

DEBATES IN THE CONTINENTAL CONGRESS ON ACCEPTABLE PEACE TERMS: 1779–1782

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Preface

Instigated by French Minister Conrad Alexandre Gérard, the Continental Congress began to discuss America's peace terms in February 1779. It would have been easy for the members of Congress to agree if they had not needed to trim their varying aspirations. It was not easy for them to agree on the terms to be insisted upon as essentials, because regional and provincial interests as well as different assessments of the war and of the diplomatic situation divided them. Territorial claims, fishing rights and the right of the Mississippi navigation were the three issues involved. This paper will first analyze the division of Congress over these issues, and then trace the process in which the peace instructions of 1779 took shape.

When Congress was formulating the peace instructions in 1779, most members of Congress were still optimistic about their political and military fortunes. However, the American military situation continued to deteriorate from 1779 to 1781. Moreover, a specter of peace mediation by neutral powers on the basis of *uti posseditis* loomed up. In such circumstances, Congress, sensing the loss of much of its bargaining power, had to retreat from the terms defined in the peace instructions of 1779.

After the darkest days of the Revolution ended with victory at Yorktown, however, attempts were made in Congress to reconsider the instructions of 1781, especially the part which placed the American plenipotentiaries ultimately under the advice of the Court of France. The last two parts of this paper will trace continuing debates in Congress over the peace instructions during the last two years of the war, probing the thinking of the moderates and the militants on the critical issues of American diplomacy.

This paper, part of my study on the diplomacy of the American Revolution, is a sequence to the two papers of mine which were published in the preceding issues of this journal.¹

I. *Congressional Factions and Foreign Policy Issues*

Among the three issues—territories, fisheries, and the Mississippi navigation—the problem of territorial demands was the easiest for Congress to reach a consensus. There were three areas that could become an issue; Canada and Nova Scotia, the trans-Appalachian

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¹ "The Diplomatic Thought of the American Revolution," *Hitotsubashi Journal of Law and Politics*, IX (January 1981), 26–41; "The French-American Treaties of 1778: The Diplomacy of the American Revolution and the French and Spanish Responses," *ibid.*, X (December 1981), 28–50.

western lands, and the Floridas.

Although the plan to conquer Canada and Nova Scotia with French assistance was given up in early 1779, delegates in Congress, especially those from New England and New York, continued to desire the acquisition of those regions. Both New England and New York were interested in economic opportunities in Canada, especially in lucrative fur trade. New England was interested in fishing on the coast of Nova Scotia and in the mouth of St. Lawrence River. But the American desire to bring these provinces into the Union was primarily motivated by security considerations. British presence in those provinces was considered a menace to the security of the United States. Nova Scotia would provide Britain with naval bases to threaten American shipping and fishing. British presence in Canada would threaten the backcountry not only of New England but also of states further southward. French presence in Canada had once been a constant menace to the colonists and British presence there might be even more threatening to the new nation. Once the United States had obtained these provinces, on the other hand, its security would be firmly insured.

"The cession of these territories," remarked Samuel Adams, "would prevent any view of Britain to disturb our peace in future and cut off a source of corrupt British influence which, issuing from them, might diffuse mischief and poison through the states."² Gouverneur Morris, a New Yorker of the moderate faction, was equally well aware of the value of those provinces to the United States. In the fall of 1778, Morris, one of the advocates of a joint French and American expedition to Canada, urged Gérard to support the plan. Sensing the French desire to make the United States dependent upon France by balancing America with British presence in those provinces, Morris argued that such British presence would force the United States to be friendly to Britain rather than to France. The acquisition of those provinces, he argued, would insure America's friendship to France.³

The threat of British presence to the security of the nation was understood not only by New Englanders and New Yorkers but also by delegates from other states. They understood, as Richard Henry Lee stated, that the acquisition of those provinces would secure for Americans "peace for a century."⁴ This explains why Congress had been eager since 1775 to bring Canada into the union either by diplomatic or by military means.

However, American arms had so far failed in conquering Canada, and a plan of joint French-American campaign had been abandoned. Moreover, there was no indigenous movement in Canada or in Nova Scotia for a union with the rebelling colonies. Even a militant New Englander like Samuel Adams was aware of the weakness of America's position in demanding those provinces.⁵ Thus it was not difficult for Congress to agree that while the cession of Canada and Nova Scotia should be demanded, the demand should not be made an essential condition for peace.

The Floridas were important to the southern states, especially Georgia and South Carolina, for both security and economic reasons. Those territories in American hands would provide the southern states with security and outlets to the Gulf of Mexico. In

² Samuel Adams to Samuel Cooper, 29 April 1779 [79], E.C. Burnett, ed., *Letters of Members of Continental Congress* [LMCC], IV, 185.

³ Gérard to Vergennes, 20 October 78, John J. Meng, ed., *Despatches and Instructions* (Paris, 1939), 342-344; Paul C. Phillips, *The West in the Revolution* (Urbana, Ill., 1913), 110n; Jared Sparks, *The Life of Gouverneur Morris* (3 vols., Boston, 1832), I, 189-191.

⁴ To George Washington, 24 June 78, *Letters of Richard Henry Lee* (LRHL), I, 420.

⁵ To Samuel Cooper, 29 April 79, LMCC, IV, 185.

hostile hands, the Floridas would threaten their security and close their outlets into the Gulf. For the United States as a whole, however, British presence in the Floridas seemed far less a threat than the same in Canada and Nova Scotia. Moreover, Congress had to take into account Spanish interest in the Floridas. Most of the delegates were quite willing to let the Spanish regain those territories if Spain would come to America's assistance. The Floridas in Spanish hands would be much less a menace than the same in British hands. It will be recalled that, while the Americans took trouble to obtain from France an renunciation of her territorial ambition in the North American continent in the treaty of alliance, Congress and its diplomatic agents had expressed their willingness to yield the Floridas to Spain.

As for the western lands east of the Mississippi River, American leaders considered them as a kind of American *lebensraum*. They felt that the United States, because of provisions in several colonial charters, had a highly legitimate claim to the region. Since all states wanted a share in developing western lands, Congress could not easily agree on the mode of governing the region. Some states, on the basis of their colonial charters, could claim the West for themselves. Virginia's claim was most extensive. Some other states, however, had definite western boundaries. They therefore demanded that the western lands be made a common property of the confederation. How to govern the western lands was a major issue in the drafting and ratification of the Articles of Confederation. Some "landless" states, like Maryland, Delaware and New Jersey, had held out their ratification of the Articles, hoping that they could get some satisfactory concessions from "landed" states. Maryland was still withholding in 1779.⁶ Some delegates from landless states, however, were less eager to obtain all the western lands for the United States. Daniel of St. Thomas Jenifer, a delegate of Maryland, maintained that the United States would have no occasion to occupy the West, but did have great need for the assistance of Spain, which could be obtained only by concession. But it can be said that concensus in Congress was that the acquisition of the western lands east of the Mississippi should be made an essential condition for peace.⁷

For the vast eastern Mississippi valley region which comprised most of the trans-Appalachian lands, the great river and its eastern branches seemed to supply the easiest way to transport its produces to the Gulf of Mexico. If the eastern Mississippi valley was to be an American *lebensraum*, then the full right to use this great water system must be obtained for the Americans. The interest of Southern states, whose hinterland extended into the region, was most directly involved. Thus delegates from those states were more insistent on the right to Mississippi navigation than those from other regions (see Table 1). Richard Henry Lee, who unlike most of the Southern delegates gave strong support to fishing rights for New Englanders, of course strenuously defended this right. He regarded those two rights as the two legs on which the United States could walk in independence. If the United States gave up these rights, he commented, "that is taking the name of independence without the means of supporting it."⁸ Outside the South, the right to Mississippi navigation was most strongly supported by the delegation of Pennsylvania. Some New

⁶ Merrill Jensen, *The Articles of Confederation* (Madison, Wis., 1940), 150-160, 188, 190-197.

⁷ Phillips, *The West in the Revolution*, 165-166, 180; Phillips, "American Opinions Regarding the West, 1778-1783," *Proceedings, Mississippi Valley Historical Association*, VII, (1913-1914), 300.

⁸ To George Mason, 9 June 79, *LMCC*, IV, 256.

TABLE I. REGIONAL VOTING SCORE ON MISSISSIPPI NAVIGATION

	Positive Votes	Negative Votes
New England states (N.H., Mass., R.I. and Conn.)	11	13
Middle states (N.Y., N.J., Pa. and Del.)	13	15
Southern state without backcountry (Md.)	0	9
Southern states with backcountry (Va., N.C., S.C. and Ga.)	19	10

The numbers of votes are the total of the votes of individual delegates in the three votings. (1) Voting on the question: "Shall the free navigation of the Mississippi River be included in the peace ultimatum? (22 March 1779); (2) Voting on the question: "Shall the free navigation of the river be made a condition for a treaty with Spain? (5 August 79); (3) Voting on the question: "May the free navigation of the river south 31 N degree be ceded to Spain if necessary? (13 October 79).

England delegates, too, supported demanding this right as an essential condition for peace.

