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# Retaliation for the Treatment of Prisoners in the War of 1812

RALPH ROBINSON\*

IT was on the thirteenth day of October, 1812, that the battle of Queenston was fought. Although the American forces gained the initial success in this engagement, the refusal of their compatriots, in plain view across the narrow Niagara River, to reinforce them and the arrival of enemy troops from nearby Fort George turned the tide and left the British victors with a large number of prisoners in their hands.

Among these prisoners twenty-three men were alleged by their captors to be British subjects and were singled out to be sent to England for trial on a charge of treason—viz., bearing arms against the king.<sup>1</sup> It was then the common law in England, to remain unchanged for another half century, that everyone born a British subject remained one until his death, and the right to change this allegiance by becoming a naturalized citizen of another country was not recognized.<sup>2</sup>

Such a policy was manifestly at variance with the interests of a new and unsettled country. The Constitution of the United States provided for the establishment of a uniform rule of naturalization, and Federal statutes had been in operation since 1790. The policies of the two countries with respect to allegiance were, therefore, in diametric opposition, and the conflicting claims arising in their pursuit framed the issue of the War of 1812. Accordingly it was quite in order that a protest should have been entered in behalf of the twenty-three men.

The first to champion their cause was Winfield Scott, himself one of the prisoners captured at Queenston. Scott, then a lieutenant colonel and twenty-six years of age, remonstrated with the British for their treatment of his companions in arms, but his action was unavailing and the men were sent to England.<sup>3</sup> Scott, however, having been returned shortly thereafter to the United States on parole, went to Washington and informed John Armstrong, Secretary of War, of their plight. This was followed by an appeal from the

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<sup>1</sup> *American State Papers: Foreign Relations*, III (Washington, 1832), 634.

<sup>2</sup> Report of British Commission on Naturalization, 1868 (Peabody Library, Baltimore).

<sup>3</sup> Winfield Scott, *Autobiography*, p. 73.

men themselves, stating that they were naturalized citizens of the United States and had wives and children residing there.<sup>4</sup>

Although the President had been authorized by act of Congress to practice reprisals, it was not until May, 1813, that the administration took action. Armstrong then directed Major General John Dearborn, in command of the American forces on the Niagara frontier of the Canadian border, "to put into close confinement twenty-three British soldiers, to be kept as hostages, for the safe keeping and restoration (on exchange)" of the Americans and to communicate the fact to the British commander in chief in Canada, Sir George Prevost.<sup>5</sup> Upon being so informed, Prevost wrote to Lord Bathurst, British minister for the colonies, who, replying at some length, pointed out that the twenty-three men taken prisoners at Queenston had been sent home "that they might be disposed of according to the pleasure of His Royal Highness the Prince Regent, they having declared themselves," so he asserted, "to be British born subjects." He then directed Prevost "forthwith to put in close confinement forty-six American officers and non-commissioned officers, to be held as hostages for the safe keeping of the twenty-three British soldiers," who had been put in confinement by Dearborn, and to notify him "that if any of the said British soldiers shall suffer death" because the soldiers sent to England should be found guilty of treason and in consequence executed, he should apprehend "as many as may double the number of British soldiers who shall have been so unwarrantably put to death, and cause such officers and non-commissioned officers to suffer death immediately."

Thus it was proposed in retaliation to exact the death of American officers and non-commissioned officers, two for one, for the death of each British soldier in the ranks. Moreover, Dearborn was to be informed, wrote Bathurst, that should the American government "not be deterred from putting to death" any of the hostages in retaliation, "His Majesty's armies and fleets on the coasts of America have received instructions to prosecute the war with unmitigated severity against all cities, towns, and villages belonging to the United States, and against the inhabitants thereof."<sup>6</sup>

When this letter was received by Prevost, Dearborn was no longer in command of the American forces. Incapacitated by obesity and failing health, which compelled him to move about in a vehicle built to accommodate him and which was later known by his name to farmers throughout the United States, Dearborn was relieved of his command. He was replaced by Major General James Wilkinson, a man whose natural ability was neutralized by a stormy and unsavory career in the Army, and to him Prevost sent Bathurst's

<sup>4</sup> Henry Kelly to the Secretary of State, *American State Papers: F. R.*, III, 635.

