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[Aller au sommaire du numéro](#)

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THE ALASKAN BOUNDARY DISPUTE

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THE Alaskan boundary dispute arose between Canada and the United States over the boundary of the long strip of territory dangling down the British Columbian coast from Alaska and known as the Alaskan Panhandle. The dispute was one of interpretation of the terms of a treaty signed by the representatives of Russia and Great Britain on February 28, 1825. The United States by its purchase of Alaska in 1867 succeeded to the Russian rights of territory under the treaty of 1825 and Canada by the entrance of British Columbia into the Canadian union in 1871 acquired British rights of territory under that treaty.

The line of demarcation was described in Articles 3 and 4 of the treaty as follows:

Commencing from the southernmost point of the island called Prince of Wales Island, which point lies in the parallel of 54 degrees north latitude, and between the 131st and 133rd degree of west longitude (Meridian of Greenwich), the said line shall ascend to the north along the channel called Portland Channel, as far as the point of the continent where it strikes the 56th degree of north latitude; from this last-mentioned point, the line of demarcation shall follow the summit of the mountains situated parallel to the coast, as far as the point of intersection of the 141st degree of west longitude (of the same meridian); and finally from the said point of intersection the said meridian line of the 141st degree, in its prolongation as far as the Frozen ocean, shall form the limit between the Russian and British possessions on the continent of America to the North-west.

IV. With reference to the line of demarcation laid down in the preceding article, it is understood:

First. That the island called Prince of Wales Island shall belong wholly to Russia.

Second. That whenever the summit of the mountains which extend in a direction parallel to the coast, from the 56th degree of north latitude to the point of intersection of the 141st degree of west longitude, shall prove to be at the distance of more than 10 marine leagues from the coast, the limit between the British possessions and the line of the coast which is to belong to Russia, as above mentioned, shall be formed by a line parallel to the windings of the coast, and which shall never exceed the distance of 10 marine leagues therefrom.

The treaty of 1825 established a line of demarcation between Russian and British possessions in an area that was remote from Europe and a subject of interest at that time only to a few fur-traders and explorers. When the treaty was signed knowledge of the geographical features of the area was limited to surveys of the coastal waters made by navigators and consequently the definition of the inland boundary lacked precision.

The ambiguities of the treaty were revealed as the activities of traders and prospectors slowly laid bare the topography of the Panhandle. It gradually became clear that the area contained no well-defined range of

mountains and was in fact a sea of mountains.¹ A series of boundary incidents on the Stikine River and on Lynn Canal made it evident by 1885 that the description of the boundary contained in the treaty of 1825 was not strictly applicable to the ground traversed.² By 1888 there emerged a clear-cut difference of opinion between Canadians and Americans on the meaning of the boundary provisions that were to be applied. Conversations held in Washington in February of that year between Dr. G. M. Dawson, Director of the Geological Survey of Canada, and Mr. W. H. Dall of the United States Coast and Geodetic Survey revealed that the officials of both countries who were most immediately concerned with the location of the boundary held widely different interpretations of the boundary terms of the treaty of 1825.³ Dr. Dawson believed that the treaty contemplated a boundary drawn along the summit of the mountains arising immediately from the shore of the sea and that in any case the line should be drawn without reference to the numerous inlets which pierce the coast. Mr. Dall held that Russia had sought and obtained by the treaty an unbroken coastal strip and that the boundary line must be drawn from the heads of the inlets. The Dall-Dawson conversations were, however, purely unofficial and the differences of opinion which they disclosed were not translated into official policy on the part of either government for another decade.

Although the exact location of specific points of the Alaskan boundary occasioned intermittent controversy between the governments of Great Britain and the United States, during the second half of the nineteenth century, the location of the boundary as a whole and the meaning of the boundary terms of the treaty of 1825 were not made subjects of vigorous governmental disputes until the end of the century. In 1896 gold was discovered in the valley of the Klondike River. The subsequent rush of gold-seekers through the Alaskan Panhandle into the Canadian Yukon created serious problems of law enforcement for the Canadian authorities. Their difficulties were increased by the fact that the Canadian government could not send any militia or police to the Yukon except through the Alaskan Panhandle and with the consent of the United States government. Canadian leaders were soon alive to the need for an all-Canadian route and the government brought forward a plan to have a railway built from a point on the headwaters of the Stikine River to Dawson City which would provide direct communication between British Columbia and the Yukon.⁴

The defeat of the Yukon Railway Bill at the hands of the Senate concentrated attention on the alternative possibility of obtaining for Canada a port on Lynn Canal, the main entry from the sea to the gold-fields. Dyea and Skagway, the two principal ports at the head of Lynn Canal were in American hands. Mr. Clifford Sifton, Canadian Minister of the Interior, speaking in the House of Commons on February 15, 1898, admitted that

¹*Proceedings of the Alaskan Boundary Tribunal* (7 vols., Washington, 1904), III, pt. II, 323-4, W. H. Dall to G. M. Dawson, April 24, 1884. (*Proceedings of the Alaskan Boundary Tribunal* hereinafter cited as *A.B.T.*)

²*A.B.T.*, III, pt. II, 324-30. Secretary Bayard to E. J. Phelps, November 20, 1885.

³*A.B.T.*, IV, pt. II, 94-113, Mr. Dall to Secretary Bayard, February 13 and December 11, 1888, with accompanying memoranda; *A.B.T.*, III, pt. II, 338-43, Dr. Dawson to Sir Charles Tupper, February 7 and 11, 1888.

⁴A full account of the circumstances surrounding the Yukon railway project may be found in John W. Dafoe's *Clifford Sifton in Relation to His Times* (Toronto, 1931), chap. VI.

the United States had been "in undisputed possession of them for some time past" but supported Canadian claim to ownership of the summits of White and Chilkat passes behind the two ports.⁵

Several months later, Mr. Sifton wrote to Sir Wilfrid Laurier who was then attending the Quebec sessions of the Joint High Commission and urged the Prime Minister to bargain with the American delegates for a port on Lynn Canal.⁶ He regarded the acquisition of such a port as essential to the development of Canadian trade with the Yukon and although he had no hope that this could be achieved by submitting the Alaskan boundary dispute to an arbitral commission he thought a bargain might be arranged if the question of a Canadian port were linked with an offer by Canada to relax her rights in the matter of pelagic sealing.

