

**THE EMBARGO OF 1807: A STUDY OF THE
CAUSES OF THOMAS JEFFERSON'S
EMBARGO POLICY**

JOHN HUNT MILES

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An Abstract
Presented to
the Graduate Council of
Austin Peay State University

In Partial Fulfillment
of the Requirements for the Degree
Master of Arts

by
John Hunt Miles
August 1974

ABSTRACT

The passage of the first Embargo Act in December, 1807, has never received adequate study. The common explanation for this condition has been the lack of satisfactory material contemporary to the event upon which such a study could be based. Instead, students of the period have turned to the economic and political aspects of the fifteen month course of the Embargo itself.

It is my own opinion that the contemporary materials which do relate to the causes of and passage of the 1807 Embargo Act allow a more definite study than has been heretofore attempted. Moreover, a study of the "politics" of that Act's passage is needed for the proper understanding and judgment of the Embargo itself. The need for such a study, combined with the belief that sufficient contemporary material does exist, has been the driving force and guiding factor behind the present study.

The first Embargo Act (1807) was decided upon by the Executive as the only practical means of maintaining America's neutrality. Throughout the early national period, one of the basic principles of American foreign policy was that the United States should not involve itself in European affairs. The degeneration of the Napoleonic Wars, after the summer of 1807, into essentially indirect commercial warfare threatened America's position. The French Berlin Decree (November, 1806) and the British Orders in Council of November, 1807, produced a situation within which the United States could not hope to continue commerce with the European powers without completely breaching America's neutrality. Jefferson and the other members of the Executive were well aware that the United States was not strong enough to or prepared to defend its

own position militarily. A general embargo would end the commercial connections which threatened to draw the United States into hostilities. It was, furthermore, the only practical course which might do so.

The origins of the Jeffersonian embargo policy were not causally rooted in the Chesapeake-Leopard incident of the preceding summer. Some connections between the need for an embargo and the Chesapeake crisis were implied. This was done for the purpose of harnessing the emotions evoked by that incident and was primarily a political maneuver designed to speed passage and acceptance of the embargo bill.

Whether or not the Embargo of 1807-1809 can be considered a success as a coercive agency (which later consideration made it), it did succeed in its original objective. The United States thereby postponed belligerent involvement with European powers for another five years, until the Anglo-American War of 1812.

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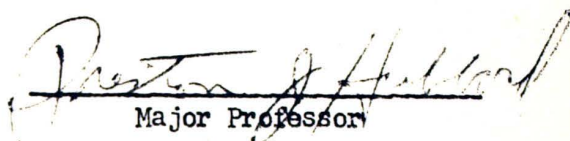
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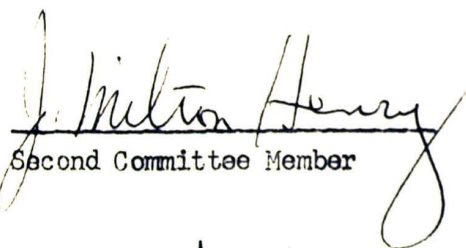
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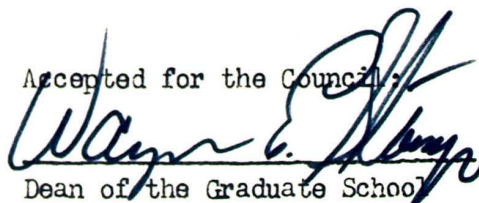
I am submitting herewith a Thesis written by John Hunt Miles entitled "The Embargo of 1807: A Study of the Causes of Thomas Jefferson's Embargo Policy." I recommend that it be accepted in partial fulfillment of the requirements for the degree of Master of Arts, with a major in History.


Major Professor

We have read this thesis and
recommend its acceptance:


Second Committee Member


Third Committee Member

Accepted for the Council:

Dean of the Graduate School

No part of the public proceedings during the two last administrations is less understood, or more in danger of historical misrepresentations, than the Embargo and the other restrictions of our external commerce.

--James Madison, 1824

TABLE OF CONTENTS

CHAPTER	PAGE
PREFACE	i
I. RELATIONS WITH FRANCE, 1801-1807	1
II. RELATIONS WITH BRITAIN, 1801-1807	17
III. THE <u>CHESAPEAKE-LEOPARD</u> INCIDENT	44
IV. WAR CRISIS	64
V. DIES IRAE	88
VI. EMBARGO: MOTIVATIONS AND CONCLUSIONS	103
LIST OF SYMBOLS AND SHORT TITLES USED IN THE FOOTNOTES	110
BIBLIOGRAPHY	112

PREFACE

Bradford Perkins, commenting on studies of the period 1794-1812, noted that "it is easy to . . . treat Anglo-American relations as a mere prelude to the controversies and recriminations which led to the War of 1812."¹ The period from December, 1807, to March, 1809, is particularly susceptible to such treatment. The Embargo of 1807 is one of the most cited and least well investigated events of Thomas Jefferson's two terms as President. The intent of this study is to examine the origins of the Embargo in their own context, i.e., as a policy deriving from the events and conditions of the preceding years of American international affairs. To the members of the Jeffersonian Executive, the legislators in Congress, and the American public in general, the Embargo Act had no "future," only a past and a present. To treat the Embargo as a cause of the War of 1812 is to step into another context.

The format of the following study is narrative rather than analytical in essence. It is specifically a narration of the political origins of the Embargo, the "politics of passage" of the first Embargo Act (1807). The study is directed toward the conditions leading to the Executive's call for a general embargo on American shipping, with special emphasis on the place (if any) of the Chesapeake-Leopard incident as a part of those conditions. The field of study is primarily that of

¹Bradford Perkins, The First Rapprochement (Berkeley: University of California Press, 1967), p. 1.

Executive policy formation. The Chesapeake-Leopard incident and its immediate aftermath have been treated at length in order to show the line of demarcation between that stream of policy and the stream resulting in the Embargo Act. The study has been extended into legislative activity only lightly, due in large part to the extensiveness of that field. Exemplary and key figures have been given treatment, however, notably those in the Senate. The field of this study does not include the course of the Embargo past the first Embargo Act. Nor does it follow the Chesapeake-Leopard incident's aftermath beyond December, 1807.

No extensive treatment has yet appeared on the political origins of the Embargo, or upon the political events leading to the passage of the first Embargo Act (1807). Two monographs have been devoted primarily to the events following the passage of the Act, however. One is primarily concerned with the economic aspects of the fifteen months of the Embargo's existence.² The second study is a more general investigation, but is particularly concerned with the debate following the passage of the original Embargo Act and with the whole as an example (positive rather than negative) of Thomas Jefferson's pacifism.³ Henry Adams gives a detailed account of the Chesapeake-Leopard incident and of some aspects of the Embargo Act's passage.⁴ Adams' treatment of

²Walter W. Jennings, The American Embargo, 1807-1889: With Particular Reference to Its Effect on Industry, University of Iowa Studies in the Social Sciences, Vol. VIII, No. 1 (Iowa City: Published by the University of Iowa, 1921).

³Louis Martin Sears, Jefferson and the Embargo (1927; reprint ed., New York: Octagon Books, 1966).

⁴History of the United States of America During the Second Administration of Thomas Jefferson, Vol. II (New York: Charles Scribner's Sons, 1918).

sources is not, however, completely correct or reliable.⁵ Henry Adams saw too much of what he wished to see in events, rather than that which was actually there. Other studies of the period, while focusing on specific aspects of the time, deal with the Embargo and the first Embargo Act in a secondary manner. None of them, however, center upon the "politics of passage" in an extended or homogenous treatment.

One reason for such a paucity of work on the "politics of passage" is the relative paucity of sources contemporary to the actual events. The Executive policy formation was carried on with a minimum of paperwork and without an important diarist in attendance. The debates in both the House of Representatives and the Senate occurred behind closed doors. The accounts in the Senate Journal are sketchy, while that in the Journal of the House is non-existent. The accounts which appear in the Annals of Congress are as limited as the report in the Senate's Journal. Only through letters and diaries of the participants can one explore behind those closed doors, and then only in a very limited way.

Nevertheless, there is sufficient information in the sources which do exist to provide a better study than has yet been attempted. While I do not claim to have discovered anything "new" in the way of contemporary sources, I do feel that the cumulative information--at least some of which seems to have been ignored in any of the individual studies of the period--presents a pattern which goes far toward providing answers to some of the major questions on the "politics of passage." It is this pattern which I particularly hope to develop in this study.

⁵ See, for instance, Dumas Malone, Jefferson and His Time, Vol. IV: Jefferson the President: First Term, 1801-1805 (Boston: Little, Brown, 1970), Appendix III, "Notes on the Merry Affair," pp. 499-500. See also Bradford Perkins, Prologue to War (Berkeley: University of California Press, 1961), p. 439.

The coverage presented in this study is neither as deep nor as broad as I would have liked for it to be. In part that was a result of the problem of sources. Many existent sources are not locally available or are incomplete when they are available in some form. I have been fortunate, however, in the degree to which major sources were and are available locally, particularly in the form of microfilm editions of major manuscript collections. Because of the unavailability of other sources several points must remain speculative hypotheses rather than demonstrable facts.

In what follows the two decades of Anglo-French hostilities, there are considered to be two major parts. The first part, the Wars of the French Revolution, is considered to run from 1793 through the Peace of Amiens (March, 1802). The second part, the Napoleonic Wars, is considered to cover the years from the collapse of the Peace of Amiens in May, 1803, until the final defeat of Napoleon Bonaparte.

Differences in rules of spelling, punctuation, and capitalization, as well as manners of phrasing, have been left as they appeared in the contemporary documents. I have taken particular care that these are given in quotations exactly as they appear in the sources. In cases where rules of grammar differ so widely from the modern standards, the use of sic would be required after half or more of the material in some of the quotations. In such quotations, therefore, I have placed sic only after those variations which might easily be taken as errors in copying or in typography. Similarly, because of the length of many of the titles of contemporary sources and because of the frequency of citation of some of them, I have used standardized abbreviations for

some of these sources after their first citation. These short forms of citation are noted at the end of the first (full) citation and are grouped in a "List of Symbols and Short Titles used in the Footnotes," which follows the body of the thesis.

CHAPTER I

RELATIONS WITH FRANCE, 1801-1807

Thomas Jefferson's first term as President began auspiciously in the area of American relations with France, as it did in most other areas. The Quasi-War with France had been concluded under the Adams Administration by the signing of the Convention of 1800 (also called the Convention of M^ortefontaine) the previous October.¹ The Wars of the French Revolution were winding down, to be ended on October 1, 1801, by the signing of preliminary peace terms between France and Great Britain. The news of the preliminary peace terms ending the Wars of the French Revolution reached the United States before the end of the year. That the Pasha of Tripoli chose to declare war on the United States during the spring of 1801 could have caused the new President little real concern.

The Convention of M^ortefontaine wiped out American fears of being drawn into the European embroglio by the Franco-American treaty of alliance of 1778, for the 1800 Convention abrogated and supplanted the earlier treaties with France. It also settled, politically if not economically, the frictions which had developed between a neutral United States and a belligerent France. Retaliatory measures were no longer needed against France and no longer threatened to make the United States a part of the Wars of the French Revolution because of frictions.

¹On the Quasi-War, see Alexander DeConde's The Quasi-War (New York: Scribner, 1966).

Since the United States' greatest concern with Europe was commerce, the Convention of Mörtefontaine (as in most other American treaties with European powers) dealt primarily with the conditions under which trade between the United States and France would be conducted.² The core of the Convention was that "Commerce between the Parties shall be free. . . . and in general the two parties shall enjoy . . . the privileges of the most favoured nation" (Article VI). Fourteen of the twenty-seven articles comprising the Convention dealt with neutral rights as they would be recognized by the signatories; four of the articles covered the political settlement of the Quasi-War; and the remaining nine articles covered various general matters or relations and general conditions of commerce between the two countries.

Among the general articles was one guaranteeing the validity of wills and inheritance of aliens residing and possessing goods in the territory of the other signatory (Article VII). Another provided a six month period of grace following the opening of any hostilities between the signatories (Article VIII). One guaranteed non-confiscation and non-sequestration of privately owned stocks and the continued validity of personal debts in case of war or "national difference" (Article IX). Article X permitted the appointment of commercial agents to reside in the territory of the co-signatory. Articles XI and VI (the latter of which is quoted above) established the two nations on a most favored nation status toward each other in the commercial relations between them.

²Quotations from the Convention of Mörtefontaine are taken from the text in DeConde's Quasi-War, pp. 351-372. Citations are identified by article in parentheses following the quotations.

The fourteen articles on neutral rights were, of course, at least partially commercial. The conditions of neutral commerce outlined by the Convention of M^ortefontaine were the liberal ones of the prior treaty with France (1778) rather than those of the more recent Anglo-American "Jay" Treaty (1794). The nationality of goods was to be determined by the nationality of the carrier (Articles XIV, XV). Complete freedom of trade directly between non-blockaded enemy ports was guaranteed by Article XIII. Contraband was explicitly defined as "all kinds of arms, ammunition of war, and instruments fit for the use of Troops" (Article XIII). Naval stores and provisions were not included as contraband under that article. Procedures for visitation and search at sea, the treatment of contraband carriers, and the due process requirements in the capture and in the prize courts were carefully laid out (Articles XVI-XVIII, XX-XXII). Official convoy of merchant ships was recognized as sufficient guarantee of the neutral character of the ships and the goods they carried (Article XIX). In order to avoid "injuries" against neutral shipping by the armed vessels, public or private, of the other signatory,

. . . all commanders of ships of war, and privateers, and all others of the said citizens shall forbear doing any damage to those of the other party, or committing any outrage against them, and if they act to the contrary, they shall be punished. . . . (Article XXIII).

All of the above treaty articles on commerce were specifically applied, on the French side, to "the territories of the French Republic, in Europe."³ Under the stipulations, the reciprocal most favored nation treatment applied only to trade between the United States and European

³See Articles XI and VIII of the Convention.

(metropolitan) France; it did not include the West Indies trade. The French West Indies were not mentioned anywhere in the Convention of Môtrefontaine. This left the American trade with the Antilles possessions of France, and particularly with the island of Saint Domingue, in a vacuum.⁴ Both the direct trade between the United States and Saint Domingue and the indirect or re-export trade between Saint Domingue and Europe via the United States had proven immensely profitable over the preceding decade. Under John Adams' Administration relations with Saint Domingue had taken on something of the aspect of relations with an independent country rather than with a French colony.⁵ The discussions between the American Ellsworth Mission and the French representatives never touched on the trade with the French West Indies in a substantial form. The instructions to the Ellsworth Mission called for the Americans to "be silent" on trade with the French colonies unless such trade could be arranged on the same terms as trade with metropolitan France.⁶

⁴The name Saint Domingue is that used by the French for their (the western) half of the island of Hispaniola, and the name which appears on contemporary maps. The eastern half of the island, under Spanish control, was called Santo Domingo. Documents of the period, both British and American, use the name St. Domingo for the island as a whole or for any part of it.

⁵On relations with Saint Domingue during John Adams' Presidency, see Bradford Perkins, The First Rapprochement (Berkeley: University of California Press, 1967), pp. 106-110, and DeConde, Quasi-War, pp. 130-141, 206-211.

⁶DeConde does not mention talks on the West Indian trade in The Quasi-War's discussion of the Ellsworth Mission's negotiations. The instructions for the Ellsworth Mission are in American State Papers: Documents, Legislative and Executive (38 vols.; Washington: Gales and Seaton, 1832-1861), Class I, Foreign Relations, Vol. II, 301-306; the quoted passage is Ibid., p. 303. The American State Papers series is hereafter cited as A.S.P., followed by the class title; the volumes in Class I are cited as A.S.P.F.R.

The rise of Napoleon Bonaparte to the leadership of France, the conclusion of the Convention of M^ortefontaine by France and the United States, the inauguration of Thomas Jefferson as President of the United States, and the end of the Wars of the French Revolution by the signing of preliminary articles of peace between France and Great Britain within the space of two years boded well for the future of Franco-American relations under Jefferson's Administration. In spite of the resumption of hostilities on the Continent during the spring of 1803, Franco-American relations prior to the fall of 1807 bore out the foretastes of 1800-1801; Franco-American relations remained cordial throughout that period.

Franco-American commercial relations under the Convention of M^ortefontaine averaged sixteen percent of the United States' annual export trade with Europe between 1801 and 1807. It averaged ten percent of America's annual world export trade during the same period. These averages reflect neither the fluctuations in Franco-American trade during these seven years nor the degree to which that trade increased above the 1801 figure. To take the last first, the dollar value of the trade between the two countries increased 325% between 1801 and 1807, from \$4 million in American exports to France in 1801 to \$13 million in 1807. In the first year after the signing of the Convention of M^ortefontaine, American exports to France increased from a wartime figure of less than \$500,000 to the \$4 million figure of 1801.⁷

⁷These figures are based on those given in the table for Series U 116-133 in the Department of Commerce's Historical Statistics of the United States: Colonial Times to 1957 (Washington: Government Printing Office, 1960), p. 551, as are the yearly figures. Note that the figures given in A.S.P., Class IV, Commerce and Navigation and those given in the Historical Statistics volume do not always agree exactly. The Historical Statistics Volume is hereafter cited as Statistics; the A.S.P. Class IV volumes are cited as A.S.P.: Commerce and Navigation.

The bulk of American exports to France in these years rested upon the re-export trade. Out of \$108 million in world exports shipped from the United States in the year ending September 30, 1807, \$59.6 million were of foreign origin (re-exports) and \$48.7 million were of domestic origin.⁸ France and her colonial possessions were the destination of 17.7% of this world total by value, but received 23% of the total re-export items, by value. Of the total value of exports to France in 1807, 70% was from the re-export trade; only 30% of the goods shipped to France in 1807 were of American origin.

Political relations between the United States and France during the same period (1801-1807) were relatively untroubled by frictions or major incidents. Three areas of friction did exist at one point in time or another: the situation in and trade with Saint Domingue, the retrocession of the Louisiana Territory to France in 1800, and privateering in the West Indies by French or French-licensed ships against American merchantmen. In addition, a visit by Napoleon's brother Jerome Bonaparte (in the course of which he married a young American girl from Baltimore) threatened to spark an incident, not between France and America but between the United States and Great Britain. A British attempt to capture Jerome's ship on its departure from New York was the direct cause of the Anglo-American Cambrian incident of 1804.⁹

⁸These and the following figures given in this paragraph are taken from the report of the Secretary of the Treasury on exports for the year ending September 30, 1807, A.S.P.: Commerce and Navigation, I, 718-723.

⁹On the Cambrian episode see below pp. 48-50. The visit also contributed to a "mineature social tempest" in Washington society; see Irving Brant, James Madison, IV: Secretary of State, 1800-1809 (New York: Bobbs-Merrill, 1953), pp. 164-169.

Saint Domingue was the key to French colonial activity in the Americas, and a rich source of trade for American merchants. Conditions on the island were complicated after 1793 by a combination of slave revolt and civil war. A part of the American trade with the island in these years was based upon that situation, selling provisions and arms to the contending factions on Saint Domingue. After 1798 the Adams Administration treated Saint Domingue virtually as an independent nation rather than as the French colony in revolt which it actually was. In 1799 the United States cooperated with Great Britain in a convention with the rebel ruler of the island, Toussaint L'Ouverture, which opened Saint Domingue to trade with the United States and Great Britain on an equal footing.¹⁰

The Jefferson Administration, entering office in 1801, took a different view of the Saint Domingue situation than had its predecessor. The new President considered Saint Domingue a part of metropolitan France despite the revolt, and thus still under French jurisdiction in both trade and foreign relations. At one point President Jefferson went so far as to tell the French Minister to the United States that "nothing would be easier than to furnish your army and fleet with everything, and to reduce Toussaint to starvation."¹¹ Although L.A. Pichon, the French Minister in question, undoubtedly overestimated the degree of support indiscreetly offered by the American President, there

¹⁰ See Perkins, Rapprochement, pp. 106-110, and DeConde, Quasi-War, pp. 206-208.

¹¹ Quoted in Dumas Malone, Jefferson and His Time, Vol. IV: Jefferson the President: First Term, 1801-1805 (Boston: Little, Brown, 1970), p. 252. Malone's biography of Jefferson is hereafter cited as JHT, by volume. Jefferson, in footnotes, is referred to as TJ.

could be no question that the United States would allow France a free hand in regard to Saint Domingue. A French expedition, under General Victor Laclerc, was sent to pacify Saint Domingue. It folded under the pressures of the rebel forces, the natural hazards of the island, and disease. Rather than waste more men and supplies on the island, France granted Saint Domingue independence in 1804.¹²

Parallel with the Saint Domingue situation, French privateering continued to disrupt American merchant shipping, perhaps, as one historian suggests, primarily in "reprisal for American relations with hungry colonists or with rebellious Negroes in the West Indies, especially in Saint-Domingue [sic]."¹³ Although the Convention of M^ortefontaine had brought the Franco-American Quasi-War to a close in 1800 and provided sanctions against naval or privateer captains who precipitated incidents between the two countries, France did seize 206 American merchantmen in the period between the opening of the Napoleonic Wars (May, 1803) and the promulgation of Napoleon's Berlin Decree (November, 1806).¹⁴ Justification for these seizures came from a combination of conditions. On June 20, 1803, Napoleon re-instated a ban on goods coming from England.¹⁵ While circumstances suggest that

¹²On relations between TJ and Napoleon over Saint Domingue, see DeConde, Quasi-War, pp. 314-15, 323-24, and Malone, JHT, IV, 251-53.

