the matter could be referred to a postwar commission. Other than that, Shelburne did not challenge the Americans' territorial claims. The region lying to the eastward of the Mississippi would, he acknowledged, become part of the United States. He moreover agreed that Britain and America would share freedom of navigation on that river (a concession that, absent Spanish concurrence, was of limited value). Indeed, while Shelburne's cabinet complained about the

⁶⁰ Articles Agreed on between the American and British Commissioners, 8 October 1782, *RDC*, 5:805–808; Franklin to Livingston, 5 December 1782, *ibid.*, 6:112; Jay cited in Diary Entry, 2 October 1782, "Matthew Ridley's Diary," 117.

preliminary terms Oswald showed them – and while Shelburne lashed the Scot for “the principle which you seem to have adopted of going before the American commissioners in every point of favor” – much of Jay’s first draft made it into the final treaty.⁶¹

A chastened Oswald, Strachey in tow, returned to France to find Adams among his American opposite numbers. The Bostonian had reached Paris just days before, and had learned of Congress’s new instructions during his introductory meeting with Jay. His reaction was immediate and savage. The orders, he wrote to Livingston, had the effect of “subjecting us to the French ministry, . . . taking away from us all right of judging for ourselves, and obliging us to do whatever the French ministers should advise us to do, and to do nothing without their consent.” He had not imagined, when Congress asked him to represent the United States abroad, that he would become Vergennes’s clerk. “If I had, I never would have accepted the commission.” He took the “utmost satisfaction” in Jay’s noncompliance, noting that Jay had “been all along acting here upon the same principles” that animated Adams’s own diplomacy. “There is no man more impressed with the obligation of obedience to instructions [than I],” Adams declared, but what Congress required was absurd. “If the French minister advises us to cede to the Spaniards the whole river of the Mississippi and five hundred miles to the eastward of it, are we bound by our instructions to put our signature to the cession when the English themselves are willing we should extend to the river and enjoy our natural rights to its extension?” Did the same strictures obtain if Vergennes told the American commissioners “to relinquish our right to the fishery on the Grand Bank of Newfoundland” despite British readiness to grant that right? If so, Adams snarled, “I really think it would be better to constitute the Comte de Vergennes our sole minister and give him full powers to make peace.” Certainly Adams had no intention of surrendering his nation’s diplomatic autonomy. To his diary he confided, “It is glory to have broken such infamous orders.”⁶²

That remark raises a provocative issue: the degree to which some writers have cast Adams in a starring role in these deliberations because, to continue the theatrical metaphor, he had most of the good lines. No Founding Father wrote or spoke with greater ferocity. Beside his

⁶¹ Ritcheson, “Britain’s Peacemakers,” 95–96; Shelburne cited in *Narrative and Critical History*, Winsor, ed., 7:132.

⁶² Adams to Livingston, 31 October 1782, *RDC*, 5:839; Adams to Livingston, 18 November 1782, *ibid.*, 6:52–54; Diary Entry, 18 February 1783, *WJA*, 3:359.

broiling correspondence Jay's matter-of-fact reports blend into the background. Yet Adams himself admitted that Jay was instrumental in fashioning treaty terms. In another, less frequently cited diary entry, Adams mused that if the French had appreciated Jay's labors, they would have accorded him "the title with which they inconsiderately decorated me, that of *'Le Washington de la négociation'*: a very flattering compliment indeed, to which I have not a right, but sincerely think it belongs to Mr. Jay." Given Adams's notorious reluctance to share credit, that was high praise, and he was not alone in considering Jay principally responsible for the Anglo-American settlement. Hamilton, who crossed swords with Adams on other questions, agreed with him that Jay deserved the lion's share of glory. Several historians also make that case. In a popular turn-of-the-century survey of United States foreign policy, Willis Fletcher Johnston sounded a note that continues to echo in scholarship on the Revolutionary War. Jay, he asserted, was "the giant and hero of all these negotiations."⁶³