Pending final settlement of the issue the British and American governments agreed in May, 1898, to establish a provisional boundary on the summit of the watershed at the head of Lynn Canal.⁷ The whole question was then placed on the agenda of the Joint High Commission appointed to settle certain issues outstanding between Canada and the United States. Lord Salisbury in his instructions to the British and Canadian members of the Commission, indicated that the British government had been prompted to press for an early settlement of the question for two special reasons: first, the influx of miners through the Panhandle into the Yukon had created the need of a Customs frontier on the coastal inlets; second, the whole Panhandle was believed to be auriferous and the discovery of large quantities of gold in the disputed territory would give rise to serious difficulties.⁸

With its inclusion in the agenda of the Joint High Commission the Alaskan boundary dispute entered upon a new and more exciting phase. The problem of locating the boundary had hitherto engaged the attention only of a few government officials and local interests and it had therefore been largely confined to a few quiet backwaters of Anglo-American relations. Now, however, the flood of miners into the Klondike had swept the Alaskan boundary question into the mainstream of the relations between the British Empire and the United States. It thus became impossible to treat the dispute as an isolated problem to be dealt with solely on its own merits. A solution *in vacuo* was no longer possible; settlement of the question would be determined by the general climate of Anglo-American relations and would affect and be affected by other issues disturbing those relations.

In the closing years of the nineteenth century Anglo-American relations were growing warmer under pressure.⁹ The spectre of a Europe dividing into two great armed camps both of which looked with envious eyes upon the fruits of British imperial activity, convinced many British statesmen of the inadequacies of a policy of "splendid isolation" and of the need to seek outside support in keeping open the sea-lanes which knit together the widely scattered British Empire. But if the gradual disintegration of the

⁵Canada: *House of Commons, Debates*, 1898, February 11, 1898, I, 407.

⁶Dafoe, *Clifford Sifton*, 171, Clifford Sifton to Sir Wilfrid Laurier, October, 1898.

⁷*A.B.T.*, III, pt. II, 376, memorandum prepared by Sir Julian Pauncefote, April 18, 1898; *ibid.*, 377, Secretary Day to Sir Julian Pauncefote, May 9, 1898.

⁸*Ibid.*, 384-6, Lord Salisbury to the High Commissioners, July 19, 1898.

⁹A full account of this development may be found in Lionel M. Gelber, *The Rise of Anglo-American Friendship: A Study in World Politics 1898-1906* (London, 1938), chaps. I, II, and *passim*.

concert of Europe and the rising might of Germany did, as Henry Adams claimed it did, "frighten England into America's arms,"¹⁰ those arms were no longer reluctant to receive British attentions.

With the passing of the frontier as a safety valve in American life, Americans came to have a new appreciation of the value of an overseas as distinct from a continental empire. The United States emerged from the Spanish-American War an imperial power whose colonial responsibilities in the Caribbean and the far Pacific made it difficult for her to maintain her old position of aloofness from world affairs. At the same time she discovered that her departure from isolation at the expense of Spain had aroused the disapproval of the nations of Europe with the exception of Great Britain. British friendliness was appreciated by American statesmen and a common interest in the White Man's Burden drew the two nations together so that it appeared to at least one Washington diplomatist that "the old pirate and the young pirate are joining forces for moral support." If these foundations of an Anglo-American *rapprochement* were to be extended and strengthened it was necessary to remove all sources of serious friction from the relations of the two countries. In the light of this necessity, the issues outstanding in Anglo-American diplomacy acquired a new and urgent significance.

The Joint High Commission had been appointed to deal with a number of these issues arising out of the field of Canadian-American relations. Foremost among those remaining within the larger sphere of Anglo-American relations was that of a canal across the Isthmus of Panama.

The growing desire of the United States for an Isthmian canal received a tremendous stimulus from the Spanish-American War. The general lack of sympathy abroad for the American cause and the need to safeguard their latest territorial acquisitions convinced many Americans of the need for a canal which would make possible the rapid concentration of American naval forces in the Atlantic or Pacific Oceans. Such a canal could be built only with the abrogation of the Clayton-Bulwer Treaty of 1850. By its terms Great Britain and the United States had agreed that neither was to build a canal through Central America without the consent of the other. Great Britain had held firmly to her rights under the treaty and had insisted that those rights did not admit the United States to exclusive control of an Isthmian canal.¹¹ But the demonstrations of British friendliness during the war with Spain made the end of the war appear to be a propitious time for the United States government to propose revision of the treaty. Lord Salisbury received the proposal very favourably and agreed in principle that an Isthmian canal should be built under the sole protection of the United States government. But he was not prepared to consent to this modification of British rights without compensation. The American proposal was made at a time when the British and American members of the Joint High Commission stood in sharp disagreement on the subject of the Alaskan boundary. Lord Salisbury, seeking a lever with which to move the American commissioners from their position on that question, argued

¹⁰Henry Adams, *The Education of Henry Adams* (Boston, 1918), 363.

¹¹R. B. Mowat, *The Diplomatic Relations of Great Britain and the United States* (London, 1925), 226-31.

that British concessions on the Isthmian canal question should be made a *quid pro quo* for American concessions on the Alaskan boundary.¹²

Disagreement on this question had arisen early in the meetings of the Joint High Commission. It had been referred to a committee composed of Lord Herschell, Sir Wilfrid Laurier, Senator Fairbanks, and General Foster and the committee had divided on national lines with respect to the true interpretation of the treaty of 1825.¹³ When it became clear that further argument would not shake the confidence of either side in the strength of its case several attempts were made to reach a compromise settlement. The most promising of these was a proposal by the British commissioners that the line should be drawn so as to give the United States the whole of the territory bordering on Lynn Canal except Pyramid Harbour and a strip of land from that port to the boundary line, thus securing for Canada access to the Yukon by the Dalton Trail.¹⁴ The remainder of the boundary was to be drawn "in the main conformable to the contention of the United States."¹⁵

In response to the suggestion by President McKinley that British consent to revision of the Clayton-Bulwer Treaty hung in the balance, the American commissioners were prepared to receive the British proposal favourably. Although they objected to several of its terms, it appeared for a time that the details would be adjusted and the compromise plan accepted. But the scheme was halted just short of fulfilment. Willingness to compromise on the part of the American commissioners had been induced largely by pressure from abroad; it was now to appear in response to pressure at home. When news of the proposed surrender of Pyramid Harbour leaked out, American shipowners on the Pacific coast, fearing that the existence of a Canadian port on the Yukon would endanger their monopoly of the carrying trade with the Yukon, lodged a strong protest with the United States government.¹⁶ President McKinley was standing for re-election in the following year and his commissioners therefore withdrew their acceptance of the compromise plan.