¹³Marshall Smelser, The Democratic Republic, 1801-1815, New American Nation Series (New York: Harper Torchbooks, 1968), pp. 140-141. See also A.S.P.F.R., II, 728-730, a decree dated June 6, 1805.

¹⁴A.S.P.F.R., III, 584.

¹⁵Georges Lefebvre, Napoleon, Vol. I: From 18 Brumaire to Tilsit, trans. Henry F. Stockhold (5th ed.; New York: Columbia University Press, 1969), p. 196.

this action was not seriously intended to cripple England (no real effort was made to prevent the transport and import of "neutralized" goods from entering France from England), it did provide grounds for action if a privateer should so desire and could find a Prize Court willing to back him. Such opportunity was enhanced by the failure of the Convention of Mörtefontaine to be explicit as to the form or types of papers which any neutral would have to carry in order to receive protection.¹⁶

Potentially more critical than either French privateering (which seems to have caused only minor problems in relations between the two countries), or the American attitude toward and trade with Saint Domingue was the Spanish retrocession of the Louisiana Territory to France on October 1, 1800.¹⁷ French plans for development of the Louisiana Territory were tied up with plans for a colonial revival which centered upon Saint Domingue and which would prove a major threat to American commerce and security in that area. Although President Jefferson could not be aware of Napoleon's exact or full intentions in regard to Louisiana, he did recognize the threat to American security and commerce in the West Indies which a Napoleonic Louisiana policy could produce. Jefferson's recognition of the strategic value and threat of the Louisiana Territory reaches back to his period as Secretary of State under George Washington. During the Anglo-Hispanic crisis over control of Nootka Sound in the Pacific Northwest in 1790, it seemed that the Louisiana Territory might

¹⁶ Articles XVI and XVII of the Convention of Mörtefontaine dealt with the form and character of ship's papers.

¹⁷ Transferred by the secret Treaty of San Ildefonso. Six months later the Territory was "paid for" by the cession of the Grand Duchy of Tuscany to Spain according to the Treaty of Aranzuez (not to be confused with the 1779 Convention of Aranzuez).

become a major bone of contention between Great Britain and Spain. Neutral American territory might well be used as an access route for either belligerent party to reach the colonial possessions of the other. Secretary of State Jefferson suggested that the United States might have to resort to war to prevent British possession of the Louisiana Territory. British possession of the Territory, the Secretary noted, would destroy the balance of power on the North American continent and leave the United States surrounded by the British.¹⁸ In fact the crisis never blossomed into a war, but the concerns raised by it remained with the then-Secretary of State. French possession of Louisiana after 1800 threatened a similar crisis, but one with a much greater potential for disaster.

News of the retrocession reached the United States by mid-May of 1801. Confirmation of the action, in the form of a copy of the Franco-Hispanic Treaty of Aranjuez (March, 1801), arrived in a dispatch from American Minister in London Rufus King (dated November 20, 1801).¹⁹ In Europe the Wars of the French Revolution had not yet ended, and the new President had just cause for considering the retrocession "an inauspicious circumstance to us."²⁰ Spanish possession of the Territory worried neither Great Britain nor the United States. The American and British attitude toward Spanish imperial possessions was amply summed

¹⁸TJ's notes on the Nootka Sound Crisis, dated July 12, 1790, are in Andrew A. Lipscomb and Albert E. Bergh (eds.), The Writings of Thomas Jefferson (20 vols.; Library ed.; Washington: Thomas Jefferson Memorial Association, 1903-1904), XVII, 299-301. This edition of TJ's writings is hereafter cited as Lipscomb.

¹⁹Malone, JHT, IV, 248 and n. 17, same page.

²⁰TJ to Thomas Mann Randolph, May 17, 1801, quoted Ibid., p. 248.

up by Rufus King in quoting Montesquieu's dictum to Foreign Secretary Lord Hawkesbury: "That it is happy for trading Powers that God has permitted the Turks and the Spaniards to be in the world since of all nations they are the most proper to possess a great Empire with insignificance."²¹ The news that preliminary peace terms had been signed in Europe reached the United States by mid-November but did little to allay President Jefferson's worries on the Louisiana situation--France was not a power to possess "a great Empire with insignificance." Throughout 1801, however, the President had no official word of the retrocession and could take no official action. Aside from warning the American Ministers abroad to be careful to maintain good relations in regard to the affair, he could only wait.²²

From the beginning of 1802, following the definite confirmation of all the earlier rumors of retrocession, Jefferson conducted what can only be called a campaign against French possession and development of the Louisiana Territory.²³ In the summer of 1801 Minister Rufus King had informed the British of the American position that the United States would be "unwilling" that the Floridas (the immediate British concern) or, by implication, any other territory in the Americas should be transferred to any nation other than the United States itself. Since Britain's main concern was that neither the Floridas nor Louisiana should fall into France's hands, Lord Hawkesbury, the British Foreign Secretary,

²¹Reported in King to Madison, June 1, 1801, and quoted in Bradford Perkins, First Rapprochement, p. 159.

²²Malone, JHT, IV, 249-251.

²³Perkins, Rapprochement, p. 159.

raised no objections to the American doctrine King expressed.²⁴

Jefferson's "Campaign" coincided in its intent with British attitudes toward the Louisiana situation, and was troubled by no opposition or interference on Britain's part.

The greater part of the President's campaign against a French Louisiana rested not upon French possession of the Territory as a whole but upon the French possession of key commercial and strategic points, notably New Orleans and the West Florida area. As it finally developed, the Floridas, East and West, remained Spanish possessions, although it was generally believed in America and in England that West Florida, at least, was a part of the retroceded territory. The main weapon in the campaign was the threat--voiced frequently, officially, and zealously--of a rupture in Franco-American relations because of that possession, even to the extent of hostilities. At one point the President went so far as to suggest an Anglo-American alliance against France. The popular temperament in America, as reported to London by Edward Thornton, the British charge in Washington, was in strong support of the attitudes being expressed by President Jefferson.²⁵

The critical phase of the Louisiana situation, from the American point of view, came when the Spanish authorities at New Orleans closed that port to the deposit of goods by Americans to await shipment to other ports. That right of deposit had been guaranteed to the United

²⁴Perkins, Reprochement, p. 159.

²⁵Malone, JHT, IV, 253-254. See also TJ to Robert L. Livingston, April 18, 1802, Lipscomb, X, 311-316; to Du Pont de Nemours, April 25, 1802, Ibid., pp. 316-319.

States in the 1795 Hispanic-American treaty concluded by Thomas Pinckney (and often called "Pinckney's Treaty"), and could only be cancelled by Spain if an equivalent point for deposit was opened at the same time. Juan Morales, acting Intendent of Louisiana, closed the port of New Orleans to American deposit on October 18, 1802, three days after the Spanish government in Madrid had finally issued the order for delivery of the Louisiana Territory to France.²⁶ By January of the following year President Jefferson had put the Administration's response to the retrocession and the closure of the port of New Orleans into action. Although he had not included the "New Orleans" question in the 1802 Annual Message to Congress (transmitted December 15, 1802), the House of Representatives had taken the initiative and requested all available information on the subject. On January 7, 1803, the House passed a resolution giving the President a mandate to act on the question as he might see fit. Shortly thereafter the House appropriated \$2 million for use in the matter. Within a week James Monroe had been nominated as a special envoy to France to aid the American Minister there, Robert Livingston, in the negotiations on New Orleans, and had received the consent of the Senate.²⁷

Three and a half months after Monroe's appointment to France, he and Robert Livingston signed a treaty which ceded the whole of the Louisiana Territory to the United States in return for a total amount of \$15 million. Official news of the Louisiana treaty arrived in the United States on July 3, 1803, a month and a half after the collapse of the

²⁶Malone, JHT, IV, xxvii, 259-260. France did not officially take possession of Louisiana until November 30, 1803; Ibid., p. 387. On the Spanish motivations for closing deposit and the actual responsibility for that act, see Ibid., pp. 265-266.

²⁷Malone, JHT, IV, 264, 268-270.

Anglo-French Peace of Amiens and two months and two weeks after the re-opening of the port of New Orleans by the Spanish government for the deposit of goods by Americans.²⁸ Two days later, on July 5, 1803, the President informed one of his sons-in-law, Thomas Mann Randolph, that the Louisiana treaty "removes from us the greatest source of danger to our peace."²⁹ It also paved the way for amicable and largely frictionless relations between France and the United States over the next four years.

One other element eventually threatened the tenor of Franco-American relations prior to the Franco-Russian rapprochement at Tilsit in the middle of 1807. On November 21, 1806, at Berlin, Napoleon issued an imperial arret (usually called the Berlin Decree) stating:

- . . . The British islands are declared in a state of blockade.
- . . . All commerce and correspondence with the British islands are prohibited. . . .
- . . . All . . . property, whatever, belonging to a subject of England, shall be declared lawful prize.
- . . . The trade in English merchandise is forbidden; all merchandise belonging to England, or coming from its manufactories and colonies, is declared lawful prize.
- . . . No vessel coming directly from England, or from the English colonies, or having been there since the publication of the present decree, shall be received into any port.³⁰

The Berlin Decree, even if enforced only as a domestic measure as some of the articles and later elaborations implied, would be disastrous to American commerce. In December, 1806, Napoleon did not completely dominate the European Continent; Denmark and Portugal remained neutral, while the ports of Sweden and Russia were allied to Great Britain.

²⁸Malone, JHT, IV, 282, 284. The Napoleonic Wars officially opened on May 16, 1803.

²⁹Quoted in Malone, JHT, IV, 284.

³⁰Articles 1, 2, 4, 5, and 7, A.S.P.F.R., III, 806. Another copy of the decree, with the preamble, is Ibid., pp. 289-290.

Nevertheless, if enforced against American shipping the Berlin Decree would chop away nearly a fourth of the United States' re-export trade, a loss of over \$13 million in cargo value.³¹

The American Minister to France, now General John Armstrong, wasted little time in determining to what degree and in what manner the Berlin Decree would affect American merchants. On December 10, 1806, Armstrong requested clarification of the import of four points raised by the Decree. He did not directly ask as to the status of the Convention of M^ortefontaine under the Berlin Decree, articles of which agreement would be violated by the full operation of the arret. Two weeks later, on Christmas Eve, the French Minister of Marine and Colonies, Decres, replied to Armstrong's note. Apart from the specific clarifications requested by the American minister, Decres provided a general reassurance: "I consider the imperial decree of the 21st of November last as, thus far, conveying no modification of the regulations at present observed in France, with regard to neutral navigators, nor consequently of the convention of the 30th of September, 1800, . . . with the United States of America."³²

With Decres' assurances to the American Minister, cordial Franco-American relations and American commercial profits were given an extra nine months of existence. Decres' statements, according to Secretary of State James Madison, were received by President Jefferson "with much pleasure." However, French privateers in the West Indies exercised a "licentious cupidity" on the promulgation of the Berlin

³¹Figures are from A.S.P.: Commerce and Navigation, I, 721.

³²Decres to Armstrong, December 24, 1806, A.S.P.F.R., III, 805; Armstrong to Decres, December 10, 1806, Ibid.

Decree, and committing "depredations which will constitute just claims of redress from their Government."³³ And, problems were reaching a head on other fronts.

³³ All quotes in this paragraph are from Madison to Armstrong, May 22, 1807, A.S.P.F.R., III, 242. The "just claims" were to be made under Article XXIII of the Convention of Môtfontaine.

CHAPTER II

RELATIONS WITH BRITAIN, 1801-1807

The opening months of 1801 saw a new administration take the reins in Great Britain as well as in the United States. The month prior to Thomas Jefferson's inauguration, Henry Addington formed a Ministry to replace that of William Pitt. Under the Addington administration, the Secretary of State for Foreign Affairs was Robert Jenkins, Lord Hawkesbury. Lord Hawkesbury was described by one diplomat in London as "absolutely incapable of transacting business."¹ Hawkesbury was not "absolutely incapable" of running the Foreign Office, but did often conduct affairs with a lack of speed and decisiveness which proved a major frustration for more than one American Minister to the Court of St. James.

The change in leadership in both nations did not drastically alter the character of relations between the two nations during these years. President Jefferson retained President Adams' Minister to Great Britain, Rufus King, at the same post for the first two years of the Republican ascendancy. The mood of good will and rapprochement with which the Adams Administration ended its term continued to characterize Anglo-American relations between the wars. Between 1801 and 1803 Rufus King was able to complete two conventions with Great Britain

¹Quoted in Bradford Perkins, The First Rapprochement, p. 133.

which laid to rest lingering problems from earlier years. On the day of Rufus King's departure from London at the end of his Ministership a third convention--which would have settled the impressment problem had it been completed--collapsed because of an adamant British attitude toward continuing the practice in the Narrow Seas around the British Isles even if the impressments on the high seas were banned.² The twenty months of peace following the signing of preliminary peace terms between Great Britain and France helped the maintenance of a rapprochement between the United States and Britain. No American Minister to Britain during the next decade would have as fortunate a set of working circumstances as those in which Rufus King spent his last two years at London.

The last months of the Wars of the French Revolution did not actively threaten Jeffersonian America's relations with Great Britain. Rufus King's term as Minister to the Court of St. James ended as the Peace of Amiens was crumbling away. Before his homebound ship left England, France and Great Britain were again at war. When James Monroe arrived in London to succeed King, the Napoleonic Wars had been a fact of life for some two months. Monroe had before him four and a half years of wartime diplomacy with Great Britain, during which all the old problems of American neutrality in a world at war could be expected to crop up between the United States and Britain. The Napoleonic Wars offered the same prospects of great commercial profit as had the French Revolutionary Wars. Since the greater part of American trade would affect, directly or indirectly, the commercial conditions of the Wars, belligerent respect or disregard of American neutrality and neutral rights would be an important question.

²Perkins, Rapprochement, pp. 154-157.

Five months after the formal (and unannounced) opening of the Napoleonic Wars the Anglo-American Treaty of 1794 lapsed. Sometimes called "Jay's Treaty," the document had been a wartime compromise, with several points left for commissions, for further discussion or for renegotiation. One article in particular was stipulated to lapse at the end of two years after the signing of "the Preliminary or other Articles of Peace" by which the French Revolutionary Wars might be ended.³ If that and other points subject to renegotiation were not settled within that two year period, another article stipulated, "all the Articles of this Treaty except the first Ten shall then cease and expire together" (Article XXVIII). The preliminary terms of peace were signed on October 1, 1801. The non-permanent articles of the Jay Treaty (Articles XI-XXVIII) expired exactly two years later, on October 1, 1803. Among those expiring eighteen articles were all those which dealt with neutral-belligerent conduct between the two nations, as well as those governing conditions of trade between the two countries.

On the American side the failure to comply with the re-negotiation clauses of the treaty was intentional. Upon entering office President Thomas Jefferson had privately expressed the policy of disposing of American treaties with the European powers by letting them lapse without renewal negotiations.⁴ The Jay Treaty with Great Britain happened to

³Article XII. This and other quotations from the treaty are taken from the text in Charles Ritchesen, Aftermath of Revolution (New York: Norton Library, 1971), pp. 386-409. Citations are by article in the body of the text, in parentheses following the quotation.

⁴TJ to William Short, October 3, 1801, Lipscomb, X, 287-288; TJ to Phillip Mazzei, July 18, 1804, Ibid, XI, 38-39.

be the first of the United States' treaties to reach its expiration during Jefferson's Presidency. Aside from general principles of non-entanglement, however, the terms of the Jay Treaty would have given Jefferson and Madison sufficient motivation for allowing its expiration without re-negotiation. Had the Jay Treaty remained in force, President Jefferson would have felt bound to abide by its stipulations on trade and neutral rights. The conditions promulgated by that treaty, however, fitted poorly with Jeffersonian policy and aims, as well as formally binding the United States to a European power. The removal of the Jay Treaty gave the United States a free hand in arguing for its own interpretations of neutral rights and conditions of trade. A re-negotiation of that Treaty would have had to start from the terms given in that document, limiting by precedent what the United States could hope for and what Great Britain might agree to put into the treaty.

Great Britain did want Jay's Treaty retained in force after its expiration in October, 1803. If this could not be done on a formal basis, then allow the text and terms of the expired treaty serve as the guiding rule between the two countries on an informal level. For whatever reason, the British government did not wish relations with the United States left to "the regulations which the parties separately may think fit to establish."⁵ The Foreign Secretary of the then-current (Pitt) administration discussed the lapse of the Jay Treaty with American Minister James Monroe in August, 1804. Lord Harrowby, the Foreign Secretary, suggested that the treaty had not in fact lapsed, since two years of peace had not followed the signing of the preliminary

⁵Madison to Monroe, March 5, 1804, A.S.P.F.R., III, 90.

articles of peace in 1801. According to instructions issued by Secretary of State Madison, the American Minister in London maintained that the government of the United States considered the treaty to have expired on October 1, 1803, irrespective of the conditions in Europe during the two year period. The United States, Monroe said, wanted any extensive treaty negotiations to be "founded in the permanent interests, justly and liberally viewed, of both countries," a thing not possible in a time of war.⁶ Lord Harrowby then suggested that the Jay Treaty should form the rules of conduct which the British would follow, on an official but informal basis and on the responsibility of the Ministry. Monroe replied that he would require instructions from his superiors in Washington before discussing a proposal "altogether new and unexpected" such as this one, and added that any negotiations for a new treaty would have to begin from scratch.⁷

Lord Harrowby communicated the substance of the meeting with James Monroe to the British Minister in Washington, Anthony Merry, but marked the subject as being for Merry's own information and not for the preparation of a formal note to the American government.⁸ According to Harrowby, the British were motivated by the concern that otherwise "the Trade between the two Countries would fall into the same cramped and doubtful State in which it was left after the Peace of 1783," and

⁶Monroe to Madison, August 7, 1804, A.S.P.F.R., III, 94.

⁷Ibid.

⁸Lord Harrowby to Anthony Merry, November 7, 1804, in Bernard Mayo (ed.), Instructions to the British Ministers to the United States, 1791-1812, American Historical Association, Annual Report for 1936, Vol. III (Washington: Government Printing Office, 1949), p. 211. Hereafter cited as I.B.M.

provide innumerable sources of discontent.⁹ Prior to the next meeting of Parliament Britain would act as if the Jay Treaty remained in force. When Parliament convened it would be asked to "lodge the Power of regulating the Commerce with America in the King in Council, in the same Manner as before the Treaty of 1794."¹⁰ The dispatches to Merry make it clear that the British government at that point in time wished to maintain the status quo of the preceding decade with as little effort and concession as possible. One means of accomplishing this was the establishment of the Jay Treaty as the basis of Anglo-American relations, an action which--Harrowby claimed--"must be regarded as a Boon to America."¹¹ The Pitt administration's offer, Lord Harrowby informed Merry, was made

merely under the Persuasion that if accepted, it would be accepted with a view to maintain a friendly Relation between the two Countries, and to avoid in the Interval every thing which could lead to interrupt it. If this System is followed in America, it will be followed here in every respect with an anxious Desire for the Continuance of Harmony and Cordiality.¹²

Anglo-American relations during the Ministry of Henry Addington had been cordial and friendly, even during the early months of the war. Lord Hawkesbury, Addington's Foreign Secretary, did not make an issue of the possible or, later, the actual, expiration of the Jay Treaty. In discussions in early 1804 on a political convention dealing strictly with neutral-belligerent relations between the two nations Hawkesbury had mentioned the use of Jay's Treaty as a ground from which to begin

⁹Harrowby to Merry, August 4, 1804, I.B.M., p. 206.

¹⁰Harrowby to Merry, November 7, 1804, I.B.M., p. 210.

¹¹Ibid.

¹²Ibid.

but did not insist upon the point over James Monroe's refusal.¹³ In fact, although Hawkesbury's attitude toward Monroe and the United States does not seem to have suggested it (Harrowby's did), the parameters of Anglo-American relations had been greatly altered by the early stages of the Napoleonic Wars. So long as Great Britain was at war with France, as one historian of Anglo-American relations points out, "frictions with the Americans was an unhappy complication, but no more," and "in any negotiations with the United States, Britain must be the one to give up something, for she was at war and America was not."¹⁴ These circumstances combined with more specific problems in both the commercial and political spheres to supply the fuses for the two powderkegs which very nearly tore apart Anglo-American relations in 1807 and almost precipitated the War of 1812 in 1807.

Relations with Great Britain seem to have deteriorated in and after 1804 not simply because of the Napoleonic Wars but because of changed attitudes on the part of successive Ministries toward the place of the United States in the wartime scheme of things. James Monroe's impression of British attitudes as gained from Lord Hawkesbury was favorable. In March, 1804, the American Minister was "far from thinking it impossible" that agreement could be reached on several of the current issues existing between the two governments.¹⁵ An interview with Hawkesbury early the following month left Monroe with the impression

¹³ Monroe to Madison, April 15, 1804, A.S.P.F.R., III, 91.

¹⁴ H.C. Allen, Great Britain and the United States (London: Odhams Press, 1954), pp. 301, 305.

