

HARO OR ROSARIO?

Maps, Navigation, and the Anglo-American Northwest Water Boundary Dispute, 1846-72

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FROM THE SECOND DECADE of the nineteenth century, Britain and the United States disputed the “Oregon Territory” west of the Rockies. Britain favoured partition along the Columbia River, and the United States claimed to the 49th parallel or, after 1819, sometimes to the 54° 40’ border with Russian Alaska. These claims were put on ice by agreements in 1818 and 1828. But the issue revived in the 1840s, and, with President Polk’s forceful policies, things looked dangerous in late 1845. The question was apparently settled the following year, when the United States accepted a British draft treaty that ran the border from the Rockies along the 49th parallel “to the middle of the channel which separates the continent from Vancouver’s Island, and thence southerly through the middle of the said channel, and of Fuca’s Straits, to the Pacific Ocean,” leaving Britain all Vancouver Island. However, a dispute arose over ownership of islands in the Strait of Georgia – providing the context of the celebrated 1859 “Pig War” on San Juan. In the 1860s, there were attempts to refer the dispute to arbitration. But, following the close of the American Civil War, these attempts became entangled with two other issues: (1) British liability for having allowed the building of Confederate commerce-raiding warships (notably the *Alabama*) in British yards and (2) the determination of American fishers to continue working Canadian coastal waters despite US abrogation of the 1854 Reciprocity Treaty. These issues were all addressed together by a conference in Washington in 1871; and the resultant treaty referred the Gulf Islands “water boundary” question to German arbitration, which, in 1872, found in favour of the United States.

* The University of Victoria has reproduced an extensive collection (mostly from the United Kingdom’s National Archives, Kew) of maps relevant to this dispute (available online at <http://bcgenesis.uvic.ca/mapGallery>). These maps are numbered, and appear on screen in groups of ten. In this article footnote reference to them is by the symbol +, followed by the numbers of their group, e.g., +21-30. For modern maps of the area discussed, Google, for example, “Haro Strait Images.”

Writing of the disputed water boundary, the British foreign minister, Lord John Russell, once regretted that no “Map or Chart” had been annexed to the 1846 Oregon Treaty “by which the true meaning of” its border article “could have been authoritatively ascertained.”¹ In the absence of such a map, the British were persuaded by George Vancouver’s 1798 map that the border should run down the most easterly navigable channel between the mainland and the islands in the gulf (later known as the Rosario Strait), while the Americans were convinced by Charles Wilkes’s 1845 map that the treaty had specified the most westerly navigable channel (the Haro Strait). So the terms of the subsequent dispute were framed by cartography, with arguments cast in terms of maps, surveys of the channels involved, and considerations of their navigability, to an extent unparalleled in other Anglo-American boundary issues.

This dimension of the dispute has been somewhat neglected, partly because most scholarship on the area’s early mapping is concerned with Spanish-British exploration and competition in the 1790s, and partly because little attention has been given to the uses made of such maps in the 1840s and 1850s or to the conclusions drawn from them about the navigability of the various channels. Although the dramatic San Juan Pig War of 1859 has drawn a good deal of attention,² there has been far less interest in attempts from 1861 onwards to secure a boundary settlement through arbitration. In particular, earlier studies do not always bring out the crucial question of whether the arbiter should be allowed, if he felt the 1846 treaty was unclear, to make a compromise award handing Britain San Juan Island and the United States its eastern neighbours. Arbitration was eventually agreed at the 1871 Washington conference. But most discussion of the conference focuses on the principal issues: British liability for damage done by the *Alabama* and US access to inshore Canadian fisheries. And this tends to obscure the way in which the United States was brought to drop its hopes of gaining a simple cession of at least the disputed San Juan archipelago and possibly of some or all of British Columbia. Nor, I contend, is it made clear that it was through

¹ Russell to the British minister in Washington, Lord Lyons, 24 August 1859. In William R. Manning, ed., *Diplomatic Correspondence of the United States: Canadian Relations 1784-1860*. (Washington: Carnegie Endowment for International Peace) vol. 4 (1945), 800n.

² Inter alia, in James O. McCabe, *The San Juan Water Boundary Question* (University of Toronto Press, 1964); David Hunter Miller, *San Juan Archipelago: Study of the Joint Occupation of San Juan Island* (Bellows Falls, VT: Windham Press, 1943); Barry Gough, “British Policy in the San Juan Boundary Dispute, 1854-1872,” *Pacific Northwest Quarterly* 2, 2 (1971): 59-68; Erwin N. Thompson, *Historic Resource Study: San Juan Island National Historic Park*, available at www.nps.gov/sajh/historyculture/places.htm; E.C. Coleman, *The Pig War: The Most Perfect War in History* (Stroud, UK: History Press, 2009); and Mike Vouri, *The Pig War: Standoff at Griffin Bay* (Seattle: University of Washington Press, 2013).

this and other concessions that the United States secured terms of arbitration that (though they did not destroy British hopes of a favourable outcome) considerably advantaged the American water boundary case.³

It is surprising that maps were not more usually attached to treaties. Mitchell's famous 1755 *Map of the British and French Dominions in North America* had been commissioned, and used in internal government debates, to support an extensive view of British rights. When published, it was praised for detecting French "Encroachments, and ... restoring us to our just Rights and Possessions, as far as Paper will admit of it."⁴ Some sixty years later maps were crucial parts of a debate about the United States' western boundaries. In 1816, John Melish published a *Map of the United States with the Contiguous British and Spanish Possessions* accompanied by a probative "geographical description." This took a broad view of US rights, claiming, inter alia, the land beyond the Rockies from the latitude of Lake of the Woods to that of San Francisco. Unsurprisingly (though probably wrongly) foreigners thought Melish's map had official sanction; Simon M'Gillivray (of the North West Company, which operated throughout much of the land in question) rapidly produced a reply and counter-map, showing the northwest coast as British.⁵

Maps featured, too, in the conduct of diplomatic negotiations. In the 1782 US-Spanish talks, John Jay got his opposite number to indicate Spain's claims on a French version of Mitchell's map. And the US-British negotiations later that year were essentially conducted in terms of Mitchell's map. By John Adams's account: "Upon that map, and that only were the boundaries delineated";⁶ and some of its imperfections shaped the terms of the resultant peace treaty. But it was not until 1819 that an existing map was mentioned in the text of a North American international treaty, and then only in descriptive terms.⁷ Prescription

³ See McCabe, *San Juan Water Boundary*, chap. 10 and 121-22. See also below pp. 66-7, 69.

⁴ Matthew H. Edney, "John Mitchell's Map of North America (1755): A Study of the Use and Publication of Official Maps in Eighteenth-Century Britain," *Imago Mundi* 60, 1 (2008): 63-85.

⁵ John Melish, *A Geographical Description of the United States, with the Contiguous British and Spanish Possessions: Intended as an Accompaniment to Melish's Map of These Countries* (Philadelphia, 1816). See also his similarly entitled and published *Map* (Philadelphia: 1816 – David Rumsey Historical Map Collection). Melish did, though, leave Britain all Vancouver Island. See *Notice Respecting the Boundary between His Majesty's Possessions in North America and the United States with A Map of America ... Exhibiting the Principal Trading Stations of the North-West Company ...* [anonymous, but on internal evidence written by Simon M'Gillivray] (London: printed by B. McMillan, 1817).

⁶ Matthew H. Edney, *The Mitchell Map, 1755-1782: An Irony of Empire* (Osher Map Library, University of Southern Maine, www.oshermaps.org/special-map-exhibits/mitchell), esp. IV, "The Mitchell Map in Paris."

⁷ After describing the border west of the Mississippi, Article 3 of the US-Spanish treaty continues: "The whole as laid down in Melish's map of the United States, published in

did not come until 1848, when the Treaty of Guadalupe Hidalgo defined the US-Mexican border in terms of two maps, copies of which were authenticated and attached. Unfortunately, one was so inaccurate that it promptly sparked a new controversy, with Mexicans favouring the line indicated by the map, Americans the findings of a new survey. It took the Gadsden (US land) Purchase to resolve the issue.⁸

The general lines of British North America's foreign boundaries were determined by the 1783, 1818, 1842, and 1846 treaties with the United States and the 1825 treaty with Russia, none of which mentioned maps;⁹ and the process of interpreting the 1783, 1846, and (later) the 1825 treaties gave rise to further territorial disputes. The disputes concerning the 1846 treaty form the body of this article, which contends that the difficulty stemmed from the existence, when the treaty was concluded, of rival maps.