During the debate on the peace ultimatum, however, the question of the right to navigate the Mississippi was not heatedly debated. Southerners did not press to include it in the peace ultimatum. Several reasons may be inferred. First, the right of Mississippi navigation seemed to be a matter to be negotiated with Spain rather than a matter of peace ultimatum. Secondly, Southerners, confronted with British military invasion, were aware of their weak position, and desired earnestly for an alliance with Spain. Therefore, they wanted to avoid antagonizing Spain by demanding the full right of Mississippi navigation. But their position was hardened after they learned of Spanish entry into the war. When congress debated the terms to be offered to Spain later, most of the Southern delegates were unwilling to make concessions on the matter of Mississippi navigation.

The most heatedly debated issue was the fisheries. Delegates from New England states, where fishing was a major industry, persistently tried to make the fisheries a *sine qua non* of peace. In this attempt, they found strong support from the Pennsylvania delegation and two Southern delegates, Richard Henry Lee and Henry Laurens (see Table II). However, most delegates from other states were afraid that New Englanders might spoil the opportunity for peace because of their overzealous defense of fisheries. James Lovell, a Massachusetts delegate, deplored that there was a party in Congress which maintained that "to demand and fight for the same right of fishery as we had always had" was "the willful murder of thousands, because allies will not support us beyond the professed end of the treaty."⁹

The defenders of the fisheries asserted that it was not merely a regional interest but also an important national interest to secure the fisheries. Samuel Adams' statement was typical.

"Our happiness depends upon independence. To be prosperous we must have an extensive trade. This will require a respectable navy. Our ship must be manned and the source of seamen is the fishery."¹⁰

These words echoed an assumption prevailing in maritime nations in Europe. Because maritime powers saw the fisheries in such a light, the right to participate in the Newfoundland

⁹ To Horatio Gates, 5 April 79, *LMCC*, IV, 141-142.

¹⁰ To Samuel Cooper 29 April 79, *ibid.*, 184-185.

TABLE II. REGIONAL AND STATE VOTING SCORE ON THE FISHERIES

Region/State	Positive Votes	Divided Votes	Negative Votes
New England	19	0	1
N.H.	5	0	0
Mass.	5	0	0
R.I.	5	0	0
Conn.	4	0	1
Middle States	8	4	1
N.Y.	1	0	4
N.J.	1	2	2
Pa.	5	0	0
Del.	1	2	1
South	0	4	17
Md.	0	0	5
Va.	0	0	5
N.C.	0	0	5
S.C.	0	4	1
Ga.	0	0	1

The score is the total of the votes by states in the five votings relating to including fishery rights in the peace ultimatum of 1779.

fisheries was an important issue. The mercantilist argument about the importance of fisheries was known to and used by the defenders of the fishing rights. Ralph Izard, another Southerner who was concerned with the rights, stated in a letter to John Adams: "Since the advantages of commerce have been well understood, the fisheries have been looked upon by the naval powers of Europe as an object of the greatest importance.... The fishery of Newfoundland appears to me to be a mine of infinitely greater value than Mexico and Peru. It enriches the proprietors, is worked at less expense and, is the source of naval strength and protection."¹¹

The foregoing description and the several figures of the voting record indicate that regional or provincial interest was a very important factor in dividing positions, militant and moderate, on these issues. But it alone does not explain the alignment of the delegates. The alignment was also a carry-over of the militant-moderate alignment in 1776. The militants who had wanted to declare independence as soon as possible were militant again in defining American peace terms. As they had been before, they were optimistic in their assessment of the situation. The moderates, on the other hand, were again less optimistic and therefore more willing to settle for a peace of compromise. The militants had more confidence in the innate strength of the Americans, while the moderates were more sensitive about America's financial and military weakness.

Samuel Adams and Richard Henry Lee were still the central figures among the militants in Congress. Thus the militants were often called the Adams-Lee junto. Since their main strength was in New England delegates, they were also called "Eastern" party. How-

¹¹ To John Adams, 24 September 78, Francis Wharton, ed., *The Revolutionary Diplomatic Correspondence of the United States (RDC)*, II, 742.

ever, Pennsylvania delegates acted with the "Eastern" party, and such Southerners as Richard Henry Lee and Henry Laurens were leading members of the militants.¹²

The case of Pennsylvania needs a special explanation. Before independence, Pennsylvania had been a stronghold of the moderates. A political revolution had been engineered by the militants in the province with the aid of the militants in Congress in June 1776, and the militant party, mostly of new men in politics, had taken over political power in the province.¹³ Because of their continuing strength, Pennsylvania sent to Congress a delegation composed mostly of the militants. New York, on the other hand, continued to be represented by the moderates in Congress. Although Lee and Laurens were militants, most of the delegates from the South did not side with the militants, "Eastern" party, or the Adams-Lee junto. Thus the moderates were often called the "Southern" party although the New York delegation was most solidly moderate. The most powerful figure among the moderates was Robert Morris of Pennsylvania. Although he lost his seat in Congress in 1778 because of the political strength of the militants in the state, he remained a powerful figure with extensive business connections. Therefore, the moderates were often called the Morris faction.¹⁴

Debates on acceptable peace terms followed the Lee-Deane dispute which had sparked factional spirit in Congress. As the Lee-Deane dispute was the issue which caused intense factional conflict and as it was relating to the conduct of American diplomacy, a brief explanation here may be appropriate. Silas Deane, one of the three American commissioners to France, served also as a procuring agent for Congress. He was a merchant adventurer who did not hesitate to make use of his office for private gain while working for the cause of the Revolution. Such mixing of public and private interests was tolerated by Franklin who was himself a man of flexible morality, but not by inquisitive, selfrighteous Arthur Lee. What was more startling than Deane's quest for private gain in the affairs of the American embassy was the fact that Edward Bancroft, Deane's secretary and private business partner, was a kind of double agent working also as a British spy.¹⁵

Congress had decided to recall Deane in November 1777 before it heard about his misuse

¹² Neil Thomas Storch, "Congressional Politics and Diplomacy, 1775-1783," Ph. D. thesis, University of Wisconsin, 1969, uses the terms "Lee-Adams Junto" and "Morris Faction." H. James Henderson, "Congressional Factionalism and the Attempt to Recall Benjamin Franklin," *William & Mary Quarterly*, 3rd. Ser. (WMQ), XXVII (1970), 246-267, uses the terms "Eastern Party" and "Southern Party." William C. Stinchcomb, *The American Revolution and the French Alliance* (Syracuse, 1969) uses the terms "radicals" and "moderates." All of these terms were used by the contemporaries. Regarding foreign policy issues only, the terms "anti-gallicans" and "pro-gallicans" were also used. Henderson's essay, "The Structure of Politics in Continental Congress," in Stephen G. Kurtz and James H. Hutson, eds., *Essays on the American Revolution* (New York, 1973), 157-196, a study based on a computerized analysis, categorizes three factions, instead of two, in Congress; "Eastern," "Middle," and "Southern." His method is useful in measuring the sectional cohesiveness in Congressional voting. But his descriptoin in the article reveals fairly persistent existence of a two-faction pattern.

Stinchcomb's book is a very good work on the diplomacy of the American Revolution with a focus upon Congressional politics and public opinion. Storch's work is the most detailed study of the factional conflicts in Congress over foreign policy issues. It is a useful work, but the author fails to achieve his purpose "to discover the interest and ideology which held these factions together." There is no analysis of the "interest."

¹³ Merrill Jensen, *The Founding of a Nation* (New York, 1968), 682-687.

¹⁴ Cf. note 12.

¹⁵ Samuel F. Bemis, "British Secret Service and the French-American Alliance," *American Historical Review* (AHR), XXIX (1924), 474-493; Thomas P. Abernethy, "Commercial Activities of Silas Deane in France," *AHR*, XXXIX (1934), 477-485; Julian P. Boyd, "Silas Deane: Death by a Kindly Teacher of Treason?" *WMQ*, XV (1959), 165-187: 319-342, 515-550.

of public funds.¹⁶ By the time Deane arrived in America in July 1778, Arthur Lee's letters which accused him of misuse of funds had begun to reach Congress.¹⁷ Thus Deane was received by Congress in an inquisitorial atmosphere. Deane made an oral report of his activities as a commissioner, and vigorously defended his conduct. The moderates were generally sympathetic to him. Deane wanted to get his public accounts settled by Congress. But he could not produce vouchers to prove his integrity. Thus charges against him remained uncleared.¹⁸ Impatient Deane took the matter to the public. He openly attacked Arthur Lee and his brothers in newspaper articles. He even questioned their loyalty to the Revolution.¹⁹

It was in this intensified factional atmosphere that the discussion of peace terms began. Although these two problems were quite different in nature, they were closely connected each other in Congressional politics. The voting record indicates similar divisions of votes in both cases. Most of the militants supported Lee against Deane, and most of the moderates supported Deane against Lee. While Congress debated peace terms, the two factions continued to battle over the matters relating to diplomatic personnel.²⁰

The political influence of French Minister Gérard worked to intensify the factional division. Gérard found the moderates more responsive to his advice than their opponents in Congress. Naturally he tried to use them as a vehicle to achieve his diplomatic aims. He might have been able to deal with the militants more tactfully, keeping their alienation from him to the minimum. However, he developed a notion that such leaders as Samuel Adams and Richard Henry Lee were opponents of the alliance. He even called them the "English patry," and suspected that they were aiming at a separate peace with Britain.²¹

¹⁶ Storch, 42-50, 51n-52n.

¹⁷ *Ibid.*, 56, 71n.

¹⁸ W.C. Ford, ed., *Journal of Continental Congress (JCC)*, 10 June, 6 August 78, XIV, 711-714, 929-930.