¹⁵ Monroe to Madison, March 18, 1804, A.S.P.F.R., III, 91.

that "some advantage may be fairly expected" from the current negotiations with the British government.¹⁶ However, a change in Ministry in May, 1804, ended the Monroe-Hawkesbury discussions before results could be obtained. William Pitt's second ministry began in May, 1804, with Lord Harrowby (and later Lord Mulgrave) at the Foreign Office. The Pitt administration was clearly a war ministry, dominated by an intense desire to prosecute the war against France with all possible weapons and force. The American Minister's first encounter with Lord Harrowby set the tone for relations between the two representatives and their respective governments. Monroe reported of his first private conference with Lord Harrowby:

The conduct of Lord Harrowby through the whole of this conference was calculated to wound and to irritate. Not a friendly sentiment towards the United States or their Government escaped him. In proposing a postponement of the interests in which we were a party, he did not seem to desire my sanction, but to assume a tone which supposed his will had settled the point. . . .¹⁷

Monroe's impressions of the attitudes held by the British government did not change substantially until the creation of the so-called "Ministry of All the Talents" following William Pitt's death in January of the next year. The "Talents" was headed by Lord Grenville as First Lord of the Treasury and Charles Fox as Foreign Secretary. After Fox's death in September, 1806, the Foreign Office was put in the hands of Lord Howick, a man who favored "the utmost limit of reasonable

¹⁶ Monroe to Madison, March 18, 1804, A.S.P.F.R., III, 91.

¹⁷ Ibid., p. 93.

concession."¹⁸ The first meeting between the American Minister and Foreign Secretary Fox occurred in February, 1806. The American thought "the prospect of arranging our affairs with this Government, especially that one which respects our trade with the colonies of its enemies, on satisfactory terms, a very favorable one."¹⁹ Later Monroe reported that Fox "was conciliating; and he repeated, what he had said in the former interview, his earnest desire to see the affairs of the two countries placed on the most friendly footing."²⁰

American policy toward Great Britain did not show the successive shifts which changes in Ministry produced in England. The instructions from Secretary of State Madison to the American Minister to the Court of St. James prior to the extraordinary mission of 1806 remained essentially the same. The American position on neutral rights was expressed in early instructions to James Monroe and formed the basis of a convention plan under discussion throughout Monroe's term in London. The United States' position on the expiration of the Jay Treaty was communicated to the American representative in London two months after the neutrality convention, along with a specific order not to arrange or enter into negotiations on commercial relations with the British government. These points remained the central elements of the American position toward Great Britain until the extraordinary mission of 1806 attempted to negotiate a commercial treaty as well as a neutrality convention.²¹

¹⁸Quoted in Bradford Perkins, Prologue to War (Berkeley: University of California Press, 1961), p. 18.

¹⁹Monroe to Madison, February 12, 1806, A.S.P.F.R., III, 113.

²⁰Ibid.

²¹Madison to Monroe, January 5, 1804, A.S.P.F.R., III, 81-88; same to same, March 5, 1804, Ibid., p. 50.

Although James Monroe arrived in London to take over the post of American Minister to Great Britain in July, 1803, he did not receive his major instructions until spring of the following year. Nor, although incidents of British violations of American neutral rights began in American and West Indian waters with the beginning of hostilities, did Monroe receive instructions to lodge formal protests against these violations until about March, 1804. Several de facto instructions which included informal requests to be made of the British government were sent to Monroe during the fall and early winter of 1803 by the way of personal letters from Madison. In an October, 1803 letter, Madison instructed, "Insist on orders to all their naval officers, to abstain from impressions & to respect our jurisdictional rights."²² Toward the end of December the Secretary of State sent James Monroe an informal sketch of the neutrality convention being prepared in the hope of easing Anglo-American tensions over neutral rights before they could become an Anglo-American powderkeg, fused and ready to explode. Such a convention, as Monroe later pointed out to Foreign Secretary Fox, was intended to define explicitly "the law of nations in the cases to which it applied," as had been the case of an 1801 Anglo-Russian treaty.²³

Formal instructions including the plan of the neutrality convention reached the American Minister in early March of 1804.²⁴ The

²²Madison to Monroe, October 10, 1803, in Gaillard Hunt (ed.), The Writings of James Madison (9 vols.; New York: Putnam, 1900-1910), VII, 65n. Hereafter cited as Hunt.

²³Conversation reported in Monroe to Madison, February 25, 1806, A.S.P.F.R., III, 113-114.

²⁴Monroe to Madison, March 18, 1806, A.S.P.F.R., III, 90. The instructions were those of January 5, 1804, n. 21 above.

neutrality convention as laid out in the prepared plan ran to thirteen articles. The bulk of the instructions, however, consisted of "observations on the preceding plan." The "observations" not only informed Monroe as to the latitude allowed in negotiations concerning the neutrality convention, but provide a concise summary of the American position on neutral rights during Thomas Jefferson's Presidency. The purpose of proposing such a convention at that time, the Secretary of State explained, was to provide "an agreement with respect to objections which cannot be much longer delayed without danger to the good understanding between the two nations."²⁵ Other outstanding or potential matters were to be postponed until a later and more appropriate time because of their lack of urgency or difficulty of arrangement. While these latter matters are not enumerated in the instructions, Madison was undoubtedly thinking of commercial relations and such matters as the abortive boundary convention of 1803 which Rufus King and Lord Hawkesbury concluded but Great Britain did not ratify.²⁶

Among the thirteen articles of the convention plan were a prohibition against impressment beyond the territorial jurisdiction of the impressing party (Article I); a ban on forced enlistment by either party on the subjects or citizens of the other party resident in the first party's territories (Article II); descriptions of proper conditions for and warning of blockades (Articles VI, VII); provisions for disposition of cases of desertion (Articles VIII, IX, X); conditions of search and visitation of merchantmen at sea, and procedures of due

²⁵Madison to Monroe, January 5, 1804, A.S.P.F.R., III, 81.

²⁶On the boundary convention see Perkins, Rapprochement, pp. 143-9.

process in prize courts ashore (Articles III, V); a definition of contraband (Article IV); and, a prohibition against ships clearing the ports of either party with contraband goods aboard (Article XII). The convention was to be in force for eight years from the exchange of ratifications, which ceremony was to take place in Washington (Article XIII).²⁷

The convention plan was sent to Monroe in two versions (given in parallel columns). The first form of the convention was that the American Minister was to begin by offering; the second form being an "ultimatum" version, containing the concessions and compromises which Monroe could make. Most of the differences between the two forms were outlined in the "observations" accompanying the plan and were of a more substantial nature. The latter modifications included changes in the definition of contraband, or, under certain conditions, its complete omission, and an article or articles admitting British warships to American ports on an equal footing to the conditions provided for French warships in the 1800 Convention of M^ortefontaine.²⁸

The various points of the convention summarized the key areas of expected Anglo-American dispute during the continuance of hostilities. Not all of the points contained in the convention were of equal importance to Jeffersonian foreign policy. Madison provided the Minister to Great Britain with a schedule of priorities among the points:

²⁷The text of the convention is in A.S.P.F.R., III, 82-83.

²⁸Madison to Monroe, January 5, 1804, A.S.P.F.R., III, 87, 89.

The essential objects for the United States are the suppression of impressments, and the definition of blockades. Next to these in importance are the reduction of the list of contraband, and the enlargement of our neutral trade with hostile colonies. Whilst you keep in view, therefore, the two last as highly important, and the two first as absolutely indispensable, your discretion . . . must guide you in all that relates to the inferior ones.²⁹

The American Minister prepared the project of a neutrality convention, based on the January 5, 1804, instructions, and submitted it to the Foreign Secretary in April.³⁰ Before Monroe and Lord Hawkesbury could reach any conclusion on the convention project, the Addington administration was replaced by William Pitt's second and last Ministry. Lord Harrowby and Lord Mulgrave, Hawkesbury's successors at the Foreign Office, demonstrated little interest or energy toward American affairs. During the remainder of 1804 James Monroe had several discussions with Lord Harrowby, but was able to reach no satisfactory understanding on the neutrality convention. Harrowby centered his talks with the American Minister on the resurrection of the Jay Treaty and avoided the subject of the neutrality convention. At the end of September, 1804, the discussion of all outstanding points between the United States and Great Britain was postponed by mutual consent. Monroe departed London in October to carry on negotiations in Madrid on the subject of the transfer of West Florida to the United States, leaving Anglo-American relations at an impasse.³¹

²⁹Madison to Monroe, January 5, 1804, A.S.P.F.R., III, 89.

³⁰Project, dated April 7, 1804, A.S.P.F.R., III, 92.

³¹Monroe to Madison, October 3, 1804, A.S.P.F.R., III, 98.

Monroe spent ten fruitless months en route to and from Spain and negotiating in Madrid. He returned to London in July, 1805, to face a disaster. A major complaint during the Seven Years' War (1756-1763) had been the assumption of the carrying trade between hostile nations and their respective colonies, a trade open to the neutrals only because hostilities had closed off the merchant service of the mother country. As a means of countering this practice and denying the enemy the produce of its own colonies, Great Britain developed what came to be called the Rule of the War of 1756. Basically the Rule denied the right of a neutral to carry on a wartime trade which the same neutral was not allowed to carry on during peace. Another version of this distinction was that of the difference in trading with an enemy (legal) and trading for an enemy (illegal). The colonial trade and the Rule were a major point between Great Britain and neutral Holland during the Seven Years' War.³² During the French Revolutionary and Napoleonic Wars the United States took the place of Holland as the major neutral trader, and received the same attentions from Great Britain on the subject of trade between an enemy and that enemy's colonies when carried on by neutrals.

During the latter days of the Wars of the French Revolution the United States and the British prize courts reached a compromise as to the conditions under which goods from an enemy colony would be considered "neutralized" and no longer good prize.³³ If the goods were imported

³²On the origins and early history of the Rule of 1756 see Richard Pares, Colonial Blockade and Neutral Rights, 1739-1763 (Oxford: at the Clarendon Press, 1938), pp. 180-225.

³³This de facto compromise was based upon the concept of "broken voyage" as laid down by Sir William Scott in the 1796 case of the ship Immanuel.

into the neutral country, even though later re-exported to the original source's mother country, the goods were considered to be neutralized by a "break" in the voyage. If the goods were carried directly from the colony to the mother country, the goods were not neutralized even though aboard a neutral vessel, and the voyage was considered "continuous." Not all cases of importation of goods, however, were legitimate importations for the purpose of sale in the neutral country. Some importations were carried out for the simple purpose of neutralizing the colonial goods so that they could be safely carried to the mother country or her allies. At the beginning of the Napoleonic Wars the outstanding precedent defining the conditions of a legitimate importation and a "broken" voyage was an 1800 case decided by Sir William Scott on the ship Polly. According to Scott:

. . . It is argued, that it would not be sufficient, that the duties should be paid, and that the cargo should be landed. If these criteria are not to be resorted to, I should be at a loss to know what should be the test; and I am strongly disposed to hold, that it would be sufficient, that the goods should be landed and the duties paid.³⁴

Scott's decision in the case of the Polly was replaced in 1805 and the American trade with the West Indies colonies shattered. On May 22, 1805, the Lords Commissioners of Appeals rendered their verdict on a 1799 case involving the ship Essex.³⁵ The original verdict of the Vice-Admiralty Court of Nassau condemned the Essex on the grounds that

³⁴Quoted in Perkins, Rapprochement, p. 88.

³⁵There is some confusion as to the actual date on which the Essex decision was rendered; June 22, 1805 is also possible. See Perkins, Rapprochement, n. 24, p. 218.

the Essex was carrying on a direct trade between Havana and Spain, in spite of proofs of importation similar to those described in the decision on the Polly. When the Appeals court upheld the decision of the Vice-Admiralty court in spite of the guidelines laid down by Scott in the Polly case, it applied the Rule of 1756 to the American trade with the old force. The following year (1806) some explication of the reasoning behind the Essex verdict was given in the judgment of a similar case on the ship William:

The landing of the cargo [,] the entry at the custom-house, and the payment of such duties as the law of the place requires, are necessary ingredients in a genuine importation. . . . But in a fictitious importation they are merely voluntary ceremonies . . . resorted to . . . with a view of giving to the voyage which . . . /the owner/ has resolved to continue, the appearance of being broken by an importation which he has resolved not really to make.³⁶

Whatever the logic, legal or political, may have been which resulted in the Essex decision, the effects of that decision on American commerce were swift. A rash of seizures followed the judgment.³⁷ The reaction by James Monroe in London was vehement. Following fruitless discussions with Lord Mulgrave, Harrowby's successor at the Foreign Office, the American Minister presented a long note on the subject of the recent seizures and the policy under which they occurred.³⁸ In the course of that note Monroe tore the Rule apart argument by argument from

³⁶Bradford Perkins, Rapprochement, p. 178; all deletions, emphases, and interpolations appear in the passage as quoted by Perkins.

³⁷Monroe to Madison, August 16, 1805, A.S.P.F.R., III; Perkins, Rapprochement, pp. 178-9; and Prologue, pp. 81-82.

³⁸Monroe to Mulgrave, September 23, 1805, A.S.P.F.R., II, 734-737.

the American point of view and in the light of the law of nations, referring to the Rule more than once as "repugnant" to the law of nations or other standards.

The reaction in the United States was also vehement, if somewhat delayed. President Jefferson did not request any specific action from Congress when it convened in December, 1805, nor did he call an early or special session. The Fifth Annual Message took up the "new principles . . . interpolated into the law of nations" after commenting upon warships hovering on the American coast and similar violations and frictions:

. . . According to these a belligerent takes to itself a commerce with its own enemies which it denies to a neutral on the ground of its siding that enemy in the war; . . . the interests of our constituents and the duty of maintaining the authority of reason, the only umpire between just nations, impose on us the obligation of providing an effectual and determined opposition to a doctrine so injurious to the rights of peaceable nations. . . .³⁹

The President asked Congress to provide "an effective and determined opposition" to Britain's exercise of the hypocritical Rule of 1756; five months later, in the form of the Non-Importation Act, it did so.

The legislative history of the Non-Importation Act is a study in itself. Jefferson seems to have exerted no influence, persuasion, or directive pressure on either House of Representatives or Senate in the matter, whether in determining the general direction which "opposition" might take or in choosing between specific plans and bills. The House

³⁹Dated December 3, 1805, James D. Richardson (ed.), A Compilation of the Messages and Papers of the Presidents, Vol. I (rev. ed.; New York: Bureau of National Literature, 1897), p. 372; hereafter cited as CMPP: I.

of Representatives and the Senate, in January and February, moved to the consideration of non-importation Act by a vote of 93 to 32.⁴⁰ The bill was sent to the Senate, which gave it precedence over its own non-importation bill. It passed in the Senate on April 15 by a vote of 19 to 9 and was signed into law three days later.⁴¹ The Act was to take effect the following November 15, and prohibited the importation of a selected list of British goods by either American or foreign carriers and whether imported directly from the British Isles or in a roundabout manner.⁴²

The American response went beyond the Non-Importation Act. While the House of Representatives debated the relative merits of non-importation resolutions submitted by Andrew Gregg of Pennsylvania and Joseph H. Nicholson of Maryland, the Senate considered a trio of resolutions reported by a select committee on the President's Annual Message. The committee was chaired by General Samuel Smith of Maryland, and consisted of Smith, John Quincy Adams (Ma.), Joseph Anderson (Tn.), Abraham Baldwin (Ga.), George Logan (Pa.), Samuel L. Mitchell (NY), and Uriah Tracy (Ct.).⁴³ On February 5, 1806, the committee reported three

⁴⁰U.S. Congress, The Debates and Proceedings of the Congress of the United States, 1789-1824 (Annals of Congress) (42 vols.; Washington: Gales and Seaton, 1834-1856), 9th Congress, 1st Sess. (1806), pp. 877-878; Malone, JHT, Vol. V: Jefferson the President: Second Term, 1805-1809 (Boston: Little, Brown, 1974), pp. 104, 105-106, 109. The Debates and Proceedings . . . are hereafter cited as Annals.

⁴¹Annals, 9th Cong., 1st Sess. (1806), pp. 240, 1262.

⁴²Ibid., pp. 1259-1262.

⁴³Entries of January 9 and 15, 1806, in Charles F. Adams (ed.), The Memoirs of John Quincy Adams (12 vols.; Philadelphia: Lippincott, 1874-1877), I, 382, 384. John Quincy Adams is hereafter referred to in footnotes as JQA; the Memoirs are hereafter cited as JQA, Memoirs.

resolutions on Anglo-American relations.⁴⁴ The last of the three was a proposal for a non-importation bill and was later replaced by the Non-Importation bill passed by the House of Representatives. The first of the resolutions was a condemnation of Britain's use of the Rule of 1756 as "an unprovoked aggression" on the United States, "a violation of their neutral rights, and an encroachment upon their national independence."⁴⁵

It was the second of the three resolutions which was to have the greatest immediate impact, however. The first resolution was passed "Unanimously in the affirmative--yeas 28," but called for no action.⁴⁶ The second resolution, however, did call for action on the President's part. The propriety of the Senate passing such a resolution was debated at length; by a vote of 23 to 7 the Senate finally

. . . Resolved, That the President of the United States be requested to demand the restoration of the property of their citizens captured and condemned on the pretext of its being employed in a trade with the enemies of Great Britain, prohibited in a time of peace; and the indemnification of such American citizens, for their losses and damages sustained by these captures and condemnations; and to enter into such arrangements with the British Government, of this and all other differences subsisting between the two nations, (and particularly respecting the impressment of American seamen,) as may be consistent with the honor and interests of the United States, and manifest their earnest desire to obtain for themselves and their citizens, by amicable negotiation, that justice to which they are entitled.⁴⁷

⁴⁴The text of the resolutions is given in Annals, 9th Cong., 1st Sess. (1806), pp. 90-91; also in A.S.P.F.R., II, 773. Introduction of the resolutions is at Annals, 9th Cong., 1st Sess. (1806), p. 84.

⁴⁵Annals, 9th Cong., 1st Sess. (1806), p. 91.

⁴⁶Ibid.

⁴⁷Ibid., p. 112; the debates are Ibid., pp. 94-103, 104-112; the vote is Ibid., p. 112.

A committee of two, comprised of General Smith and Samuel Mitchell, was appointed on February 21 to deliver the text of the first and the second resolutions to the President.⁴⁸

Whether or not President Jefferson wished to open treaty negotiations with Great Britain on a more extensive scale than those fostered by the neutrality convention instructions of January, 1804, he was now committed to do so.⁴⁹ Jefferson had wished to place the negotiations completely in the hands of James Monroe, but was pressured into establishing a joint commission for the negotiations.⁵⁰ The present Minister to Great Britain was to serve as half of the new two-man commission. President Jefferson's first choice for the second man was the former Minister to Great Britain, Rufus King. King, however, refused and another candidate, William Pinkney, was chosen.⁵¹ Pinkney, at least nominally a Federalist, was chosen by the President for the practical reason of his prior record as a lawyer and a member of the Debt Commission established by Jay's Treaty, and for the political reason (again practical) that the success or failure of the mission should be the

⁴⁸Annals, 9th Cong., 1st Sess. (1806), pp. 116, 138.

⁴⁹There are questions as to TJ's involvement here. See Bradford Perkins, Prologue, pp. 114-115; Malone, JHT, V, 105, 110-111; Frank A. Cassell, Merchant Congressmen in the Young Republic: Samuel Smith of Maryland, 1752-1839 (Madison, WI.: University of Wisconsin Press, 1971), pp. 129-132; entries of February 1 and 4, 1806, in JQA, Memoirs, I, 395-397, 400.

⁵⁰TJ to Monroe, March 10, 1808, Lipscomb, X, 3-5.

⁵¹Perkins, Prologue, p. 115.

responsibility of a bipartisan commission, not simply the Republicans. The latter reason, it was hoped, would produce smoother domestic reactions to any results issuing from the mission.⁵²

The instructions for the joint mission were transmitted in a letter dated May 17, 1806.⁵³ In a memorandum written some two months earlier, President Jefferson summarized the main points of those instructions:

. . . [W]e may enter into treaty with England, the sum of which should be to settle neutral rights, not insisting on the principle of free ships, free goods, and modifying her new principles of the "accustomed trade" so as [to] give up the direct, & keep the indirect commerce between colonies & their metropol's, restraining impressmts [sic] of seamen to her own citizens in her own ports, & giving her commerce the rights of the most favored nations without entering into details. . . .⁵⁴

No question was taken at the first Cabinet meeting on treaty relations with Great Britain, though the above "seemed to be the sentiment."⁵⁵ On April 25 a full Cabinet meeting did vote on that outline of treaty terms and approved all the proposals "in maximo and minimo . . . without

⁵²Perkins, Prologue, p. 115; Malone, JHT, V, 113-114.

⁵³Madison to Monroe and Pinkney, A.S.P.F.R., III, 119-124; an excellent analysis of the instructions is in Perkins, Prologue, pp. 117-119.

⁵⁴Entry of March 14, 1806, in TJ's Anas, in Paul L. Ford (ed.), The Writings of Thomas Jefferson (10 vols.; New York: Putnam, 1892-1899), I, 310. No entry for this date appears in the Anas in the Lipscomb ed. The Ford ed. is hereafter cited as Ford; the Anas will be cited as Anas, with specific references to the ed. of TJ's writings in which the entry appears.