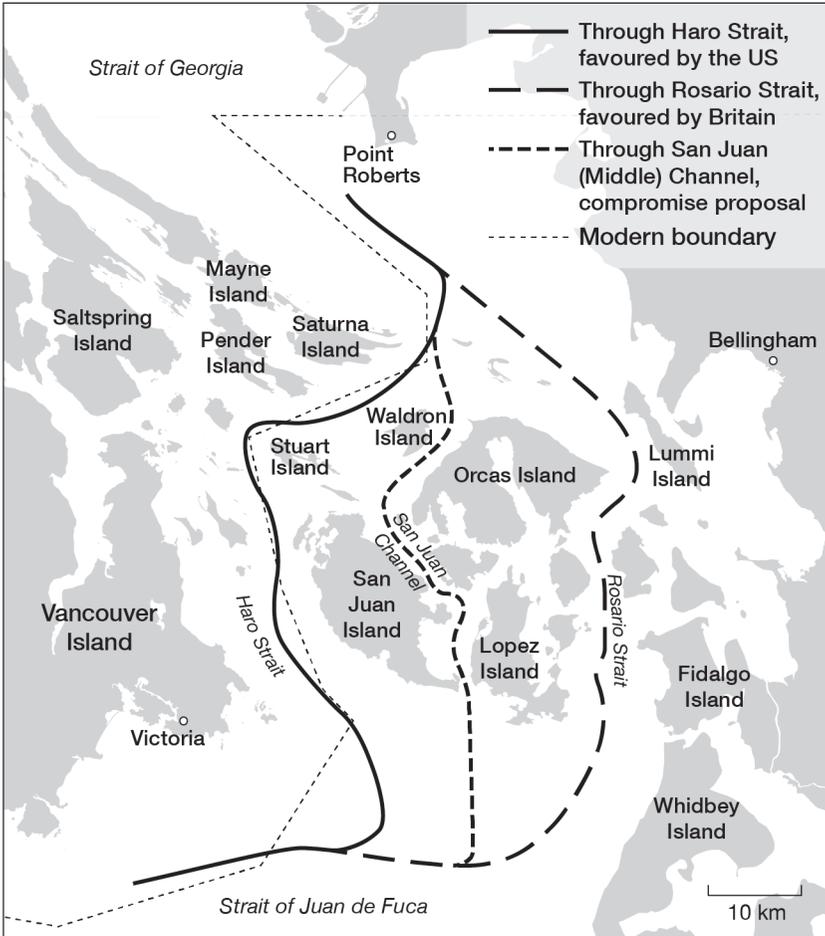
Before sending his final offer to Washington in 1846, Foreign Secretary Lord Aberdeen had briefed the governor of the Hudson's Bay Company (HBC), Sir J.H. Pelly. Pelly was at first happy with its wording. But the following week he started to worry, and on 22 May he sent Aberdeen a letter expressing the fear that "some parts" of their conversation "may have been overlooked, or ... [that he] may not have been sufficiently explicit." Pelly now noted that there were several islands in the relevant part of the Strait of Georgia, and so suggested that the border should run from its centre (on 49°) "south along the line coloured red as navigable in the chart made by Vancouver (a tracing of which I enclose) till it reaches a line drawn through the centre of the Straits of Juan de Fuca." He added a treaty draft specifying a border "south along the track of Vancouver (as shown in the map made by him)."¹⁰ But it was too late: Pelly had seen Aberdeen on Saturday 16 May, and the draft treaty had gone off to Washington on Monday the 18th. It would have been most unwise

Philadelphia, improved to the first of January, 1818." But it then immediately prescribes a remedy in case the Arkansas River did not rise at 42° as the map suggested. The map had been much used during negotiations, and the border in Oregon was nearly influenced by its mistaken depiction of a "Multnomah" river there. See Warren L. Cook, *Flood Tide of Empire: Spain and the Pacific Northwest, 1543-1819* (New Haven, CT: Yale University Press, 1973), 518-21.

⁸ The maps were Juan Pantoja's 1782 plan of the port of San Diego and the "Map of the United Mexican States, as organized and defined by various acts of the Congress of said republic ... Revised edition. Published at New York, in 1847, by J. Disturnell" which misplaced El Paso. See also the Wikipedia article on the Gadsden Purchase (<http://en.wikipedia.org/wiki/Gadsden-Purchase>).

⁹ More specific, but sometimes important, points were determined by joint Anglo-American commissions under the treaties of 1794, 1814, and 1842, which (where they agreed) did make maps recording their findings.

¹⁰ Pelly to Aberdeen, 22 May 1846 (*San Juan Boundary. Abstract of Correspondence ... 1842 to 1849* - Foreign Office Confidential Print [for the cabinet] 2041 (hereafter Confidential Print 2041) pp. 108-108B).



Framed by cartography: Places and possible boundaries in the Haro or Rosario debate. Cartography by Eric Leinberger

to withdraw it and seek to substitute an alternative. And it is this that presumably underlies the 1854 recollection of the senior civil servant at the Foreign Office, Henry Addington, who held that, when the 1846 treaty had been negotiated, it had been “forecast that some difficulty might arise as to the precise line ... [from] the middle of the Gulf of Georgia down the Channel to the entrance of Fuca’s Strait: but this consideration being of less importance than the conclusion of the Treaty, the Treaty was concluded and signed ... [regardless].”¹¹

¹¹ National Archives, Kew, FO 5/809, fo. 194. All file numbers cited hereafter are those of these archives.

Later in 1846, Pelly repeated his concerns to Aberdeen's successor, Lord Palmerston: "[between 49° and 48° 20' there are many] islands, and, I believe, passages between them. I know there is one close round Vancouver's Island [the Haro Strait]; but I believe the largest to be the one Vancouver sailed through [the Rosario Strait], ... coloured red in the [enclosed] tracing [of 'Vancouver's track'], and I think this is the one that should be the boundary."¹² Next year the HBC brought the subject up again: there were "several channels" among the islands, and it was important to determine the correct boundary since "otherwise the sovereignty of these ... islands may very soon become a source of dispute." The HBC believed that commissioners should be appointed to settle this.¹³

The idea prompted Addington to suggest that, though most of the border from the St. Lawrence River westwards could be left unmarked, the stretch through the Strait of Georgia presented "so many points of possible collision" that it would be wise to get it demarcated. If (as was usual) the treaty term "channel" was agreed to mean "navigable channel," the question might be settled between naval officers already present in the Pacific – even should there prove to be more than one "navigable channel." But if the United States took "channel" to refer to the whole stretch of water between Vancouver Island and the mainland, the various islands would have to be apportioned by commissioners on the principles previously used to share out those in the St. Lawrence and the St. John rivers.¹⁴

After a brief delay to see whether the British naval surveys of 1846 had turned up any useful material, the chargé in Washington, John Crampton, sought prior agreement from Secretary of State Buchanan that the treaty term "channel" did indeed mean "a deep and navigable channel." If so, since "it [was] believed that only one Channel, that ... laid down by Vancouver in his Chart, ha[d] ... been hitherto surveyed and used," it was "natural to suppose" the treaty's negotiators had had "that particular Channel in view." Should the United States agree, the border could easily be fixed by two naval officers "of scientific attainments and conciliatory character." And Crampton enclosed Vancouver's map with draft instructions to the commissioners framed on the assumption that

¹² Pelly to Palmerston, 30 July 1846, Confidential Print 2041, 108D.

¹³ Sir George Simpson put this to the British minister in Washington, Richard Pakenham, who notified Palmerston on 25 February 1847, FO 5/809, fos. 70-73; Confidential Print 2041, 108D-109.

¹⁴ 30 March 1847, *Memorandum relative to ... the Negotiations ... which led to the Conclusion of the Convention of ... 1846*, Confidential Print 2042, 161-62.

his channel should be the border. Otherwise, Crampton observed, “much time might be wasted in surveying the various intricate Channels ... and some difficulty might arise in deciding which ... ought to be adopted for the ... Boundary.”¹⁵

However, American attention was focused not on Rosario but on the Haro Strait. This (as the “Canal de Arro”) is the only channel running northwards from the Juan de Fuca Strait that is named on the small-scale “Map of the Oregon Territory” published in the atlas attached to Charles Wilkes’s 1845 *Narrative of the United States Exploring Expedition*.¹⁶ Its southern entrance looks broad and inviting.¹⁷ Before sending his proposed treaty to Washington, Aberdeen had shown it to the US minister in London, Louis McLane. Aberdeen later recalled that neither had mentioned the Canal de Haro, or “any other channel” or “islands the position & indeed the very existence of which had hardly at that time been ascertained.”¹⁸ But McLane interpreted the treaty’s words – “the channel which separates the continent from Vancouver Island” – in the light of Wilkes’s map and reported (in a despatch widely circulated around political Washington) that Aberdeen “most probably, will offer” a 49th parallel border “to the arm of the sea called Birch’s Bay, thence by the Canal de Arro and Straits of Fuca.”¹⁹ McLane’s letter reached the secretary of state just before the proposed treaty, and Buchanan, whose later recollection was that he had never even seen Vancouver’s

¹⁵ Crampton to Buchanan, 13 January 1848, enclosing draft instructions and “a copy from Vancouver’s chart,” in Manning, *Diplomatic Correspondence of the United States: Canadian Relations 1784-1860*. vol. 3 (1943), esp. 1129-32.

¹⁶ *Narrative of the United States Exploring Expedition during the Years 1838, 1839, 1840, 1841, 1842* (Philadelphia: Lea and Blanchard, 1845; London: Wiley and Putnam, 1845).