We may ask, however, what Jay's initiatives in the late summer of 1782 gained for the United States. Shelburne had been prepared to negotiate on the basis of Franklin's "necessary" conditions as early as July, before Jay took center stage in the talks. Jay did make navigation of the Mississippi a more categorical U.S. demand than Franklin had during his meetings with Oswald, and Jay and Adams clarified the sloppy language of the doctor's original memorandum with regard to the fisheries, but the Americans could probably have achieved these objectives without the two-month delay caused by Jay's insistence on a reworded commission, a hiatus during which, as noted above, the Franco-Spanish assault on Gibraltar failed and Britain's position improved. The bluster over Oswald's powers was much ado about nothing. Altering them did not foil any British designs to reconsolidate the empire, since Shelburne had abandoned his dream of reunion between mother country and colonies

⁶³ Diary Entry, 30 November 1782, *WJA*, 3:339; Hamilton cited in Stahr, *John Jay*, 245; Willis Fletcher Johnston, *America's Foreign Relations* (New York: Appleton-Century-Crofts, 1916), 1:122. David McCullough's Pulitzer-Prize-winning biography celebrates – and occasionally exaggerates – Adams's contribution, a tendency even more pronounced in the Home Box Office miniseries based on the book. See McCullough, *John Adams*, 273–286; *John Adams* (dir. Tom Hooper, 2008), Episode 3: "Don't Tread on Me" and Episode 4: "Reunion." For texts in which Jay appears the indispensable man, see L. Nathan Ellis, *A Short History of American Diplomacy* (New York: Harper & Brothers, 1951), 35–37; Reginald Horsman, *The Diplomacy of the New Republic, 1776–1815* (Chicago: Harlan Davidson, 1985), 25–27; Kaplan, *Colonies into Nation*, 134, 140, 141–142.

before George III asked him to form a government. Furthermore, as Bradford Perkins notes, “There is no evidence that the ministry intended to use recognition as a bargaining chip.” Neither Shelburne nor any of his colleagues ever suggested withholding acknowledgment of U.S. independence until the Americans gave way on other points. To Shelburne, independence was an accomplished fact, however disagreeable. Had Jay let the issue slide and begun substantive discussions in August, when Britain faced an uncertain military fate in the Mediterranean, the Americans might have been able to secure some of Franklin’s “advisable” provisions, such as the surrender of all or part of Canada, or they might have obtained more expansive fishing rights than the British agreed to in the final treaty. As it turned out, Jay’s finickiness helped take the heat off Shelburne at a time when the prime minister was vulnerable. Jay the lawyer won out over Jay the diplomat, and the result was a sacrifice of American leverage.⁶⁴

Moreover, the Vaughan mission, while dramatic, would have been unnecessary had Jay not suspended talks with the British over a matter of semantics. Franklin had already inaugurated the bilateral dialogue Jay sought to create. Negotiations between the doctor and Oswald had led to Shelburne’s tacit acceptance of most key U.S. demands, and Franklin had kept this information from Vergennes. The Americans were thus on course to signing a separate agreement with their enemy before the skulking exploits of Vaughan – or, for that matter, Rayneval, who may not have had the welfare of the United States uppermost in his mind but who was not the agent of Gallic perfidy Jay imagined. Vaughan’s trip did help solve the problem of interrupted talks, but Jay himself had caused this problem by making a fuss over the commission and breaking off contact with Oswald when Franklin was too ill to stop him. A dispassionate analysis of the events following Franklin’s incapacitation must conclude that Jay, rather than being “*Le Washington de la negotiation*,” unnecessarily slowed the momentum toward an Anglo-American treaty. His stretch as sole negotiator of the peace was not his finest hour.