With their failure to agree either on the meaning of the treaty of 1825 or on a compromise settlement the commissioners fell back on an attempt to find an acceptable method of resolving the dispute by arbitration. Once again their efforts met with no success. The American commissioners insisted on an even-numbered tribunal and the British held out for an odd-numbered tribunal along the lines of the Venezuela Boundary Commission.

Failure to resolve the Alaskan boundary question brought the Joint High Commission to an impasse and prevented final settlement of the other issues before it. The Commission therefore adjourned, and as it never

¹²Allan Nevins, *Henry White: Thirty Years of American Diplomacy* (New York, 1930), 145, Henry White to Secretary Hay, December 23, 1898; Gelber, *Rise of Anglo-American Friendship*, 42 ff.

¹³The record of the attempts made by the Joint High Commission to settle the dispute is to be found in *Foreign Office Correspondence Respecting the Proceedings of the Joint Commission for the Settlement of Questions Pending Between the United States and Canada* (hereinafter cited as *F.O. Correspondence* etc.).

¹⁴*F. O. Correspondence* etc., 156 ff., "Draft Article Respecting the Alaska Boundary," given by the British commissioners to Senator Fairbanks, February 2, 1898.

¹⁵John W. Foster, "The Alaskan Boundary" (*National Geographic Magazine*, X, 455).

¹⁶Charles C. Tansill, *Canadian-American Relations 1875-1911* (New Haven, 1943), 180, American Ship-owners to Senator George C. Perkins, February 2, 1899.

reconvened, the Alaskan boundary was thrown back into the ordinary channels of diplomacy.

In the months that followed the adjournment of the Joint High Commission it proved difficult to inject new life into the Alaskan boundary negotiations which had run such an exhausting course in the sessions of the Commission. The newly-born Anglo-American *rapprochement* had received a setback and tempers were wearing thin in both North American capitals.¹⁷

But Secretary Hay was determined that no obstacle should be allowed to hinder the development of friendlier relations between the United States and Great Britain and he patiently gathered up the scattered threads of diplomacy for another attempt to solve the troublesome boundary question. His resolution was fortified by rumours of impending disorders on the unsettled frontier and by the knowledge that upon the success of his efforts depended the fate of the revised Clayton-Bulwer Treaty.

In April, 1899, Hay renewed the proposal made by the American members of the Joint High Commission to refer the question to an even-numbered tribunal of arbitration.¹⁸ The British government repeated its objection that this plan contained the possibility of deadlock and again recommended that the dispute be settled along the lines insisted upon by the United States in the Venezuela boundary dispute, that is, by an odd-numbered tribunal. Secretary Hay now felt that this offer was "about as good a one as we can get" and he was disposed to accept it until the Canadian government attempted to attach to it a clause providing that Pyramid Harbour should be given to Canada irrespective of the decision of the tribunal.¹⁹ Hay regarded this condition as utterly inadmissible and the British offer was rejected.²⁰

In July the British government once again put forward the plan of an odd-numbered tribunal but this time accompanied it with an alternative proposal very similar to one which had been discussed in the meetings of the Joint High Commission. It was now proposed that the United States grant to Canada a perpetual lease of half a square mile of territory at a suitable point on Lynn Canal with the right to construct and maintain exclusive control over a railway from the concession to the Canadian border.²¹ Secretary Hay was delighted. He believed that the lease arrangement would decide the whole question in favour of the United States because "the very act of granting a lease implies unquestionable possession."²² President McKinley and his Cabinet agreed that it was a "reasonable solution" provided that the details could be arranged so as to protect American

¹⁷Gelber, *Rise of Anglo-American Friendship*, 46; John Buchan, *The Earl of Minto* (London, 1924), 168; the Earl of Minto to Arthur Elliott, August, 1899; W. R. Thayer, *John Hay* (Boston, 1916) II, 205-6, Secretary Hay to Ambassador Choate, April 28, 1899.

¹⁸Tansill, *Canadian-American Relations*, 190, Secretary Hay to Ambassador Choate, April 19, 1899.

¹⁹Tyler Dennett, *John Hay* (New York, 1933), 229; Secretary Hay to Ambassador Choate, May 1, 1899; *A.B.T.*, IV, pt. II, 125; Lord Salisbury to Ambassador Choate, May 17, 1899; Tansill, *Canadian-American Relations*, 192.

²⁰Thayer, *John Hay*, 206-7, Secretary Hay to Ambassador Choate, June 15, 1899.

²¹Tansill, *Canadian-American Relations*, 107, Ambassador Choate to Secretary Hay, July 18, 1899.

²²A. L. P. Dennis, *Adventures in American Diplomacy* (New York, 1928), 149-50, Secretary Hay to Senator C. K. Davis, August 4, 1899.

shipping interests and safeguard American sovereignty over the area to be leased. But Senator Davis, Chairman of the Senate Foreign Relations Committee, was firmly of the opinion that the lease arrangement would not command the two-thirds majority necessary for its ratification by the Senate and on his advice the British suggestion was dropped.²³

The abandonment of the lease arrangement temporarily exhausted the resources of Anglo-American statesmanship with respect to the Alaskan boundary. In October a provisional boundary was arranged for the area at the head of Lynn Canal²⁴ but further progress toward the establishment of a permanent boundary could not be made until the operation of forces external to the dispute should alter the bargaining strength of the parties thereto.