¹⁷ See *Maps Annexed to the Memorial and Reply of the United States Government Submitted to the Arbitration ... of ... the Emperor of Germany*, *British Parliamentary Papers* [hereafter P.P.] 1873, lxxiv, Map F - +41-50.

¹⁸ Aberdeen’s son to Edmund Hammond, 21 August 1859, FO 5/813, fo. 263. McLane agreed (in another context) that he had been shown the precise treaty words Aberdeen proposed. See Aberdeen to Pakenham, 29 June/1 July 1846, *North-West American Water Boundary: Second and Definitive Statement on Behalf of the Government of Her Britannic Majesty*, Historical Note, p. xvi (P.P. 1873, lxxiv).

¹⁹ McLane to Buchanan, 18 May 1846, in Manning, *Diplomatic Correspondence* 3:1034. There is no evidence to support either Bancroft’s claim (*Reply of the United States to the case of ... Her Britannic Majesty*, 7 - P.P. 1873, lxxiv) that Aberdeen “definitely assented, as Mr. MacLane understood him, to the Haro Channel as the boundary,” and that Pelly later called, “map in hand,” in a vain attempt to persuade Aberdeen to go back on this, or the alternative American version that, despite his promise to McLane, Aberdeen was led by Pelly to leave the treaty “open to the construction ... that the Rosario Strait was the Channel meant” (see p. 62). It was because Pelly did *not* think he had, on 16 May, properly explained the geographical position that, too late (22 May), he sent Aberdeen a map and related treaty draft.

chart, understood the British offer in the light of Wilkes's map.²⁰ This was not a matter of immediate moment since what aroused American concern was not the boundary's route through the Strait of Georgia but Britain's insistence that the HBC keep a perpetual right to navigate the Columbia River. However, Senator Benton did observe that the border would turn "south, through the Canal de Haro (wrongly written 'Arro' on the maps) to the Straits of Fuca."²¹ He was probably guided to this understanding by McLane's despatch – though a map in an influential 1845 pamphlet had also shown a suggested border running through, but not naming, the Haro Strait.²²

Only one of the maps published in Wilkes's 1845 atlas related to Oregon. But he had also made a more detailed chart of the "Straits of Arro," and this was copied by Navy Secretary George Bancroft, who had seen McLane's despatch.²³ Later, as US minister in London, Bancroft heard talk of a projected British settlement on Whidbey Island. So he sought his copy of the chart to enable him to claim Haro as the "main channel intended by the recent Treaty." Buchanan sent it, saying that he was sure the "Canal of Arro, as marked in Captain Wilkes' 'Map,'" was the channel Aberdeen had meant when talking to McLane. However, Bancroft continued to worry. In 1848, on learning that Britain had proposed a boundary commission, he told Palmerston that "the islands to the east of ... the channel of Arro were ours" and showed him the tracing of Wilkes's chart. This only contained "the wide [southern] entrance into the Straits of Arro," not their more problematic northern section.²⁴ But that autumn further charts deriving from the exploring expedition were published. Bancroft sent them to Palmerston, saying they would enable him to "trace the whole course of the Canal of Arro, through the middle of which our boundary line passes." Palmerston's only response was a polite remark that the intended boundary commissioners would

²⁰ See Buchanan to Bancroft, 28 December 1846, in Manning, *Diplomatic Correspondence* 3:341; and Crampton's 13 January 1848 account to Palmerston of his recent conversation with Buchanan in *Second and Definitive Statement*, Historical Note, p. xxxi.

²¹ *Congressional Globe*, 29th Congress, First Session, Appendix, 867.

²² The banker (and former northwest coast trader) William Sturgis included the sketch in his *The Oregon Question* (Boston: Jordan, Swift and Wiley, 1845), and the United States submitted it to the arbitrator as Map G (+41-50).

²³ "Chart of the Straits of San Juan de Fuca Puget's Sound &c. by the U.S. Ex. Ex. 1841" (+61-70).

²⁴ Bancroft to Palmerston, 31 July and 3 November 1848, FO 5/809, fos. 129, 134; Bancroft to Buchanan, 3 November 1846, and 4 August 1848, and Buchanan to Bancroft, 28 December 1846, in Manning, *Diplomatic Correspondence* 3:341, 1072-74.

find the charts useful in determining where “the line of Boundary described in the ... Treaty ought to run.”²⁵

National views were not quite uniform. The 1848 map of “Vancouver’s Island” published by “James Wyld, Geographer to the Queen and H.R.H. Prince Albert,” alarmed Bancroft “by adopting a line [through the Rosario Strait] far to the east of the Straits of Arro.”²⁶ But the British cartographer John Arrowsmith coloured the San Juan archipelago on his 1849 map as American. This was later noted by Governor Isaac Stevens of Washington Territory. Yet the 1848 “Map of Oregon and Upper California from the Surveys of John Charles Fremont and Other Authorities,” to which Congress gave at least some consequence by ordering the printing of twenty thousand copies, clearly showed the border as the British would have wished,²⁷ as did an 1852 map by the surveyor-general of Oregon, J.B. Preston. On seeing these, Arrowsmith published a new version of his map in 1853, with the boundary running up the Rosario Strait.²⁸

Most people treated these maps as mere ammunition to be deployed in support of their national interpretations of the boundary treaty. Certainly James Douglas, who, from 1851, combined management of the HBC west of the Rockies with the governorship of the fledgling colony of Vancouver Island, viewed the San Juan archipelago as British, and he wrote repeatedly to London (often enclosing maps) to demonstrate this and to stress the archipelago’s importance. Pending instructions, which in due time approved his course, he would assert British sovereignty. To this end, he landed thirteen hundred HBC sheep on San Juan in

²⁵ Bancroft to Palmerston, 3 November 1848, and Palmerston’s 7 November reply, in Manning, *Diplomatic Correspondence* 3:1166; Confidential Print 2041, pp. 112–13; *Second and Definitive [British] Statement*, app., xxxii–xxxiii. The maps Bancroft sent in November are discussed below, pp. 54.

²⁶ Bancroft sent it to Buchanan, asking him for “any chart or Map which designates the line of Boundary truly,” 19 October 1848, in Manning, *Diplomatic Correspondence* 3:1159; Wyld’s map, FO 925/1864, P.A. Penfold, ed., *Maps and Plans in the Public Record Office*, vol. 2, *America and the West Indies* (London: H.M.S.O., 1974) (hereafter Penfold) no. 560 is at +51–60.

²⁷ In its 20 February 1854 letter to the Foreign Office, the Colonial Office buttressed its case by enclosing a copy of the relevant section (+71–80 – MPK 1/77). This was also submitted to the 1872 arbitration as the British Map 5.

²⁸ Stevens to Governor Douglas, 12 May 1855, in Manning, *Diplomatic Correspondence* 4:652; and Arrowsmith to the HBC’s secretary, 29 September 1856, *Correspondence between the British and United States Commissioners, Relative to the Line of Water Boundary ... on the North-West Coast of America ... 1857–1859*, Confidential Print 1769, 38–39, 44–45; Arrowsmith’s 1853 “Map of Vancouver Island and the Adjacent Coasts,” FO 925/1238, is at +71–80. On 8 October 1856, Arrowsmith traced part of the large map – “A Diagram of a Portion of Oregon Territory Surveyor-General’s Office, Oregon City, October 21st 1852 Jn.B. Preston” – noting that it showed the boundary line as “commencing at mid-channel on the 49th Parallel & extend[ing] S. & W. thro Vancouver & De Fuca Straits,” +61–70 - FO 925/1650, pt. 2. Another American map – “Map of Oregon showing the location of Indian Tribes.” 1852 (Coleman, *Pig War*, 215) – takes the border east of San Juan (down the Middle Channel).

December 1853. On the American side, in 1852 the San Juan archipelago was included in one of the Oregon Territory's new counties, and in 1854 it became Whatcom County, Washington Territory. The county sheriff tried to collect local taxes from the HBC, managing in 1855 to seize thirty-four "valuable rams." News of this led the US federal government and the Canadian governor general to tell local officials that the "title ought to be settled" before either country sought to "exercise complete and exclusive rights."²⁹

Given this "mutual forbearance," it was hoped that sovereignty could be sorted out by Commissioners. When approached by Crampton in 1848, Buchanan had conceded that he, "and he presumed Mr. Pakenham, in negotiating and signing" the 1846 treaty, always "conceived 'channel' to mean the 'main navigable channel,' wherever situated." He would not, however, "without further geographical evidence," commit himself to accepting Vancouver's route as this "main navigable channel." Instead, he suggested that the task of identification should be left to the officers chosen as joint commissioners.³⁰ However, Congress did not pass the necessary legislation until 1856, and the commission did not convene until the summer of 1857. It proved a great disappointment. Social relations between the leading commissioners – Captain James Prevost (RN) and Archibald Campbell – were "most harmonious." But Prevost's opening suggestion that the United States might relinquish the enclave tip of Point Roberts (on the mainland) met the polite response that this was beyond Campbell's competence.³¹ Neither commissioner was impressed by the other's arguments as to which channel the 1846 treaty had intended. So Prevost advanced his fall-back proposal: compromise on the newly discovered middle channel immediately to the east of San Juan. Campbell, who struck one British interlocutor as "impossible to deal with unless given everything he asks," declined "to sacrifice any portion of the territory" which he believed the Treaty gave to the United

²⁹ Secretary of State Marcy to Stevens, 14 July 1855, and Sir Edmund Head to Sir George Simpson, 24 July 1855, in Manning, *Diplomatic Correspondence* 3:121, 640.