¹⁹ Storch, 75-95. Newspaper articles by Deane and his critics are in Charles Isham, ed., *The Deane Papers* (New York, 1887-90), III. Congress discharged Deane from any further attendance without exonerating him from the charges levelled against him. Next Year Deane left America for France presumably to collect sufficient evidence to vindicate himself. The French, who had sent him back to America aboard the flag ship of the French fleet in 1778, were no longer very kind to this fallen hero. Expecting the failure of the Revolution, Deane wrote in 1781 a series of letters to his friends in America, advising them to seek a reunion with Britain. These letters were used by the British for propaganda. This ruined his honor completely and he was forced to live in exile. In 1789, he finally decided to return to America, but died suddenly just before his departure. Boyd alleges that he was poisoned by Bancroft who feared that Deane might reveal his role as a double spy. For a critical description of his life, see Boyd, "Silas Deane," *loc. cit.*, for a sympathetic one, see his biography in *Dictionary of American Biography*, V, 173-174.

²⁰ Storch, 129-150; Henderson, "Congressional Factionalism," 252-263. On the basis of my tabulation of major votings on the fisheries and Mississippi navigation, I can identify the following delegates as "militants" and "moderates." Lovell (Mass.), Merchant (R.I.), Dyer (Conn.), Huntington (Conn.), Sherman (Conn.), Scudder (N.J.), Armstrong (Pa.), McLene (Pa.), Searle (Pa.), F.L. Lee (Va.), R.H. Lee (Va.), and Laurens (S.C.) were militants; whereas Duane (N.Y.), Jay (N.Y.), Lewis (N.Y.), G. Morris (N.Y.), Fell (N.J.), Charmichael (Md.), Forbes (Md.), Henry (Md.), Jenifer (Md.), Paca (Md.), Plater (Md.), T. Adams (Va.), Nelson (Va.), and Hill (N.C.) were moderates. Compare this line-up with the line-up of the Adams-Lee faction vs. the Morris faction which can be known by a tabulation of votings on personnel matters. Whipple (N.H.), S. Adams (Mass.), Lovell (Mass.), Holton (Mass.), Scudder (N.J.), Armstrong (Pa.), Shippen (Pa.), Searle (Pa.), McLene (Pa.), R.H. Lee (Va.), and Laurens (S.C.) belonged to the Adams-Lee faction; whereas Collins (R.I.), Duane (N.Y.), Floyd (N.Y.), Jay (N.Y.), Lewis (N.Y.), G. Morris (N.Y.), Fell (N.J.), Dickinson (Del.), Charmichael (Md.), Jenifer (Md.), Paca (Md.), Plater (Md.), Smith (Va.), Griffin (Va.), Fleming (Va.), Burke (N.C.), Penn (N.C.) and Sharp (N.C.) belonged to the Morris faction.

²¹ To Vergennes, 18 February, 3, 4-6, 13 March 79, Meng, *Despatches and Instructions*, 532, 549, 556-60, 584.

Therefore Gérard did not hesitate to involve himself deeply in the factional struggle over the Lee-Deane issue.²² Although the militants were much annoyed by Gérard's overt pressure and intervention, they were not opponents of the alliance. In 1778, both Samuel Adams and Richard Henry Lee were among the members of the committee which advocated a plan for a joint French-American expedition to Nova Scotia and Canada. Adams wrote at least twice in the fall of the year that France must be "our pole star."²³ Chevalier de LaLuzerne, who succeeded unhealthy Gérard as French Minister to the United States in September 1779, saw the nature of the factions in a truer light and acted more tactfully in dealing with Congress.²⁴

II. *The Peace Instructions of 1779*

In a letter addressed to the President of Congress on February 9, 1779, Gérard informed him that the Spanish king had made Britain a final offer of mediation. About one week later, Gérard had a conference with the members of Congress and advised that body to appoint its representative for expected peace negotiations and to prepare the terms of peace that they would regard as an ultimatum.

He counseled moderation. The United States, he said, should consider their resources and their abilities on the one hand, and the probable advantages and disadvantages arising on the other, by continuing war. Moderate terms might perhaps be obtained. But the pride of Great Britain was too high, and her abilities too great to submit to extraordinary demands at present. In order to encourage moderation, Gérard added that France desired no aggrandizement by conquest, the independence of America alone being such a debilitating blow to Great Britain, as to secure France effectually against the haughtiness of that nation.

As he knew well the Spanish attitude toward the American Revolution and since he was instructed to protect Spanish interests, Gérard urged Congress to respect Spanish interests. He hinted the possibility of Spanish financial aid to America. If the war continued, he said, a subsidy might be obtained from Spain. Then he mentioned the Spanish desire to close the navigation of the Mississippi and to recover the Floridas.²⁵

Responding to his advice, Congress took the first step to formulate its peace terms on February 17 by appointing a committee of five, composed of Gouverneur Morris, Thomas Burke, John Witherspoon, Samuel Adams, and Meriwether Smith.²⁶

They came up with a report one week later. The report enumerated, in addition to the prior acknowledgement by Britain of the independence of the United States, five essential conditions for peace as follows: (1) that the boundaries of the United States be the ancient Southern limit of Canada in the north, the Mississippi River in the west and the northern limit of the Floridas in the south; (2) that every post and place within the United States be evacuated by the British forces; (3) that the right of fishing and curing fish on the banks and

²² Stinchcomb, *The French Alliance*, 37-45.

²³ To John Adams, 25 October 79, *LMCC*, IV, 462; to James Warren, 3 November 78, H.A. Cushing, ed., *The Writings of Samuel Adams [WSA]*, IV, 89.

²⁴ Cf. the Section 3 of this article.

²⁵ *JCC*, 15 February 79, XIII, 184; William Henry Drayton, Memo of Conference with Minister of France, 15 February 79, *LMCC*, IV, 69-71.

²⁶ *JCC*, 17 February 79, 195.

coasts of Newfoundland be retained by the Americans; (4) that the navigation of the Mississippi river, as low down as the Southern boundary of the United States be free to the Americans; (5) that free commerce be allowed to the subjects of the United States with some port or ports below the southern boundary. The report added that in case the allies agreed to continue to support the war, it be insisted that Nova Scotia and its dependencies be ceded to the United States or declared independent. It also suggested that if Spain entered the war and supplied the United States with subsidies the United States would assist her regain the Floridas.²⁷

The majority of the committee members were moderates, although the committee's stand on the fisheries reflected Samuel Adams's idea.²⁸ Some militants were not satisfied. They wanted to make the cession of Nova Scotia a *sine qua non* for peace and the right of Mississippi navigation extended to the mouth of the river. Gérard, on the other hand, felt that the report demanded too much. He was especially concerned with the strong stand of New Englanders regarding the fisheries.²⁹ He put pressure on Congress, advising moderation and a speedy agreement on peace terms. He suggested to more friendly members of Congress that the demands of New England might be included in the terms of peace but should not be made a *sine qua non*.³⁰

The French minister's pressure irritated some militant delegates. When moderate delegates argued that to make excessive demands betrayed a lack of confidence in France, Gérard reported, Samuel Adams exclaimed in protest: "Why should we tie our interests too closely to those of France. Here is where our independence should be considered!"³¹ James Lovell wrote: "I am afraid of the arts that are using to busy us into a rash ultimatum. We are told that such is our first business though your letter and the observation of a blind man may convince us to the contrary...there will be no puzzle about south bounds. But shall neither Canada, Nova Scotia or fishery be in the ultimatum."³²

Gérard's pressure did not bring immediate success. On March 17, the Committee of the Whole, which had been considering the report of the five men committee, agreed on a set of four articles stating American demands in stronger terms. The first article defined the boundaries largely in the same way as the previous report had done, adding possible concessions regarding the northern boundary in the Lake region. The second article demanded the complete evacuation of British forces from the United States. The third article demanded American fishing rights, defining them more elaborately than the previous report. The fourth article demanded the right to free navigation of the entire Mississippi River.³³ Congress voted to adopt the first two articles without much debate. When Congress took up the third and fourth articles, the moderate force tried to soften the position of Congress

²⁷ *Ibid.*, 24 February 79, 239-244.

²⁸ Three members, G. Morris, M. Smith and Burke, were moderates. Burke is not listed as a moderate in the footnote 20. But this voting record indicates moderateness of his position. Storch counts him among the Morris faction, and Henderson classifies him as "Deane Nucleus." (Storch, *op. cit.* and Henderson, "Congressional Factionalism," *loc. cit.* 254). Samuel Adams was of course a militant. Witherspoon who sided with the Adams-Lee junto in the Lee-Deane controversy, was not a persistent militant as to the issues of peace terms. Later he became a champion of the pro-French faction.

²⁹ Gérard to Vergennes, 1, 3, 10, 18 March 79, Meng, *Despatches and Instructions*, 546, 551, 571, 586.

³⁰ *Ibid.*, 551.

³¹ *Ibid.*, 571.

³² JL to HG, 1 March 79, *LMCC*, IV, 84.