In the autumn of 1899 forces were set in motion that were to break the deadlock. The Boer War broke out on October 10. The nations of Europe, never displeased to hear of discord within the British Empire, responded to the news of early British disasters in a manner strongly reminiscent of Kaiser Wilhelm's telegram of 1896. To Great Britain, strongly resentful of being compelled to play Goliath to President Kruger's David, the benevolent neutrality of the United States stood out in bright contrast to the strongly disapproving attitude of the nations of Europe. As the splendour of British isolation faded rapidly amid the encircling gloom of European hostility, the British government learned to place a rising premium on the value of American friendship. British statesmen grew increasingly sensitive to the advantages of removing all obstacles to the development of that friendship. Of the issues outstanding between the two nations, the unsolved riddle of the Isthmian canal remained the most important. The canal problem could be solved by obtaining British consent to the abrogation of the Clayton-Bulwer Treaty. In the negotiations which had taken place on that subject since December, 1898, the British government had shown a persistent disposition to make revision of the treaty conditional upon a settlement of the Alaskan boundary question. Failure to provide for a final settlement of that question had brought to a standstill negotiations upon the canal treaty. Into these negotiations new life was forcibly injected by the introduction into Congress in January, 1900, of a bill empowering the United States government to "excavate, construct and protect" an Isthmian canal. Secretary Hay condemned the Canal Bill as a violation of the Clayton-Bulwer Treaty but he took advantage of the situation to urge upon Lord Salisbury the desirability of forestalling the Bill by immediate joint revision of the treaty.²⁵ Lord Salisbury was convinced of the need of doing everything possible to cultivate American friendship but he realized that if he yielded unconditionally to American demands for revision of the Clayton-Bulwer Treaty he would thereby surrender Canada's most important bargaining counter in the Alaskan boundary negotiations.²⁶ It was particularly difficult for him to make this surrender at a time when Canada's

²³Tansill, *Canadian-American Relations*, 200, Senator C. K. Davis to Secretary Hay, July 31, 1899.

²⁴The text of the *modus vivendi* of October 20, 1899, will be found in *Foreign Relations of the United States*, 1899, pp. 330-1.

²⁵Thayer, *John Hay*, 222-3, Secretary Hay to Ambassador Choate, January 15, 1900.

²⁶Tansill, *Canadian-American Relations*, 215, Ambassador Choate to Secretary Hay, January 27, 1900.

assistance in an imperial war gave her additional claims to consideration by the mother country. But his desire for Anglo-American solidarity finally overbore these reservations and he appealed to the Canadian government to give its consent to a new canal treaty.²⁷ This consent the Canadian government gave, though reluctantly, and the Hay-Pauncefote Treaty was signed on February 5, 1900. The new treaty was ratified by the Senate only after three amendments were added which materially altered its character. Great Britain refused to accept the amended treaty but a new treaty was concluded on November 18, 1901, and it proved acceptable both to the British government and to the American Senate.

The settlement of the Isthmian canal question had profound effects on the diplomatic strength of Great Britain and the United States in their relations to one another. Great Britain emerged from the settlement with strong claims to American gratitude but with the loss of a powerful bargaining counter in her relations with the United States. The finality of the settlement ensured to the United States greater independence in her future relations with Great Britain. Upon the settlement of the Alaskan boundary question, the State Department with its international position no longer exposed to attack on the Panama flank could now bring to bear its diplomatic big guns. But the Foreign Office, to whose position the canal question had been a diplomatic outwork, found that its surrender weakened the resistance that could be offered to attack at other points along the line of empire.

Already in May, 1901, Secretary Hay had renewed his proposal to submit the dispute to arbitration by an even-numbered tribunal.²⁸ The Canadian government was still disinclined to accept such an arrangement and replied in November with a suggestion that the dispute be referred to a tribunal with two neutral arbitrators.²⁹ But in the meantime the assassination of President McKinley in September had brought Theodore Roosevelt and his "incalculable impetuosity" into the White House. Mr. Roosevelt was convinced that the Canadian case did not "have a leg to stand on" and that it was "dangerously close to blackmail."³⁰ He was vigorously opposed to any arbitration of the dispute and the negotiations in search of an acceptable method of arbitration were therefore discontinued. But two years later, incidents in the gold-fields made him change his mind.

Roosevelt's first inclination was to "let sleeping dogs lie" but rumours of disorder in the Klondike and at the head of Lynn Canal prompted him in May, 1902, to dispatch troops to south-eastern Alaska for police purposes.³¹ The presence of American troops on the boundary aroused grave misgivings on the part of the British and Canadian governments and at the end of June Lord Lansdowne urged Ambassador Choate to discuss the whole question

²⁷Mowat, *Diplomatic Relations of Britain and United States*, 279-80, Joseph Chamberlain to the Earl of Minto, January 30, 1900.

²⁸*Canada Sessional Paper No. 46a*, 3-4 Edward VII, A. 1904, 31-4, "Draft Arbitration Convention," communicated unofficially by Mr. Hay and forwarded by Lord Pauncefote, May 10, 1901.

²⁹*Ibid.*, 35-7, the Earl of Minto to Mr. Joseph Chamberlain, November 6, 1901.

³⁰T. A. Bailey, "Theodore Roosevelt and the Alaska Boundary Settlement" (*Canadian Historical Review*, XVIII, 124, President Roosevelt to J. St. Loe Strachey, July 18, 1902).

³¹Dennis, *Adventures in American Diplomacy*, 143, President Roosevelt to Ambassador Choate, January, 1902; Philip C. Jessup, *Elihu Root* (New York, 1938), I, 391-2, George B. Cortelyou to Secretary Root, March 27, 1902.

with Sir Wilfrid Laurier who was then in London.³² Both Choate and Henry White had conversations with Sir Wilfrid and found him anxious for a prompt settlement of the dispute and ready to accept the American proposal for arbitration by an even-numbered tribunal.³³ The arbitration convention was signed on January 24, 1903.³⁴ By its terms the Alaskan boundary dispute was to be referred for settlement to a tribunal consisting of "six impartial jurists of repute, who shall consider judicially the questions submitted to them, each of whom shall first subscribe on oath that he will impartially consider the arguments and evidence presented to the tribunal, and will decide thereupon according to his own true judgment." Three members of the tribunal were to be appointed by the President of the United States and three by His Britannic Majesty. All questions considered by the tribunal were to be decided by "a majority of all the members" and the decision of the tribunal was to be final. The tribunal was to consider and decide seven questions relating to the meaning of Articles III, IV, and V of the Anglo-Russian treaty of 1825 and it was also to consider any acts of the several governments before or after the treaties of 1825 and 1867 which throw light on the original understanding of the parties as to the limits of their respective territorial jurisdictions under these treaties.