⁵⁵Entry of March 14, 1806, Anas, Ford, I, 310.

a single dissent on any article."⁵⁶ The greater part of those articles was based upon the January 1804 neutrality convention plan, with the addition of articles on general commercial relations between the United States and Great Britain. Areas of emphasis had shifted between January, 1804, and May, 1806; impressment remained the core requirement of the proposed treaty, but the colonial trade had supplanted the blockade question in importance. One historian of the period has suggested that, in fact, the emphasis of impressment and legal recognition of the conditions denoting a non-direct trade (essentially those recognized by the British prize courts in the 1800 Polly decision) as the sine qua non's for a new Anglo-American treaty was a demand for a "return to the halcyon days before seizures and impressment became serious problems."⁵⁷

Negotiations between the American commissioners in London and their British counterparts began in mid-July, were interrupted in the early fall by the illness and, later, death of Foreign Secretary Fox, then were finished in three months of discussions at the end of the year. A treaty was signed on December 31, 1806. This "December" treaty was not what the President and Cabinet had envisioned, in fact being "so bad" it was not even submitted to the Senate for ratification.⁵⁸

⁵⁶Anas, Lipscomb, I, 453. The emphasis is TJ's.

⁵⁷Perkins, Prologue, p. 119.

⁵⁸TJ to Madison, April 21, 1807, Lipscomb, XI, 193; accounts of the London negotiations are in Perkins, Prologue, Chap. IV, and in Henry Ammon, James Monroe: The Quest for National Identity (New York: McGraw-Hill, 1971), Chap. XIV.

"The British commissioners," President wrote in March, 1807, "appear to have screwed every article as far as it would bear, to have taken everything, and yielded nothing."⁵⁹ A summary of the discussions and the American commissioners' expectations as to possible treaty terms reached Washington City in late January and was the subject of a full Cabinet meeting on February 2, 1807.⁶⁰ The Cabinet agreed unanimously not to accept "any treaty yielding the principle of our non-importing act, and not securing us against impressments."⁶¹ The Cabinet further decided that the United States should not "draw off in hostile attitude," but to

agree formally that there shall be an understanding between us that we will act in practice on the very principles proposed by the treaty (except as to the East India commerce), they defining what breaks the continuity of a voyage, blockades, jurisdiction, etc., and we agreeing to recommend to Congress to continue the suppression of the non-importing. . . .⁶²

A letter of instructions for Monroe and Pinkney was drawn up by the Secretary of State the following day, based upon the Cabinet's deliberations.⁶³ Therein, James Madison wrote that it did not

⁵⁹To Monroe, March 21, 1809, Lipscomb, XI, 169.

⁶⁰TJ to Madison, February 1, 1807, Lipscomb, XI, 146. Monroe and Pinkney's report of November 11, 1806, is in A.S.P.F.R., III, 137-140; TJ's memorandum of the February 2, 1807, Cabinet meeting is in the Anas under that date, Lipscomb, I, 466-467.

⁶¹Entry of February 2, 1807, Anas, Lipscomb, I, 466.

⁶²Ibid., p. 467. The Non-Importation Act was suspended, but not repealed, by Congress in December, 1806, as an aid to the negotiations; see Annals, 9th Cong., 2d Sess. (1806), pp. 20, 115-127, 153-159.

⁶³Dated February 3, 1807, A.S.P.F.R., III, 153-156.

comport with [the President's] views of the national sentiment or the legislative policy, that any treaty should be entered into with the British Government which, whilst on every other point it is either limited to or short of strict right, would include no article providing for . . . [impressment].

.
. . . if, previous to the receipt of [this letter], a treaty not including an article relating to impressments should have been concluded, and be on the way, the British commissioners should be candidly appraised of the reason for not expecting its ratification; and on this ground be invited to enter anew on the business, with an eye to such a result as has just been explained and authorized.⁶⁴

On March 3, 1807, exactly a month after the new instructions had been prepared, a copy of the December treaty reached David Erskine, the British Minister in Washington. Erskine immediately supplied the American government with a copy of the treaty.⁶⁵ The treaty proved even more disastrous than the earlier news from the American commissioners had suggested. Not only did the treaty omit any article on impressment, it included an informal note as an appendix which threatened to end American neutrality and make her an ally of Great Britain. The note embodied Britain's attitude toward the Berlin Decree just issued by Napoleon. According to the note, Great Britain reserved the right to retaliate in kind irrespective of any treaty obligations to the contrary, including the December treaty with the United States which was about to be signed. British actions depended upon whether or not Napoleon chose to withdraw the Decree. Further,

⁶⁴A.S.P.F.R., III, 153-154.

⁶⁵Madison to Monroe and Pinkney, March 18, 1807, A.S.P.F.R., III, 156; TJ to Monroe, March 21, 1807, Lipscomb, XI, 167.

without such an abandonment on the part of the enemy, or such assurances or such conduct on the part of the United States . . . /as will give/ security to His Majesty that it will not submit to such innovations on the established system of maritime law . . . His Majesty will not consider himself . . . precluded from adopting such measures as may seem necessary for counteracting the designs of his enemy.⁶⁶

The American response to this ultimatum was simple: "No treaty can be sanctioned by the United States under the alternative presented by the declaratory note on the subject of the French decree of November 21."⁶⁷

The February letter of instructions reached the American commissioners in London on April 6, 1807, by which time a new Ministry had taken office.⁶⁸ The Ministry was headed by the Duke of Portland, with George Canning in charge of the Foreign Office. Soon after the arrival of the February instructions the Americans obtained an interview with the new Foreign Secretary. They found that the most effective course of action would be to suspend any negotiations on the terms of the December treaty until instructions based upon the actual text of the treaty should arrive from the American government.⁶⁹ The talks were never resumed.

Whether or not the December treaty would have substantially altered the course of Anglo-American relations must remain a matter of speculation. It is probable that, even had Jefferson and Madison not

⁶⁶A.S.P.F.R., III, 152; the full text is Ibid., pp. 151-152.

⁶⁷Madison to Monroe and Pinkney, May 20, 1807, Ibid., p. 163.

⁶⁸Monroe and Pinkney to Madison, April 22, 1807, Ibid., p. 160.

⁶⁹Ibid., pp. 160-162.

rejected the treaty out of hand, the Senate would not have ratified the document. General Smith of Maryland, himself a major Maryland merchant, agreed that the treaty was a serious blow to the American position and to her commerce.⁷⁰ Rufus King's reaction, as given to another prominent New York Federalist, was that "I am not sure that Jefferson was not absolutely obliged, if he regards the national honour, to send the Treaty back."⁷¹

Even had the December treaty been ratified by the United States, it would have hit an immediate stumbling block. Seven days after the signing of the treaty the "Ministry of All the Talents" issued an Order of the King in Council retaliating against the Berlin Decree. According to the Order, no ships (neutrals included) would be allowed to "trade from one port to another, both [of] which ports shall belong to or be in the possession of France or her allies, or shall be so far under their control as that British vessels may not freely trade thereat."⁷² The British Minister at Washington informed Secretary of State Madison of that Order nine days after he had provided the American government with an unofficial copy of the December treaty and two days before the

⁷⁰Cassell, Merchant Congressmen, p. 136.

⁷¹King to Gouverneur Morris, March 30, 1807, in Charles Ring (ed.), The Life and Correspondence of Rufus King (6 vols.; New York: Putnam, 1894-1900), V. 13. Hereafter cited as King. The emphasis and the spelling "honour" in the quote are King's.

⁷²Dated January 7, 1807, A.S.P.F.R., III, 267.

original of the treaty reached Washington.⁷³ As Jefferson pointed out to an unknown correspondent, the effect of the note on the Berlin Decree appended to the December treaty was to bind the United States to the terms of the treaty without so binding Great Britain.⁷⁴ The Order of January 7, 1807, took advantage of that fact even before the December treaty had time to reach the United States in any form.

Jefferson and Madison had not, at this point, given up hope of avoiding a rupture with Britain, even though the events of December and January were causing that goal to recede even more swiftly than before. During the latter part of March, President Jefferson informed James Monroe, unofficially, that

. . . If the treaty cannot be put into acceptable form, then the next best thing is to back out of the negotiations as well as we can, letting that die away insensibly; but, in the meantime agreeing informally, that both parties shall act on the principles of the treaty, so as to preserve that friendly understanding which we sincerely desire, until the one or the other may be disposed to yield the points which divide us. . . . Let it die away, and give us time, the most precious of all things to us. . . .⁷⁵

The United States was not to have that time.

⁷³Madison to Monroe and Pinkney, March 18, 1807, A.S.P.F.R., III, 156; Erskine to Madison, March 12, 1807, Ibid., p. 158.

⁷⁴Dated March 25, 1807, Lipscomb, XI, 173.

⁷⁵Dated March 21, 1807, Ibid., pp. 169-170.

CHAPTER III

THE CHESAPEAKE-LEOPARD INCIDENT

The first of two powderkegs buried in the wartime contacts between the United States and the European powers exploded on June 22, 1807, three leagues off Cape Henry, Virginia. The shock waves of that explosion reached Norfolk, Virginia about noon of the following day, and Washington City on June 25. A month after it reached Washington the shock was felt in London, sinking negotiations there on a new Anglo-American treaty. For five anxious months President Jefferson and his Cabinet, along with the Congress and the general populace of the nation, waited anxiously to see whether the powderkeg's blast had touched off a still greater explosion--an Anglo-American war.

The Chesapeake-Leopard incident of June 22 did not, as some writers have suggested, stand "completely apart from the continuous stream of connected events which constituted contemporary history."¹ Rather, that incident marked the culmination of a long stream of contemporary events in Anglo-American relations which, in greater or lesser degree, had harassed the American nation since the beginning of the Wars of the French Revolution over a decade before. The roots of this "long fuse" were not commercial in character, but political. It had no elements in common with the "new and extraordinary maritime

¹A.T. Mahan, Sea Power in Its Relations to the War of 1812 (2 vols. (Boston: Little, Brown, 1905), I, 168.

system" which Great Britain was about to father.² The roots of this fuse lay embedded in the political character of the United States and Great Britain as two separate and unequal sovereign powers, the one at war for its existence and the other struggling to remain neutral and independent in the face of that war. Great Britain, on the one hand, saw herself as

engaged in a life-and-death struggle against an evil power whose victory would have meant not only her own ruin, but the destruction of the liberties of every European nation . . . [and] conceived it as her duty, not only to herself but to Europe, to preserve or to restore the balance of power on the Continent. . . .³

In a similar vein, William Pitt, twice Prime Minister of England during the Anglo-French wars, stated it as a principle that

the distance between friends and neutrals is immense; it is small, on the contrary, between enemies and neutrals; the slightest accident, a mere chance, the least mistrust, a false appearance is enough to efface the distinction between them.⁴

In the spring of 1807, President Thomas Jefferson informed one of his correspondents of the American view of matters:

. . . I consider Europe, at present, as a world apart from us, about which it is improper for us even to form opinions, or to indulge any wishes but the general one, that whatever is to take place in it, may be for its happiness. . . .⁵

That view was official rather than personal, perhaps written with an eye

²Mahan, Ibid.

³Neutrality, Vol. II: The Napoleonic Period, by W. Alison Phillips and Arthur H. Reede (New York: Columbia University Press, 1936), p. 9. The spirit, if not the wording, is accurate; see also H.C. Allen, Great Britain and the United States, p. 301.

⁴Quoted in Andrew Montague, "John Marshall," in The American Secretaries of State and Their Diplomacy, ed. Samuel F. Bemis, 10 vols. (New York: Knopf, 1927-1929), II, 259.

⁵TJ to Julian Niemcewicz, April 22, 1807, Lipscomb, XI, 196.

to public consumption. Nevertheless, the American "climate of opinion" was that Europe could stew in her own juices without the help or hindrance of the United States. A modern writer expressed much the same spirit in 1935, in a more pungent form: "But of the hell broth that is brewing in Europe we have no need to drink. Europe has always fought: the intervals of peace are only armistices."⁶

The conflicts which arose out of these disjointed and non-understood views on the respective sides manifested themselves most sharply in the area of national sovereignty. Particularly severe were those raised by the deserters-impressment question and the problem of British refusals to observe American territorial sovereignty. Both had long strings of incidents to their credit, stretching back to the early days of the French Revolutionary Wars. The Anglo-American frictions were obscured by problems with France during much of the Presidential terms of George Washington and John Adams. Impressments of American citizens did occur, however. In 1793, the first year of the French Revolutionary Wars, massive impressments by the British were reported from Cadiz, Spain; a Captain Jones of the British frigate Andromache "hardly left two Men on board of any American Vessel" in Cadiz's harbor.⁷ In December of 1800, the Secretary of State reported to the Senate a total of over 700 cases of impressment between August 1799 and

⁶ Ernest Hemingway, "Notes on the Next War," quoted in Hans Kohn, Political Ideologies of the Twentieth Century (New York: Harper Torch-books, 1966), p. ix.

⁷ Peter Walsh to the Secretary of State (Timothy Pickering), October 17, 1793, in Dudley Knox (ed.), Naval Documents Related to the United States Wars with the Barbary Powers, 1785-1807, 7 vols. (Washington: Government Printing Office, 1939-1944), I, 51.

the end of July 1800.⁸ The problems with France, combined with a decrease in British impressments (for military, not diplomatic or political, reasons) kept the diplomatic situation from boiling over during this period, as did the growing development of an Anglo-American rapprochement in other areas after the conclusion of the Anglo-American "Jay's" Treaty of 1794.⁹

Although two of the most potentially explosive impressment incidents occurred before 1801, the impressment problem reached its worst after 1803.¹⁰ During the first months of the Napoleonic Wars less than a hundred cases of impressment were reported. By the end of 1805 that total had risen to over nine hundred. The aggregate total impressed since the beginning of the war rose by nearly two thousand between the end of 1806 and the end of 1807.¹¹

The impressment coin did have another side, however. In spite of the fact that many of the men impressed from American ships were American citizens, many others undoubtedly were not. Neither the British government nor its representatives claimed a right to impress bona fide

⁸Report dated December 9, 1800, A.S.P.F.R., II, 292-294.

⁹See particularly Bradford Perkins' First Rapprochement, pp. 67-69, and Alexander DeConde's Quasi-War, pp. 201-205. On the impressment problem in general, see James Zimmerman's Impressment of American Seamen (New York: n.n.7, 1925).

¹⁰The two incidents (q.v., p. 52) were the "Havana" incident of 1798 and the Ganges incident in 1799, both of which involved actual or attempted impressment from American naval vessels.

¹¹These figures are from the reports of the Secretary of State to the Senate for 1803, 1806, and 1808, and are based upon the number of petitions for relief received during the period covered by the report. The reports can be found in A.S.P.F.R., II, pp. 593-595 (dated December 2, 1803); Ibid., pp. 776-798 (dated March 8, 1806); and Ibid., III, 36-79 (dated February 29, 1808).

American citizens into the British navy, but the British government consistently claimed the right to reclaim British subjects who had previously deserted from the Royal Navy or otherwise shirked their obligation to render Crown service. Lord Nelson (later the victor at Trafalgar) claimed, at one point, a total of desertions during the Wars of the French Revolution on the order of forty-two thousand.¹² It was such deserters, now employed knowingly or innocently aboard American merchantmen, which the Royal Navy and the British government sought to impress. If some American cousins got caught up in things, it was unfortunate, but unavoidable; the more so since Americans seemed so willing to abet the original desertions.¹³

Impressments occurred everywhere, both inside American territorial waters (even, occasionally, in American harbors) and without them on the high seas. While impressments in British and foreign harbors and on the high seas (including what Britain characterized as the Narrow Seas surrounding the British Isles) frustrated the American Government and frayed tempers, those occurring within American territory were the least bearable and most explosive. Nor were violations of the territorial waters of the United States limited to impressments. The Royal Navy developed a habit of searching American merchantmen as soon as they departed their harbors, or even before the vessel had cleared the harbor. The most notable instances of such procedures were those involving H.M.S.

¹²Perkins, Rapprochement, p. 61.

¹³In one case \$100 was offered to any deserter from a British man-of-war then lying in New York harbor (H.M.S. Thetis); see Charles Ritcheson, Aftermath of Revolution, p. 381.

Cambrian (in 1804) and H.M.S. Leander (in 1806). In the spring of 1807 a series of such episodes attached themselves to the warships of a Royal Navy squadron anchored off Norfolk, Virginia, at Lynnhaven Bay. None of these incidents evolved directly from impressments, although they often involved them.

Problems of impressment and of violations of American territory began with the Napoleonic Wars. During the earlier months, at least, incidents were confined to the American side of the Atlantic. On October 10, 1803, Secretary of State Madison remarked in a letter to James Monroe that incidents were a daily occurrence.¹⁴ Two months later Monroe was informed that, while on the European side of the ocean violations of American rights might be "so much mitigated in comparison with the former war," the situation on the American side of the Atlantic was still far different--"the friendship and patience" of the United States toward Great Britain "are put to a severe trial," Madison noted.¹⁵ Although the volume of incidents appears to have disturbed the Secretary of State at this time, no single incident stands out as a particularly heinous violation of American rights or American territory. The distinction was to be left to one Captain Bradley of H.M.S. Cambrian.

The Cambrian incident of June, 1804, was precipitated by a visit from Jerome Bonaparte, Napoleon's brother, beginning sometime in 1803. Two French frigates waited in New York harbor for Jerome's return trip home. Their presence, and the lure of capturing Napoleon's brother,

¹⁴Madison to Monroe, Hunt, VII, 65n.

¹⁵Madison to Monroe, December 26, 1803, Hunt, VII, 77n-78n.

brought Captain Bradley's frigate and the British sloop of war Driver into New York harbor to harrass the French ships and establish positions from which the British vessels might capture the French on departure. While in the harbor Captain Bradley impressed fourteen seamen off the British merchantman Pitt, thereby violating American neutral territory. These actions produced something more than the "minor social tempest" which Jerome had produced in Washington earlier in the year. In order to allow the departure of the French frigates which were the cause of the Cambrian and the Driver's presence at and in the harbor, Mayor DeWitt Clinton of New York invoked a "24-hour" rule designed to detain belligerent vessels and give enemy vessels a one-day start away from neutral territory. Bradley decided not to wait the full twenty-four hours, and H.M.S. Cambrian and Driver violated detention. They were not able to overtake the French frigates, however, so laid to off Sandy Hook at the entrance of New York harbor and resumed their general harrassments. Included in those later harrassments was the impressment of six British passengers from aboard the American merchantman Diana. Although Captain Bradley was shortly relieved of command of the frigate Cambrian, he was later posted as captain of a ship of the line, which was referred to by the British Foreign Secretary as a demotion.¹⁶

Unlike the preceding series of undistinguished incidents, the Cambrian incident sparked retaliatory, or at least defensive, action on the part of the United States. President Jefferson toned down the

¹⁶Brant, Madison, IV, 254-255; I.B.M., p. 209, nn. 18, 19; Monroe to Madison, September 8, 1804 and October 18, 1805, A.S.P.F.R., III, 96, 106.

report of the incident appearing in the Fourth Annual Message, but nevertheless desired some action on the Legislature's part.¹⁷ An appropriate bill was reported out of committee in the House of Representatives at the end of November, 1804, and passed by the House on February 5, 1805. The Senate passed the bill on March 3, 1805; Jefferson approved it the same day.¹⁸ The term of the bill was two years, and was to expire at the end of the Congressional session then in process. During that time the Executive was granted wide discretionary power in dealing with foreign armed vessels and their captains when such committed breaches of the peace within American territory, including the authority to place under arrest anyone committing such a breach and to interdict American waters to foreign warships, either selectively or collectively.¹⁹

During the next two years the President found it necessary to exercise the powers granted him by this "Ports and Harbors" Act twice. The first occasion was in the spring of 1806 against H.M.S. Leander, Cambrian, and Driver. In April of that year the Cambrian and Driver, now in company with H.M.S. Leander commanded by one Captain Henry Whitby, resumed their tactics of two years previous of standing off New York harbor and searching shipping leaving the harbor before that shipping had cleared American Waters. At one point Captain Whitby had a warning shot fired at a vessel which refused to halt--and killed one of the

¹⁷The relevant passage of the Message (dated November 8, 1804) is in C.M.P.P.:I, pp. 357-358. TJ sent the draft of an appropriate bill to Joseph H. Nicholson in November; see Malone, JHT, IV, 441-442, and n. 6, p. 441.

¹⁸Annals, 8th Cong., 2d Sess. (1804-1805), pp. 700-706, 1178-1180, 51, 74, 1698. The text of the bill is Ibid., pp. 1694-1698.

¹⁹Annals, 8th Cong., 2d Sess. (1804-1805), pp. 1694-1698. The bill will be hereafter referred to as the "Ports and Harbors" Act.

seamen aboard that vessel. Shortly afterward, on May 1, the President and his Cabinet discussed several possible responses to the incident, including the forceful ejection of the British vessels by American frigates. No frigates (or gunboats) were readily available, however, and the idea was dropped.²⁰ Instead, Jefferson issued an order interdicting American waters to the three ships and their captains, regardless of who might later be commanding the ships or what ships the captains might later be commanding at the time.²¹ Both the Cambrian and Driver later entered American waters in violation of the May, 1806, proclamation, but retired again before any trouble developed.²²

Jefferson's second evocation of the "Ports and Harbors" Act was one of the sparks knocked loose when the Chesapeake-Leopard powderkeg exploded in June, 1807. In a proclamation issued in the July aftermath of that incident the President interdicted American waters to all British warships (except those acting as diplomatic couriers) rather than the ship (H.M.S. Leopard) directly involved in the incident.²³

As critical as the Chesapeake-Leopard incident proved to be, it was not completely unprecedented. On at least two previous occasions British captains had impressed or attempted to impress men from aboard

²⁰Anas, Lipscomb, I, 455-456.