³³ *JCC*, 17, 19 March 79, 329-330, 339-341.

on these issues. On March 22, they succeeded in making the demand for fishing rights conditional upon the willingness of the allies to continue the war in support of it, with the proviso that “in no case, by any treaty of peace, the common right of fishing as above described be given up.”³⁴

The defendants of fishing rights, however, recovered two days later from their setback by winning the vote to reconsider the revised article.³⁵ The moderates won their point on May 27, but the militants came back on June 19 with Elbridge Gerry’s proposal of five resolutions.³⁶ The first of his propositions declared it essential to the welfare of the United States that the inhabitants continue to enjoy their common right of fishing. The second declared that France should be asked for a more explicit guarantee of that right; the third, that, in the treaty of peace with Great Britain, a stipulation be demanded that the inhabitants of the United States should not be disturbed in the exercise of that right; the fourth, that without unanimous consent of the states Congress would not conclude any treaty of commerce with Great Britain previous to such a stipulation; and the fifth, that the American minister in peace negotiation should not sign a treaty of peace without further instructions from Congress if France and Britain did not agree to American requests described in the second and third propositions.³⁷ The first two propositions were carried without difficulty, but the third one became a subject of heated discussion. Newspaper articles joined the debates going on in Congress.³⁸

During the spring months, Gérard repeatedly sent memorials to Congress.³⁹ At this juncture, he felt it necessary to have an audience with Congress to bring the matter to a speedy settlement. On July 12 Gérard spoke to Congress. He reminded Congress that it was assumed at the Court of France that the business had laid before it in February would have been settled long before. Again he made a plea for just and moderate terms.⁴⁰ His speech had some effect. Gerry’s third proposition was set aside on July 22. So was the fifth proposition a week later.⁴¹

The problem of Mississippi navigation was overshadowed by the debates on the fisheries in Congress for four months after late March. On March 24, an attempt was made to soften the stand on Mississippi navigation in the report of the Committee of the Whole by making it conditional to the willingness of the allies to continue the war in support of it. That attempt was defeated, but the original article was also set aside.⁴² Thereafter the problem of Mississippi navigation did not appear to be taken up in Congress as an item in the peace ultimatum. But it was to be discussed repeatedly in connection with treaty terms to be offered Spain.

Finally on August 14, Congress agreed on the instructions to be given to the minister plenipotentiary to negotiate a treaty of peace. He was to make it a preliminary article of any negotiation that Great Britain should agree to treat with the United State as sovereign,

³⁴ *Ibid.*, 22 March 79, 348–352.

³⁵ *Ibid.*, 24 March 79, 371–373.

³⁶ *Ibid.*, 27 March 79, XIV, 749–752.

³⁷ *Ibid.*, 19, 24 June, 1 July 79, 749–752, 765–770, 790–793.

³⁸ Storch, 115.

³⁹ To President of Congress, 17, 31 March, 3, 6, 22, 27 May 79, Jared Sparks, ed., *The Diplomatic Correspondence of the American Revolution* [DCAR], V, 582–583, 583–584, 589, 597–601, 603–605.

⁴⁰ Gérard to Vergennes, 21 May 79, Meng, *Despatches and Instructions*, 667. JCC. 12 July 79, 821–841.

⁴¹ JCC, 22, 29 July 79, 896–897.

⁴² *Ibid.*, 24 March 79, XIII, 369–371.

free and independent. The boundaries to be demanded were basically the same as agreed on March 19. The cession of Canada and Nova Scotia, as well as the guarantee of fishing rights, were to be demanded but not to be made an ultimatum. The instructions also empowered the minister to conclude a treaty of commerce with Britain with the conditions that no privilege not granted to France be granted to Great Britain and that the common right of fishing be in no case given up. The instructions did not mention Mississippi navigation.⁴³ It was now regarded to be a matter to be negotiated with Spain.

Having settled the matter of peace terms, Congress turned to the problem of what the United States should offer to Spain for a treaty of alliance. It was resolved on September 10 that if Spain would accede to the treaty of alliance, Congress would make no objection to her acquiring the Floridas, provided that the United States should enjoy the free navigation of the Mississippi River into and from the sea, and the use of a free port on the river somewhere below the 31st parallel.⁴⁴ This condition was obviously displeasing to Spain. Desiring to hasten an alliance with Spain, John Witherspoon moved a month later to waive the claim to the navigation of the Mississippi below the 31st parallel. But this motion was promptly defeated.⁴⁵ Now that Spain was already in the war against Britain, most of the Southern delegates were less willing than they had been in the previous spring to soften their position on Mississippi navigation simply for a Spanish alliance.

Congress did not decide until near the end of September on the appointment of the minister plenipotentiary for peace negotiations. Two candidates, John Adams and John Jay, representing the two factions, had almost equal numbers of supporters. To break the impasse, the moderates sought a compromise with the New England wing of the militants. They found out that some new Englanders were willing to sacrifice Arthur Lee if they could appoint Adams to negotiate peace. The moderates, anxious to remove Lee from his diplomatic post, agreed to give Adams the post of the Minister to negotiate peace and to send Jay to the Court of Spain.⁴⁶

III. *The Backdown of Congress in the Instruction of 1781*

The war situation in America turned from bad to worse in 1780 because of the success of the British offensive in the South. The British army had adopted a strategy of subduing the southernmost states and then extending its control northward. Georgia had been largely under the British control since 1778. South Carolina was invaded in 1779 and General Lincoln's army in Charleston surrendered to the British on May 12, 1780. The British army, having conquered most of Georgia and South Carolina, now threatened North Carolina.⁴⁷

The fall of Charleston was a great setback for America. Besides, Congress was in serious financial difficulty. The morale of the people was low. The international situation was also unfavorable to the United States. War weariness was increasing in France. The military situation in America discouraged the governing circle which had provided consid-

⁴³ *Ibid.*, 14 August 79, XIV, 956-966.

⁴⁴ *Ibid.*, 10 September 79, XV, 1046-1047.

⁴⁵ *Ibid.*, 13 October 79, 1168-1169.

⁴⁶ Henry Laurens, Notes of Proceedings, 25 September 79, John Laurens to Richard Henry Lee, 27 September 79, Elbridge Gerry to John Adams, 29 September 79, *LMCC*, IV, 438, 443, 454-457. *JCC*, XV, 1112-1113.

⁴⁷ Willard M. Wallace, *Appeal to Arms*, 204-215.

erable amount of aid to America. Besides, France herself had acute financial difficulties. Jacques Necker, Director General of Treasury, felt that war was leading France toward bankruptcy. In December 1780, Necker secretly approached Lord North with a peace overture. His proposal was a long-term truce on the basis of status quo. The British, however, interpreting it as an indication of French weakness, did not make a conciliatory response. When Comte de Vergennes, French Minister of Foreign Affairs, learned of Necker's peace move, he proceeded to stop it at once.⁴⁸ Vergennes knew the financial difficulty of his government and was aware of the war-weariness among the people. Thus he, too, concluded that France had better have a peace now if its terms were such that they could satisfy the minimum requirement of French honor. He thought it quite tactless for France to make a direct approach to the enemy on the matter of peace. But he was inclined to be receptive to peace feelers extended by neutral powers. Both Catharine II of Russia and Joseph II of Austria were eager to mediate.⁴⁹

In February 1781, Vergennes let his secretary Joseph de Rayneval draw up a confidential memorandum which revealed his ideas on the conditions for the cessation of the war acceptable to France. The memorandum included the following point: that American independence be assured either by a definitive treaty or on a de-facto basis by a long-term truce; in case the status quo truce could not be avoided, it should be limited to South Carolina and Georgia (the evacuation by the British of New York must be secured). Vergennes knew such terms would be hard for the Americans to accept, but he expected that the fear of total failure might possibly induce them to make this great sacrifice. For the French king to request such a sacrifice would expose himself to a charge of bad faith. But the neutral mediators could appropriately put a painful request to the Americans. The king then could save face by accepting the terms as inevitable and by guaranteeing American independence against a future attack.⁵⁰

In several dispatches sent to LaLuzerne in spring 1781, Vergennes directed him to urge Congress to accept the proposed mediation by neutral powers. At the same time, he directed the French envoy to induce Congress to empower his majesty's ministers to interpose to curb John Adams, the American plenipotentiary, whenever necessary.⁵¹ It was the most critical, darkest hour of the American Revolution.

When a rumor of peace moves by neutral powers on the basis of *uti possidetis* reached America, Georgia and South Carolina leaders were scared. They became desperate to save themselves from a *uti possidetis*. They were now willing to sacrifice a part of Mississippi navigation if an alliance with Spain could be obtained. Delegates from those states argued that America should offer Spain concessions since British agents were trying to induce Spain to step out of the war. They hoped that American concessions would win Spanish military assistance and that it would improve American military situation and eliminate the danger of a *uti possidetis*.⁵²

⁴⁸ Richard B. Morris, *The Peacemakers: The Great Powers and American Independence* (New York, 1956), 88-107.

⁴⁹ *Ibid.*, 173.

⁵⁰ Edward S. Corwin, *French Policy and the American Alliance of 1778* (Princeton, 1919), 296-297.

⁵¹ To LaLuzerne, 9 March, 19 April 81, Henri Doniol, *Histoire de la Participation de la France à l'Établissement des États-Unis d'Amérique* (Paris, 1886), IV, 553-556, 558-591. Also 30 June 81, *ibid.*, 601-603.

⁵² Irving Brant, *James Madison, the Nationalist* (Indianapolis, 1948), 83-84; Madison to Joseph Jones, 25 November 80, *LMCC*, V, 456-459.