³⁰ Crampton to Palmerston, 13 January 1848. Though they adopted Aberdeen's proposals verbatim, the 1846 treaty had, formally, been concluded between Buchanan and Pakenham – without, Pakenham recalled in 1859, any US intimation "as to the particular direction" of the water boundary (*Second and Definitive Statement*, app., xxix-xxxii).

³¹ Point Roberts extends southwards into the sea, with its tip (below 49°) a US enclave. James Wyld's August 1858 "Map of the Gold Regions of the Frazer River and the Washington Territory ..." (+91-100) assumes that Britain owned *all* of the point: the 49th parallel border is shown as extending only to half-way between it and the mainland coast to its east, after which the line turns south; from this starting point it *must* go through the Rosario Strait.

States. Exchanges became heated, and on 7 December Prevost reported deadlock.³²

Buchanan and Crampton had agreed that the border should run down “the main navigable channel,” and in 1856 Crampton could still write that “the existence of another navigable channel, broader and deeper than that laid down by Vancouver ... is, according to the reports of the most recent navigators in that region, extremely improbable.”³³ Most earlier maps had, at least de facto, favoured Rosario rather than Haro. And they should, in this respect, be taken at face value. No doubt all were intended to boost both their countries’ claims to the area – Vancouver disregarded most of the names given by previous Spanish explorers and plastered his map with British ones – and, still more, at least as regards Vancouver and Wilkes, the fortunes and reputations of their makers. But this could be done only if the maps were accurate; and Vancouver’s instructions had emphasized “the drawing up of accurate and standardised charts.”³⁴ Nor, indeed, was there, when they were made, any national interest in distorting representations of the San Juan Islands and the Gulf Islands. Vancouver was less concerned with the islands than with probing the coast for openings into the interior and with securing restitution of the British establishment on Nootka Sound, while Wilkes wanted the United States to take possession of Oregon right up to 54° 40’ (well north of these islands).³⁵

As noted by Americans anxious to refocus attention away from Vancouver, the first exploration had been Spanish. In 1790, one expedition had, rather crudely, mapped the Straits of Juan de Fuca, noting and naming the broad southern entrance of the “Canal de Lopez de Haro” and also the “Canal de Fidalgo,” the southern end of what was later called the Rosario Strait. Next year an expedition under Francisco Eliza

³² Prevost to the Earl of Clarendon, 7 December 1857, FO 5/810 esp. fos. 96–97, 101; (Confidential Print, 1769), esp. 37, 45, 53, 55; Helen Akrigg, “Richards, Sir George Henry” *Dictionary of Canadian Biography*, Vol. 12, University of Toronto/Université Laval, 2003, www.biographi.ca/en/bio/Richards_george_henry12E.html. Privately, Campbell said that “a strict construction” would give the United States not only the San Juan archipelago but also Saturna Island (to the north of the main Haro channel); he would, though, allow this to Britain “under a liberal and generous construction of the treaty.” See General Harney to Secretary of War Floyd, 10 October 1859, Washington [State] National Guard, *Collection of Official Documents on the San Juan Imbrolio, 1859–1872* (typescript, Tacoma, 1964), 40–41.

³³ 9 February 1856, in Manning, *Diplomatic Correspondence* 4:655.

³⁴ David Mackay, *In the Wake of Cook: Exploration, Science and Empire, 1780–1801* (London: Croom Helm, 1985), 101.

³⁵ *Ibid.*, 101–2; Robert J. King, “George Vancouver and the Contemplated Settlement at Nootka Sound,” *The Great Circle: Journal of the Australian Association of Maritime History* 32, 1 (2010): 6–34; “Report on the Territory of Oregon by Charles Wilkes, Commander United States Exploring Expedition, 1838–1842 [June 1842],” *Oregon Historical Quarterly* 12 (1911): 293–98.

investigated further. A pair of small craft pushed up the Haro Strait and, by following the largest opening, came through into the open water of the Strait of Georgia. They then continued “through a great many islands” but gave up amidst “another considerable archipelago ... which [they] could not explore.” What was less commonly stressed was that they dissuaded Eliza from taking his main ship into the Haro Strait, for fear that it would be wrecked. Instead, Eliza anchored on the south side of the Juan de Fuca Strait, from whence the small craft passed north through Rosario Strait, went up the Strait of Georgia to Texada Island, crossed to the east coast of Vancouver Island, and returned down this and the outer line of the Gulf Islands.³⁶ The general conclusion was highly adverse to Haro: “[It] contains several islands ... and many shoals and rocks under water ... strong currents, and terrible whirlpools; for which reasons any large vessel would be in great danger”; nor, for the greater part of the strait, was there any “tolerably safe anchoring ground.” But the Canal de Fidalgo (Rosario Strait) also gave access to the Strait of Georgia: “[Its] currents and whirlpools are not so formidable,” and it “[has] good anchoring grounds.” So when exploration was resumed in 1792, the *Sutil* and the *Mexicana* went up through Rosario Strait and were surveying the mainland coast beyond Bellingham Bay when they met the British *Discovery* and *Chatham* under Vancouver.³⁷ Both parties had instructions to look chiefly for channels leading into the interior – in other words, for a “Northwest Passage.”³⁸ They exchanged maps and, for a time, cooperated.

The Spanish surveys of 1791 and 1792 produced several manuscript charts, one of which was later produced by the United States as evidence for the 1872 arbitration.³⁹ These all show a clear passage through Rosario

³⁶ Since Spanish, British, and American explorers often gave the same places different names, I have used present-day names. I also apply the term “Gulf Islands” to the Canadian Gulf Islands and call those around San Juan the “San Juan archipelago.”

³⁷ “Extract from the navigation made by ... Don Juan Pantoja y Arriaga ... and of the Expedition made [in 1791] ... under the command of ... Don Francisco Eliza,” translated in a “Memorandum” composed in preparation for the dispute’s 1872 arbitration, Confidential Print 2042, esp. 149–55. Fuller extracts of the accounts of this and other Spanish voyages are translated in Henry R. Wagner, *Spanish Explorations in the Strait of Juan de Fuca* (Santa Ana, CA: Fine Arts Press, 1933), which also (36–40, 47 ff.) reconstructs the probable routes of the 1771 and 1772 expeditions on the basis of the anchor symbols on their maps.

³⁸ Mackay, *In the Wake of Cook*, 102; Cook, *Flood Tide of Empire*, 328, 331.

³⁹ Those depicting San Juan include: “Carta que comprehende los intexiones y veril de la Costa desde los 48° ... hasta los 50° ... examinados ... por Don Francisco Eliza ... en este año de 1791” (+11–20, reproduced as US arbitration map B); Henry R. Wagner, *The Cartography of the Northwest Coast of North America to the Year 1800* (Berkeley, CA: University of California Press, 1937), vol. 2, no. 779; “Plano reducido que comprehende parte de la Costa ... desde los 47 grados ... hasta los 50 ... Costruido por ... D. Gonzalo Lopez de Haro, ... en Enero de 1792”

Strait (though, in the June–August 1792 *Sutil* and *Mexicana* map, one requiring a northwest turn at the northern end of “San Juan”). And all depict a single stylized San Juan (sometimes described as an island, sometimes as an archipelago) with its northwest end seriously foreshortened. They differ, however, in their treatment of the “Haro Canal.” Eliza’s 1791 “Carta que comprehende” places the name near the passage’s southern entrance; but it does leave room for a sharp right turn (through Boundary Passage) into the Strait of Georgia – though the US arbitration map (printed from a formerly Mexican manuscript) seems to narrow this somewhat. By contrast, the “Plano Reducido” and the “Pequeña Costa” both show Haro as leading straight into a barrier of islands, as does the map of the *Sutil* and the *Mexicana*’s June–August 1792 operations. These, however, were all manuscripts intended for the official Spanish voyages of exploration, which ceased in 1796, and, as no further Spanish ships visited the northwest coast, they could guide later navigation only by influencing subsequent maps.⁴⁰

Spain had by now recognized the importance of publicizing its discoveries, and it sought to anticipate the publication of Vancouver’s findings by drawing attention to those of the *Sutil* and *Mexicana* through maps dated 1795 (though they did not come out until 1798) and through an atlas attached to Espinosa y Tello’s *Relacion del viage hecho por las goletas Sutil y Mexicana* (1802). Neither attracted anything like the same attention as did Vancouver’s *Voyage of Discovery*.⁴¹ Nor, though they were later invoked by the United States,⁴² did they do much for the “Haro Canal.” That of 1795 applies the name only to the opening northward from the Juan de Fuca Strait; like the earlier manuscript map of June–August 1792, it represents the canal as a near dead end, blocked by islands. The 1802 map does extend the name of the canal all the way from the Juan de Fuca Strait to waters giving onto the Strait of Georgia; but this takes it through a narrow gap between Stuart Island and its southeastern neighbour. Like their predecessors, both maps lop off the northwest of

(Wagner, *Cartography*, vol. 2 no. 83; Wagner, *Explorations*, 39; Juan Pantoja’s “Pequeña Costa ... desde los 48gd ... hasta los 50” (accompanying his letter describing the 1791 expedition), see Wagner, *Cartography*, vol. 2 no. 796; Wagner, *Explorations*, 155; “Carta esférica de la parte de la costa ... arreglada segun los operaciones ... de las Goletas Sutil y Mexicana desde 5 Junio a 31 Agosto de 1792,” +II-20; Penfold, no. 362.