<sup>5</sup> *Ibid.* <sup>6</sup> *Ibid.*, III, 640-41.

letter. Wilkinson at once forwarded it to Madison, but not before making a spirited reply to Prevost in which he declared that the government of the United States "cannot be 'deterred' by any considerations of life or death, of depredation or conflagration, from the faithful discharge of its duty to the American nation."<sup>7</sup>

The President at once directed General Mason, American commissioner of prisoners, to put in close confinement all the British commissioned officers of every rank who were prisoners in the states of Massachusetts, Kentucky, and Ohio, in "order to secure a sufficient number of hostages, to answer in their persons for the proper treatment of a certain number of American officers now in possession of the enemy, on whom the British authorities have recently threatened to exercise a severity unknown to civilized warfare, and outraging humanity."<sup>8</sup>

Following this action, Wilkinson wrote Prevost that he was "commanded by the President" to inform him that "adhering unalterably to the principle and purpose declared in the communication of General Dearborn . . . on the subject of the twenty-three American soldiers, prisoners of war, sent to England to be tried as criminals," forty-six British officers had been ordered into close confinement and would "be immediately put to death in case of the putting to death of the forty-six American officers commissioned and non-commissioned officers . . . and that they will not be discharged from their confinement until it shall be known that the forty-six American officers . . . are no longer confined."<sup>9</sup> The letter closed with a threat of "such exemplary retaliations as may produce a return to . . . legitimate modes of warfare," should the British fleet carry into effect the instructions which Bathurst said had been issued to it.

Meanwhile the irritation and apprehension of the Americans were increased by the seizure of fifty-nine men of the 14th Regiment, captured by the British at Beaver Dams in June, 1813, and their deportation to England on the claim that they were British subjects.<sup>10</sup> Thereupon orders were issued to confine fifty-nine British soldiers taken by General Harrison at the Battle of the Thames, who were to be held for the safety and proper treatment of the fifty-nine Americans sent overseas.<sup>11</sup>

This brought the number of officers and common soldiers held as hostages in close confinement by the United States to 128.

All these incidents were accompanied by a lengthy correspondence between General Mason and Colonel Thomas Barclay, the British officer residing in the United States who was charged with the care and exchange

<sup>7</sup> *Ibid.*, III, 635-36.      <sup>8</sup> *Ibid.*, III, 636.      <sup>9</sup> *Ibid.*, III, 637.

<sup>10</sup> Barclay to Mason, *ibid.*, III, 656.      <sup>11</sup> Mason to Barclay, *ibid.*, III, 660.

of British prisoners, replete with charges and countercharges of the hardships endured by these officers and men kept in confinement, which furnishes convincing evidence that the situation had become intolerable and that both sides would be only too glad to have it relieved.<sup>12</sup>

The first break came in the early winter of 1814. Among the prisoners held by the British in close confinement at Beauport, just out of Quebec, was Brigadier General William H. Winder, who had been captured at the Battle of Stoney Creek in June of the previous year. Efforts to effect his exchange had been unsuccessful—a failure to be accounted for, no doubt, by the request of Lieutenant Colonel John Harvey, whose troops had effected his capture.

“Be careful of exchanging *Genl. Winder*,” wrote Harvey. “He possesses more talent than all the rest of the Yankee Generals put together.” Nevertheless, in January, 1814, Winder was given a sixty-day parole with leave to return to the United States.<sup>13</sup> This unusual privilege was conferred because, as Sir George Prevost claimed, Winder had expressed “his hopes of succeeding in inducing his Government to waive the course of proceeding which they [had] adopted and to put an end to the whole question [of hostages], at least in the form of retaliation.”

Indeed, Winder is represented as giving assurances of his “strong conviction that the ground taken by His Government . . . cannot be supported and of his confident hope of being able to place the subject in that point of view as shall induce them to retrace their steps and leave the question in the state in which it was placed by the confinement of the British subjects taken in arms and sent to England.”<sup>14</sup>

Winder was to continue during his parole in the status of hostage, returning to Quebec at its expiration. He arrived in Baltimore on January 27th and left the next day for Washington, but was unsuccessful in his efforts to get the required assurance that the Madison administration would relinquish the “retaliatory system” and on March 22 he was back in Quebec and again in confinement as a hostage.

Before he reached Quebec, however, the Madison administration underwent a change of heart, for on March 19 the President conferred authority on Winder to propose an immediate exchange of all or any of the officers or

<sup>12</sup> *Ibid.*, III, 633 ff.