James Madison, a Virginia delegate, was strongly opposed to their proposal. He insisted that Congress would be guilty of "impropriety" if it sacrificed the claims of particular states without permission from the state or states involved. He hoped, on the basis of Jay's dispatch, that Spain might yield if the United States remained unyielding on their part. He suspected that a rumor of a *uti possidetis* peace was a Spanish fabrication to scare the Americans.⁵³ One of Madison's colleagues in the Virginia delegation, Theodorick Bland, who would often side with the militants, was this time willing to yield. He urged Governor Thomas Jefferson to direct the Virginia delegation to agree to offer concessions to Spain.⁵⁴ When a small British army landed suddenly on the Chesapeake Bay, the Virginia Assembly voted to agree to surrender lower Mississippi navigation.⁵⁵ Thereupon Congress decided in February 1781 to authorize Jay to give up, if necessary, the right of Mississippi navigation below the 31st parallel.⁵⁶ Jay reluctantly offered this concession to the Spanish, adding on his own initiative the hint that this offer might be withdrawn if Spain did not respond promptly. But Spain did not respond.⁵⁷

The desperate mood of Congress in early 1781 was well suited to LaLuzerne's efforts on behalf of Vergennes. LaLuzerne was a more tactful diplomat than his predecessor. He had avoided antagonizing the Americans unduly by championing the Spanish claims. He had told Congress of Spanish aspirations, but had not tried to press them upon Congress, taking more or less a neutral posture.⁵⁸ Unlike Gérard, he had taken a tolerant attitude toward the Adams-Lee faction. Understanding that they were not opposed to the French alliance, he tried to be on as friendly terms with them as he could.⁵⁹ Thus he had gained respect of those whom Gérard had antagonized. Impressed by the friendliness of the new minister, Richard Henry Lee wished that France had originally sent LaLuzerne instead of Gérard.⁶⁰

LaLuzerne had skilfully built up his influence upon Congress by the time he began to work on Congress to make decisions agreeable to French peace policy in May 1781. His task was not difficult because a majority of the delegates in Congress, aware of the loss of much of American bargaining power, felt that it would be the best for them to place their trust in France.

By this time the militant faction had been disintegrated. Such militants as Samuel Adams, William Whipple, William Ellery, Josiah Bartlett, Henry Merchant, Elbridge Gerry, Richard Henry Lee and Henry Laurens no longer sat in Congress. The militant unity of New England delegations no longer existed. Such delegates as John Sullivan and Ezekiel Cornell were LaLuzerne's close political allies.⁶¹ Opposition to LaLuzerne's program was led by the Massachusetts delegation. But the Pennsylvania delegation, which had once been dominated by the militants, was now composed of moderates. Among the delegates from the South, few militants could be found.

⁵³ Madison to Jones, 25 November 80, *ibid.*

⁵⁴ Theodorick Bland to Governor of Virginia (Jefferson) 22 November 80, *ibid.* 456.

⁵⁵ Brand, *Madison*, 85; Thomas P. Abernethy, *Western Lands and the American Revolution* (New York, 1937) 244.

⁵⁶ *JCC*, 15 February 81, XXV 714-715.

⁵⁷ Morris, *Peacemakers*, 243; JJ to President of Congress, 3 October 81, *RDC* IV 738-747.

⁵⁸ Corwin, *French Policy*, 267-269.

⁵⁹ Stinchcomb, *French Alliance*, 80-81.

⁶⁰ RHL to HL, 31 August 79, *LRHL*, II, 119; Stinchcomb, *French Alliance*, 83.

⁶¹ Stinchcomb, *French Alliance*, 162-163; Storch, "Congressional Politics," 180-181.

On May 26, LaLuzerne sent Congress a memorial which urged that body to give the minister plenipotentiary for peace negotiations new instructions that would show Congress' moderation and its desire for peace. Explaining the European diplomatic situation, he urged that America should let Europe know "that the independence of the thirteen United States, and the engagement they have contracted with the king, are the sole motives which determined them to continue the war."⁶²

Congress soon appointed a committee to confer with the minister and make appropriate recommendations on the matter. Although it had a standing committee on foreign affairs, it was not unusual for Congress to appoint an *ad hoc* committee for resolving questions of foreign policy.⁶³ At LaLuzerne's request, John Witherspoon was appointed to head the committee. The French minister held frequent conferences with the committee and tried to impress its members with the desirability of accepting the peace mediation, the necessity of moderation, the inadequacy of John Adams as America's sole representative in peace negotiations, and the necessity of confidence in the French king. The committee, composed of Daniel Carroll, Joseph Jones, John Witherspoon, John Sullivan, and John Mathews, was cooperative. Witherspoon, its chairman, once a friend of the Adams-Lee junto, was now a champion of moderation, and Sullivan, bribed by LaLuzerne, served as his agent in Congress.⁶⁴

On June 6, Congress resolved that the American plenipotentiary be authorized and instructed to concur with the French king in accepting the mediation proposed by the Empress of Russia and the Emperor of Germany, but to accede to no treaty which did not "effectually secure the independence and sovereignty of the thirteen United States."⁶⁵ Then Witherspoon proposed two additional instructions: the first was to free the American minister from the instructions of August 1779 on territorial matters; and the second was to order him "to make the most candid and confidential communications" to the ministers of the French king and "to undertake nothing in the negotiations for peace without their knowledge and concurrence." Witherspoon's motion was once rejected.⁶⁶ But it was reconsidered and passed in the affirmative two days later.⁶⁷ The Virginia delegation tried to limit territorial concessions in more specific terms, but their motions were defeated.⁶⁸ On June 9, Witherspoon proposed another additional instruction: to allow the American minister "to agree to a truce, or to make such other concessions as may not affect the substance of what we contend for, and provided that Great Britain be not left in possession of any part of thirteen United States." This motion was again passed in the affirmative.⁶⁹

Thus the Congress retreated almost completely from the instructions of 1779. The only ultimatum was the independence and sovereignty of the thirteen United States. Even a long-term truce which gave the United States de-facto independence from Britain was acceptable. LaLuzerne reported to Vergennes the current mood of Congress: "That if the Ohio formed their boundary the thirteen states would not complain....If circumstances

⁶² JCC, 28 May 81, XX, 560-572.

⁶³ Stinchcomb, *French Alliance*, 156-158.

⁶⁴ *Ibid.*, 158, 161-162; Storch, "Congressional Politics," 182.

⁶⁵ JCC, 6 June 81, XX, 605-606.

⁶⁶ *Ibid.*, 606-607.

⁶⁷ *Ibid.*, 8 June 81, 614-618.

⁶⁸ *Ibid.*, 8 June 81, 611-613.

⁶⁹ *Ibid.*, 9 June 81, 618-619.

forced them to adopt as boundaries the mountains which divide the rivers that flow into the Atlantic from those that flow to the West," he predicted, "the peace would be accepted and ratified." He added, however, that such a peace would meet with general criticism and would cool the ardor of French partisans. No peace based on *uti possidetis*, he observed, would be ratified by Congress.⁷⁰

The resolutions already adopted by Congress regarding new peace instructions pleased LaLuzerne, but he requested more. Among other things, he requested Congress to modify the instructions so that the American plenipotentiary was "ultimately to govern" himself by the advice and opinion of the ministers of the French king. Making use of Adams's quarrel with Vergennes as a pretext, he persuaded the committee with the necessity of such directive.⁷¹

John Adams had incurred the French Foreign minister's displeasure by his behavior in Paris. He had maintained that American diplomacy, while taking advantage of connection with France, had always to guard America's interests from being subordinated to France's.⁷² The excessive sense of gratefulness for French assistance on the part of American diplomats would betray the interest of the nation.⁷³ This awareness, together with a psychological necessity to compensate for an inferiority complex toward a stronger ally, had made Adams exceedingly self-assertive in his dealing with the French. It had also been his belief that such diplomacy of high posture would be more effective than diplomacy of low posture. He wrote to a friend that "I have long since learned that a man may give offense and yet succeed."⁷⁴ Franklin said Adams had told him that "a little apparent stoutness and a greater air of independence and boldness in our demands will procure us more ample assistance."⁷⁵ Adams had been critical of Franklin's diplomacy of low posture and remained throughout his life a severe critic of Franklin's diplomacy. But old Benjamin had certainly known better how to deal with the French to the advantage of the United States.⁷⁶ In any case, Adams had offended Vergennes on several occasions.⁷⁷ Acquainted with Adams' self-assertiveness, Vergennes had felt that something should be done to restrain his power as the plenipotentiary in peace negotiations. He had thought of inducing Congress to place Adams under Franklin or to balance him with a reliable co-plenipotentiary. But he had later directed LaLuzerne that he would be satisfied with letting Congress instruct Adams to be guided by the advice of the ministers of the French king.⁷⁸ Now LaLuzerne attempted to do both to have Adams in leash.

Congress knew well that Adams was not trusted by the French government. Once the President of Congress had sent him an admonishing letter.⁷⁹ Besides, delegates from the

⁷⁰ LaLuzerne to Vergennes, 13 June 81, Doniol, *Histoire*, IV, 617-621.

⁷¹ Stinchcomb, *French Alliance*, 158.

⁷² To President of Congress, 18 April 80, *ibid.*, III, 623.

⁷³ To Roger Sherman, 6 December 78, *ibid.*, II, 852; To William Carmichael, 8 April 80, *ibid.*, III, 603.