⁴⁰ Christon Archer, “Retreat from the North: Spain’s Withdrawal from Nootka Sound, 1793–1795,” *BC Studies* 37 (1978): 35.

⁴¹ Wagner, *Cartography*, vol. 1, 232–33, 252–53; Wagner, *Cartography*, vol. 2, nos. 833, 861 (+II-20 and 21-30).

⁴² “The results of the three Spanish expeditions [1790, 1791, 1792] were published officially ... in 1795, in an elaborately prepared chart for mariners,” *Reply of the United States*, P.P. 1873, lxxiv, 5, 7.

San Juan and, by their shading, indicate uncertainty as to the shape of adjacent islets. So they would have proved unreliable guides to navigating Haro Strait. They do, however, indicate a fairly clear passage through Rosario.

Vancouver was shown maps of recent Spanish discoveries. And it would seem that his subordinates, Lieutenant Broughton (in the relatively small *Chatham*) and Master Mariner Johnston and the naturalist Archibald Menzies (in boats), explored much of the San Juan archipelago – albeit not that island’s west coast fronting Haro Strait.⁴³ But Vancouver himself was more interested in searching the mainland coast for a Northwest Passage; and when he took the bigger *Discovery* north, his route passed through Rosario Strait. The exploration was eventually recounted in *A Voyage of Discovery to the North Pacific Ocean*, accompanied by eight “Charts” of America. The only one here relevant is that “shewing part of the coast ... with the tracks of His Majesty’s sloop Discovery ... in which the Continental shore has been traced and determined from 45° 30’ N. [the lower Columbia River] ... to 52° 15’ [north of Vancouver Island].”⁴⁴ Though more use might have been made of Broughton’s work, the main islands of the San Juan archipelago are better depicted in it than on the Spanish maps. However, whereas the east coast of San Juan itself is shown by a hard line, its west coast is much less sharp, as is the east coast of Vancouver Island and the area around Pender Island. The chart’s main focus is clearly indicated by its title’s stress on “the Continental shore” and the explanation: “The parts not shaded are taken from Spanish authorities.”⁴⁵ The “Canal de Arro” is shown only as leading to Pender Island and the vaguely depicted bays beyond it to the northwest. And though the Rosario Strait is not named, it appears as the natural route north to the “Gulph of Georgia,” with the *Discovery*’s “track” running up through it.

An unwieldy sheet with a scale of about 15.5 miles to the inch, Vancouver’s “chart” might not seem the best of navigation aids. But the publisher of his second edition observed that, though the “general chart” of the northwest coast would be adequate for most readers, the more detailed “charts are indispensably necessary for such as may hereafter

⁴³ Eric W. Groves, “Lieutenant W.R. Broughton ... James Johnston ... Archibald Menzies ... and the survey of the San Juan Archipelago, 1792,” *Archives of Natural History* 19, 1 (2012). Available at www.eupublishing.com/doi/pdfplus/10.3366/anh.2012.0058. The *Chatham* got into some trouble with tides in Rosario Strait, losing its anchor.

⁴⁴ George Vancouver, *A Voyage of Discovery to the North Pacific Ocean*, vol. 4 (1798), plate 4 - +21-30.

⁴⁵ Further north another of Vancouver’s chart similarly claims that “the Continental Shore has been correctly traced and determined,” whereas the “Parts not shaded are taken from Russian authority.”

navigate those seas.⁴⁶ And they were certainly so used. Describing an early voyage down the coast of North America, the Russian von Langsdorff often praises Vancouver's guidance – his “charts and views” of the entrance to San Francisco harbour had proved “so accurate, that they left nothing to be wished for.” When John Jacob Astor was planning a voyage to relieve Astoria in 1813, he wrote for copies of “Vancouver's” chart of the Columbia.⁴⁷ The plates from which these charts were printed had been “irretrievably lost.” But copies could be made of such parts as were of interest: in the 1850s, Governor Douglas sent a number back to London to illustrate his despatches. One was on a single sheet of stiff cardboard-like paper that could easily have been taken on board a ship and consulted to provide general navigational guidance.⁴⁸ And, in 1871, several old HBC captains testified that such had been the usual practice: “The chart in use was that of Rosario Strait only, and from surveys made by Vancouver”; “Vancouver's Charts were used in these waters in 1847 [when the deponent came to the coast], and till 1854. I never knew the Spanish Chart used, or any American chart.”⁴⁹ That British ships, almost the only ones in those waters for a decade before 1846, should use a chart of British origin is unsurprising. In many ways it was also wise: the published Spanish charts were inconsistent in their treatment of Haro Strait, and the 1791 conclusion had been that it was unsafe for large ships. But Rosario could clearly take them; it was (as the HBC witnesses proclaimed) “the only channel known to be navigable” and “the only surveyed channel”; and, in this context, Vancouver's surveys were, in 1846, still the best.

There had, indeed, been only two more recent publications. Duflot de Mofras's small-scale 1844 “Carte de la Côte de l'Amérique ... comprenant le Territoire de l'Orégon, les Californies, la Mer Vermeille ... et de l'Amérique Russe” could offer little detail. Perhaps because de Mofras had sailed from Mexico, this chart had many of the flaws of the

⁴⁶ George Vancouver, *A Voyage of Discovery ... A New Edition, with Corrections ...* (London: John Stockdale, 1801), 7.

⁴⁷ G.H. von Langsdorff, *Voyages and Travels in Various Parts of the World during the Years 1803, 1804, 1805, and 1806* (1817 edn., Carlisle, Penna.: ‘Printed by George Philips’ [<http://catalog.hathitrust.org/Record/008735011>]), 426; James P. Ronda, *Astoria and Empire* (Lincoln, NB: University of Nebraska Press, 1990), 275.

⁴⁸ This is FO 5/813 fo. 223 (accompanying Douglas's letter of 17 January 1859). For two others, see MPK 1/77/4 and 6 (+71–80), described as manuscript tracings on paper and accompanying his letters of November 1853 and February 1854.

⁴⁹ *North-West American Water Boundary: Case of the Government of Her Britannic Majesty ...*, 32 (William Mitchell) and 37 (Herbert Lewis) (P.P. 1874 lxxiv). Compare *ibid.* pp. 31, 34, and 36 for identical claims.

1802 Spanish map.⁵⁰ Wilkes's "Map of the Oregon Territory by the U.S. Ex. Ex.," as it appeared in 1845, was also small-scale, and it inundated even more of the southeast coast of Vancouver Island. The handling of the San Juan archipelago and the northern section of San Juan itself is considerably better. But though Wilkes's "Canal de Arro" curls correctly round this area, the way out into the Strait of Georgia is shown as a narrow passage between offshore islands and a clearly unsurveyed southeastern projection of Vancouver Island. Though no name is given to Rosario Strait, it seemed to provide a distinctly clearer route north, and Wilkes's 1845 map provided no reason to desert it.

Nor, as far as maps went, did developments later in the decade. The British government had hoped that Captain Kellett's 1846 survey would provide material on the two rival channels. It led in 1849 to the publication (for two shillings) of a recognizably modern chart of "Juan de Fuca Strait." But as this hardly extended north of San Juan, it did not greatly help.⁵¹ More useful were the two charts of Wilkes's expedition, published in 1848 on a scale of about two sea miles to the inch, that Bancroft sent to Palmerston.⁵² Between them they showed the line of the "Canal de Arro" and demonstrated that there was clear (and deep) water between Stuart and Waldron islands and what was vaguely represented as a southeastern projection of Vancouver Island (in reality the Canadian Gulf Islands). But these charts passed Haro Strait through an unpromisingly narrow gap to the southeast of Stuart Island. And Wilkes's *Narrative* shows that he had not taken any ship through it: he could only devote three days to its survey (by small boat) because his work was cut short by news of the loss of one of his other ships. Also, as became apparent in 1853, two of the small islands he plotted do not exist.⁵³ The expedition had, in fact,

⁵⁰ Published in *Exploration du Territoire de l'Oregon, des Californies et de la Mer Vermeille, exécutée pendant les années 1840, 1841 et 1842* (Paris: Arthus Bertrand, 1844). A section was submitted to the arbitrator as the American Map E (+31-40).