Senator Henry Cabot Lodge was able to secure prompt ratification of the treaty by the American Senate on February 11, 1903, after he had disclosed in confidence to his fellow Senators the names of the men whom the President intended to appoint to the tribunal and thereby satisfied their demand that no one should be appointed who would yield on the American claim.³⁵ On February 14 the British government was informed that President Roosevelt would appoint to the tribunal Secretary of War Root, Senator Lodge of Massachusetts, and Senator George Turner of Washington.³⁶ By no reasonable interpretation of the terms of reference could these gentlemen properly be described as "impartial jurists of repute." Root was a cabinet member of the government of one of the parties to the dispute; Lodge had repeatedly expressed himself as hostile to the Canadian claims;³⁷ and Turner represented in the Senate that state which was most interested in securing a full confirmation of the American claims. The character of these appointments was a breach of faith and of contract on the part of the United States government. It was determined partly by the need to nominate persons acceptable to the Senate and partly by the President's conception of the nature and purpose of the tribunal. Mr. Roosevelt did not regard the tribunal set up under the treaty of January, 1903, as an arbitral tribunal in the sense in which that term was usually employed in international law.³⁸

³²Tansill, *Canadian-American Relations*, 224, D. J. Hill to Ambassador Choate, telegram, June 30, 1902.

³³Nevins, *Henry White*, 192-3, Henry White to Secretary Hay, June 28, 1902; Dennett, *John Hay*, 457-9, Ambassador Choate to Secretary Hay, July 5, 1903.

³⁴The text of the treaty may be found in *A.B.T.*, II, 1-6.

³⁵"Memoir of H. C. Lodge" (*Transactions of the Massachusetts Historical Society*, April, 1925) as quoted by James White, "Harry Cabot Lodge and the Alaska Boundary Award" (*Canadian Historical Review*, December 1, 1925, 334).

³⁶*A.B.T.*, V, pt. iv, 21, Sir Michael Herbert to Lord Lansdowne, February 14, 1903.

³⁷See, for example, Senator Lodge in a speech to the electors of Northampton, Massachusetts, October 16, 1902, as quoted by *Manitoba Free Press*, February 24, 1903.

³⁸T. A. Bailey, "Theodore Roosevelt and the Alaska Boundary Settlement," (*Canadian Historical Review*, XVIII, June, 1937, 124-5), President Roosevelt to F. W. Holls, February 3, 1903.

He had flatly refused to expose what he felt were the irrefutable claims of the United States to any possibility of compromise at the hands of a tribunal with a neutral umpire. He had consented to refer the dispute to an even-numbered tribunal from which the United States need not fear an adverse decision and he had done so in order to facilitate a favourable settlement of the dispute by providing the British government with a means of escape from what he believed to be an untenable position. It is therefore not surprising that he should have nominated to the tribunal three experienced politicians on whom he could rely to uphold unflinchingly the American case.

The Canadian government lodged a strong protest with the British government and Sir Wilfrid Laurier made a personal appeal to Secretary Hay urging the unsuitability of the American appointments.³⁹ But Sir Michael Herbert, British Ambassador to Washington asserted that the President had "got his back up" and advised that it would be useless to protest.⁴⁰ The British government therefore made no formal protest against the appointments and ratified the treaty.

On March 7 the British government on the recommendation of the Canadian government appointed to the tribunal Lord Alverstone, the Lord Chief Justice of England, Mr. Justice Armour of the Supreme Court of Canada, and Sir Louis Jetté, Lieutenant-Governor of Quebec and formerly puisné judge of the Superior Court of Quebec. On the death of Mr. Justice Armour in July, Mr. A. B. Aylesworth, a leader of the Ontario Bar who was in England at the time, was appointed in his stead.

Throughout the spring and summer of 1903 while the British and American cases were being prepared for presentation to the tribunal in the autumn, President Roosevelt took particular care that no one who could possibly influence the decision of the tribunal should remain unaware of his attitude toward the dispute. In letters to each of the American commissioners, to Mr. Justice Holmes, and to Henry White the President made it perfectly clear that he considered the American case to be impregnable, that he regarded the tribunal solely as a device to enable the British government to escape gracefully from an impossible position, and that if the tribunal failed to decide in favour of the American contention he intended to ignore its decision and run the line, by force if necessary, in accordance with the American contention.⁴¹ In view of the general climate of Anglo-American relations the leaders of the British government to whom the letters to Holmes, Lodge, and White were shown, could not fail to respond to such vigorous brandishment of the big stick.

The tribunal sat in London and heard the arguments of counsel from September 15 to October 8. During those days "the undercurrents of

³⁹Dafoe, *Clifford Sifton*, 220, the Earl of Minto to the Earl of Onslow, February 19, 1903; *A.B.T.*, V, pt. iv, 22, same to same, February 21, 1903; Dennett, *John Hay*, 357-8, Sir Wilfrid Laurier to Secretary Hay, February 24, 1903.

⁴⁰Lord Newton, *Lord Lansdowne* (London, 1929), 262-3, Sir Michael Herbert to Lord Lansdowne, February 21, 1903.

⁴¹Jessup, *Elihu Root*, I, 395, President Roosevelt to Messrs. Root, Lodge, and Turner, March 25, 1903; James White, "Henry Cabot Lodge," 340-1, President Roosevelt to Senator Lodge, July 16, 1903 and August 16, 1903; J. B. Bishop, *Theodore Roosevelt and His Times Shown in His Own Letters* (New York, 1920), I, 259-61, President Roosevelt to Mr. Justice Holmes, July 25, 1903; Nevins, *Henry White*, 199, President Roosevelt to Henry White, September 26, 1903.

diplomacy," as Henry White described them,⁴² moved to shape the decision of the tribunal as they had molded its structure and composition. Whenever Lord Alverstone showed signs of differing from his American colleagues that fact was reported to the White House and President Roosevelt resorted to the familiar device of diplomatic pressure. Through the offices of Ambassador Choate, Henry White, and Senator Lodge the President did his best to persuade A. J. Balfour that failure of the tribunal to reach a decision would have very serious effects on Anglo-American relations because in the event of a deadlock he would not consent to arbitration of the dispute but would treat the disputed territory as American soil.⁴³ The evidence shows that on at least two occasions the British Prime Minister in conversation informed Lord Alverstone of the President's attitude.⁴⁴ This is not to suggest that Lord Alverstone's findings were wholly or even principally the product of diplomatic pressure; but it is to say that it would have been extremely difficult for any man appointed as the English member of the tribunal, knowing the character of the American appointments and aware of the operation of political forces behind the judicial façade, to persuade himself that the method of settlement being employed was entirely judicial (in the strict sense) and that he must remain uninfluenced by considerations of expediency as distinct from considerations of law.