⁷⁴ To Secretary of Foreign Affairs (Livingston), 21 February 82, J.Q. Adams, ed., *The Works of John Adams [WJA]*, VII, 525, 528; *RDC*, I, 513.

⁷⁵ Franklin to President of Congress, 9 August 80, *ibid.*, IV, 23.

⁷⁶ See Adams's autobiography, *Adams Papers: Diary and Autobiography*, III, 338. For a discussion of Adams's and Franklin's diplomacy see Gerald Stourzh, *Benjamin Franklin and American Foreign Policy* (Chicago 1954); Adams's diplomatic activities in France is discussed extensively in James H. Hutson, *John Adams and the Diplomacy of the American Revolution* (Lexington Ky. 1980).

⁷⁷ *RDC*, III, 806-807, 808, 809-816, 827-829, 848-855, 861-863, 870-877, 882-883; IV, 7-13, 18-19.

⁷⁸ Stinchcomb, *French Alliance*, 155-156.

⁷⁹ President of Congress (Samuel Huntington) to Adams, 10 January 81, *RDC*, IV, 19.

Middle and Southern states were afraid that John Adams, ardent champion of fisheries, might spoil a chance of peace by his attachment to fishing rights.⁸⁰ On June 11, Congress complied with LaLuzerne's request.⁸¹

Congress went on to curb his power further by adding new ministers for peace negotiations. There were many delegates who wanted to appoint several ministers to join with Adams. This was of course agreeable to LaLuzerne. The proposal of appointing additional ministers had once been voted down. But it was reconsidered and passed in the affirmative.⁸² Subsequently, John Jay was chosen first, and then Benjamin Franklin, Henry Laurens and Thomas Jefferson were added.⁸³

After the American peace commission was thus expanded, an attempt was made to reconsider the instruction which placed the American negotiators under French tutelage. A number of delegates felt such an instruction was humiliating and dishonorable. Now that the four other ministers were appointed, some delegates felt that Congress could safely repeal that obnoxious instruction. But a majority of the delegates did not consider it feasible to revoke the instruction when it was already known to the French minister. Thus the motion was defeated.⁸⁴

'Blush, blush, America!' James Lovell expressed his chagrin to John Adams, "consult and ultimately concur in everything with the minister of his Christian Majesty."⁸⁵ Thomas Rodney, another delegate, lamented that the clause would convince the French that the United States was reduced to a weak and abject state. He was afraid that France might not try to get formal recognition of American independence in the hope that she would keep the United States more dependent upon her.⁸⁶ St. Thomas Jenifer, a staunch supporter of the French minister, agreed with Rodney that the French were not altruistic. But he thought it the best for Congress to rely on France. He expected that France would procure the United States "tolerable terms" in so far as this was needed to keep the United States "in her

⁸⁰ Brant, *Madison*, 136-137, 144-145.

⁸¹ *JCC*, 9, 11 June 81, XX, 619, 625-627.

⁸² *Ibid.*, 9, 11 June 81, 619, 627-628.

⁸³ *Ibid.*, 11, 14 June 81, 628-648.

⁸⁴ *Ibid.* 15 June 81, 650. Madison later wrote in his memo of the debates in Congress, 30 December 82 (*JCC*, XXIII, 872-875). "The reasons assigned for this expediency (of submitting the Commission for peace to the counsel of France) were that at the juncture when that measure took place the American affairs were in the most deplorable situation, the Southern States being overrun and exhausted by the enemy, and the others more inclined to repose after their own fatigue than to exert their resources for the relief of those which were the seat of the war; that the old paper currency had failed and with it public credit itself to such a degree that no new currency could be substituted; and that there was then no prospect of introducing specie for the purpose, our trade being in the most ruinous condition, and the intercourse with Havana in particular unopened. In the midst of these distresses the mediation of the two Imperial Courts was announced. The general idea was that the two most respectable powers of Europe would not interpose without a serious desire of peace, and without the energy requisite to effect it. The hope of peace was therefore mingled with an apprehension that considerable concessions might be exacted from America by the mediators, as a compensation for the essential one which Britain was to submit to. Congress on a trial found it impossible from the diversity of opinions and interests to define any other claims than those of independence and the alliance. A discretionary power therefore was to be delegated with regard to all other claims. Mr. Adams was the sole minister for peace, he was personally at variance with the French Ministry; his judgment had not the confidence of some, and his impartiality in case of an interference of claims espoused by different quarters of the United States.... The idea of having five ministers taken from the whole union was not suggested until the measure had been adopted, and communicated to the Chvr. de Luzerne to be forwarded to France, when it was too late to revoke it."

⁸⁵ 21 June 81, *LMCC*, VI, 124-125.

⁸⁶ To Caesar Rodney, 15 June 81, *ibid.*, 121-122.

interest.” “I trust more to her policy than her justice,” he wrote.⁸⁷

Lovell and other friends of Adams were afraid that he might resign his commission in indignation at the curbing of his power. If he resigned, his friends feared, the fishing rights would have no defender in peace negotiations.⁸⁸ Not only was his power as America's peace negotiator curtailed, but also his commission to negotiate a commercial treaty with Britain was revoked.⁸⁹ But Adams kept his temper and stayed on. John Jay, a new appointee, sent Congress a strong protest at the instruction, but he too decided to accept the commission.⁹⁰

The new instructions of 1781 were not an expression of the *naiveté* of Congress but a reflection of America's difficult situation. Some delegates who supported the instructions might have had naive confidence in the good-will of the French king toward America.⁹¹ But others did not. Yet, they could not see any other alternative. Keenly aware of America's weak position, they thought that the only high card for American diplomacy at the impending peace negotiations was French support of the American cause, even if the support was of limited nature. Therefore they could not risk weakening that support by rejecting the advice of the French minister who was acting on Vergennes' behalf. Besides, they had their own misgivings about the soundness of Adams' judgment and felt it desirable to restrain him one way or another. No matter what their sense of national pride might be, a majority of the delegates felt that they had, to use Madison's phrase, to sacrifice their "pride" to their "interests."⁹²

Fortunately for the United States, the peace mediation by the neutral powers ended in failure because of British inflexibility.⁹³ The peace negotiations of 1782 were conducted in a quite different political and military situation, and the American negotiators could stand in a far better position for diplomatic bargaining. Thus the instructions concerning full consultation with the French government did not have any practical effect in the peace negotiations.

The sudden change in American fortune occurred in October 1781. General Cornwallis who had invaded Virginia with an army of more than seven thousand men was besieged by American and French troops at Yorktown. With their retreat to the sea blocked by the timely arrival of the French fleet commanded by Admiral DeGrasse, Cornwallis' whole army surrendered on October 19. Moreover, American forces in the South recovered most of South Carolina and Georgia from the British. In 1782, the British still controlled New York and Charleston, two of the four major ports in America. They were still powerful on the seas. In April 1782, they defeated DeGrasse's fleet in a battle in the Caribbean and captured the admiral as a prisoner of war.⁹⁴ But the battle of Yorktown was the decisive

⁸⁷ To George Weedon, 5 June 81, *ibid.*, 112.

⁸⁸ Stinchcomb, *French Alliance*, 165, 177-178.

⁸⁹ *JCC*, 12 July 81, XX, 746-747.

⁹⁰ To President of Congress, 20 September 81, *RDC*, IV, 716-718.

⁹¹ Stinchcomb comments that "the naive delegates believed that they could ask Luzerne about the reliability of the King of France and receive an objective answer." (*French Alliance*, 171). My impression is that most of the delegates were not so simple and naive. It is my interpretation that those delegates, in the time of great anxiety, had a psychological necessity of being reassured of French good will towards America. Stinchcomb is more critical than I am of the decision of Congress to adopt the instructions (*ibid.*). Given the circumstances, however, I think it was very hard for Congress to act otherwise.

⁹² Madison's memo, 30 December 82, *JCC*, XXIII, 873.

⁹³ Morris, *Peacemakers*, p. 185.

⁹⁴ Wallace, *Appeal to Arms*, 228-262.

turning point in the Revolutionary War. The disaster was a shocking blow to the British public. To subjugate the Americans by force no longer appeared to be practical.

IV. *The Movement to Reconsider the Instruction of 1781*

Victory at Yorktown brightened America's prospect for winning a satisfactory peace. Sensing improvement in their bargaining position, a number of delegates in Congress began to argue for reconsidering the instructions of 1781. William Ellery moved on January 8, 1782, that "it is now expedient that Congress should enlarge their ultimata for concluding a treaty of peace." This was the first attempt to revise the peace instructions Congress had adopted in the darkest days of the war. This motion was defeated without much support, but the subject was to be brought up again and again.⁹⁵

As the British now seemed to have given up conquering the American states, the French began to fear that they might try to allure the Americans away from the French alliance by offering some attractive peace terms. The French would have to continue fighting until Spain could obtain satisfactory peace terms. The British might make use of French commitment to Spain in their attempt to detach the Americans from the alliance. The French minister therefore warned Congress in April of the British tactics of divide and bargain. Emphasizing the king's strong resolution to be true to the principles of the alliance, LaLuzerne called for maintaining close consultation between the allies. Congress responded with reaffirmation of its determination to conduct peace negotiations "in confidence and in concert with his most Christian Majesty."⁹⁶

Next month Congress staged an elaborate reception for the Minister of France in which he presented to Congress the king's letter announcing the birth of a prince. James Madison, who feared the weakening the alliance would result in weakening America's international position, was glad to have such a reception. "It was deemed politic at this crisis," he declared, "to display every proper evidence of affectionate attachment to our ally."⁹⁷ He did not think that Britain was willing to offer America complete independence. He suspected that she was still trying to retain a "federal" connection with the United States. Therefore, he felt it very important for the United States to maintain the solidarity of the alliance.⁹⁸

Not all the members of Congress however had the same idea about the value of the French alliance. When it was known in May that the Netherlands recognized the United States, Madison reported that the news had much emboldened the enemies of France in Congress. Foremost among them was Arthur Lee who had sat in Congress since February 1782 as one of Madison's colleagues in the Virginia delegation. Ralph Izard, another Francophobe and former diplomatic appointee, had just arrived to reinforce the militant group in Congress.⁹⁹ "Doctor Lee declared," Madison wrote in July, "that it might be considered as the epoch of our emancipation. Yesterday I was reminded by Izard that

⁹⁵ The motion was supported by the delegations of Mass. and Ga. The votes of R.I. and Conn. were divided. No delegates from the other states supported the motion. *JCC*, 8 January 82, XXII, 11.