⁵¹ UK Hydrographic Office, Taunton, *Catalogue of Charts, Maps, Views and Sailing Directions* (1849), p. 61 (+51-60). The Admiralty also published a map of "Vancouver Island and the Gulf of Georgia" that uneasily linked Kellett's survey to Vancouver's chart (+71-80). A British officer visiting the area in 1859-60 recalled: "We had no charts, or at any rate none that were of much use; those that we had having probably been made by Captain Kellet ... in 1847." See Francis Martin Norman, "Martello Tower" in *China and the Pacific in H.M.S. "Tribune," 1856-60* (London, 1902), 248.

⁵² "Straits of Juan de Fuca Oregon Territory from Surveys of the U.S. Ex. Ex. and Spanish and English Authorities," FO 925/1378 - +61-70; and "Archipelago of Arro, Gulf of Georgia, Ringgold's Channel and Straits of Fuca Oregon Territory by the U.S. Ex. Ex. 1841," FO 925/1377 - +31-40.

⁵³ This may reflect hasty plotting "from afar" of what were in reality only clouds. In the Antarctic a British captain reported sailing over Wilkes's "land" (probably similarly plotted icebergs). But perhaps the non-existent Haro islands were simply invented by someone smarting under

devoted much more effort to a survey of the mainland coast from Puget Sound to Point Roberts, during which Wilkes's deputy, Ringgold, used Rosario Strait – having indeed borrowed, as a pilot, an HBC sailor who “was acquainted only with the Rosario Channel.” Indeed, the expedition named Rosario Strait “Ringgold's Channel” and charted it as the most direct north-south passage.⁵⁴

Before 1854, “charts” were mostly small-scale and fairly imprecise. Vancouver's missed the Fraser River; however, after 1827, most coastal shipping visited the HBC's Fort Langley near that river's mouth. So captains presumably relied greatly on experience and local knowledge. Here we have a conflict of evidence. According to HBC testimony in 1871, the Company's ships only twice transited Haro Strait before the conclusion of the 1846 treaty: in 1843, the sailing vessel *Cadboro* was, when becalmed, carried into the strait by the tide and had to pick up a passing Indian as a pilot “as we had no chart by which to navigate” it; then, in 1846, Haro was traversed by the small steamer called the *Beaver*, perhaps on the “experimental trip” for which its master was reprimanded.⁵⁵ Off-the-record, the *Beaver*'s former captain, William McNeill, appears much less definite: Wilkes claimed that, even in 1841, he had spoken of Haro as “the best passage,” though his need to take shelter at night compelled him to use Rosario; and he is reported as saying, in 1871, that HBC steamers used Haro from shortly after the establishment of Victoria in 1842-43.⁵⁶ Confirmation was provided by a former *Beaver* stoker who testified that his vessel had “two or three times” towed the *Cadboro* from Victoria through Haro Strait to the mouth of the Fraser, while an HBC shepherd mentioned a similar journey in 1845.⁵⁷

Victoria also attracted Haida traders, who came south by canoe; and one former HBC officer recalled crossing over from Fort Langley by canoe in 1848, going through Active Pass “and then by the Strait of Haro” to Victoria. This was then called “the canoe route,” as distinct from “the established ship route by the Rosario Strait.”⁵⁸ If we can judge

Wilkes's dictatorial treatment. A US Coast Survey assistant in 1853 reported a “favorable” opinion of Wilkes's chart, but with the caveat that it “started from an erroneous base (if he ever surveyed all he claims) which has given all the distances too small.” See John Frazier Henry, “The Midshipman's Revenge: Or, the Case of the Missing Islands,” *Pacific Northwest Quarterly* 73, 4 (1982): esp. 159-62; Coleman, *Pig War*, 31.

⁵⁴ Wilkes, *Narrative of the United States Exploring Expedition*, vol. 4, 482-85; *Case of the [British] Government*, 36.

⁵⁵ *Case of the [British] Government*, 36 (Swanson), 30 and 36 (McNeill and Anderson).

⁵⁶ *Reply of the United States*, 24, 35. Already in 1837 the report was current in Fort Vancouver that an HBC vessel had passed the Haro Strait and found it the shorter channel (see *ibid.*, 34).

⁵⁷ *Reply of the United States*, 34 (John McLeod), 32-33 (Adam Benson).

⁵⁸ *Case of the [British] Government*, 36 (Anderson).

from Wyld's 1848 map, the geography of the Canadian Gulf Islands was still very imperfectly known, but an outlet to the Strait of Georgia is indicated through a gap roughly corresponding to Active Pass; and, in 1853, Governor Douglas was apparently able to give the US Coast Survey "much valuable information" as to the Haro Strait's tides and depth of water.⁵⁹ The following February his report to London mentioned, en passant, that the HBC "had ascertained that one" of the many "passages connecting" the Strait of Georgia with Haro Strait "was navigable for ships," and he indicated this in red on a copy of "Vancouver's chart." He added "a corrected chart," prepared by the colony's surveyor J.D. Pemberton, on which the new link featured as "Cadboro Passage," together with another link (Active Pass) through the Canadian Gulf Islands (formerly seen as part of the Vancouver Island coast) that "may be regarded as a continuation of the Canal de Arro."⁶⁰

The United States Coast Survey's "Reconnaissance of Canal de Haro & Strait of Rosario and approaches" was also published in 1854. Though a quantum improvement on previous "charts," it was not impeccable – Saturna and Pender islands are conflated – and a pencilled note on a British copy records "considerable disagreement" with Kellett's results. The chart reached the British Hydrographic Office in January 1856 and was mentioned that December in instructions to Boundary Commissioner Prevost.⁶¹ These note that Haro Strait had "been ascertained to be navigable" and that the United States would probably claim it, though, "unless HM's Govt is misinformed," it was less safe and convenient than "the well known and frequented ... Rosario Strait." Prevost was to argue for Rosario, but he was also to search for a suitable intermediate channel between the islands of the San Juan archipelago and, if appropriate, suggest this as a compromise. Such a channel had in fact been shown clearly on the US exploring expedition's map of the "Archipelago of

⁵⁹ Wyld's Map, +51-60; "valuable information," *Reply of the United States*, 27 (Crosby). The US survey ship *Active's* commander wrote on 31 October 1853 that, in claiming Rosario as the boundary, the British were "overlooking the fact that there is a channel much nearer home, better in almost every respect, and, to them, far more convenient ... the Canal de Haro" (Senate Exec. Doc. 29 [40-42], p. 87).

⁶⁰ Douglas to Newcastle, 27 February 1854, FO 5/809, fos. 218-19, 220-21, enclosing +71-80 - MPK 1/77/4 and MPK 1/77/3, Penfold, nos. 367 and 379. Douglas held that Cadboro Passage could not be the treaty boundary since it ran not "southerly" but "nearly due east and west" and since it did not itself connect the Strait of Georgia with the De Fuca Strait but led only "into another channel, ... the Canal de Arro." Nor could Active Pass be the treaty boundary since it ran into not the middle but the extreme west of the Strait of Georgia.

⁶¹ "U.S. Coast Survey A.D. Bache Supdt. Reconnaissance of Canal de Haro & Strait of Rosario and Approaches," +71-80, Penfold, no. 485, on which pencilled lines appear to have been drawn down the Haro and Rosario channels and also loosely down the middle channel between them. Part of Prevost's 20 December 1856 instructions is in Confidential Print, 1769, 67-68.

Arro,” and it was now confirmed by the Coast Survey’s “Reconnaissance.” Arguably, it met the treaty requirement of a line “southerly through the middle of the said channel,” separating “the continent from Vancouver’s Island” better than either Rosario to the east or the zig-zag Haro to the west. And, from the British perspective, it would have secured the island of San Juan, whose retention was increasingly seen as necessary for the “quiet possession of Vancouver Island.” Even in 1847 the government had contemplated sharing out the San Juan Islands, as had been done with those in the St. Lawrence, and, from 1856, British policy was chiefly directed towards securing compromise on the basis of the Middle Channel.

Prevost’s report that American commissioner Campbell would not budge from Haro Strait set off a round of interdepartmental consultation. There was no disposition to rely on the US “Reconnaissance” chart, and the Foreign Office insisted that, before seeking arbitration, “we ought to have a clear knowledge of our chances resulting from a Survey.”⁶² This insistence on a British survey proved fortunate. In 1858, there was a gold rush into the Fraser Valley, where, apart from a vestigial HBC trading presence, there had been no European settlement. The Royal Navy survey ships helped bolster Douglas’s emergency projection of British authority into what was rapidly constituted as “British Columbia.”⁶³ But the results of Captain George Richards’s survey proved disappointing. Indeed, Addington’s successor, Edmund Hammond, felt that “it goes to establish the American claim, and that the Canal de Haro is the best navigable channel.”⁶⁴ Richards’s own conclusion was that both channels presented problems to sailing ships, though Rosario had “some advantage” as it was easier to anchor there. As “navigable steam channels,” both were “perfectly safe and easy during day time” and would be so at night if properly lighted. Since ships from Victoria bound for the Fraser River or Nanaimo would thereby save twelve to fifteen miles, the “Haro Strait ... must be almost entirely used by British vessels,” while American shipping for the Bellingham area would just as naturally use Rosario. Sailing vessels should not ordinarily attempt the Middle Channel between the San Juan Islands; but, though inferior to Haro and Rosario, it was “yet a perfectly safe channel for steamers.”⁶⁵

⁶² Hammond’s memorandum, approved by the foreign secretary, 3 August 1858, FO 5/813, fos. 148-49. The file also records much 1858-59 interdepartmental discussion.