The tribunal was asked to answer seven questions. The most important was the fifth; it asked whether it was the intention of the treaty of 1825 that Russia should receive a continuous strip of coast, not exceeding the marine leagues in width, separating the British possessions from the bays, ports, inlets, havens, and waters of the ocean, and extending from a point on the fifty-sixth degree of north latitude to a point where the boundary should intersect the one hundred and forty-first degree of west longitude. This was the crux of the whole dispute and the evidence to support the American contention on this question was very strong if not conclusive.

The United States requested the tribunal to answer the fifth question in the affirmative and fortified its request by a detailed analysis of the negotiations leading up to the treaty of 1825.⁴⁵ American counsel contended that Russia's chief interest had been to protect the monopoly of the Russian American Company to the fur trade of the north-west coast and to prevent the founding of any foreign fur-trading establishments on the islands or inland waters of the coast north of 55° latitude north. It was for this reason that the Russian government had issued the ukase of 1821 prohibiting foreign vessels from approaching within one hundred Italian miles of the coast of the continent and it was for this reason that the Russian government strove in the negotiations to erect a territorial barrier between her coastal possessions and the inland dominions of Great Britain. American counsel

⁴²Nevins, *Henry White*, 200-1, Henry White to Secretary Hay, October 20, 1903.

⁴³*Ibid.*, 199-200, President Roosevelt to Henry White, September 26, 1903, and Henry White to Secretary Hay, October 20, 1903; "Memoir of H. C. Lodge" as quoted by James White, "Henry Cabot Lodge," 335; Tansill, *Canadian-American Relations*, 258-9, Ambassador Choate to Secretary Hay, October 20, 1903.

⁴⁴Nevins, *Henry White*, 200, Henry White to Secretary Hay, October 20, 1903; Tansill, *Canadian-American Relations*, 258-9, Ambassador Choate to Secretary Hay, October 20, 1903.

⁴⁵*A.B.T.*, I, pt. II, 29-65 and IV, pt. I, 40 ff.

argued convincingly that these purposes Russia achieved in the treaty of 1825.

The United States held that the central aim of Great Britain had been to preserve the free navigation of the high seas and therefore to secure the renunciation of the extravagant Russian claims to maritime jurisdiction contained in the ukase of 1821. As a secondary objective Britain had sought to confine Russian territory to the west of the Rocky Mountains and as far north as possible on the coast in order to secure a large area for the future operations of the Hudson's Bay Company and an uninterrupted outlet for its furs to the Pacific. By the treaty of 1825 Britain had obtained the renunciation by Russia of her maritime pretensions and prevented the extension of Russian territory as far east as the Rocky Mountains, but had failed to push the southern boundary of the Russian strip any farther north than 55°. American counsel argued very powerfully that Great Britain had failed to obtain any rights with respect to the Russian *lisière* other than the right in perpetuity to navigate the rivers and streams which crossed its eastern boundary and the right for ten years to frequent the interior seas, gulfs, havens, and creeks along the coast of the *lisière*.

British counsel were unable to combat this argument effectively⁴⁶ and the tribunal upheld the American contention by a majority of four to two, Lord Alverstone siding with the American commissioners. Although the Commission went on to draw a mountain boundary line that was a compromise between the British and American contentions there can be little doubt that there was ample evidence to sustain the majority in favour of an unbroken coastal strip belonging to the United States. It was with respect to the answer which the majority gave to the comparatively unimportant second question that the award of the tribunal betrayed most clearly the influence of political forces.

The second question asked: "What channel is Portland Channel?" Great Britain contended very strongly that Portland Channel was that body of water discovered and named by Vancouver and running to the north of four islands, Pearse, Wales, Sitklan, and Kaunaghunut.⁴⁷ The United States argued that Portland Channel was the body of water running to the south of the four islands.⁴⁸ During the proceedings Lord Alverstone had informed his Canadian colleagues that on this question he considered the British case irrefutable and had intimated that he would prepare an opinion to this effect which they might sign. On October 12 he had read to the tribunal a memorandum embodying the views of the three British commissioners on the subject of Portland Channel.⁴⁹ His Canadian colleagues were therefore astounded when at the meeting of the tribunal on October 17, Lord Alverstone voted with the American commissioners that Portland Channel after passing to the north of Pearse and Wales Islands flows between Wales and Sitklan and enters the sea to the south of Sitklan and Kaunaghunut. The majority decision on this question was manifestly a compromise since the four islands had been treated as an entity throughout

⁴⁶*A.B.T.*, III, pt. I, 73-6; *A.B.T.*, IV, pt. I, 31-42; *A.B.T.*, IV, pt. II, 26-55; *A.B.T.*, V, pt. I, 65-99; *A.B.T.*, V, pt. II, 35-43.

⁴⁷*A.B.T.*, III, pt. I, 51-69; *A.B.T.*, III, pt. II, 196-208; *A.B.T.*, IV, pt. II, 15-20; *A.B.T.*, IV, pt. III, 18-22; *A.B.T.*, V, pt. II, 12-18.

⁴⁸*A.B.T.*, IV, pt. I, 8-17, 25-6; *A.B.T.*, V, pt. I, 39-45.