⁹⁶ "Communication of the French Minister to Secretary of Foreign Affairs," *DCAR*, VI, 60-61; *JCC*, 1 May 82, XXII, 221-223.

⁹⁷ *LMCC*, VI, xxvi; Madison to Edmund Randolph, 14 May 82, *ibid.*, 350.

⁹⁸ To Arthur Lee, 7 May 82, *ibid.*, 345.

⁹⁹ *Ibid.*

Franklin was interested in restoring the back lands to the crown. Soon after I was shown by Lee a proposition for reconsidering the commission and instruction for peace. The plan is to exclude Franklin and Jay and to withdraw the others from the direction of France."¹⁰⁰

Arthur Lee himself expressed his sentiment as follows. "Yoke is reveted upon us," he said, "and the man [Franklin] who I am sure sold us in the negotiation with France, is the sole adjunct with Mr. Adams, in a negotiation on which everything that is dear and honorable to us depends." This was the reason why Lee wanted the appointment of the peace commissioners reconsidered. Then he criticized the instructions. This instructions meant, he understood, that "the French are to make a peace for us." Those instructions put decisions on all the issues important to the United States in the hand of the French court, in the hope that the court would behave as a generous protector toward a servile client. "This was not the sentiment or language," he protested, "that commenced the revolution."¹⁰¹

On July 24, Lee moved that "the commissions of June 15, 1781, appointing ministers plenipotentiaries..., together with the instructions given to the said commissioners, be reconsidered." His proposals were supported by Theodorick Bland, another Virginian, and two delegates from Massachusetts. It was Madison, another Virginian, who appeared to make a major speech against Lee's motion. First he observed that although the motion was pointed against the ministers as well as against the instructions, nothing was said to show that the appointment was improper. He could not agree with the motion, he went on, even if it was limited to reconsidering the instructions. He reminded his colleagues of the times and circumstances in which those instructions had been passed. He did not think it prudent or proper to reconsider the instructions. He maintained that the instructions as they now stood did not produce any ill consequence. Reconsidering and altering them, however, might in his opinion interrupt the harmony which at present subsisted between the United States and France. It might abate the zeal she had hitherto shown in America's favor. It was his opinion that American affairs were not at present in such a situation as to warrant so hazardous a step. Other members followed Madison to express their opposition to the reconsideration. Congress adjourned without putting the motion to a vote.¹⁰²

Another attempt to reconsider the instructions was made in August. On August 2, a letter from Jay dated April 28 was read in Congress. It depicted the poor treatment he was receiving and gave details of the many slights he had suffered in Madrid. He did not see much possibility of success in his negotiation with Spain. He did not regret it because he thought that the importance of a Spanish alliance had been diminished. He therefore advised Congress that the United States should not be so anxious for it as to sacrifice Mississippi navigation.¹⁰³ As soon as it was read, Edward Rutledge moved that a committee be appointed to revise the instructions given to Jay and his motion was agreed immediately.¹⁰⁴ Several days later Congress adopted new instructions for Jay. He was instructed to decline acceding to any Spanish proposal for a treaty without Congress's approbation, unless the proposal be of such a tenor as to require the consent of the United States as a fulfilment of the stipu-

¹⁰⁰ To Edmund Randolph, 23 July 82, *ibid.*, 388.

¹⁰¹ To James Warren, (23) July 82, *ibid.*, 389.

¹⁰² Charles Thomson, Notes of Debates, 24 July 82, *ibid.*, 390-391.

¹⁰³ To Secretary of Foreign Affairs, 28 April 82, *RDC*, V, 336-337.

¹⁰⁴ Thomson's notes, 2 August 32, *LMCC*, VI, 410-411.

lation in the secret article of the French-American alliance.¹⁰⁵ Feeling that the ordeal of the war soon to be over, Congress thus stiffened its attitude to Spain. Most of the members were in no mood to sacrifice Mississippi navigation for a Spanish treaty. Debating on the new instructions, Bland stated that a treaty with Spain was of no advantage to the United States. "If she wants a treaty let her sue for it and let Congress judge of the terms."¹⁰⁶

Jay's letter gave another impetus to the movement to reconsider the peace instructions of 1781, because it expressed his anxiety on French connection with Spain. He mentioned that French alliance with Spain would embarrass France if England offered the United States peace on the basis of the French-American alliance. Spain would demand, he observed, more than England would probably be willing to give. However, the United States had not agreed to continue the war to satisfy the inordinate desires of Spain and this put France in an awkward position. Such a situation would make it unwise for Congress to make its peace commissioners ultimately dependent on the French court.¹⁰⁷ Jay had been known as a moderate. Gérard had regarded him one of his most reliable political friends in Congress. His frustrating experiences in Spain, however, had made him strongly anti-Spanish and also suspicious of French diplomacy since he could not have enough support from France in his dealing with Spain.

Jay's letter, Madison recorded, was "fresh leaven to the antigallic ferment."¹⁰⁸ When an committee of five was chosen to revise the instructions given to Jay on August 2, Lowell moved that the peace instructions of 1781, too, should be referred to the committee. Madison promptly voiced his opposition. If, at the moment Congress was about to revise the instructions respecting Spain, a step was taken which might show America's want of confidence in France and give offence to that court, he argued, it might endanger American affairs. Lee again criticized the instructions of 1781, branding them "derogatory to the honor, dignity and independence of the United States."¹⁰⁹ He was now "very much inclined to think that France will be for protracting the war, or for turning the chief advantages of it to herself and to Spain."¹¹⁰ But he thought that this matter should be brought up more directly. Lowell defended his motion as the most delicate way to bring up the subject. But his motion was not put to a vote.¹¹¹

The problem was brought up in a direct manner two days later. Bland moved that the peace instructions of 1781 be reconsidered. But the discussion was postponed. On August 8, Lee reminded Congress that there was a business before them of the greatest importance. He again moved that the peace instructions be reconsidered. A lively discussion took place. Williamson said he did not think the instructions of so dangerous a nature as was represented. The independence of the states and the principles of the alliance and treaty of commerce were fully secured. The matters in which the ministers were ultimately to be governed by the opinion of France were only what respected disputed boundaries, the fisheries and other matters which might come into discussion at the treaty. Rutledge argued that the boundaries were not a minor matter. The boundaries were everything.

¹⁰⁵ Thomson's notes, 6 August 82, *ibid.*, 424-427.

¹⁰⁶ *Ibid.*

¹⁰⁷ The same as note 193.

¹⁰⁸ To Edmund Randolph, 5 August 82, *LMCC*, VI, 420.

¹⁰⁹ The same as note 104.

¹¹⁰ Lee to Samuel Adams, 6 August 82, *LMCC*, VI, 428.

¹¹¹ The same as note 104.

The states could not exist without boundaries.

Lee made a long speech emphasizing the vital importance of revising the instructions. Again his argument was answered by Madison. He admitted that the instructions were a sacrifice of national dignity. But, he said, it was a sacrifice of dignity for policy. The situation of affairs and circumstances at the time rendered this sacrifice necessary. He did not think the instructions harmful to the interest of the United States. Whether there was the controversial part of the instructions or not, the American ministers could assert American claims and contend with the utmost earnestness for American rights. Likewise, they would have to follow the advice and opinion of the court of France when their most earnest endeavors proved ineffectual. He reminded his colleagues that France had voluntarily bound herself by the treaties she had entered into with America to secure a guarantee of American independence. This was because it was her interest as well as policy to secure the affections of the Americans and forever separate them from Great Britain. She would never think them formidable to her while they continued to be absolutely independent, nor would she ever object to their enlarging their boundaries or increasing their commerce and naval power unless they gave her reason to suspect a want of confidence in her and a disposition to be united with her ancient enemy. He asked: if Congress withdraw its confidence in France at this critical juncture, would not it give just grounds of suspicion and jealousy? To revoke the instructions, he continued, would not restore the dignity of the nation. It would rather convince the nations of Europe that the Americans were a people unstable in their councils and measures, governed wholly by circumstances. He also suggested that any symptom of weakening of the alliance, together with British victory in the Caribbean, might encourage the British to continue the war with new vigor.¹¹²

Madison felt that something had to be done to appease the militants. "It is very probable," he wrote a few days before, "that this affair will eventually be adjusted on some middle ground. The venom against France will not be assuaged without some such expedient."¹¹³ Therefore he proposed to appoint a committee "to take into consideration and report to Congress the most advisable means of securing to the United States the several objects claimed by them and not included in their ultimatum for peace...of 1781." This was of course unsatisfactory to the militants. But Madison and the moderates carried the day. His proposal was adopted and the committee was appointed. Madison himself was in the committee and the rest of the members were equally divided into moderates and militants.¹¹⁴

The committee reported on August 15 and recommended that the paper prepared by a previous committee composed of Daniel Carroll, Edward Randolph and Joseph Montgomery should be delivered to the Secretary for Foreign Affairs and that the Secretary should perfect it and transmit it to the peace commissioners, so that they could impress his Most Christian Majesty with the justice of the American claims. The paper referred to was a lengthy document which justified American territorial claims, her demand for the participation in northeastern fisheries and for the free navigation of the Mississippi in detailed arguments.¹¹⁵ The committee's compromise proposal seemed to be accepted by the both

¹¹² Thomson's notes, 8 August 82, *LMCC*, VI, 432-435.