⁶³ Equally the crews of the *Satellite* and the *Plumper* secured double pay to remove the temptation to desert and join the gold rush – FO 5/813, fos. 164-70, 185-86.

⁶⁴ 3 February 1859, FO 5/813, fo. 325.

⁶⁵ “Remarks on the Strait of Georgia, with the Channels leading into the Straits of Fuca, in connexion with the Boundary question,” FO 5/810, fos. 326-37: five rocks in Rosario Strait might present dangers to sailing ships in calm or fog, but in Haro Strait tides were more

Richards's survey did not change the positions of Whitehall departments: the Colonial Office insisted on retaining San Juan so as to keep Americans safely away from Vancouver Island, and the Foreign Office drafted British proposals accordingly. So the only change was in some of the arguments. Rosario Strait had once been seen as the only navigable channel; and, in the days when HBC ships usually coasted, calling at Nisqually (established on Puget Sound in 1833) and Fort Langley (1827), it had also afforded the most direct passage. By 1854, Haro Strait was known to be navigable, especially by the growing number of steamers. But even in 1857 Prevost could describe Rosario as "undoubtedly the best for sailing vessels," which used it as "the safest and easiest . . . communication between the Southern and Northern parts of Vancouver Island" – an important consideration since the Nanaimo coal trade went "almost exclusively" by sail.⁶⁶ The Fraser River gold rush shifted the balance of interests. Douglas insisted that miners should first call at Victoria to buy licences from the British Crown. Having done so, they wanted to get across to the mainland as quickly as possible: as an American observer put it, there were not enough steamers to take everybody, so people also rushed over in "schooners, sloops, boats, and canoes. The route at first adopted was entirely through the Canal de Haro," and this became the sole route between Victoria and British Columbia.⁶⁷ Disparaging Haro Strait was therefore no longer easy. So the British adopted the view that there were "two considerable channels," Haro and Rosario; dividing the San Juan archipelago would give Britain "the command of the Haro Canal," the United States that of Rosario, "so that each country would command a safe highway to its Possessions, free from all interference on the part of the other."⁶⁸

When this solution proved unacceptable, Britain suggested compromise along the "Middle Channel" immediately east of San Juan, without, it hoped, "tedious arbitrations" by a third party.⁶⁹ But Secretary

irregular, and, without "a commanding breeze," such ships could in places be endangered by "whirls and eddies."

⁶⁶ Prevost to the British Minister in Washington, Lord Napier, 5 December 1857, FO 5/813, fos. 31-33.

⁶⁷ Henry Crosby to the US Attorney-General, 2 April 1872, in *Reply of the United States*, 26-28. Crosby added that, by 1859, steamers were also branching off from Haro Strait to transit through Active Pass (the former "canoe route" and present route of the big BC car ferries).

⁶⁸ Russell to Lyons (for transmission to Secretary of State Cass), 16 December 1859, in Manning, *Diplomatic Correspondence*, 4:832-33n.

⁶⁹ Britain also bid for the Point Roberts enclave (misleadingly described as of "no intrinsic value to either Govt."), on the grounds that the United States would get most of the San Juan archipelago. See Russell to Lyons, 24 August 1859, in Manning, *Diplomatic Correspondence*, 4:802-3n.

of State Cass believed the dispute could best be settled by arbitration and that this required that the issue be treated as one of right, not convenience. So no progress could be made until Russell accepted the American formula, which was as follows: “[If San Juan] belongs to Great Britain she is entitled to hold it, whether it is valuable or not; and if it belongs to the United States the United States’ Government is entitled to its possession, even though it should be ... of superior value to Great Britain.”⁷⁰

Thereafter, thoughts turned to arranging arbitration but, on the British side, always in the hope that if the arbiter could not “determine the precise line intended by the words of the Treaty,” he should have “discretion” to appoint another – presumably the Middle Channel. In June 1860, Cass indicated readiness to consider British proposals. But they did not reach Washington until January 1861, by which time political developments had made the British minister, Lord Lyons, doubt the possibility of carrying arbitration through Congress. President Buchanan sought Senate “advice” on whether, if the arbitrator could not determine the precise treaty line, he might appoint one approximating to it “as nearly as possible.” This was sensitive ground since most Americans felt that, in his 1831 arbitration of their northeastern boundary, the King of the Netherlands had robbed them by delivering a compromise award. Early in 1861, the Foreign Relations Committee was ready to give the arbitrator such powers. But when Buchanan’s term ended and Lincoln revived the question, the committee recommended arbitration “without authority to establish any line but that provided for in the Treaty.” The British government was prepared, reluctantly, to proceed on this basis, but the proposal was never formally made as the American Civil War supervened.⁷¹ The question cropped up again briefly in 1864. But Lyons was now told it was not worth going further unless the arbitrator could

⁷⁰ Lyons to Russell, 20 December 1859 (reporting a conversation with Cass); Russell to Lyons, 9 March 1860, Confidential Print 2041, 227-28, 234-35. Either ignorantly or disingenuously, Cass also deprecated British fears of the military consequences of US possession of San Juan, writing that, since the Haro Strait was, at its narrowest point, seven miles [11.3 kilometres] wide, no fortifications on its coasts could “ever control its navigation.” See Cass to the US Minister in London, George Dallas, 4 February and 23 April 1860, in Manning, *Diplomatic Correspondence*, 4:219, 225. To the north of San Juan the channel is in fact much narrower, and American military engineers were keen to create a fortified base on the south of the island (McCabe, *San Juan Water Boundary*, 32-33, 147n).

⁷¹ [David] Hunter Miller, ed., *Treaties and Other International Acts of the United States of America*, vol. 8, 1858-1863 (Washington: Government Printing Office, 1948), 415-20; Lyons to Russell, 12 February 1861, in James J. and Patience P. Barnes, *Private and Confidential Letters from British Ministers in Washington to the Foreign Secretaries in London, 1844-67* (Selsgrove, PA: Susquehanna University Press, 1993), 241.

“furnish an equitable solution” by appointing as the boundary “the nearest approximation that [could] be made to the words of the Treaty.”⁷² Discussion with Secretary of State Seward, and perhaps some informal sounding of Senate opinion, ensued, but matters were then dropped.

After 1865, relations worsened with US resentment of Britain’s apparent Southern leanings during the Civil War along with claims for massive reparation for the damage caused by the *Alabama* and other Confederate cruisers. This meshed with a revival of “Manifest Destiny” sentiment and American hopes to acquire some or all of “British North America.” Meanwhile, Russia offered to sell Alaska, and Seward jumped at this, not only for its own sake but also because it would increase the pressure on British Columbia. In January 1868, he told a senator that “grievances on both sides” would be balanced “until all were disposed of.” He continued: “In this way we would pay for British Columbia with the *Alabama* claims.”⁷³ His minister in London never thought this would happen; and, in March, Seward suddenly switched strategy. Rapid and scrambled negotiation then led, by January 1869, to separate conventions on the *Alabama* claims and on arbitration over San Juan.

Had these matters been broached earlier, they might well have been settled. But in 1869 they were caught up in the unpopularity of President Johnson, the first (and for a century the only) president to be impeached. The administration’s attempt, at the very end of its time in office, to secure a pre-emptive settlement with the British did not go down well. The *Alabama* convention was leaked, and it drew immediate criticism both for downplaying US claims and for agreeing to consider British claims against the United States. When it came to the Senate, the chairman of the Foreign Relations Committee, Charles Sumner, proclaimed that if, “through British intervention, the [Civil] war was doubled in duration,” then England was “justly responsible for the additional” cost – in other words, for \$2,000 million.⁷⁴ Sumner later wrote that he hoped to see “the debate end” with “the withdrawal of England from this hemisphere” and the remodelling of maritime international law.⁷⁵

⁷² Miller, *Treaties* 4:242; Confidential Print 2041, 248, 250–52, 274–75.

⁷³ David Shi, “Seward’s Attempt to Annex British Columbia, 1865–1869,” *Pacific Historical Review* 47, 2 (1978): 222–25, 227–29, 231–33; Adrian Cook, *The Alabama Claims: American Politics and Anglo-American Relations, 1865–1872* (Ithaca, NY: Cornell University Press, 1975), 35–41.

⁷⁴ Cook, *Alabama Claims; Speech of the Honourable Charles Sumner ... against the Ratification of the Johnson-Clarendon Treaty for the Settlement of the Alabama and Other Claims* (London: Stevens Brothers, 1869), 21, 25–26.