⁴⁹Dafoe, *Clifford Sifton*, 230.

the proceedings by British and American counsel alike. To the American commissioners Lord Alverstone's *volte-face* was no surprise. Determined to push their country's claims to the limit they had, at the last moment, insisted that unless a division were made of the Portland Channel islands they would refuse to sign the award.⁵⁰ The Chief Justice, fearful of the consequences of deadlock, and believing that the islands were of no value to Canada bowed to the American demands and altered his previous view stated on October 12.⁵¹ The majority decision on this question derives its importance not from the loss to Canada of two islands of no economic and questionable strategic value but from the fact that the patently non-judicial character of that decision cast the whole award into disrepute and made it possible to impugn the judicial character of the answers to other and more important questions before the tribunal.

The majority finding of the question of Portland Channel offended the judicial sensibilities of the two Canadian commissioners who appear to have been unaware of the possibility that their own thorough-going support of their country's case might have been affected by the non-judicial atmosphere which surrounded the labours of the tribunal. Sir Louis Jetté and Mr. Aylesworth refused to sign the award of the tribunal on the ground that it was not a judicial finding. They filed dissenting judgments both of which upheld the British position in its entirety and attacked the majority award on the question of the islands as "a mere compromise dividing the field between two contestants."⁵² They also issued a joint statement to the *Times* explaining to the people of Canada the character of the award and their reasons for not signing it.⁵³

Lord Alverstone held aloof from the public controversy that followed the award, but in the privacy of correspondence with Sir Wilfrid Laurier, Mr. Aylesworth, Sir Louis Jetté, and Mr. Clifford Sifton, he revealed that he was deeply offended by their expressions of want of confidence in his decision. The record of the correspondence that passed among these gentlemen reveals a striking contrast between the position taken by the Canadians who flatly denounced Lord Alverstone's decision on the ground that it was not a judicial finding and the position taken by Lord Alverstone who stoutly maintained that his decision was founded solely on judicial considerations.⁵⁴ This seeming incompatibility of view is partly to be explained by the fact that the Canadians attached a very different meaning to the word "judicial" from that given to it by Lord Alverstone. They restricted the term "judicial" to those considerations directly related to the interpretation of the law as embodied in the treaty of 1825. Lord Alverstone used the term in a much wider sense which enabled him to give weight to considerations such as the unfortunate consequences of deadlock in the tribunal and the value of the Portland Channel Islands to the parties.

⁵⁰*Ibid.*, 232.

⁵¹For a comparison of Lord Alverstone's first opinion and his final judgment see John S. Ewart, "The Alaska Boundary" in *The Kingdom of Canada and Other Essays* (Toronto, 1908), 322 ff.

⁵²*A.B.T.*, I, pt. 1, 86 ff.

⁵³The *Times*, October 21, 1903.

⁵⁴Lord Alverstone to A. B. Aylesworth, October 21, 1903 and October 26, 1903; A. B. Aylesworth to Lord Alverstone, November 3, 1903, November 9, 1903, and November 11, 1903; Lord Alverstone to Clifford Sifton, October, 1903; *Memorandum* of Lord Alverstone, October 24, 1903. These documents are to be found in the Sifton MS.

Lord Alverstone's more liberal interpretation of the term "judicial" reflected his view of the nature of the tribunal and of the functions he was called upon to perform in it. The peculiar structure and composition of the tribunal restricted the range of its possible results to two inescapable alternatives, an American victory or deadlock. In the choice between these alternatives the judgment of Lord Alverstone would almost inevitably be decisive. Under these circumstances he conceived his position to be not that of one judge among six but that of an umpire appointed to adjust the claims of two conflicting groups. The tribunal itself he regarded not as one of arbitration but as "an attempt to solve by mutual discussion and friendly consideration questions which might have become the subject of discord between the two nations concerned."⁵⁵ Lord Alverstone, holding this broad view of the nature and purpose of the tribunal did not feel bound in his deliberations to consider only the evidence presented to him in the written arguments and the arguments of counsel. Throughout the proceedings he was particularly sensitive to the consideration that the failure of the tribunal to reach an agreement would be an international calamity.⁵⁶ Believing that his first duty was to secure an award he attempted to double in the roles of diplomat and judge. His performance of this exacting dual role exhibited dignity and perseverance but lacked the delicacy and insight needed to harmonize its desperate parts into a consistent pattern. He came naturally into close relations with the American commissioners without whose consent an award was impossible. Toward his Canadian colleagues Lord Alverstone maintained an attitude of grave courtesy but he seriously blundered, as a mediator if not as a judge, in failing to enter into close collaboration with them and especially in neglecting to inform them privately of his change of opinion on the question of Portland Channel. In the atmosphere of the tribunal, charged with suspicion, the Canadian commissioners were only too ready to regard any such omission as evidence of a willingness on the part of the Chief Justice to be guided by considerations of policy rather than of law. To that want of complete frankness on the part of Lord Alverstone may be traced much of the bitterness of the Canadian commissioners and no small measure of the acerbity of their accusations which inflamed Canadian opinion against the whole award.

The record of Canadian-American relations had led many Canadians to see annexationist designs in every positive assertion of American territorial claims along the Canadian border and had persuaded them that, in any dispute between Canada and the United States, Great Britain was likely to surrender Canadian interests on the altar of Anglo-American friendship. From the beginning Canadians had been profoundly sceptical of the arrangements for the settlement of the Alaskan boundary dispute and the award of the tribunal realized their worst fears.⁵⁷ The refusal of the Canadian commissioners to sign the award, their issuance of separate decisions, and their condemnation of the majority decision in the statement to the *Times* unleashed in Canada a storm of protest which one historian

⁵⁵Taken from a speech made by Lord Alverstone at a dinner at the Mansion House, as reported in the *Times*, October 14, 1903.

⁵⁶A. B. Aylesworth to Lord Alverstone, November 3, 1903, Sifton MS.

⁵⁷*Toronto Telegram*, January 25, 1903; *Manitoba Free Press*, January 25, 1903; *Victoria Daily Colonist*, February 26, 1903; *Toronto Globe*, February 19, 1903 and February 21, 1903; *Ottawa Citizen*, February 19, 1903; *Halifax Herald*, February 25, 1903; *London Morning Post*, September 3, 1903.

has described as "vigorous, wide-spread and sustained beyond anything in the country's annals."⁵⁸ Canadian indignation was aroused not so much by the details of the award as by the methods which were believed to have been employed in reaching it.⁵⁹ Canadians vent their anger to a lesser degree upon the United States for having violated the treaty in its appointments to the tribunal and to a greater degree upon Great Britain for having offered such feeble resistance to American aggressiveness.⁶⁰ The circumstances surrounding the settlement of the dispute produced serious dissatisfaction with Canada's position in the British Empire.⁶¹ Those circumstances did not reveal any clear and desirable alternative to existing imperial relationships but they convinced many Canadians that those relationships were no longer adequate and should be changed in ways which would give Canadians greater control over their own affairs and in this way they helped to create an atmosphere favourable to the reception of new ideas concerning Canada's relation to the mother country.