If Jay’s tactics left something to be desired, though, his strategy was sound. National self-interest demanded that he disobey Congress’s orders. Jay lacked Adams’s penchant for hyperbole, but he would have applauded the mid-November tirade the Bostonian wrote to Livingston, in particular its concluding yowl that “there is nothing that humbles and

⁶⁴ Perkins, “Peace of Paris,” 201.

depresses, nothing that shackles and confines – in short, nothing that renders totally useless all your ministers in Europe so much as these positive instructions to consult and communicate with French ministers upon all occasions and follow their advice.”⁶⁵

Adams’s arrival came as a godsend to Jay. From that point on, Jay believed, Franklin would have no choice but to go along with his younger colleagues, who, together, comprised a majority of the peace commission. As for Adams, he found Jay a second self. “Nothing that has happened,” he later wrote, “has ever struck me more forcibly, or affected me more intimately than the entire coincidence of principles and opinions between him and me.” The two lawyers were so alike in personality that it is difficult to determine which man hated the French more or had scantier patience with Franklin’s approach to statecraft. It did not take them long to conclude that they were the only American patriots in Paris and that the future greatness of the United States depended on their defying Congress, Versailles, and the doctor. After his initial meeting with Jay, and after introducing himself to Oswald and Strachey, Adams headed off to Passy to tell Franklin that the days of adherence to French advice and opinion were finished.

The resulting encounter was bizarre. Adams clearly expected Franklin to argue with him, and he delivered a lecture that must have set the old man’s teeth on edge. According to Adams’s diary, “I told him without reserve my opinion of the policy of this [French] court, and of the principles, wisdom, and firmness with which Mr. Jay had conducted the negotiation in his [Franklin’s] sickness and my absence, and that I was determined to support Mr. Jay to the utmost of my power.” A diplomat’s first duty was to his country, not to Congress, Adams declaimed. Had Americans shed their blood at Monmouth, Camden, and Brandywine only to make the United States a tail to the French kite?

Instead of responding in kind, Franklin said nothing, a reaction Adams chalked up to his still being weak from his battle with the stone. The next day, however, when the three American diplomats met to thrash out strategy before sitting down with the British negotiators, Franklin told Adams and Jay, “I am of your opinion and will go on with these gentlemen [Oswald and Strachey] without consulting this [French] court.” An astonished Adams had to report on 30 November that Franklin “has gone with us in entire harmony and unanimity

⁶⁵ Adams to Livingston, 18 November 1782, *RDC*, 6:52–54.

throughout, and has been able and useful, both by his sagacity and his reputation, in the whole negotiation.”⁶⁶

Franklin handled – one is tempted to say played – his fellow commissioners as nimbly as he managed Vergennes, Oswald, and their respective sovereigns. He would have been within his rights to protest that Jay and Adams had achieved no breakthroughs, that he had adopted their policy of negotiating without French knowledge before either man arrived in Paris, and that the only difference between the approach they were pursuing and the one he had followed was that he had been more attentive to French sensibilities. But a quarrel with Adams and Jay would have been detrimental to the commission’s efforts at a time when it was imperative for the Americans to present a united front. Franklin therefore let his colleagues believe he was acting out of deference to their wishes, and his self-effacement went a long way toward mollifying them. Assured of Franklin’s support, both lawyers felt free to concentrate their argumentative skills on the adversary.

There followed two months of discussions, the specifics of which need not concern us. The essential point is that the Americans failed to keep Vergennes informed of these talks, and in fact orchestrated a campaign of disinformation that so misled the comte that as late as 23 November he was writing to Luzerne about how far apart the United States and Great Britain were from reaching an agreement. (By that date, nearly all of the issues in dispute between the two sides had been resolved in America’s favor.) Congress was likewise left unapprised. Livingston wrote the commissioners to express his perplexity “that we have not yet been favored with such minute information on many points as we have reason to expect.” That was the arrangement Franklin, Adams, and Jay wanted, and it facilitated a nearly comprehensive diplomatic triumph. Adams did make a concession on the fisheries, permitting the British to substitute the word “liberty” for “right” in the treaty passage referring to curing and drying claims, a distinction that generated over a century of controversy, but otherwise the Americans got everything they wanted: boundaries to their liking, freedom of navigation and commerce on the Mississippi, acknowledgment of U.S. independence, and a British pledge to withdraw their troops.⁶⁷

⁶⁶ Diary Entry, 30 November 1782, *WJA*, 3:336.