²¹The text of the Proclamation, dated May 3, 1806, is in C.M.P.P.:I, pp. 390-392. The other two captains were John Nairne and Slingsby Simpson, Ibid., p. 391.

²²On the Cambrian see the entry of December 16, 1806 in Anas, L. & B., I, 465; on the Driver see the exchange of notes between Captain Michael Kaltaisan and Captain William Love of the Driver in A.S.P.F.R., III, 8-9.

²³The text, dated July 2, 1807, is in C.M.P.P.:I, pp. 410-412.

American warships while the United States was at peace with Great Britain. The first such case (often called the "Havana" incident) occurred in November, 1798, off Havana, Cuba. The American sloop of war Baltimore, under Captain Phillips, was serving as escort for a group of American merchantmen bound for Havana. The convoy was halted by a Captain Loring of H.M.S. Carnatic, commanding a squadron of three ships of the line and two frigates (with an aggregate rating of 310 guns). Loring then proceeded to impress fifty-five men from off the Baltimore, fifty of whom were subsequently returned. The news of the incident resulted in orders being issued to the Navy commanding total refusal and armed resistance (if necessary) to any further attempt to impress men from aboard a Navy vessel.²⁴ Four months later, and three months after Secretary of the Navy Benjamin Stoddert issued resistance orders to the United States Navy, a forty-four gun frigate of the Royal Navy, H.M.S. Surprise, attempted to stop the U.S.S. Ganges, a merchantman converted into a 24-gun sloop of war, and search for British deserters. Captain Thomas Tingey of the Ganges is reported to have replied:

A public ship carries no protection but her flag. I do not expect to succeed in a contest with you, but I will die at my quarters before a man shall be taken from the ship.²⁵

H.M.S. Surprise abandoned the scene.

The Chesapeake-Leopard incident of 1807 differed from the Havana and Ganges incidents in two fundamental ways. On the one hand, H.M.S. Leopard used rather extensive force in forcing Commodore James Barron

²⁴The documents relating to the incident, upon which the foregoing was based, appear as No. 147 in A.S.P.F.R., II, 203-204.

²⁵Quoted in DeConde, Quasi-War, p. 203, as are all details of the incident.

of the Chesapeake to surrender his ship. Second, the Leopard was acting on orders specifically commanding the search of the Chesapeake and the impressment of certain British deserters reported to be aboard her. On June 1, 1807, Vice-Admiral George C. Berkeley, Commander in Chief of His Majesty's ships and vessels on the North American Station, issued orders to all ships under his command that the U.S.S. Chesapeake was to be searched for deserters from any of a list of six vessels of the Royal Navy. While a resort to force on the part of the British was not explicitly ordered, Berkeley did order his captains to "require" to search the Chesapeake. According to the order, the Chesapeake included among her complement deserters who had "openly paraded the streets of Norfolk, in sight of their officers, under the American flag, protected by the magistrates of the town and the recruiting officers belonging to the Chesapeake. These deserters were, according to Berkeley's order, from His Majesty's ships Belleise, Bellona, Triumph, Chichester, Halifax, and Zenobia, all members of a British squadron under the command of Captain John E. Douglas of H.M.S. Bellona.²⁶

The U.S.S. Chesapeake, a frigate of 36 guns, did indeed have deserters from the Royal Navy among her complement. In February, 1807, four men stole a ship's gig and fled H.M.S. Melampus while that ship was anchored in Hampton Roads off Norfolk, Virginia. Three of the four men proceeded to enlist aboard the Chesapeake, which was then recruiting seamen for a tour of duty in the Mediterranean. The British Consul at Norfolk, John Hamilton, requested the return of these men by name,

²⁶A copy of the orders, including the section quoted, is in A.S.P.F.R., III, 12; see also The Naval Chronicle, 40 vols. (London: Joyce Gold, 1799-1818, XVIII, 117-118.

without result. At the beginning of April Commodore James Barron reported on the background of the three men requested by Hamilton who had enlisted aboard the Chesapeake--all three being American citizens. The matter of these three men seems then to have been dropped by Hamilton.²⁷ In March, however, a group of men deserted from another of the ships of Douglas' squadron, the H.M.S. Halifax, one of whom enlisted aboard the American frigate under the name John Wilson (in fact being one Jenkin Ratford). Barron did not examine, and may well not have known about, Wilson-Ratford. Thus the frigate Chesapeake set sail for the Mediterranean with three known and at least one unknown deserter aboard.²⁸

The Chesapeake weighed anchor shortly after seven o'clock on the morning of June 22, 1807, commanded by Captain Charles Gordon and carrying Commodore James Barron to take command of the Mediterranean squadron. Coming out of Chesapeake Bay the American frigate passed two elements of the British squadron. Later in the day (about four o'clock) the Chesapeake was approached and hailed by H.M.S. Leopard. The captain of the Leopard, Salusbury P. Humphreys, sent a lieutenant aboard the frigate with a copy of Berkeley's June 1 order and a note from Humphreys himself. Barron replied that no men such as were described in the order were a part of the Chesapeake's crew--the Melampus not being named in the order which Berkeley had issued--and that he (Barron) could never allow "the crew of any ship that I command to be mustered by any other but their

²⁷The exchange of notes between the British Consul and the American authorities, all dated from March 6 through March 9, 1807, are in A.S.P.F.R., III, 16-17; Commodore Barron's report to the Secretary of the Navy (Robert Smith), dated April 7, 1807, is Ibid., pp. 17-18.

²⁸Leonard F. Guttridge and Jay D. Smith, The Commodores (New York: Harper and Row, 1969), pp. 117-120. Hereafter cited as Commodores.

own officers."²⁹ Humphreys interpreted Berkeley's "require" to mean that force was to be used if necessary; he fired several broadsides into the American frigate, producing extensive damage and killing three men. Barron was forced to surrender the frigate to Humphreys before he was blown out of the water. Humphreys refused to consider the Chesapeake a captured prize, but did muster the frigate's crew and press four men from her before departing. Three of the men impressed were the men who had deserted from the Melampus; the fourth was Jenkin Ratford. The Chesapeake limped into Norfolk just after noon the next morning, with twenty-two round shot in her hull, two masts in unseaworthy condition, three of her crew dead and eighteen more wounded.³⁰

An American court of inquiry, sitting in October, decided that the Chesapeake was "prematurely surrendered, at a time when she was nearly prepared for battle, and when the injuries sustained either in the ship or crew did not make such a surrender then necessary . . . [and] before a single gun of any kind was fired from her . . ."³¹ The irony of the affair is increased when one turns to an aspect which the Court of Inquiry did not take up. Of the four deserters removed from aboard the Chesapeake, three were from H.M.S. Melampus and one from aboard H.M.S.

²⁹Barron to Humphreys, June 22, 1807, A.S.P.F.R., III, 18.

³⁰This account is based upon the reports and excerpts from the Chesapeake's log as submitted by Gordon and Barron to the Secretary of the Navy at the time of the incident, and may be found in A.S.P.F.R., III, 16-20.

³¹Report of the Court of Inquiry, A.S.P.F.R., III, 23; the full text of the report is Ibid, pp. 21-23. British sources reported that the Chesapeake did return fire; see a letter dated June 24, 1807, in Naval Chronicles, XVIII, 117, and Commodores, p. 130.

Halifax--and only that one was covered by Humphrey's orders. Yet, in a report written the day of the engagement, Humphreys reported that "Several other English subjects composed part of the crew, but as they did not claim the protection of the British flag, and were not within the limits of my orders . . . [I] allowed them to remain."³²

The shock in Norfolk at the Chesapeake's condition was intense. The British squadron which had been lying at Lynnhaven Bay for several months awaiting the departure of a pair of French ships-of-the-line turned in a matter of moments from friends to enemies. While Captain Gordon and Dr. John Bullus (an American diplomat bound for the Mediterranean aboard the Chesapeake) were en route to Washington to report the incident to President Jefferson and Secretary of the Navy Robert Smith, the Norfolk cauldron nearly boiled over. A mob ran riot in the streets, smashing in their course some water kegs belonging to the British Squadron. Direction of events on the Norfolk side fell into the hands of an extemporaneous public committee, which ordered all communication with the British vessels cut. Captain Douglas, commander of the British squadron, took umbrage at this and previous events at Norfolk and informed the city that "the British flag never has, nor will be insulted with impunity . . . it has been, and is still in my power, to obstruct the whole trade of the Chesapeake."³³ Richard E. Lee, the mayor of Norfolk, replied with a note beginning, appropriately enough, "I have received your

³²Humphreys to Douglas, June 22, 1807, quoted in A.L. Burt's The United States, Great Britain, and British North America From the Revolution to the Establishment of Peace After the War of 1812 (New York: Russell and Russell, 1961), p. 243, n. 47. The emphasis is mine.

³³Douglas to Lee, July 3, 1807, Naval Chronicles, XVIII, 122.

menacing letter of yesterday." Lee's note was dated (correctly) July 4, 1807.³⁴ The Lee-Douglas debate, fortunately, resulted in nothing, and events were soon placed in the hands of the Governor and the State Militia.

The Norfolk reaction, in spirit, was typical of reactions throughout the United States. Before the end of June a public meeting in Baltimore, chaired by General Samuel Smith, adopted resolutions pledging to support any government action, including war.³⁵ On July 11 a similar meeting was held at Amelia Court House, Virginia, and adopted similar resolutions, to which end "we do now pledge our lives, and fortunes and our sacred honor."³⁶ A pair of Boston town meetings occurred on July 10 and July 16, both attended by John Quincy Adams and both producing resolutions similar to those from Baltimore and Amelia Court House. One of the resolutions passed July 16 described H.M.S. Leopard's actions as "a wanton outrage upon the lives of our fellow citizens, a direct violation of our national honor, and an infringement of our national rights and sovereignty."³⁷ About the same time Thomas Jefferson informed De Pont de Nemours that "Never since the battle of Lexington have I seen this country in such a state of exasperation as at present, and

³⁴Lee to Douglas, July 4, 1807, Ibid.

³⁵Cassell, Merchant Congressmen, p. 137.

³⁶Dice Robins Anderson, William Branch Giles (1914; reprint ed., Gloucester, Ma.: Peter Smith, 1965), p. 113.

³⁷Entries of July 10, 1807, and of July 16, 1807, in JQA, Memoirs, I, 468-469. The text of the resolutions passed at the July 16 meeting are in Worthington C. Ford (ed.), Writings of John Quincy Adams, 7 vols. (New York: Macmillan, 1913-1917), III, 161-162; the passage quoted is Ibid., p. 161. The Writings are hereafter cited as JQA, Writings.

even that did not produce such unanimity."³⁸ That the President could have had war if he had convened a special Congressional session and asked for it is almost certain.

Gordon and Bullus reached Washington City with the news of the Chesapeake-Leopard incident on June 25. The President issued an immediate call for those members of the Cabinet who had already left Washington for the summer, then set to work with Secretary of State Madison and Secretary of the Navy Robert Smith (brother of General Samuel Smith) to prepare an outline of response policy for submission to the full Cabinet when it should meet. All members were present on July 2 and a series of basic policy decisions were made. Foremost among those decisions were the approval by the Cabinet of a proclamation already drawn up which would interdict American territorial waters to all British warships except diplomatic couriers and a decision to try for a solution to the Chesapeake crisis by diplomatic means before resorting to force or economic retaliation.³⁹ "Reason and the usage of civilized nations,"

Jefferson informed John W. Eppes (his son-in-law), "require that we should give them an opportunity of disavowal and reparation. Our own interest, too, the very means of making war, requires that we should give time to our merchants to gather in their vessels and property and our seamen now afloat."⁴⁰ Jefferson was not a pacifist; he did, however, rate reason above war as a first solution to problems and he was

³⁸ Dated July 14, 1807, Lipscomb, XI, 274.

³⁹ Entry of July 2, 1807, Anas, Ibid., I, 470.

⁴⁰ Dated July 12, 1807, quoted in Henry S. Randall, The Life of Thomas Jefferson, 3 vols. (New York: Derby and Jackson, 1858), III, 226-227. Hereafter cited as Randall.

quite aware that the United States was not ready for a war.⁴¹ It is particularly fortunate, therefore, that Congress was not in session at the time.

The President and his Cabinet determined to recall the Mediterranean squadron to home waters and send the U.S.S. Revenge to England with a list of demands which the American Minister was to present to the British government. The demands, as decided upon in that meeting, were to include

1. A disavowal of the Act and of the principle of searching a public armed vessel.
2. A restoration of the men taken.
3. A recall of Admiral Barclay [sic].⁴²

A Court of Inquiry into the conduct of Commodore Barron was noted as already ordered. Special note was also made to inform Russia of the incident.⁴³ At the time, ultimate responsibility for the orders carried by Captain Humphreys of H.M.S. Leopard was uncertain. In mid-July Jefferson was inclined to think Berkeley had acted under orders from London which were written "in equivocal terms, implying force or not as should suit them, to say; and the construction would be governed by Bonaparte's successes or misfortunes."⁴⁴ By September Jefferson was strongly of the opinion that the British government was responsible, and

⁴¹In spite of Louis Sear's attempt, in Jefferson and the Embargo (1927; reprint ed., New York: Octagon Books, 1966), to paint TJ as such Sears, it must be noted, was writing at a time when such as he tried to attribute to TJ was much in vogue. But see TJ to John Jay, August 23, 1785, Lipscomb, V, 94-95; to William Short, October 3, 1801, Ibid., X, 287; and the letter to Eppes cited in n. 40 above.

⁴²Entry of July 2, 1807, Anas, Lipscomb, I, 470.

⁴³Ibid.

⁴⁴TJ to Eppes, July 14, 1807, Randall, III, 226.

so informed Thomas Paine:

. . . That war with us had been predetermined [Jefferson wrote] may be fairly inferred from the diction of Berkley's [sic] order, the Jesuitism of which proves it ministerial from its being so timed as to find us in the midst of Burr's rebellion as they expected, from the contemporaneousness of the Indian excitements, and of the wide and sudden spread of their maritime spoillations. . . .⁴⁵

The Cabinet met almost daily during the first part of July, hammering out guidelines for the months ahead. Congress was to be called to convene on October 26. The state governors were to be ordered to have their quotas of militia ready if needed. The Virginia militia was to be ordered into actual service in the Norfolk area.⁴⁶ A general preparation of the United States for a war was begun, including the possibility of a winter expedition against Canada. Among the general defensive preparations was the instruction to Secretary of the Navy to "take immediate measures for procuring from London 100 telescopes."⁴⁷

All preparations were to be just that--preparations. No action was to be taken until Congress had convened in October and the results of diplomatic demands had been received from London. Eight years later Jefferson described his state of mind during the period to Jean Batiste Say:

. . . I had then persuaded myself that a nation, distant as we are from the contentions of Europe, avoiding all offenses to other powers, and not over-hasty in resenting offence from them, doing justice to all, faithfully fulfilling the duties

⁴⁵Dated September 6, 1807, Lipscomb, XI, 362-363.

⁴⁶Entries of July 4, 5, and 7, 1807, Anas, Ibid., I, 470-471.

⁴⁷Entry of July 28, 1807, Ibid., 475; the emphasis is mine. Offensive and defensive measures are noted in the entries for July 26, 27, and 28, 1807, Ibid., 471-477.

of neutrality, performing all offices of amity, and administering to their interests by the benefits of our commerce, that such a nation, I say, might expect to live in peace, and consider itself merely as a member of the great family of mankind; that in such case it might devote itself to whatever it could best produce, secure of a peaceable exchange of surplus for what could be more advantageously furnished by others. . . .⁴⁸

In the immediate case, the Chesapeake crisis, the American motto was "reparation for the past, and security for the future."⁴⁹

The immediate problems before President Jefferson and Secretary of State Madison were the preparation of Monroe's instructions and the British squadron lying off Norfolk. Douglas' squadron might not give the United States time to try for a diplomatic resolution to the crisis or to prepare defensive measures for a war. The Norfolk situation was virtually another powderkeg in itself. Although the Presidential Proclamation of July 2 interdicting American waters to all British warships shifted control of the Norfolk crisis to Governor William H. Cabell of Virginia, it did not end the Norfolk crisis. Rather, the Proclamation gave the situation a new, but potentially an explosive, character. Now Douglas' squadron was in violation of that Proclamation so long as they remained in American waters. The conditions laid down by the Proclamation and the President's subsequent instructions to Governor Cabell were poorly received by Captain Douglas. They were obeyed in large, however. By the end of July the Norfolk situation had cooled enough so that the Cabinet in Washington decided that most of the

⁴⁸ Dated March 2, 1815, Lipscomb, XIV, 258-259.

⁴⁹ TJ to Du Pont de Nemours, July 14, 1807, Ibid., I, 471.

militia in the Norfolk area could be dismissed, although it should remain in readiness.⁵⁰ The following months would not be completely settled or calm, but they were relieved of the worst of their local and immediate menace. Matters now waited upon events in London.

⁵⁰Entry of July 26, 1807, Anas, Ibid., I, 471.

CHAPTER IV

WAR CRISIS

First news of the Chesapeake-Leopard incident reached London on July 24, 1807. The news precipitated an emergency meeting of the Portland Ministry to determine the official reaction to the incident.¹ Admiral Berkeley's dispatches from Halifax, Nova Scotia, had arrived at an inopportune moment. The armies of the Fourth Coalition had been defeated at Friedland in June. Tsar Alexander I of Russia had already abandoned the sinking ship of the Coalition. On July 7 and July 9 Russia and Prussia signed treaties with Napoleon which ended their alliance with Great Britain and shifted their allegiances to France. Reports of the Franco-Russian rapprochement at Tilsit began reaching London in mid-July, although confirmation of the event was to wait upon accounts in French newspapers during early August.

At about the same time as the first rumors of Tilsit arrived, rumors of Danish naval preparations came to the Portland government. A British fleet under Admiral James Gambier sailed before the end of July. A British envoy (Francis J. Jackson, later "Copenhagen" Jackson) presented the British ultimatum to the Prince Royal of Denmark at Kiel. The Prince Royal's reply was unsatisfactory. At the beginning of September, the British fleet began a bombardment of Copenhagen. The city capitulated on September 7, 1807.²

¹ Bradford Perkins, Prologue to War, p. 190.

² J. Steven Watson, The Reign of George III, 1760-1815, Vol. 12 of the Oxford History of England, ed. Sir George Clark (Oxford: at the Clarendon Press, 1960), pp. 455-456; Lefebvre, Napoleon, II, 3-4.

It was under these conditions that the Portland Ministry had to determine how to respond to the Chesapeake-Leopard incident and the American cries of outrage which were sure to follow. The Ministry decided, in the face of general public sentiment and the objections of the Parliamentary opposition, to pull the fuse which might set off an Anglo-American war. Thus, when George Canning, the British Foreign Secretary notified James Monroe that an encounter had occurred between an American frigate and a vessel of the Royal Navy, the Foreign Minister tossed in the fuse-dampening comment that "if the British officers should prove to have been culpable, the most prompt and effectual reparation shall be afforded" the United States.³ Canning claimed, however, to be unable to supply Monroe with any details of the incident.

For nearly a month the American Minister was forced to rely upon reports of the incident as they were given in the British newspapers, some of which were wildly inaccurate. The first reports appeared in the London papers on July 27, and were based upon private letters and unofficial reports which had arrived from Halifax at the same time Berkeley's official dispatches had. The report carried by the pro-American London Morning Chronicle stated that H.M.S. Leopard had undergone an engagement with the U.S.S. Constellation, a frigate of 44 guns, and had exchanged several broadsides before taking the American frigate's surrender. A similar version was one among several which circulated about the Mediterranean during the fall.⁴ Representative of the more common

³Canning to Monroe, July 25, 1807, A.S.P.F.R., III, 187.

⁴London Morning Chronicle account is summarized in Brant's Madison, IV, 389.

reactions was an article titled "Cobbett's Strictures on the Difference with America":

. . . if the laws of nations do not allow you to search for deserters in a friend's territory, neither do they allow that friend to inveigle away your troops or your seamen, to do which is an act of hostility. . . . The fault of our officers upon that station has been excessive forbearance. We have suffered greatly from our tameness toward those states. . . . I would only demand and insist upon it, that America should not be permitted to destroy the British navy. . . .⁵

Nor were such reactions as expressed in "Cobbett's Strictures" limited to the press and the general public alone. The Earl of Selkirk, speaking in the House of Lords, said that "Nothing can be more absurd than to talk of the attack on the Chesapeake as an unprovoked outrage."⁶ At the end of July Lord Bathurst wrote Lord Harrowby, laying out a reasoned defense of the British practice of impressment and the right of search:

. . . our right of Search is derived from the circumstance of one of the parties being belligerent; and that the Neutral, by allowing men belonging to the Ships of War of the belligerents to enter into his Service, steps out of his Character of Neutral, by depriving the belligerent of his means of carrying on the War. . . .⁷

On July 29 the American Minister to the Court of St. James met with the British Secretary of State for Foreign Affairs. That meeting had originally been scheduled to deal with outstanding matters other than the new crisis, but quickly shifted to the subject of the Chesapeake-Leopard incident. Canning and Monroe agreed that the

⁵ Naval Chronicles, XVIII, 129, 130. Emphasis in the original.