¹¹³ The same as note 108.

¹¹⁴ Thomson's notes, 8 August 82, *LMCC*, VI, 436-438.

¹¹⁵ *JCC*, 15 August 82, XXIII, 468-469, for the text of the document "State of Facts and Observations," *ibid.*, 482-524.

factions. When the document was read in Congress, however, some delegates from “landed” states found its argument for American rights to the western lands disagreeable. Because of this dispute, the adoption of the document was suspended.¹¹⁶

Meanwhile, Congress, responding to a request of the French court, reaffirmed on October 4 its unviolable adherence to the treaty of alliance and its determination not to negotiate a peace but in confidence and in concert with the King of France. Congress however took this opportunity to press upon the King of France in strong terms the objects confided to his discretion.¹¹⁷ Madison hoped that this strong presentation of American objects would appease the rage for changing the peace instructions.¹¹⁸

However, towards the end of the year, still another attempt was made to release the American plenipotentiaries from the obligation to conform to the advice of the French ministry. Again a letter from Jay sparked the movement. After peace negotiations had started in Paris, a member of the British mission placed in Jay’s hand a copy of an intercepted cipher dispatch from Barbe-Marbois, LaLuzerne’s first secretary, to Vergennes. In the letter dated March 13, 1782, Barbe-Marbois referred to the instructions of Congress as leaving the king “master of the terms of the treaty of peace, or truce, excepting independence and treaties of alliance.” Then he denounced Samuel Adams and other New Englanders for stirring up trouble by insisting on sharing in the Newfoundland fisheries. In order to forestall the rise of the movement for the fishing rights, he recommended, the king might better be advised to intimidate Congress with a strong statement of his displeasure with clamour for the fishing rights.¹¹⁹

In forwarding the copy of this intercepted letter to Congress, Jay voiced his strong distrust of French policy.¹²⁰ Agitated by this communication from Jay, Abraham Clark moved to revise the instructions in order to exempt the American plenipotentiaries from the obligation to conform to the advice of the French ministry. Again heated debates ensued. The opponents of the motion argued that, if Britain was disposed to give the Americans what they claimed, France could not prevent it regardless of the instructions; that they were more in danger of being seduced by Britain, than of being sacrificed by France whose interests in the main coincided with America’s; and that there was strong reason to suspect that the letter had been adulterated if not forged. Their opinion prevailed finally and the motion was tabled.¹²¹

¹¹⁶ Thomson’s notes, 16, 20 August 82, *LMCC*, VI, 445, 447–449.

¹¹⁷ “Communication of the French Minister to a Committee of Congress,” 24 September 82, *DCAR*, VI, 83–88; *JCC*, 4 October 82, XXIII, 637–639. The Statement adopted by Congress partly read that “Congress place the utmost confidence in his Majesty’s assurances, that he will readily employ his good office in support of the Unites States in all points relative to their prosperity, and considering the territorial claims of these states as heretofore made, their participation of the fisheries, and of the free navigation of the Mississippi not only as their indisputable rights, but as essential to their property, they trust that his Majesty’s efforts will successfully be employed to obtain a sufficient provisions and security for these rights.” (633–634).

¹¹⁸ To Edmund Randolph, 8 October 82, *LMCC*, VI, 499.

¹¹⁹ The deciphered and translated version of Barbe-Marbois’ letter is in *RDC*, V, 238–241.

¹²⁰ Jay to Secretary of Foreign Affairs (Livingston), 10 September 82, *RDC*, V, 740. Jay was shown only the deciphered and translated copy of Barbe-Marbois’ letter. But he had already become so suspicious of French diplomacy that he immediately believed in its authenticity. “I am persuaded,” he wrote in the letter, “that this court chooses to postpone an acknowledgment of our independence by Britain to the conclusion of a general peace in order to keep us under their direction, until not only their and our objects are attained, but also until Spain shall be gratified in her demands to exclude everybody from the Gulf....” For a discussion of the authenticity of the letter, see Corwin, *French Policy*, 337n.

¹²¹ Madison’s memo of debates, 30 December 82, *JCC*, XXIII, 872–875.

It was not known to Congress yet that the preliminary peace terms had been agreed to and signed by the representatives of Britain and America. Congress, separated from Europe by the Atlantic, did not play any role in the actual peace making process of 1782.

Conclusion

Discussion of peace ultimata in 1779 and the adopted peace instructions revealed American thinking on the interset of their new nation in territorial matters, fisheries and Mississippi navigation.

The Americans wanted Canada and Nova Scotia. Their interest in these regions was partly economic but was primarily derived from their concern with security. Since they were aware of their weak position to claim those regions, however, they did not include the claim in the peace ultimatum. The presence of the British in the Floridas, too, was a threat to American security. They expressed some interest in taking the region for themselves, but they were willing to see the Floridas taken by Spain. As for the western lands east of the Mississippi, the American leaders regarded them as a legitimate American territory. Although there was difference in the degree of earnestness, there was a consensus in Congress that the western lands should be claimed as a *sine qua non* for peace.

The navigation of the Mississippi was regarded as very important to the future development of the western lands. As its importance was mainly a matter for the future, and as there was a difference of opinion regarding how these lands should be developed, there was some inclination in Congress that the navigation of the lower Mississippi might be given up for a time being in exchange for Spanish alliance and assistance. The fisheries on Newfoundland banks and their vicinities were highly important to the economy of New England. The right to participate in the fisheries was strongly defended by the delegates from that region. They could also argue that the fisheries were a nursery of seamen and therefore essential to the security and welfare of the whole nation. It was only after heated debates and parliamentary maneuvering that the fishing rights were removed from the peace ultimatum.

In debating over these American claims, the members of Congress were divided roughly into two groups—the militants and the moderates. This division was related to difference of interests of the state or region each delegate represented. It was also derived from difference in assessment of the current military and political situation which some viewed more optimistically, and others less optimistically. The assessment was affected by the degree of military threat to their respective state or region. But the militant-moderate division in 1779 was largely the continuation of the militant-moderate division before the declaration of independence. The existence of two factions was discernible throughout the revolutionary years. But factional spirit was most intense in 1778 and 1779 because of the Lee-Deane dispute.

If a peace conference had been held in 1779, the United States would never have been able to secure the terms demanded in the peace instructions. In 1780 and 1781, the bargaining position of the United States deteriorated further. This deterioration was so obvious that Congress retreated in June 1781 from its former position, making independence of the thirteen United States the only condition for peace. Persuaded by the French minister,

Congress also instructed its peace commissioners to govern themselves ultimately by the court of France. The militants were critical of this part of the instructions, thinking it so abject and humiliating. James Madison, a supporter of the instructions, explained that Congress chose to sacrifice dignity for policy.

However the militant-moderate division was not simply concerned with the question of national dignity. It was also related to difference in degrees of their trust in France and to their different views on America's best diplomatic strategy. The militants, because of Gérard's pressure for moderation or their own unpleasant experience as diplomats, developed strong distrust of French policy. They continued to believe that France would support America's separation from Britain since it was her interest to do so. But they strongly suspected that France would be opposed to America's other aspirations. The moderates on the other hand were more optimistic about French support of American interest. Furthermore they believed that the United States should do nothing to weaken French support because it was the most important American diplomatic asset even if it was limited support.

For the militants, it was a mistake to have put the peace commissioners under French tutelage. When the prospect for better peace was brightened by Yorktown, they tried to revoke the obnoxious instructions. For the moderates, however, it was a folly to withdraw openly America's confidence in the French government. The militant's suspicion of French diplomacy was justifiable to a certain degree, and their desire to revoke the instructions was understandable. The revocation would have been really a reasonable policy if it could have been done secretly. But it may be said that Madison's opposition to their attempt was well taken in the circumstances. For one thing, even though the instructions stood as they were, France would not be able to prevent the United States from getting what Britain would like to offer. Besides, no matter how positive or passive France would be in her support of American claims, it was better for the United States not to weaken her alliance with France by her own overt action, before she could ascertain the nature of British peace policy, which was then unknown to Congress.

Congress did not play any significant role in the actual process of peace making. In fact, the American peace commissioners ignored the instruction of Congress concerning full consultation with the French government and signed the preliminary articles of peace with the British which they feared might be too favorable to the United States to please France. Yet it is interesting to observe how members of Congress discussed issues relating to peace making, because the discussion revealed American thinking on national interest and diplomatic strategy.