<sup>13</sup> Harvey to Baynes, June 11, following Winder's capture at Stoney Creek. *Documentary History of the Campaign upon the Niagara Frontier in the Year 1813*, Ernest A. Cruikshank, coll. and ed. (Welland, 1896), VI, 68.

<sup>14</sup> Prevost to Bathurst, Jan. 13, 1814, no. 124. Photostat copies of the correspondence between Prevost and Bathurst herein referred to are in the Library of Congress, Manuscript Division, PRO, London CO 42, Vol. 156.

men, whether held as hostages or as ordinary prisoners. Previous to his entering upon these negotiations, Monroe in a letter to Prevost suggested and solicited Winder's "exchange for any British officers whose value shall be equal to his." He was not, however, to re-enter military service until the British officers so selected "shall have arrived in Canada." Moreover, four British officers were given parole for three months, with permission to return to Canada "as well in return for the indulgence shown by you to General Winder as because some of them have Families whom they expressed a strong desire to visit."<sup>15</sup>

This proposal receiving Prevost's assent, Winder now went from Quebec to Montreal, where he met Edward Baynes, adjutant general to Prevost and selected by him to represent the British in the arrangements to be made. Their efforts resulted on April 16 in a "convention" providing for the mutual exchange of prisoners with permission for them after May 15 to enter again the military and naval services of their respective countries. Expressly excepted, however, were "the first three and twenty men put into confinement on principles of retaliation, as hostages by the United States (for the 23 men deported to England, following the Battle of Queenston) and the officers and non-commissioned officers put into confinement by Prevost in retaliation."<sup>16</sup>

The negotiations were conducted between Winder and Baynes through the medium of a correspondence couched in the language of formal diplomatic communications.<sup>17</sup>

After the convention had been executed on April 16, Monroe received information from the American commissioner general of prisoners in London that the twenty-three Queenston prisoners were receiving treatment in no wise differing from that accorded other prisoners confined in England, and thereupon concluded that the plan to put them on trial for treason had been abandoned.<sup>18</sup> Winder by this time being on the point of returning to military service, Monroe appointed Tobias Lear to reopen negotiations looking to the release of the twenty-three British soldiers held as hostages in retaliation by the Americans. This was finally accomplished by a supplemental convention drawn up and executed by Lear and Baynes, who again represented the British interests, on July 16, whereby the release of these men and forty-six American officers held as hostages in retaliation by the British was agreed to.<sup>19</sup>

But the exchange of the twenty-three men sent to England after the Battle

<sup>15</sup> Same to same, May 16, no. 154, forwarding a copy of Monroe's letter written on March 19.

<sup>16</sup> Same to same, May 16, no. 154, enclosing a copy of "*The Convention*."

<sup>17</sup> For correspondence between Winder and Baynes, see *Richardson's War of 1812*, Alexander C. Casselman, ed. (Toronto, 1902), pp. 274 ff.

<sup>18</sup> Beasley to Monroe, *American State Papers: F. R.*, III, 727.

<sup>19</sup> *Ibid.*, III, 728.

of Queenston was again expressly excluded. They remained there until repatriated under the provisions of the Treaty of Ghent.

On July 9, 1815, two having died from natural causes, twenty-one landed in New York and among those who witnessed their arrival was the American officer who first interceded in their behalf. Brevetted major general for meritorious services on the Canadian border, where he had been severely wounded, and destined for a long and distinguished career in the Army, Winfield Scott was departing for a visit to England and the Continent.<sup>20</sup>

Whether Bathurst spoke for his government when he declared that the twenty-three men would be tried for treason and executed may be questioned. If he did, then there is no reason to doubt that the retaliatory measures taken by the Madison administration saved them from such a fate.

Developments of great moment to General Winder followed his negotiation of the convention for an exchange of prisoners with Baynes. It brought him in contact with Madison and Monroe, and so favorably were they impressed with him and with his military record on the Canadian border prior to his capture at Stoney Creek that upon his own exchange and return to military service he was put in command of a new military district which included Washington, Baltimore, and Annapolis, and entrusted with the task of gathering and organizing the forces required to defend these cities from the British, who, it was apprehended, were about to land an army in Maryland.

And thus when the British did march upon Washington, General Winder commanded the troops that joined battle with them at Bladensburg and suffered a defeat attended with incidents that administered a lasting sting to our national pride.

<sup>20</sup> Scott, p. 81.