⁶ Neutrality, II, 174, n. 12.

⁷ July 30, 1807, quoted in Perkins, Prologue, p. 193.

questions raised by the Chesapeake crisis should take precedence over any other issues between the two nations; the prior negotiations on the terms of the December treaty and on the collection of minor incidents which were accumulating in Anglo-American relations were postponed by mutual consent until the crisis could be settled. The central issue was, from the British point of view, the question of the citizenship of the men impressed from aboard the American frigate. From Monroe's point of view, however, the key to the matter was the fact that the men, whatever their citizenship, had been taken from the deck of a national warship--a clear violation of American sovereignty, since warships were public vessels and distinctly a part of the nation's territory. The question of the jurisdiction over a merchantman had been endlessly debated by the United States and Great Britain, without resolution, but there was no question or ambiguity in the case of a public armed vessel such as the U.S.S. Chesapeake. The British Foreign Secretary refused to center on the territorial issue and persisted in maintaining the importance of the citizenship question. In general, and without making any pledges, Canning impressed the American Minister as willing to resolve the crisis without causing a breach in Anglo-American relations. The two representatives agreed that the gist of the American position should be stated in a formal note and closed the meeting.⁸

The formal note (written the same day) was brief and belligerent. It labeled the Leopard's action "an act of complete hostility . . . with a view to assert and enforce the most unfounded and most unjustifiable

⁸Reported in Monroe to Madison, August 4, 1807, A.S.P.F.R., III, 186-187.

pretension to search for deserters."⁹ Monroe called for a disavowal of the principle underlying Vice-Admiral Berkeley's June order and a recall of Berkeley himself.¹⁰ Neither of these points should prove a major stumbling block if, as Monroe assumed, the Portland Ministry had not authorized Berkeley's conduct in this matter.¹¹

The hardening of tone which the American Minister included in the formal note had at least one of the desired results. On August 3, 1807, Foreign Secretary Canning sent Monroe a formal note stating that "His Majesty neither does nor has at any time maintained the pretension of a right to search ships of war, in the national service of any State, for deserters." Canning further pledged that, in the case of proven British culpability, there would be no trouble in disavowing the actual action.¹²

Canning, however, had also hardened his tone. Having presented the general disavowal and the pledge for a more specific one should the British commander be responsible, the Foreign Secretary proceeded to task the American Minister to task on other points. Why, Canning asked, had Monroe included incidents in his formal note which had been stated by the American Minister himself as unfavorable topics for present discussion? Canning did not raise the citizenship question in that reply,

⁹ Monroe to Canning, July 29, 1807, Ibid., 187.

¹⁰ Ibid.

¹¹ Monroe to Madison, August 4, 1807, Ibid., 186.

¹² Canning to Monroe, August 3, 1807, Ibid., 188.

and Monroe may have assumed from that omission that the subject was safely shelved.¹³

Secretary of State Madison's instructions on the Chesapeake crisis did not reach London until August 31, 1807.¹⁴ The tone of the instructions matched the tone of Monroe's formal note, beginning by calling the incident an "enormity . . . [which] is not a subject for discussion" and which "demands, in the loudest tone, an honorable reparation." Discussions on all other topics were to be dropped until the reparations for the Leopard's attack on the Chesapeake had been settled. The crux of the incident, as Monroe had already asserted, was the violation of American sovereignty, not the citizenship of the men impressed. For reparations the United States required

. . . a formal disavowal of the deed, and restoration of the four seamen to the ship from which they were taken. . . . As a security for the future, an entire abolition of impressments from vessels under the flag of the United States. . . .

The abolition of impressment from American ships, whether public or privately owned, was an "indispensible" part of the reparations, and was to conform to the form laid out in earlier instructions to Monroe and Pinkney as joint American commissioners. The alternative to such reparations, Madison noted, would be "a resort to means depending on the United States alone," which retaliation did not include the July 2 Proclamation interdicting American waters to all British warships. That was purely a measure of self-protection, not a head-start on unilateral determination of reparations.

¹³Canning to Monroe, August 3, 1807, 188.

¹⁴See Monroe to Madison, September 16, 1807, A.S.P.F.R., III, 189. The text of the instructions is Madison to Monroe, July 6, 1807, Ibid., 183-185. All quotes in the following paragraph are from these instructions.

A meeting with the Foreign Secretary took place within a week of Dr. Bullus' delivery of the instructions. Although Canning was "conciliatory" during that meeting, if firm about abolition of impressments from merchantmen, no results were forthcoming. Canning raised three points in reply to the American demands: the President's interdiction of American waters to British warships, the American practice of returning French deserters even while protecting British deserters, and the separate nature of the Chesapeake-Leopard incident and impressments from merchantmen. Monroe answered each of the points according to his instructions and previously established American arguments on the same and related subjects. Canning continued to reject any solution to the Chesapeake crisis which involved impressment from merchantmen, even if the public face of such a settlement could be worked to make the topics appear separate.¹⁵

Monroe embodied his discussion with Canning, based upon his instructions, into a formal note on September 7.¹⁶ The formal note limited the topic to that of reparations for the Leopard's action. According to the American Minister, the incident of June 22 was "unprovoked and unexpected on one side," with

¹⁵ Monroe to Madison, October 10, 1807, A.S.P.F.R., III, 191-192. The American answer to Canning's question about treatment of French deserters was, essentially, that any treatment of deserters was a local matter since there were no treaty stipulations on the subject. Since the French officers were usually better behaved about requesting the return of deserters, they received better local cooperation.

¹⁶ Monroe to Canning, September 7, 1807, Ibid., 189-191. All quotes in this paragraph are from this note.

nothing to extenuate it on the other. The commander of His Majesty's squadron on the coast of the United States appears to have acted on a presumption that he possessed the power to make war, and to decide on the causes of war. It will be difficult to . . . find an example of an aggression marked with such high indignity and injustice to a friendly Power.

The greater part of the note, however, was given over to the question of impressments from all American ships, in a final hope to clear the way for British disavowal of the whole practice. Without that, proper reparations would be impossible.

Canning waited over a fortnight to make a reply to the American Minister's formal demand for reparations, but when it finally came it proved to be a tour de force.¹⁷ In composing his reply to Monroe's note, the Foreign Secretary ignored everything which had passed between himself and James Monroe outside of formal notes. Canning developed the interdict proclamation into a major bone of contention preventing the granting of reparations by Great Britain. He informed the American Minister that

. . . in so far as the Government of the United States have thought proper to take the reparation into their own hands, and to resort to measures of retaliation, previously to any direct application to the British Government or to the British Minister in America for redress, in so far the British Government is entitled to take such measures into account, and to consider them in the estimate of reparation which is acknowledged to have been originally due.

Moreover, Canning asserted that

. . . I am precluded from concurring in the inference, that therefore the national character of the men who were violently taken from on board the Chesapeake makes no part of the present question.

¹⁷Canning to Monroe, September 23, 1807, Ibid., 199-201. All quotes in this paragraph are from this note.

. . . It is not intended to allow that the sailors of Great Britain would be justly employed against her concert in foreign ships of war, but merely that redress is, in that case, to be sought for by Government from Government, and not be summarily enforced by the unauthorized officer of any of His Majesty's ships of war.

The enlistment of British subjects, the Foreign Secretary concluded, aboard American public vessels was an act "which the British Government would be justified in considering as an act of hostility."

The negotiations of the Chesapeake-Leopard incident were to be placed in the hands of a special British envoy to the United States and, hopefully, concluded in Washington. That envoy, George H. Rose, departed Lympington, England, aboard H.M.S. Statira on November 9, 1807.¹⁸ The instructions for Rose's mission included the command "to require the Recall of the Proclamation of the President of the United States, and the discontinuance of the Measures which have been adopted under it . . . previously to entering into any negotiation."¹⁹ At the same time, Rose was "absolutely prohibited" from entering into any negotiations respecting impressments from aboard merchantmen. Thus, while Canning had tacitly disavowed both the principle of a right to search armed public vessels for deserters and the specific action involving the U.S.S. Chesapeake and H.M.S. Leopard, Canning was not willing to produce these more formally without major concessions on the part of the United States.

Canning himself assessed the exchange with James Monroe over the Chesapeake-Leopard incident as a distinct British victory. At the end

¹⁸Excerpt from the Globe, in the Washington National Intelligencer, December 18, 1807. The Intelligencer is hereafter cited as N.I.

¹⁹Canning to Rose, October 24, 1807, I.B.M., p. 237. The full text of Rose's instructions are Ibid., pp. 235-242.

of September, 1807, he privately informed Lord Boringdon:

If they had taken our atonement by itself, as we offered it, they would have appeared to gain something. But they have so managed Matters that we shall now appear to bully them even in making reparations. Nothing could be more advantageous for us than the course which they have taken.²⁰

The instructions to Rose insured that the situation would remain as Canning described it. Unaware of Canning's apparent feelings of triumph, the American Minister who had (on instructions from his government) so played into the Foreign Secretary's hands departed England with a mixture of relief and regret. The closing of the Chesapeake negotiations at last allowed Monroe to retire from a post he had been seeking to leave since 1805. He regretted, however, that he did not leave his successor a job "altogether free from difficulty."²¹

Monroe prepared his final report to the Secretary of State on the Chesapeake situation on October 10, 1807. A happy accident allowed Monroe to send duplicates of these dispatches to Washington by a ship then ready to depart for Boston.²² The originals were to reach the United States via the U.S.S. Revenge. The duplicate dispatches reached Washington City at the end of November, and by December 1, 1807. The receipt of Monroe's final Chesapeake dispatches forced President Jefferson and his Cabinet to make a firm decision as to the character of

²⁰ Quoted in Perkins, Prologue, pp. 195-196.

²¹ Monroe to Madison, October 10, 1807, A.S.P.F.R., III, 192.

²² George Joy to Madison, October 11, 1807, Madison Papers, Joint University Libraries, Vanderbilt University, Nashville, Tn. (Library of Congress microfilm copy, series 1, reel 9). Hereafter cited as Madison Papers.

the "means depending on the United States alone" with which Madison had threatened the British Government.

The months between the departure of the Revenge with the instructions for Monroe and the receipt of Monroe's final Chesapeake dispatches were not idle and certainly not relaxed. Captain Douglas' squadron in the Chesapeake Bay area continued to provide tensions with which the Jefferson Administration had to deal. Not until October did three of Douglas' five ships leave the Chesapeake; the last ships departed in December.²³ Throughout these months the vessels of Douglas' squadron (along with any other British vessels in American waters) were considered to be enemy vessels, and American authorities were "to act toward them as we would toward enemies in regular war, in like cases."²⁴

From the middle of September on, news and rumors dribbled into the United States from Europe and from London in particular. The British operations against Copenhagen were reported in the National Intelligencer and other American newspapers throughout early October.²⁵ At the beginning of October excerpts from the "Russian Court Gazette" and from a German journal provided letters written by Tsar Alexander I commenting to friends upon the events at Tilsit in July.²⁶ On November 16, 1807, the arrival of one Captain Doane via the ship Sansom was reported in the National Intelligencer. Doane reported that negotiations

²³N.I., October 19 and December 23, 1807.

²⁴TJ to Madison, August 20, 1807, L. & B., XI, 340.

²⁵See, for instance, N.I. issues for October 5, 7, and 19, 1807.

²⁶N.I., October 2 and 5, 1807.

in London had broken down and that war was soon to come. The single bright spot in several dark months of newspaper reports and general rumors was the appearance, toward the end of September, of a report declaring that the British Foreign Secretary had disavowed the attack on the Chesapeake. The "report" was actually an unidentified excerpt from Canning's note to Monroe, received by the American government in mid-September and supplied to the Intelligencer by the Secretary of State.²⁷

Secretary of the Navy Robert Smith and Secretary of the Treasury Albert Gallatin were apparently more optimistic about the British response than President Jefferson. News of the military affairs of early June, especially the French victory over Russia at Friedland, made Jefferson's personal view of affairs dismal. At the beginning of September the President informed the Secretary of the Navy that a rumored peace settlement on the Continent would give Britain a free hand and an enlarged group of neutrals with which to trade, in which case "the present ministry, perhaps no ministry which can now be formed, will not in my opinion give us the necessary assurance respecting our flag. In that case, it must bring a war soon." Only if the aftermath of the Battle of Friedland and other Continental events should exclude Britain from the Baltic Sea would the United States stand a chance of gaining reparations from England.²⁸ In early October Jefferson's attitude had not changed in spite of the disavowal of principles which Monroe had sent home. The President informed Thomas Paine that "all the little

²⁷ N.I., September 28, 1807; Brant, Madison, IV, 389.

²⁸ Dated September 3, 1807, Lipscomb, XI, 357, 356-357.

circumstances coming to our knowledge are unfavorable to our wishes for peace."²⁹

Congress opened the first session of the Tenth Congress on October 26, 1807. The Seventh Annual Message went through three drafts, at least the first of them being too much like a war message for the tastes of Secretaries Gallatin and Smith.³⁰ The final draft was less belligerent than the first, undoubtedly because of the remonstrances of Gallatin and Robert Smith. Five days before the Congress convened, the Secretary of the Treasury informed the President:

. . . We will be universally justified in the eyes of the world, and unanimously supported by the nation, if the grounds of war be England's refusal to disavow or to make satisfaction for the outrage on the Chesapeake. But I am confident that we will meet with a most formidable opposition should England do that and we should still declare war because she refuses to make the proposed arrangement respecting seamen. It is in that case that measures short of war may become proper, leaving to England, if she chooses, the odium of commencing an actual war. . . .³¹

At the same time, Gallatin pointed out that the planned preparations for defensive works at selected American ports remained largely that--plans. "Those essential preparations," wrote Gallatin, "are in some places hardly commenced, in every respect incomplete."³² Nevertheless, Jefferson remained concerned about the advantage which such a situation

²⁹Dated October 9, 1807, Ibid., 378.

³⁰Malone, JHT, V, 459 and n. 17, p. 459.

³¹Gallatin to TJ, October 21, 1807, Henry Adams (ed.), The Writings of Albert Gallatin, 3 vols. (Philadelphia: Lippincott, 1879), I, 359. Hereafter cited as Gallatin, Writings.

³²Ibid., p. 360.

would give to Great Britain. "If we resort to non-importation," he wrote to one of his sons-in-law, "it will end in war and give her Britain the choice of the moment of declaring it."³³

About two-fifths of the Seventh Annual Message as submitted to Congress concerned itself with Anglo-American relations. Relations with the remainder of the European powers and with the Barbary states each received one sentence. In relations with Europe, outside of those with Great Britain, "our harmony has been uninterrupted, and commerce and friendly intercourse have been maintained on their usual footing."³⁴ Summarizing the current state of relations with Great Britain, the President covered the December treaty signed by Monroe and Pinkney (along with the reasons for rejecting it), the Chesapeake-Leopard incident, and the Order in Council of January 7, 1807, which prohibited the direct trade between any two ports not open to British ships. If the tone of these sections did not ring the war tocsins, the events reviewed left no doubt that the tocsins were ready and waiting. Jefferson set the problem of the Chesapeake-Leopard incident aside, however, with the note that definite dispatches could be expected from London in the near future. They would supply the information needed to properly guide American policy toward Britain.

Jefferson asked Congress for no specific legislation in the Seventh Annual Message. The House of Representatives was its usual vociferous self; the Senate was, in John Quincy Adams' eyes, lethargic.

³³TJ to Thomas Mann Randolph, October 26, 1807, quoted in Brent, Madison, IV, 392.

³⁴The text of the Message, dated October 27, 1807, is in C.M.P.P.:I, pp. 413-418; the quoted section is Ibid., p. 415.

An ad hoc committee in the House examined the "aggressions" mentioned in the Message, and reported out a resolution condemning the actions of H.M.S. Leopard and those of Captain Douglas' squadron in the Norfolk area as "flagrant violation[s] of the jurisdiction of the United States." The Chesapeake-Leopard incident itself, the committee reported, was "stamped with circumstances of indignity and insult, of which there is scarcely to be found a parallel in the history of civilized nations."³⁵ The Senate committee on the same subject brought in an "aggression" bill on the line of the "Ports and Harbors" Act (1805) which would expire at the end of the present session of Congress.³⁶ Both houses passed a Naval Appropriations bill which was approved by the President on November 24, 1807.³⁷

On December 7, 1807, the President submitted to the Congress the dispatches which had arrived from Monroe at the end of November. The message of submission made it clear that Congress was being supplied with the papers for its own information. The negotiations "being still depending," the Congress was to wait upon the results of the Rose mission before taking any action on the dispatches.³⁸ Only one copy of the letters from Monroe was sent to Congress that day. This set of papers went first to the House of Representatives, where they were read the same day. The Senate adjourned without waiting for the House to

³⁵Annals, 10th Cong., 1st Sess. (1807), pp. 2291, 2290.

³⁶Ibid., pp. 24-38, 43-44. But see the entries for November 23 and 26, 1807, in JQA, Memoirs, I, 479-480, 481.

³⁷Annals, 10th Cong., 1st Sess. (1807), p. 2813.

³⁸The text of the message is in C.M.P.P.:I, p. 420.

finish reading the dispatches. On December 8 the dispatches were read in the Senate, employing "about two hours, and little else was done."³⁹

John Quincy Adams described Jeffersonian policy more than once during the Congressional session as "procrastination, and if Great Britain does not wage complete war upon us, we shall end with doing nothing this session."⁴⁰ Following a dinner party at the President's House, Adams reported that the President had informed the British Minister (also present at the dinner), that the Rose mission would "take us all winter, and in the mean time your nation will make peace and leave us nothing to dispute about--that is all my hope."⁴¹

John Quincy Adams had been greatly upset by the spate of rumors and news which reached the United States during the first part of November. The rumors reinforced "the opinion I have entertained for some months, that this country cannot escape a war."⁴² The dispatches submitted to the Congress on December 7 and 8 produced quite a different effect on Adams. Three days after these were read in the Senate, the Massachusetts Senator informed a correspondent:

The Ground taken by our government on the subject of the attack upon the Chesapeake has been sanctioned even by the British ministry, who in the most unqualified manner have

³⁹ Entries of December 7 and 8, 1807, JQA, Memoirs, I, 486-487; the quote is Ibid., p. 487.

⁴⁰ JQA to John Adams, November 30, 1807, JQA, Writings, III, 164. Emphasis in the original

⁴¹ Entry of November 25, 1807, JQA, Memoirs, I, 480; the emphasis is Adams'.

⁴² Entry of November 14, 1807, Ibid., p. 476.

disavowed the orders of Admiral Berkeley, have disclaimed in the most pointed terms every pretension to search a national ship for deserters; and have declared themselves willing to make proper reparation for the aggression.⁴³

The Executive was less happy about the implications, and less definite about what those implications were, than was John Quincy Adams. During the discussions within the Executive in the days immediately following the arrival of the Chesapeake dispatches, Jefferson was of the opinion, "What is good in this case cannot be effected; we have, therefore, only to find out what will be least bad."⁴⁴ Canning had removed the main fuse from the war powderkeg; the disavowal of the principle of search aboard national vessels and the disavowal of Berkeley's action in particular were sufficient to set aside an immediate war. However, the major evil--impressment per se--had not been resolved, and reparations (even if determined unilaterally) had not been made by Great Britain. More than once during the preceding months Jefferson had characterized the choice soon to be facing the Congress should negotiations fail as a choice between war or economic sanctions. In the midst of the July crisis stemming from the Chesapeake-Leopard incident, the President was of the opinion "the executive should do nothing, necessarily committing . . . [Congress] to decide for war in preference of non-intercourse, which will be preferred by a great many."⁴⁵

⁴³To Joseph Hall, December 11, 1807, JQA, Writings, III, 164.

⁴⁴TJ to Gallatin, December 3, 1807, Gallatin, Writings, I, 367. Emphasis in the original.

⁴⁵TJ to George Clinton, July 6, 1807, Lipscomb, XI, 258.

Some form of economic coercion as a retaliatory action short of war had long been a part of the American climate of opinion. The threat of economic sanctions to foster the development of manufactures had been used by the Southern colonies for nearly half a century prior to the Revolution.⁴⁶ Similar measures had been used by the First Continental Congress and by the individual colonies as a response to British commercial and political restrictions after the French and Indian Wars.⁴⁷ One historian of the period has claimed that economic coercion was an integral part of the "political education" of the Republican party.⁴⁸

James Madison, particularly, was an active advocate of economic sanctions as an offensive or a retaliatory weapon. Throughout his service in Congress he viewed economic coercion as a major tool in the American foreign policy toolbox. In 1789 and 1791 Madison called for retaliatory duties as a means of forcing changes in the British navigation laws. In 1794 he supported the use of economic coercion against Great Britain for her "wartime depredations" on American commerce. On that occasion a thirty-day embargo was enacted by the Congress, but not renewed. More recently Madison had put forth the idea of using economic sanctions to "force all nations having colonies in this quarter of the globe to respect our rights."⁴⁹

⁴⁶C.R. Haywood, "Economic Sanctions: Use of the Threat of Manufacturing by the Southern Colonies," Journal of Southern History, XXV (May, 1959), 208 and passim.