⁶⁷ Vergennes cited in Brecher, *Securing American Independence*, 307; Livingston to Jay, 23 November 1782, *RDC*, 6:71; Livingston to Franklin, 5 September 1782, *ibid.*, 5:66. For Adams’s yielding on the fisheries, see John Adams’s *Journal of Peace Negotiations*,

Ironically, given his younger colleagues' reputation for stubbornness, it was Franklin who proved most obdurate on a key article. The doctor was opposed to Loyalist indemnification. His son William was a Loyalist, and he felt the personal and political betrayal keenly. Shelburne would have been happy to pass over this matter in silence, but the Tories had a powerful lobby in Parliament and he believed his survival in office depended on appeasing them. Negotiations were deadlocked for several days on the question until Oswald proposed a "compromise" that became Article 5 of the treaty, which stipulated that Congress would recommend to the legislatures of the individual American states the restitution of property and estates. Both parties were aware that this provision meant nothing. It was designed to save Shelburne's face rather than protect Tory rights, and, predictably, the states ignored congressional recommendations in the coming years. Shelburne in effect sold the Loyalists out. Franklin had his victory.⁶⁸

On the last day of talks, Henry Laurens finally arrived to take his place on the commission. His imprisonment in the Tower of London had left him feeble, and he could do little more than join Franklin, Jay, and Adams in signing the treaty at Oswald's lodgings at the Grand Hotel Muscovite. Before putting his name to the document, he expressed surprise that the Americans had not consulted Vergennes during their deliberations, but he did not press the point, and the business concluded without incident. Franklin then invited the signers and their staffs to a celebratory dinner at the Hotel Valentino in Passy, where they drank toasts to an independent United States. "Thus drops the curtain upon this mighty tragedy," Adams wrote his wife a few days later, a premature claim but one that indicates his – and the other negotiators' – confidence that the preliminary articles were definitive. Although they would have to be ratified by Congress and Parliament, and while they would not become effective until France, Spain, and Holland made peace, these were technicalities. Having entered the family of nations and won a territorial bonanza by coming to terms with Great Britain, the United States could hardly be expected to plunge back into war against its former sovereign over

28 November 1782, *RDC*, 6:85–88. For the terms agreed upon by the British and American commissioners, see Provisional Articles of Peace, 30 November 1782, *RDC*, 6:96–99.

⁶⁸ "Franklin is very staunch against" the Loyalists, Adams recorded toward the close of talks, "more decided a great deal on this point than Mr. Jay or myself." Diary Entry, 26 November 1782, *WJA*, 3:332.

Gibraltar or any other European issue. For all practical purposes, the American Revolution ended on 30 November 1782.⁶⁹

“THIS LITTLE MISUNDERSTANDING”

Someone had to break the news to Vergennes. Adams would have relished that assignment. He believed the comte had been conniving with the British commissioners, especially Strachey, whose proposals, he noted, “appeared to me to come piping hot from Versailles,” and he exulted in having beaten Europe’s most accomplished chess player at his own game. “There is a Vulcan at Versailles whose constant employment has been to forge chains for American ministers,” he wrote fellow diplomat Francis Dana. “But his metal has not been fine and strong enough, nor his art of fabricating it sufficiently perfect, to be able to hold a giant or two who have broken them to pieces like morsels of glass.”⁷⁰

Fortunately for the future of Franco-American relations, Franklin volunteered to explain matters. He had taken the precaution of sending a note to Vergennes the night before the signing ceremony, although he did not provide any details about what the commissioners had agreed to. The next day he forwarded a copy of the treaty to the palace along with the information that it had been signed that morning. There was no reply for several days. When Franklin broke the silence by paying a call on Vergennes, he was received with icy formality. The “abrupt signature of the articles,” Vergennes observed, had “little in it which could be agreeable to our king.” Franklin offered lavish apologies and the best excuses he could devise, and at length Vergennes softened, reasoning that, although the Americans “had not been particularly civil,” at least the damage was minor, since the agreement just signed would not become valid till a general European settlement. To avoid any misconceptions in America or elsewhere, the comte urged Franklin not to send a copy of the provisional treaty to Congress for the time being. Such an “intelligence with England,” he said, “might make the people in America think a peace was consummated.” Franklin made polite murmurings that Vergennes interpreted as assent.⁷¹

⁶⁹ Diary Entry, 30 November 1782, *WJA*, 3:335–339; John Adams to Abigail Adams, 22 January 1783, *The Adams Papers: Adams Family Correspondence*, Richard Alan Ryerson, Joanna M. Revelas, Celeste Walker, Gregg L. Lint, Humphrey J. Costello, eds. (Boston: Massachusetts Historical Society, 1993), 5:74.