The influence of political forces on the structure, membership, and award of the Alaskan Boundary Tribunal indicates clearly the limitations of arbitration as a method of settling international disputes. The Alaskan boundary dispute was not susceptible of judicial or quasi-judicial settlement because one of the parties was unwilling to have the dispute taken out of international politics and settled by judicial as distinct from political criteria. Once it is admitted that considerations of policy were bound to have a most important place in the settlement of the dispute it is difficult to see how a result could have been reached materially at variance with that which was the decision of the Alaskan Boundary Tribunal. The essential facts were that the United States had a very strong case, that a settlement was becoming increasingly urgent, that President Roosevelt was determined to have a settlement wholly favourable to the United States, and that in the existing state of international relations no British government could afford to uphold Canadian claims to the extent of jeopardizing Anglo-American understanding. Concessions had to be made on the British side and the substitution of Canadian weakness for British desire for American friendship in the equation of the settlement would not have altered the result in Canada's favour. British diplomacy created an atmosphere of friendly relations and facilitated the adjustment of an awkward and irritating dispute which, if it had not been settled, might have produced a breach in the Anglo-American *rapprochement* and impeded co-operation of the English-speaking peoples in the Great War. In the development of Anglo-American solidarity Canada had a far greater stake than that which she

⁵⁸O. D. Skelton, *The Life and Letters of Sir Wilfrid Laurier* (London, 1922), II, 153.

⁵⁹Gelber, *Rise of Anglo-American Friendship*, 162; H. L. Keenleyside, *Canada and the United States; Some Aspects of the History of the Republic and the Dominion* (New York, 1929), 227; P. E. Corbett, *The Settlement of Canadian-American Disputes* (Toronto, 1937), 22.

⁶⁰H. F. Angus (ed.), *Canada and Her Great Neighbour; Sociological Surveys of Opinions and Attitudes in Canada Concerning the United States* (Toronto, 1938), 78; *Montreal Gazette*, October 21, 1903; *Toronto World*, October 19, 1903; *Ottawa Journal*, October 21, 1903; *Manitoba Free Press*, October 21, 1903; *London Daily Mail*, October 20, 1903, and October 26, 1903.

⁶¹Sir Wilfrid Laurier, *Canada, House of Commons Debates*, October 23, 1903; *Toronto Globe*, October 26, 1903; *Montreal La Presse*, October 26, 1903.

was called upon to surrender in the settlement of the Alaskan boundary dispute.

Yet in 1903 Canadians believed that they were being asked to make all the sacrifices for the cause of Anglo-American amity. An uncritical assumption that Canada had the stronger case, together with a refusal to recognize that in imperial diplomacy the interests of the whole must take precedence over those of the part, and that in international politics disputes are settled in accordance with the views of the stronger party, all lay at the source of a wave of Canadian indignation which vented itself upon British supineness and American bullying. This indignation gave a tremendous stimulus to the movement for full self-government which later became formalized in new relations among the members of the British Commonwealth of Nations. Her sense of nationality quickened by what she regarded as ill-treatment at the hands of two great English-speaking powers, Canada moved out of the colonial era into a period of conscious aspiration for national status.

DISCUSSION

Mr. Ewart stated that Lord Alverstone really was more responsible for the final decisions in the Alaskan boundary settlement than is indicated in the paper. Alverstone took an oath to decide judicially by the evidence. He could not have been so foolish as to have misunderstood the meaning of this. Hence as an arbitrator he actually violated his oath. He should have turned back the problem to the diplomats but evidently he had no conscience. He should not be let off so easily but must be condemned. *Mr. Ewart* also asked, "What was the method of arriving at the decision with respect to the S Mountains?"

Mr. Gibson agreed with *Mr. Ewart's* criticism of Lord Alverstone's Portland Channel decision, but felt that, in view of President Roosevelt's determination not to allow the matter to revert to ordinary channels, it would have been extremely difficult for the Chief Justice to act otherwise. With regard to the S Mountains he said that Lord Alverstone and the American commissioners had made no explanation of their finding. The Canadians stated that it was a compromise decision, and criticized their American colleagues for not indicating the principle of the decision. There was also a gap in the award at this point for lack of surveys.

Mr. Ewart said that Alverstone should have told the Canadians about the information in Roosevelt's letters before making his decision.

Mr. Gibson replied that this would not have affected the outcome, and went on to say that Alverstone asserted that he never could persuade Aylesworth of the grave international consequences of the failure to reach a decision.

Professor Underhill stated that Laurier told his Cabinet that his hand was forced in 1902 with respect to an even-numbered commission, and asked, "What did occur?"

Mr. Gibson replied that he had only the information given in *Dafoe's Life of Sifton*.

Mr. Ewart asserted that Great Britain did not wait for Canada's opinion before ratifying the treaty. The author of the paper agreed with this.

Mr. Kenney suggested that it didn't matter a continental how the decision went. There was a feeling at the time that every inch of the territory involved was a potential gold mine. Even if Britain and Canada had refused to sign there would not have been any serious disturbance on the frontier. The United States would merely have put itself in the wrong with the world and with its own people, and when the inevitable reaction against Roosevelt's imperialism came the final decision would have been as favourable to Canada as the one made.

Mr. Gibson did not agree with Mr. Kenney's appraisal. He said the speaker did not appreciate the high pitch of feeling in Canada at the time with respect to the loss of the two strategic islands. A serious breach in relations might have occurred.

Professor Lower pointed out the importance of the Alaskan boundary controversy in Canada's development as a nation.

Professor Sage related the "legend" of the finding of the Russian boundary markers at the time of the building of the C.P.R. These upheld the American claims so far that the Ottawa government did not make them known.