⁴⁷Curtis P. Nettles, The Roots of American Civilization (New York: Appleton-Century-Crofts, 1963), pp. 650-651.

⁴⁸Henry Adams, The Life of Albert Gallatin (1879; reprint ed., New York: Peter Smith, 1943), p. 368.

⁴⁹Madison to TJ, September 14, 1807, quoted in Brant, Madison, IV, 399. On Madison's advocacy of economic sanctions, see Ibid., pp. 397-400.

Nor was all sentiment favoring economic sanctions hoarded by the members of Jefferson's Executive. Early in the Chesapeake crisis, calls for an embargo developed outside the Executive. William Duane, for example, suggested an embargo as early as July. In this he may have represented many of the more volatile Pennsylvania Republicans.⁵⁰ During the same month, General Samuel Smith of Maryland, a prominent Baltimore merchant and one of Maryland's Senators in the current Congress, demanded an embargo against Great Britain in strong and certain terms.⁵¹

The Administration occupied itself with determining the form which economic sanctions should take to best serve against Britain. A limiting factor in their deliberations was the upcoming arrival of George Rose. Although the President did not foresee a settlement of matters by Rose, certain compromises were prepared for discussions with that envoy. Jefferson informed David Erskine early in December that the United States would be willing to settle the Chesapeake issue prior to general settlement of the impressment question.⁵² The immediate question before the Cabinet was whether the existing Non-Importation Act (1806) was sufficient or whether stronger measures were needed. Gallatin suggested they should "repeal the present Non-Importation Act,

⁵⁰ Sanford W. Higginbotham, The Keystone in the Democratic Arch (Harrisburg, Pa.: Pennsylvania Historical Commission, 1952), p. 136.

⁵¹ TJ to Smith, July 30, 1807, Lipscomb, XI, 301.

⁵² Erskine to Canning, December 2, 1807, quoted in Henry Adams, History of the United States of America During the Second Administration of Thomas Jefferson, Vol. II (New York: Scribner, 1918), pp. 162-163.

and in lieu thereof . . . pass a general non-importation Act [from Great Britain⁷] to take place, say on 1st February next."⁵³ The central idea occupying the minds of the Executive, however, seems to have been a law which would vest in the President, during the current Congressional session, the power to lay an embargo. Gallatin, at least, feared that such a plan would have difficulty in passing the House of Representatives.⁵⁴ Another possibility being considered was "continuing the suspension of the present law, by an Act of Congress, till the last day of the session."⁵⁵ All of these plans had the merit of being delayed or delayable in their operation, allowing time for adjustment in the light of developments growing from George Rose's mission. The period of debate afforded the Administration was limited not by the expected arrival of George Rose but by the existing Non-Importation Act. That Act, as modified in December 1806, was due to go into effect on December 14, 1807. By that time, Jefferson and the Cabinet must have decided upon the policy which they would recommend to Congress in regard to that Act.

The Executive decided to follow the easiest course. Rather than propose new legislation to Congress prior to Rose's arrival, the existing Non-Importation Act would be allowed to go into effect on December 14, 1807. Although the provisions of the Non-Importation Act were characterized by John Quincy Adams as "too much, or too little, for the present

⁵³ Gallatin to TJ, December 2, 1807, Gallatin, Writings, I, 367.

⁵⁴ Ibid.

⁵⁵ Herbert Heston, "Non-Importation, 1806-1812," Journal of Economic History, I (November, 1941), 180; Annals, 9th Cong., 2d Sess. (1806), pp. 16, 18, 19, 19-20, 22, 112, 114, 115-127, 154-159; TJ's proclamation, dated March 24, 1807, appears in N.I. from March 25, 1807.

state of things," David Erskine wished it to be repealed.⁵⁶ The Non-Importation Act had a short period of implementation between mid-November and mid-December, 1806, only to be suspended by legislative action in December, 1806, then by Presidential Proclamation the following March.⁵⁷ In spite of John Quincy Adams' judgment to the contrary, the Non-Importation Act had not yet received a full test of its effectiveness. Flaws had appeared in the short period of enforcement in late 1806, however, flaws which Secretary of the Treasury Gallatin hoped could be corrected before the law went into full effect. On December 11, 1807, Gallatin sent the House of Representatives a letter (written six days before) pointing out certain defects in the Act of 1806 and requesting clarification and strengthening on those points. The letter concluded with the admonition that, on the whole, "it is desirable that the act may not be carried into effect previous to a revision."⁵⁸

Gallatin's closing comment in the December 5 letter to the House of Representatives was apparently as close as Jefferson's Administration approached an official declaration of intent on the Non-Importation Act. It came late enough and in obscure enough a form. Petitions had been submitted to the two houses of Congress throughout the current session calling for the repeal of the Non-Importation Act before it could again go into effect. One petition occasioned a debate in the House of Representatives in late November, more on the legitimacy of petitions

⁵⁶ JQA to Hall, December 11, 1807, JQA, Writings, III, 165; entry of December 8, 1807, JQA Memoirs, I, 487.

⁵⁷ Herbert Heaton, "Non-Importation, 1806-1812," Journal of Economic History, I (November, 1941), 180; Annals, 9th Cong., 2d Sess. (1806), pp. 16, 18, 19, 19-20, 22, 112, 114, 115-127, 154-159; TJ's proclamation, dated March 24, 1707, appears in N.I. from March 25, 1807.

⁵⁸ Dated December 5, 1807, A.S.P.: Commerce and Navigation, I, 699.

than on the Act itself.⁵⁹ Republican floor leaders in both Houses were certainly instructed in the Administration's preferences in regard to the Non-Importation Act, but no special messages on the subject were sent to either house. On December 14, the day the Act was to go into effect, John Quincy Adams submitted to the Senate a memorial from the Boston merchants. Adams records that he had previously discussed this move with General Samuel Smith of Maryland and received the advice that it be allowed to lie on the table with a previous memorial from the merchants of Philadelphia. Adams agreed. Smith, however, moved that the Boston petition be made the business of a special committee. It was so ordered, with Smith as the committee's chairman. Problems arose when Samuel Maclay of Pennsylvania moved that the Philadelphia memorial be submitted to the same committee. Smith objected to the motion. He alleged that Maclay's motion to refer the Philadelphia memorial was "a political trick, intended to embarrass the Government."⁶⁰ After a two-hour debate on Maclay's motion of referral the Philadelphia memorial was committed to the committee on the Boston memorial by a vote of 16 yeas to 13 nays.⁶¹

The committee on the memorials, under Smith's direction, then began the job of hammering out a report to the Senate. The difference between the Philadelphia and Boston memorials was small but crucial.

⁵⁹The debate is in the Annals, 10th Cong., 1st Sess. (1807), pp. 961-981; for comments see Malone, JHT, V, 477-478.

⁶⁰Entry of December 14, 1807, JQA, Memoirs, I, 489; on the activity of the day see Ibid., pp. 488-489.

⁶¹Annals, 10th Cong., 1st Sess. (1807), p. 48; JQA, Memoirs, I, 489.

The Philadelphia merchants had prayed for the outright repeal of the Non-Importation Act. The Boston merchants, on the other hand, had prayed for the suspension, modification, or repeal of the Act. No movement toward a revision of the Act could be made from the Philadelphia plea. The Boston plea allowed the committee more latitude in reporting on the memorial, specifically the latitude to report changes and modifications in the original Act. It was the latter course which Executive policy, as implemented by General Smith of Maryland, was intended to follow. According to John Quincy Adams, the committee decided to reject the plea of the Philadelphia merchants and concentrate upon that of the Boston merchants. The final committee report declared against an outright repeal of the Act, and favored instead "a further suspension and modification" of the Non-Importation Act.⁶²

The House of Representatives went through a similar train of activities on a group of Boston memorials submitted by Josiah Quincy, a Federalist Representative from Massachusetts. After an extended debate the House voted to refer the Boston memorials to the Committee of the Whole.⁶³ A previous attempt had been made to submit a memorial from the Philadelphia merchants to the House's Committee of Commerce and Manufactures--without success. Following the referral of the Boston memorials to the Committee of the Whole, another motion was made to submit the Philadelphia memorial to committee. It again failed, by a

⁶² Entry of December 15, 1807, JQA, Memoirs, I, 490.

⁶³ Entry of December 14, 1807, JQA, Memoirs, I, 489; Malone, JHT, V, 478; Annals, 10th Cong., 1st Sess. (1807), pp. 1172-1177.

small majority.⁶⁴ The House had also committed itself to modification of the existing Non-Importation Act rather than its repeal.

The Executive's response to the Chesapeake crisis was to modify the existing legislation for commercial sanctions against Great Britain. That decision did not leave the President easy in mind. In October Jefferson had feared an American policy based upon non-importation would simply allow Britain rather than America the choice of timing in opening a war. His state of mind was hardly better in mid-December. The unamended Non-Importation Act went into effect by default on December 14, 1807. On the same day, Senator Nicholas Gilman of Pennsylvania informed a friend "(in confidence) the man in the Stone House is of the opinion that the Die is Cast."⁶⁵

⁶⁴Entry of December 15, 1807, JQA, Memoirs, I, 489; Annals, 10th Cong., 1st Sess. (1807), pp. 1178-1188.

⁶⁵To William Eustis, December 14, 1807, quoted in Bradford Perkins, Prologue to War, p. 149. Parentheses and emphasis in the original.

CHAPTER V

DIES IRAE

The second of the two powderkegs buried in the wartime contacts between the United States and the European powers exploded during the course of the week of December 14-18, 1807. If the implementation of the Non-Importation Act did not cast the American die, the news reaching Washington City in the week following certainly did. The explosion of this second powderkeg was broader in its impact and more damaging than the Chesapeake-Leopard encounter of the summer. It was also less immediate in its shocks and less obvious in its impact. Nor was it the result of the single Anglo-American fuse; it had multiple fuses, British and French, which reached the powder at about the same time.

In simplest terms, American neutral commerce had been forged into a weapon of war to be wielded by whichever belligerent proved to be the better blacksmith. The Franco-Russian rapprochement at Tilsit aided that forging by creating two coherent power blocks dominant in disparate spheres--the Tiger and the Shark, as one historian has labeled them¹--and stalemated in the military arena. Only in the commercial arena could the Shark and the Tiger meet in decisive combat, and even there only through neutral pawns. Britain designed a "Maritime System" aimed at insuring that any goods which reached Continental ports were British goods or had passed through Britain. Napoleon implemented his

¹Marshall Smelser, The Democratic Republic, title, Chapter 7.

Continental System in order to shut British goods out of the Continental Markets.² The only channel by which British goods could reach the markets of an enemy Continent was via neutral shipping. As one British commentator wrote, if France "can have no Commerce but through our means, they will resort to us."³

Napoleon promulgated restrictions against goods from Britain and British goods in 1803 and 1804. Only after military and political development gave him control of the greater part of the Continental ports did Napoleon take serious steps to close the Continent to the goods which he had already restricted on paper. The Berlin Decree of November 21, 1806, closed off trade between Great Britain and the Continental ports. While Napoleon could not actually blockade the British Isles as the Berlin Decree announced, he could and did enforce that Decree in the Continental ports. Tsar Alexander I gave the French Emperor the last thread needed to sew the Continental System together. In the months following Tilsit (July 1807) the Emperor grew increasingly less tolerant of neutral shipping and neutral rights. After the end of August, 1807, the Berlin Decree was enforced against American shipping in spite of the liberal terms of the Convention of Mortefontaine (1800).

The British Maritime System was older and potentially more effective for controlling trade. Napoleon's Continental System could be enforced only in the Continental ports and, occasionally, by French privateers on the oceans. The Maritime System had the entire strength

² Napoleon, II, 188; Watson, Reign of George III, pp. 463-464.

³ Sir John Nicholl to Canning, August 15, 1807, quoted in Bradford Perkins, Prologue to War, p. 199.

of Britain's Royal Navy behind its enforcement and the whole of the oceans as its effective scope. During the first years of the Napoleonic Wars, Great Britain relied upon blockade and the decisions of the Admiralty Courts and Courts of Appeal to channel and restrict commerce with the Napoleonic ports. Blockade was used to close off European ports and many of the colonial ports in the West Indies. Restrictions on the trade between colonies and European ports was controlled through ship seizures and the decisions rendered by the prize courts. The most extensive of the blockade plans was imposed in May, 1806, covering the European "coast, rivers, and ports, from the river Elbe to the port of Brest, both inclusive."⁴ The colonial trade, carried on by neutral ships sailing between enemy colonies (especially in the West Indies) and the mother country in Europe, was subjected to restrictions through the decisions of the British prize courts, combined with occasional orders. These orders, it would appear, took more the form of warnings to the neutral merchant, instructions to the Royal Navy, and forms of interpretations for the courts than they did unilateral interpolations in the law of nations. At the beginning of the Wars, for instance, an order was issued to the Royal Navy and British privateers which governed what elements of trade between the West Indian colonies and a neutral country would be subject to capture and condemnation.⁵

The colonial trade was particularly bothersome to Great Britain and a major target of the Maritime System. The core of the problem presented by the neutral trade with belligerent colonies, in the words

⁴Charles Fox to Monroe, May 16, 1806, A.S.P.F.R., III, 267.

⁵Dated June 24, 1804, signed by Pelham, A.S.P.F.R., III, 265.

of a modern commentator, was: "Of what use to be masters of the seas, if the enemy was entitled to furl his own flag and carry on his normal commerce in the ships of neutrals?"⁶ Great Britain's answer to that question was a stricture against neutral shipping taking the place of the enemy's shipping--often referred to as the Rule of the War of 1756 because of its origins in that war. Britain applied this Rule during the Napoleonic Wars to prevent neutrals (particularly the United States) replacing French shipping in the trade between the West Indies and France herself. The brunt of the Rule was that neutrals could not, simply because there was a war, enter into trade which had been closed to neutral shipping during peace.⁷ Following the reopening of hostilities in 1803 Britain did not strongly enforce the Rule; in the spring of 1805 she began to do so. The decision of the Courts of Appeals in the case of the American merchantman Essex was a major shift in Britain's policy toward neutral trade--not, indeed, as to the character of strictures under which that trade operated, but the intensity with which those strictures were applied in practice and enforced.

The decision handed down on the Essex preceded Napoleon's Berlin Decree by a year and a half and the blockade (by the British) of the European coast from the Elbe River to the port of Brest by a year. Up to the end of 1806 it represented the harshest conditions laid down by

⁶Richard Pares, Colonial Blockade and Neutral Rights, 1739-1763, p. 181.

⁷The history and theory of the Rule is a tangled wood. The best modern treatment is Pares, op. cit.; perhaps the most interesting contemporary analysis may well be James Madison's "An Examination of the British Doctrines Which Subjects to Capture a Neutral Trade, Not Open in Time of Peace," which may be found in Hunt, VII, 204-375.

either belligerent. The Berlin Decree broke the log jam. In the offensive note appended to the final terms of the Monroe-Pinkney treaty the British negotiators warned that if Napoleon did not withdraw the Berlin Decree, "His Majesty might probably be compelled . . . to adopt, in regard to the commerce of neutral nations with his enemies, the same measures which those nations shall have permitted to be enforced against their commerce with his subjects."⁸ Seven days after tacking that note onto the treaty just signed between the United States and Great Britain, His Majesty did retaliate through an Order of the King in Council prohibiting neutral trade directly between two ports, both of which were closed to British ships.⁹ In effect, American trade with the Continent could be carried on only directly from an American port to a single Continental port and returned, or only by breaking voyage at a British port in between--making the ship liable to seizure under the Berlin Decree should Napoleon decide to ignore the terms of the Convention of Mortefontaine. The fuses were beginning to smoulder in that second powderkeg.

None of this occurred in secrecy and news of the intensification of the commercial warfare reached the United States by one means or another. Official documents, edicts, and proclamations were communicated from government to government via the usual diplomatic channels. Rumors of less official matters and of matters under consideration arrived by the usual channels for such. Throughout the days of the Chesapeake crisis, news of new commercial restrictions accompanied the rumors of

⁸ A.S.P.F.R., III, 152.

⁹ Dated January 7, 1807, A.S.P.F.R.

success and failure in the Chesapeake discussions. The same ship which brought Captain Doane and his war rumors brought a copy of the London Star for September 28, 1807, containing an article announcing the probability of British retaliation against the Berlin Decree: "[O]ur government has resolved to retaliate on France by a proclamation, exactly on the model of the French decree of blockade."¹⁰ Such an action had, in fact, been suggested in Parliament as early as the end of February or the first of March. About the time of the article in the London Star the proposal was taken up in earnest by the Portland Ministry and shaped into a weapon of commercial warfare.¹¹ The final result was the group of Orders in Council issued November 11, 1807, requiring all trade with the Continent be channeled through Britain. As one British historian has pointed out, "The system was not applied as a means of prohibiting Europe from trading with neutrals but of directing, taxing, and controlling that trade."¹²

Rumors were also arriving in the United States of increasing pressure on neutrals from France. In mid-November, at about the same time as copies of the London Star of September 28 and Captain Doane reached the United States from England, materials from France arrived aboard the ship Sally-Barker-Windsor. Included in the materials was a private letter reporting that Napoleon was about to promulgate restrictions against all commerce via England.¹³ More important to the Jefferson

¹⁰ Excerpted in the N.I. for November 16, 1807.

¹¹ Perkins, Prologue, pp. 198-199; Watson, Reign, p. 465.

¹² Watson, Reign, p. 465.

¹³ N.I., November 20, 1807.

Administration, dispatches from the American Minister to Napoleon's Court (John Armstrong) had arrived which gave official indications that Napoleon's attitudes toward excepting America from the effects of the Berlin Decree might be changing. Armstrong had received a copy of a letter written by the French Minister of Justice, Regnier, which revised the interpretation of the Berlin Decree to be followed by the French prize courts. The accompanying letter of transmittal, from the Minister of Exterior Relations (Champagny), stated that Napoleon "considered every neutral vessel going from English ports, with cargoes of English merchandise, or of English origin, as lawfully seizable by French armed vessels."¹⁴

The President of the United States and his Secretary of State also had more substantial information on the British debates then in progress than the rumors brought by Doane and the excerpts from the London Star. One source in particular was an English correspondent of Madison's who was particularly friendly to the American position on neutral commerce, George Joy. Joy had warned Madison and the President several times over the past months of a trend toward stricter commercial regulations by Britain. A letter of October 11, 1807, speaks of "the rigorous Blockade" which was expected but not yet announced.¹⁵ Earlier letters from Joy indicate that the orders proclaiming such an action were strongly expected throughout the first week in October, to extend to "all french ports and ports in the continent of france. [sic]"¹⁶

¹⁴Champagny to Armstrong, October 7, 1807, A.S.P.F.R., III, 245; Regnier's letter, dated September 18, 1807, Ibid., pp. 244-245.

¹⁵Joy to Madison, October 11, 1807, Madison Papers.

¹⁶Joy to Madison, October 5, 1807, Madison Papers.

The news from Europe turned from rumor to hard fact during the week of December 14-18. The first spark was the arrival of the U.S.S. Revenge with dispatches from Minister John Armstrong in France. Those dispatches reached the Secretary of State on December 14, 1807, the same day the Non-Importation Act went into effect, and included news that the American merchantman Horizon has been condemned under the new interpretation of the Berlin Decree.¹⁷ The threat contained in the Regnier letter of September was confirmed--Napoleon had torn up the Convention of M^ortefontaine as far as the Berlin Decree was concerned. That alone was enough to excite concern in the Executive branch. Two days later, however, a second and a third spark were added to the fuse, and the powderkeg exploded. British newspapers of November 11-12 reached New York on December 12 and Washington City on or by December 17.¹⁸ At about the same time, a copy of a proclamation by King George III, issued October 16 and calling for an intensification of impressments, arrived in Washington City.¹⁹

¹⁷Madison to Armstrong, February 8, 1808, A.S.P.F.R., III, 249, acknowledging receipt of the dispatches. The dispatches are Ibid., 245-247.

¹⁸N.I., December 18, 1807.

¹⁹Adams, History, p. 166, gives December 17 as the date of arrival. The Gazette in which the proclamation was printed probably crossed via the Augusta, which docked December 13 at Norfolk. See also JQA, "Reply to the Appeal of the Massachusetts Federalists," in Henry Adams (ed.), Documents Relating to New-England Federalism, 1800-1815 (Boston: Little, Brown, 1905), p. 188. JQA's "Reply to the Appeal . . ." is hereafter cited as JQA, "Reply."

During the Chesapeake crisis, the President and his advisors had great lengths of time to determine basic policy and choose the form of response most appropriate to the situation. Now, they could expect to have virtually no time at all. If the British newspapers were correct, as the information to hand from other sources and the tone of the newspapers themselves strongly implied, the Orders in Council scheduled for signing on November 11 had already been in force a month. The new interpretation of the Berlin Decree had certainly been in effect for at least the same length of time. Any ship sailing from the United States for Europe was liable to capture by one belligerent or the other. And, the Royal proclamation of October threatened a new spate of impressment incidents involving any American ship at sea. Speed must have appeared essential in order to cut down losses and incidents from all of these sources. Nor would basic policy be difficult to determine--much had already been eliminated in prior discussions on the proper response to the Chesapeake crisis. But, the existing Non-Importation Act was clearly insufficient as a protection against the new shockwaves of disaster. The only sufficient answers were war or full-scale embargo, and the only question now was which one it should be.