⁷⁰ Diary Entry, 25 November 1782, *WJA*, 3:328; Adams cited in Henrietta Dana Skinner, “New Light on Revolutionary Diplomacy,” *Harper’s* 104 (December 1901): 784.

⁷¹ Vergennes to Luzerne, 19 December 1782, *RDC*, 6:107.

Vergennes was therefore blindsided when Franklin sent him a note ten days later informing him that an American ship, the *Washington*, was preparing to depart for the United States with a copy of the treaty. Even more shocking was Franklin's comment that, in view of the fact that the British had given the ship a safe-conduct pass, it would be helpful if he could also send home 6 million livres in aid. "I fear the Congress will be reduced to despair when they find that nothing is yet obtained," he wrote. The *Washington* set sail at ten o'clock the following morning, and if Vergennes could come up with the cash by then, Franklin said, he would be happy to dispatch a courier to collect it.⁷²

Vergennes's reply to this letter was revealing. He had ample grounds for protest. The Americans had disregarded their instructions to take no steps without French permission and had violated the terms of the 1778 alliance. Having rushed to close a deal with the British, they were now, it seemed, dropping out of the war. And they had the effrontery to ask for more money! Franklin might have expected a wrathful message. Instead, Vergennes sounded almost plaintive. "I am at a loss, sir, to explain your conduct and that of your colleagues on this occasion," he wrote. "You have concluded your preliminary articles without any communication between us, although the instructions from Congress prescribe that nothing shall be done without the participation of the [French] king." This was curious behavior for a "wise and discreet" man like Franklin. How was Versailles to construe it as anything other than an act of bad faith?⁷³

Franklin spent a day and a half working on his response, one of the most famous pieces of correspondence in the annals of U.S. diplomacy. He began by pointing out that it was the American commissioners' responsibility to "give Congress as early an account as possible of our proceedings," lest they hear of them from the British first, which would be confusing. Then he assured Vergennes that he and his colleagues had not made a separate peace; they had simply agreed on preliminary articles that would not be valid until France and Britain concluded their negotiations. He admitted, however, that by failing to consult Vergennes before signing, "we have been guilty of neglecting a point of *bienséance* [propriety]," but not "from want of respect for the King, whom we all love and honor." It would be a shame if this "single indiscretion" were to undermine "the great work which has hitherto been so happily conducted"

⁷² Franklin to Vergennes, 15 December 1782, *RDC*, 6:137–138.

⁷³ Vergennes to Franklin, 15 December 1782, *RDC*, 6:140.

between France and the United States, because if that happened all of their years of shared sacrifice would be for naught. Expressions of gratitude for King Louis’s “many and great benefits” followed, capped by a statement that could be read either as an entreaty or a threat: “*The English, I just now learn, flatter themselves that they have already divided us.* I hope this little misunderstanding will therefore be kept a secret, and that they will find themselves totally mistaken.” That was blarney; Franklin had not “just now” learned anything of the sort, but it was a signal to Vergennes that he should moderate his criticism if he wanted to preserve Franco-American friendship.⁷⁴