Jefferson consulted with members of the House of Representatives and the Senate, probably on the evening of December 17, to discuss the possibilities available. It became clear from that consultation that embargo might be a possibility; war was not, even should the President request it.²⁰

²⁰ JQA, "Reply," p. 188; Timothy Pickering to Rufus King, January 11, 1808, King, V, 53.

With an embargo the only probable choice of response, the Executive went to work laying out the specific measure to be proposed to Congress. By the morning of December 18 the basic lines had been prepared. A sketch of a resolution was drawn up by Caesar Rodney, the Attorney General, and given to General Samuel Smith for submission to the Senate.²¹ The resolution, as of the morning of December 18, had no provisions for exempting foreign vessels then in American ports, and was to lay the embargo for an unlimited time. The Secretary of the Treasury retained doubts about the policy decided upon by the Executive. On the morning of December 18 he wrote a note to the President outlining those points of concern which remained with him about a "measure being of a doubtful policy, and hastily adopted on the first view of our foreign intelligence."²² Gallatin did not, however, feel that the measure should be dropped in toto, but should instead be recommended with modifications and for a limited time.²³

Jefferson recognized the validity of at least one of Gallatin's objections--the one concerning foreign shipping--and called a final Cabinet meeting for "before half after ten," to "let us be together before the message goes out of our hands."²⁴ At the same time, the President requested the Secretary's opinion on holding the Special Message and documents until James Monroe, on his way from Norfolk, could arrive in Washington, although "he will bring us no new information, as

²¹Gallatin to TJ, December 18, 1807, Gallatin, Writings, I, 368.

²²Ibid.

²³Ibid.

²⁴TJ to Gallatin, December 18, 1807, Gallatin, Writings, I, 369.

far as can be judged from his letter."²⁵ When the Cabinet did meet that morning, it decided to adopt one of Gallatin's objections (the one on foreign shipping), but to put no time limit upon the embargo as outlined in the sketch of a resolution prepared by Rodney. It was also decided to go ahead with submission of the Special Message with no delay for Monroe's arrival. Finally, the Cabinet gave its final approval of the measure as prepared, unanimously, as Jefferson later informed a correspondent.²⁶

The Executive's policy proposal was sent to both houses of Congress about or shortly after noon of the same day by the hand of Mr. Coles, Jefferson's private secretary.²⁷ The submission included a Special Message calling for an embargo and a set of four documents. The documents were an extract from the Regnier letter of September 18, the letter to Minister of Exterior Relations Champagny (dated September 24, 1807) requesting information on the new policy, and the letter of reply from Champagny to Minister John Armstrong (dated October 7, 1807) and George III's October 16 proclamation.²⁸ The text of the Special Message was that drawn up by Madison in reaction against an earlier,

²⁵TJ to Gallatin, December 18, 1807, Gallatin, Writings, I, 369.

²⁶Adams, History, p. 170, quoting a letter from TJ to John G. Jackson, October 13, 1808.

²⁷Entry of December 18, 1807, JQA, Memoirs, I, 490-491; U.S. Congress, Senate, Journal of the Senate of the United States of America, 10th Cong., 1st Sess. (1807) (Washington City: R.C. Weightman [1808], p. 69. The Senate's Journal is hereafter cited as Senate, Journal; all references are to the 10th Cong., 1st Sess. (1807).

²⁸JQA, Memoirs, I, 491; Annals, 10th Cong., 1st Sess. (1807), pp. 2327-2330; the text of the Regnier letter, in full, is in A.S.P.F.R., III, 244-245; the Champagny and Armstrong letters are in A.S.P.F.R., III, 245, 244 respectively.

more belligerent draft of the President's.²⁹ Jefferson's original message was a prolix review of the course of American relations with the belligerents during the past year. It included mention (as Madison's draft did not) of the British Orders of November 11--"not officially, indeed, communicated to us, yet so given out to the public as to become a rule of action with them"--and expressed the fear those regulations "will interdict all commerce whatever" with the European powers.³⁰ The situation was summed up as: "The whole world is thus laid under interdict by these two nations, and our vessels, and their cargoes and crews, are to be taken by the one or the other, for whatever place they may be destined, out of our own limits."³¹

The Senate passed an Embargo Act on the same day the Special Message was submitted to the Congress, in a period of something under three hours and by a vote of 22 to 6. The House of Representatives debated the passage of the Senate's Embargo Act for the remainder of that day and for two more days, finally passing the Act sometime after eleven o'clock in the evening of Monday, December 21, by a vote of 82 to 44.³² The Act was approved by the President on December 22, 1807.³³

²⁹TJ to Madison, July 14, 1824, Lipscomb, XVI, 69-70.

³⁰The full text is in Lipscomb, XI, 401-402, incorrectly identified as an undated letter from TJ to General John Mason--but see TJ to Madison, July 14, 1824, Lipscomb, XVI, 70. The section quoted appears in Lipscomb, XI, 401.

³¹Lipscomb, XI, 401.

³²National Intelligencer, December 23, 1807.

³³Annals, 10th Cong., 1st Sess. (1807), p. 2815.

In the Senate, the President's Special Message was read, with the accompanying documents, and referred to a select committee chaired by General Samuel Smith (Md.), and composed of John Quincy Adams (Ma.), Joseph Anderson (Tn.), Stephen R. Bradley (Vt.), and Andrew Gregg (Pa.). The committee, on the Senate's approval, reported out a bill. The bill was passed through all three readings shortly thereafter. Objections to a second reading in the same day--being a violation of the rules of the Senate--were removed by suspending the pertinent Senate rule for three days. Two motions for postponement were made, one for postponement until Monday and one until the following day; both postponement motions were defeated and the bill was passed by a final vote of 22 yeas and 6 nays.³⁴

The real debate upon the Embargo Act seems not to have taken place upon the Senate floor during the readings of the bill, but in the meeting of the select committee to which the Special Message was referred. Senator Smith (Md.) was the acknowledged floor leader of the Republican party in the absence of William B. Giles (Va.). It was General Smith who seems to have been appointed by the Executive to guide an embargo bill through the Senate.³⁵ In the committee meeting it was Smith who had to convince the other members of the committee that the embargo was the proper course of action. John Quincy Adams proved Smith's greatest stumbling block in the committee meeting; indeed, according to Adams himself, the only opposition in the committee. "I suggested very strong doubts," Adams recorded in his diary, "as to the propriety of the

³⁴Senate, Journal, pp. 70-74; Annals, 10th Cong., 1st Sess. (1807), pp. 50-51. The two accounts are virtually identical.

³⁵Cassell, Merchant Congressman, pp. 138-139.

measure, upon the papers sent with the President's message."³⁶ Adams finally agreed to a favorable report for an embargo "as a compliance with the special call for it."³⁷

The House of Representatives proved itself as prolix as the first draft of the Special Message. When the Senate bill was sent to the House about three o'clock, a debate already on the floor between John Randolph and Jacob Crowninshield was dropped in favor of the Senate's bill. Randolph introduced a resolution upon the Special Message which called for an embargo in short and exact terms. When debate on Randolph's motion arose, Nathaniel Macon moved that Randolph's resolution be tabled, which it was.³⁸ The Senate's Embargo Act, brought into the House chamber by the Senate Secretary, was "read the third time, and committed to a Committee of the Whole on the state of the Union on this day."³⁹ The House then resolved itself into such a Committee of the Whole for consideration of the bill, but was voted down. On Monday, December 21, in a twelve-hour session which finally ended after eleven o'clock that evening, the bill was finally passed with amendment by a vote of 82 yeas and 44 nays. The amendments in the final bill were essentially those reported by the Committee of the Whole. Several other amendments were proposed between the third reading and final vote on the bill. One of these motions, defeated by a vote of 82 to 46, was designed

³⁶Entry of December 18, 1807, JQA, Memoirs, I, 491; see also an excerpt from a letter by Stephen R. Bradley, dated October 21, 1824, in JQA, Writings, III, n. 2, pp. 168-169.

³⁷Entry of December 18, 1807, JQA, Memoirs, I, 491.

³⁸Annals, 10th Cong., 1st Sess. (1807), p. 1216.

³⁹Ibid., p. 1218.

to limit the embargo to sixty days.⁴⁰ An amendment to exempt vessels sailing to fish and another to exempt those countries who had treaties with the United States which touched on the subject were also defeated; the first by a vote of 82 to 45, and the second by a vote of 75 to 52.⁴¹ Two other motions, not directed at amending the terms of the bill, appeared during the last day of debate. One was directed to opening the House doors, it then being in secret session, and was defeated 92 to 36. The second motion was a motion for adjournment, and failed by a vote of 81 to 40.⁴² Following the adjournment motion, the final question of passage was put and answered in the affirmative by a vote of 82 to 44.⁴³

With the President's approval on the next day, Tuesday, December 22, the Embargo Act was formally the law of the land. Europe had America's response to the commercial warfare.

⁴⁰Annals, 10th Cong., 1st Sess. (1807), pp. 1218, 1220-1221.

⁴¹Ibid., p. 1219.

⁴²Ibid., p. 1221.

⁴³Ibid., pp. 1221-1222.

CHAPTER VI

EMBARGO: MOTIVATIONS AND CONCLUSIONS

If you can keep your head when all about you
Are losing theirs and blaming it on you,
If you can trust yourself when all men doubt you,
But make allowance for their doubting too;
If you can wait and not be tired by waiting,
Or being lied about, don't deal in lies,
Or being hated, don't give way to hating,
.....
--Rudyard Kipling

The day after President Jefferson signed the first Embargo Act into law a series of editorials justifying the Embargo began appearing in the National Intelligencer.¹ According to the first of the articles, the Embargo was

the best [thing] to be done . . . a dignified retirement within ourselves; a watchful preservation of our resources; and a demonstration to the world, that we possess a virtue and a patriotism that can take any shape that will best suit the occasion.²

As for the motivations for establishing such measures:

. . . the ocean presents a field only where no harvest is to be reaped but that of danger, of spoilation and of disgrace. . . . the great contending nations . . . have forced us into the measure, by the direct effect on us, of measures founded in an alleged regard for their own eventual safety and essential interests.³

¹Three editorials, probably written by James Madison, appeared in N.I. for December 23, 25, and 28, 1807. On Madison's authorship, see Brant, Madison, IV, 402-403.

²N.I., December 23, 1807.

³Ibid. Emphasis in the original.

Other sources of comment were less kind than the editorials in the National Intelligencer. The early blows were directed primarily against President Jefferson and one of the earliest was a full broadside unleashed by Timothy Pickering, a Federalist Senator from Massachusetts and a vociferous and virulent anti-Republican and anti-Jeffersonian. Early in 1808 Pickering published a pamphlet in the form of a letter to Governor James Sullivan of Massachusetts.⁴ The pamphlet carried the core of its import in the latter part of its title, which trumpeted the "imminent danger of an unnecessary and ruinous war." In the pamphlet, Pickering outlined what he considered to be the reasons for the Executive request for an embargo on American shipping. "In truth," Pickering wrote, "the measure appeared to me then, as it still does, and as it appears to the public, without a sufficient motive, without a legitimate object."⁵ At the end of the pamphlet Pickering listed the three "existing pretences--for there are no causes--" of what he felt to be merely the first step toward a war with Great Britain.⁶ There was the general practice by Great Britain of impressment on the high seas, the recent Chesapeake-Leopard affair, and Britain's application of the Rule of 1756 to prevent the United States carrying on trade for Britain's enemies.⁷ To Pickering, the Embargo Act was aimed directly at Great Britain, and exhibited the "dangerous extent of Executive influence."⁸

⁴ Timothy Pickering, Letter . . . to His Excellency James Sullivan (Boston: Greenough and Stebbins, 1808). Hereafter cited as Pickering, Letter.

⁵ Ibid., p. 5.

⁷ Ibid., pp. 13-14

⁶ Ibid., p. 13.

⁸ Ibid., p. 15.

Pickering's comments on the Embargo and on President Jefferson were far less considerate and forgiving in his private correspondence of the same period. In a letter written two days after the Senate had passed the Embargo Act, Pickering informed a correspondent that the policy suggested by the Executive was a "means of compliance [with French demands for support] without formally issuing an edict."⁹ The Embargo carried the strong impression, Pickering wrote, that the United States "should crawl into their shell, & there remain until the French Emperor shall say--Come Forth!"¹⁰ Pickering felt that Great Britain would consider the Embargo Act an act of hostility.¹¹ Events which he had predicted as the aftermath of another crisis over a year before had at last come to fruition.¹² The United States now had to choose sides in the Napoleonic Wars, and, Pickering was convinced, the Executive would choose in favor of France. The Embargo act was the first step in this direction.¹³

It was not a ~~member~~ of the Jeffersonian Executive who took up the task of refuting Pickering, but Pickering's own Senatorial colleague from Massachusetts. John Quincy Adams received a copy of Pickering's pamphlet on March 16, 1808.¹⁴ By the end of the month he had prepared an answer

⁹To Timothy Williams, December 20, 1807, in Timothy Pickering, Papers, Joint University Libraries, Vanderbilt University, Nashville, Tennessee (Massachusetts Historical Society microfilm ed.), Reel XXXVIII. Cited as Pickering Papers hereafter.

¹⁰Ibid.

¹¹Ibid.

¹²Pickering to Rufus King, March 24, 1806, King, IV, 508.

¹³Pickering to Timothy Williams, December 20, 1807, Pickering Papers.

¹⁴Entry of March 16, 1808, JQA, Memoirs, I, 522.

to Pickering's pamphlet, in the form of an open letter to Harrison Gray Otis.¹⁵ In that letter-pamphlet Adams took up Pickering's allegations one by one and laid them to rest. He particularly took Pickering to task for omitting any mention of the British Order in Council of November, 1807, early news of which had appeared in the National Intelligencer of December 18. According to Adams, Pickering's commission of the Orders as a main cause of the Embargo was "like laying your finger over the unit before a series of noughts, and then arithmetically proving that they all amount to nothing."¹⁶ The Orders, in fact, "stand in front of the real causes for the embargo" and "strike at the root of our independence."¹⁷ To Adams, "The embargo was the only shelter from the Tempest--the last refuge of our violated peace."¹⁸

Adams' assessment of the causes and intentions of the Embargo Act were much closer to the true motivations held by Jefferson than the allegations presented by Pickering. In the original draft of the Special Message calling for an embargo, Jefferson had written, "If, therefore, on leaving our harbors, we are certainly to lose them, is it not better, as to vessels, cargoes, and seamen, to keep them at home?"¹⁹ A number of Jefferson's personal letters during the next few months take much the same tone and a more explicit phrasing. On January 3, 1808, the

¹⁵ Entry of March 31, 1808, JQA, Memoirs, I, 524-525. The pamphlet appears in JQA, Writings, III, 189-232, as a letter to Harrison Gray Otis, March 31, 1808. Hereafter cited as JQA, Letter, with page references to the copy in the Writings.

¹⁶ JQA, Letter, p. 201. The emphasis is JQA's.

¹⁷ Ibid., p. 200.

¹⁸ Ibid., p. 199.

¹⁹ Lipscomb, XI, 402. Also see above n. 30, p. 99.

President informed Dr. Benjamin Rush, "The embargo is salutary. It postpones war, gives time and the benefits of peace in Europe, which will postpone the causes of difference to the next war."²⁰ In the same week Jefferson informed John Taylor of Carolina:

. . . The embargo keeping at home our vessels, cargoes and seamen, saves us the necessity of making their capture the cause of immediate war; for, if going to England, France had determined to take them, if to any other place, England was to take them. Till they return to some sense of moral duty, therefore, we keep within ourselves. This gives time. Time may produce peace in Europe; peace in Europe removes all causes of difference, till another European war; and by that time our debt may be paid, our revenues clear, and our strength increased.²¹

Thus, although Jefferson did entertain some hope that the embargo, once in effect, would have an influence on the negotiations with George Rose on the Chesapeake crisis, the embargo was essentially a palliative and a means for delaying what Jefferson felt to be inevitable--a war.²² Jefferson did later develop an attitude toward the Embargo as a coercive agency, but in the early months and during the period of policy formation it was James Madison who appeared as the major advocate of this aspect of the Embargo.²³ Jefferson was convinced during the early months of the Embargo that matters would reach a point at which the Embargo itself would become too onerous or clearly ineffectual and the United States would have to go to war with one or the other European powers. In a

²⁰Lipscomb, XI, 413.

²¹January 6, 1808, Ibid, p. 414.

²²Gallatin to TJ, December 18, 1807, Gallatin, Writings, I, 368. A similar argument was used by General Samuel Smith in the Senate committee meeting of December 18; see the entry of that date in JQA, Memoirs, I, 491.

²³Brant, Madison, IV, 398; Malone, JHT, V, 584-586.

Cabinet meeting of July 6, 1808, the possible responses to a repeal of the various commercial decrees by the belligerents was discussed. The Cabinet decided that a full repeal of the sanctions by either belligerent would be met by a removal of the Embargo in regard to that country.²⁴

The repeals discussed in Cabinet on July 6 were impartial. The Secretary of State was concerned over a repeal toward France without a repeal toward Great Britain at the same time, as that would make American shipping bound for France vulnerable to seizure by Great Britain. It was decided to suspend the Embargo toward Great Britain even if she repealed only the November Orders and left the Order of the preceding January (1807) in effect.²⁵ In spite of the contentions of Timothy Pickering and other Federalists, as well as at least one modern writer, the Embargo was not directed against Great Britain alone.²⁶ In fact, the Embargo coincided to some degree with the designs of both belligerents. If Great Britain was not getting the American trade, at least neither was the Continent.²⁷ If France was not getting the American trade, neither was Great Britain and a channel no longer existed by which British goods could easily find their way to the Continent.

²⁴Entry of July 6, 1808, Anas, Lipscomb, I, 483.

²⁵Ibid.

²⁶Lawrence S. Kaplan makes a particular point that TJ's policy was exactly what Napoleon wanted; Kaplan, "Jefferson, the Napoleonic Wars, and the Balance of Power," William and Mary Quarterly, 3d ser., XIV, 2 (April, 1957), 196-217.

²⁷Bradford Perkins makes a particular point that TJ's policy was exactly what George Canning wanted. Perkins, "George Canning, Great Britain, and the United States, 1807-1809," American Historical Review, LXIII (October, 1957), 1-22.

Jefferson was, indeed, more concerned about British reactions and responses to the Embargo than to the French reaction. And he was more aware of Britain's Royal Navy as the immediate threat to American ships than the remnants of the French fleet. As Jefferson told James Maury, "We naturally fear that which comes into immediate contact with us, leaving remoter dangers to the chapter of accidents."²⁸

Jefferson did not, as one modern author has suggested, "[leap] hastily into the Embargo."²⁹ He did, indeed, leap into the Embargo, but more like a man who knows he must swim in cold water and wishes to get the first step over with. Jefferson was left no choice other than a general embargo if he wished to maintain both America's neutrality and her peace. And this much, at least, the plunge into the Embargo did do. The war was delayed for five years, until the Anglo-American War of 1812 broke over much the same issues.

²⁸ November 21, 1807, Lipscomb, XI, 397.

²⁹ Bradford Perkins, Prologue to War, p. 40.

LIST OF SYMBOLS AND SHORT TITLES USED IN THE FOOTNOTES

Adams, <u>History</u>	Henry Adams, <u>History of the United States of America During the Second Administration of Thomas Jefferson</u> , Vol. II
<u>Annals</u>	<u>[Annals of Congress] Debates and Proceedings of the Congress of the United States, 1789-1824, 42 vols.</u>
<u>A.S.P.</u>	<u>American State Papers: Documents, Executive and Legislative</u> --general designation for the series, followed by the title of the specific class of papers being referred to, 38 vols.
<u>A.S.P.F.R.</u>	<u>American State Papers</u> , Class I, <u>Foreign Relations</u> , 3 vols.
Brant, <u>Madison</u>	Irving Brant, <u>James Madison</u> , 6 vols.
<u>C.M.P.P.:I</u>	James Richardson (ed.), <u>A Compilation of the Messages and Papers of the Presidents</u> , Vol. I
<u>Commodores</u>	Leonard F. Guttridge and Jay D. Smith, <u>The Commodores</u>
Ford	Paul L. Ford (ed.), <u>The Writings of Thomas Jefferson</u> , 10 vols.
Gallatin, <u>Writings</u>	Henry Adams (ed.), <u>The Writings of Albert Gallatin</u> , 3 vols.
Hunt	Gaillard Hunt (ed.), <u>The Writings of James Madison</u>
<u>I.B.M.</u>	Bernard Mayo (ed.), <u>Instructions to the British Ministers to the United States, 1791-1812</u>
JQA	John Quincy Adams
JQA, "Letter"	John Quincy Adams, an open letter "To Harrison Gray Otis, March 31, 1808" (pamphlet)
JQA, <u>Memoirs</u>	Charles F. Adams (ed.) <u>Memoirs of John Quincy Adams</u> , 7 vols.

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Malone, <u>JHT</u>	Dumas Malone, <u>Jefferson and His Time</u> , 5 vols. to date.
<u>N.I.</u>	[Washington] <u>National Intelligencer</u>
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Senate, <u>Journal</u>	<u>Journal of the Senate of the United States</u> , 10th Cong., 1st Sess. (1807)
<u>Statistics</u>	<u>Historical Statistics of the United States: From Colonial Times to 1957</u>
TJ	Thomas Jefferson

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