Again, Vergennes did not react with the fury that might have been anticipated. Rather than responding to Franklin right away, he wrote Luzerne in Philadelphia, suggesting that “the most influential members of Congress should be informed of the very irregular conduct of their commissioners in regard to us.” According to Congress’s instructions, “they ought to have done nothing without our participation,” and yet they had clandestinely met with British agents for weeks, signed a preliminary treaty, and sprung it on Versailles with no advance notice. While Vergennes was hurt by the Americans’ treachery, though, he told Luzerne not to speak of it “in the tone of complaint.” Shortly thereafter he sent the ambassador another letter countermending even that mild remonstrance. What was done was done, he said. There was no point in forcing a confrontation that could drive the Americans into an alliance with the British. Remarkably, when the *Washington* weighed anchor a few days behind schedule, it carried 600,000 livres from the French treasury, a down payment on Vergennes’s commitment to pay the full 6 million in quarterly installments throughout 1783.⁷⁵

Why was Vergennes so serene in the face of the commissioners’ double-dealing? Three considerations seem to have shaped his response. First, as he indicated to Luzerne, he did not want to risk a breach with the United States at a time when France was still at war. Second, he recognized that, had he been in Franklin’s position, he would have done the same thing. The terms Britain offered were too good to decline. “You will notice that the English buy the peace more than they make it,” the comte remarked to Rayneval. “What can be the motive that they could have brought terms so easy that they could have been interpreted

⁷⁴ Franklin to Vergennes, 17 December 1782, *RDC*, 6:143–144 (emphasis in the original).

⁷⁵ Vergennes to Luzerne, 19 December 1782, *RDC*, 6:150–152; Vergennes to Luzerne, 21 December 1782, *ibid.*, 6:153.

as a kind of surrender?" Finally, and most important, he understood that the Anglo-American settlement benefited France, relieving Versailles of its obligation to fight until Spain achieved its war aims. Vergennes could now tell the Spanish that American actions made recovery of Gibraltar impracticable. The Bourbons had been unable to overrun the rock with the Americans in their camp; without them, Spanish reconquest was a pipe dream. Britain, freed from fighting in North America, was certain to fight even more tenaciously for Gibraltar, meaning that Spain would have to accept something less than fulfillment of the Treaty of Aranjuez. The Americans' duplicity actually helped break a diplomatic logjam.⁷⁶

Thus it was that Vergennes received news of the separate peace with greater equanimity than some U.S. Congressmen, notably Livingston, who lambasted Jay, Adams, and Franklin for "forfeit[ing] the confidence of an ally to whom we are much indebted." As noted above, Livingston's fellow legislators swallowed whatever moral qualms they had and ratified the commissioners' handiwork. The preliminary peace agreement initialed by Britain and the Bourbon powers on 20 January 1783 ensured that the United States escaped any reprisals for what its diplomats had done. Definitive treaties were signed all around several months later, and the European war was over.⁷⁷

Vergennes had accomplished his principal objective, depriving Britain of its North American colonies, but France had recovered none of the territory taken from it in 1763 and its army and navy were exhausted. Worse, it was bankrupt. The war had cost the government an estimated 1 billion livres. Vergennes could not look with satisfaction on the results of French diplomacy. "If we may judge the future from what has passed here under our eyes," he wrote to Luzerne, "we shall be but poorly paid for all we have done for the United States, and for securing them a national existence."⁷⁸

In the short term, he was right. The financial crisis brought about by the war compelled Louis XVI to call the Estates General, which had not assembled in 175 years, and France was soon convulsed by a revolution of its own. By the time that world-shaking event ran its course, the map of

⁷⁶ Vergennes to Rayneval, 4 December 1782, *RDC*, 6:107.

⁷⁷ Livingston to Boudinot, 18 March 1783, *RDC*, 6:316; Dull, *Diplomatic History of the American Revolution*, 152–158.

⁷⁸ Vergennes to Luzerne, 19 December 1782, *RDC*, 6:152; Murphy, *Charles Gravier*, 397–404.

Europe had changed dramatically, and not in France’s favor. Yet in the second decade of the twentieth century, millions of Americans would cross the Atlantic to fight to preserve French independence, repaying many times over “the debt to Lafayette,” in part because another American diplomat disobeyed orders.⁷⁹

⁷⁹ Jonathan R. Dull, “France and the American Revolution Seen as Tragedy” in *Diplomacy and Revolution*, 73–106.