⁷⁵ Cook, *Alabama Claims*, 112.

The San Juan arbitration convention had followed Britain's January 1861 proposals in allowing the arbitrator to designate an "equitable solution" boundary if the line indicated by the words of the 1846 treaty could not be determined precisely.⁷⁶ The Senate considered the San Juan case just after the rejection of the *Alabama* claims convention. There were qualms about handing Britain a second rebuff, and both Sumner and Secretary of State Hamilton Fish had led the British minister, Edward Thornton, to expect approval. But this was opposed by Michigan's Jacob Howard in a lengthy speech reviewing the controversy, denouncing Britain's Civil War behaviour, and demanding that Britain be told to "surcease her usurped occupation" of San Juan. Howard seemed to have enough votes to kill the treaty, so action was postponed. The matter should have been taken up again by January 1870, the latest date for ratification. But Howard stood ready to renew his opposition. And a petition from some inhabitants of Victoria asking for annexation to the United States had further whetted American hopes of territorial gain. Thornton felt that it would be a waste of time to discuss boundaries "whilst politicians retain[ed] ... the idea that British Columbia may be annexed to the United States," and, as he had expected, the treaty was allowed to lapse – though this was attributed to an oversight in not convening the Senate by the prescribed date.⁷⁷

Things might have been left to drag on, but both sides felt some need to settle. The dramatic European developments of 1870 pressed Britain towards appeasing American grievances over the *Alabama* for fear that, otherwise, the United States would allow Britain's opponents in any future war to fit out similar vessels. Equally, President Grant's administration came slowly to realize that Britain was not going to cede some or all Canadian territory and/or to declare its North American colonies independent. US finances were tight after the Civil War, and a settlement with Britain would facilitate conversion of American debt to a lower interest rate. There was also the fisheries problem. By terminating the 1854 Reciprocity Treaty the United States had lost the right to fish in Canadian territorial waters, but its fishers were tempted to continue regardless. In 1870, the new Dominion of Canada, with British backing, determined on tougher enforcement – with the corollary danger of an incident that might draw in warships on both sides. Such considerations,

⁷⁶ The treaty's text is in United States Department of State, *Papers Relating to Foreign Affairs*, (Washington: Government Printing Office), 1868, Part 1, 404–6.

⁷⁷ Miller, *Treaties*, 445–46; Thornton to Clarendon (private), esp. 13 and 20 April 1869, 11 January 1870, Clarendon Papers, Bodleian Library, Oxford, MS. Clar. dep. c. 480, 481; *Congressional Globe*, 41–22, app., 90–95, 16 April 1869; Cook, *Alabama Claims*, 173.

combined with a very real sense of interconnectedness and shared values, prompted first informal “talks-about-talks” in Washington by the Canadian-British banker Sir John Rose, and then the convention there of an American-British commission. This commission, led on the US side by Fish and on the British by the cabinet minister Earl de Grey, aimed at settling, or deciding on how to settle, all outstanding issues.⁷⁸

Of these, easily the most important were the *Alabama* and the fisheries: on one computation, seventeen commission sessions were occupied by “Canadian questions” (mostly, but not exclusively, the fisheries), ten by the *Alabama* and other US claims against Great Britain, and four by the San Juan issue.⁷⁹ Fish believed that “the West [would] be united against the cession of San Juan”;⁸⁰ its sectional interests were represented by the American commissioner George H. Williams, senator for Oregon from 1865 to 1871. The opposite concerns of British Columbia were put to the British commissioners by J.W. Trutch, who would soon become the province’s lieutenant-governor.⁸¹ British Columbia’s accession to Canada had by now been arranged. San Juan might have been expected to concern the Dominion’s premier, Sir John A. Macdonald, who was one of the British commissioners. But he focused chiefly on the fisheries, which did indeed present him with excruciating political problems, and his letters suggest that he still saw San Juan as a British question.⁸²

Discussions about San Juan began on 15 March 1871, with debate soon turning to interpretations of the diplomatic correspondence of the 1840s. Next day, when asked why the Senate “could not be brought to assent to arbitration,” Fish explained that there was a feeling that the US negotiators of 1846 had been “misled”: Aberdeen had promised the line of the Haro Strait, but then he “so worded” Pakenham’s instructions “as

⁷⁸ On all this, see Allan Nevins, *Hamilton Fish: The Inner History of the Grant Administration* (New York: Dodd, Mead and Co., 1937); Goldwin Smith, *The Treaty of Washington 1871: A Study in Imperial History* (Ithaca, NY: Cornell University Press, 1941); and Tom Bingham, “The *Alabama* Claims Arbitration,” *International and Comparative Law Quarterly* 54, 1 (2005): 1–25.

⁷⁹ Nevins, *Hamilton Fish*, 477.

⁸⁰ Fish Diary, 18 January 1871, John Bassett Moore’s transcription, Library of Congress, Hamilton Fish Papers, microfilm, shelf no. 17,634, reel 4, responding to a rumour that Britain would concede the inshore Canadian fisheries if it could have San Juan.

⁸¹ De Grey to Granville, 7 April 1871, PRO 29/63, fo. 218. A resolution of the BC legislature seems not to have reached the British delegation until the issue had been settled (FO 5/1299, fo. 378).

⁸² Thus he told Charles Tupper on 1 April 1871 that he expected “a cessation of Canadian discussion for a week or two, during which we shall discuss the *Alabama* and San Juan matters.” See Joseph Pope, *Memoirs of the Right Honourable Sir John Alexander Macdonald* (London: Edward Arnold, 1894), 2:105. Admittedly Macdonald felt the British case on San Juan could “only be maintained by the most technical construction” of the treaty’s text (to Tupper, quoted by McCabe, *San Juan Water Boundary*, 100).

to leave the Treaty open to the construction ... that the Rosario Strait was the Channel meant." The British commissioners exploded at this slur on Aberdeen's integrity. Sir Stafford Northcote wanted to threaten to break off altogether, believing that the Americans (who had already twice signed treaties for arbitration) were so manifestly in the wrong that they would climb down and seek to renew "the conferences on a more satisfactory footing." However, his colleagues decided simply to protest and ask the Americans what else they could suggest. Fish's reply was that the US commissioners could not accept "any Treaty under which the passage of the Straits might be left under the absolute control of England."⁸³ The 1846 treaty was clearly ambiguous, and they should "annul" and renegotiate it. This, the British observed, would return the whole territory west of the Rockies to its interim condition under the 1818 Anglo-American compromise. On which note, both sides withdrew for reflection.⁸⁴

Fish had stressed, at the very outset, that the US Constitution required Senate consent to any treaty that might be negotiated, and the American commissioners continually emphasized the difficulties in securing this.⁸⁵ Their British counterparts, de Grey wrote, all accepted that these were "real; & that it [was] necessary in order to secure the [requisite] two-thirds vote to save the 'amour propre' of that body by making the arrangements differ as much as possible from those agreed" in 1868. General Schenk soon told de Grey that the US commissioners were "trying to find a solution, which they could get the Senate to accept."⁸⁶ Part of the difficulty was that Rose had not delivered Britain's earlier warning that it would not simply "cede San Juan." Unaware of this, Fish seems to have sought a cession to secure Senate approval for the rest of the intended treaty – for "what the United States really liked was to acquire territory,

⁸³ Or, as he told Northcote one evening, "arbitration might give you the Rosario Channel, and that would give you the command of our communications" (Northcote to Granville, 26 March 1871, PRO 30/29/74, fol. 373). Even so, Rosario (the most direct route between Puget Sound and Bellingham) would have remained open to both parties.

⁸⁴ The British Commissioners to the Foreign Office, 15 and 16 March 1871, FO 5/1300, fos. 198-237; Earl de Grey to Foreign Secretary Lord Granville (private), 17 March 1871, PRO 30/29/63, fos. 119-200; *Diaries 1869, 1870, 1871, 1875, 1882, of the First Earl of Iddesleigh* [Sir Stafford Northcote] (privately printed, 1867), 195 (hereafter Iddesleigh, *Diaries*). The official conference records were kept completely bland since otherwise, the Americans explained, they would have to spout "bunkum" to "please the ... public" (Lord Tenterden to Granville, 24 March 1871, PRO 30/29/106). So our knowledge of proceedings derives from the accounts the British sent to London, supplemented by Fish's diary.

⁸⁵ Fish Diary, 4 March 1871. However, despite Macdonald's warnings, they never really appreciated that only legislation by the, in this respect, fully autonomous Canadian Parliament could bring the treaty's fisheries provisions into effect.

⁸⁶ De Grey to Granville, 17 and 21 March 1871, PRO 30/29/63, fos. 120, 137.

... [and] an arrangement which enabled them to do so would float any Treaty.”⁸⁷ He “urged a new boundary to include the whole or a part of British Columbia for which the U.S. would pay an equivalent in money or otherwise,” but this, he was told, was out of the question.⁸⁸ Various compromises were floated privately. Britain offered, albeit with few expectations, the Middle Channel, together with non-fortification of the whole San Juan archipelago and free navigation of all the channels between Vancouver Island and the mainland.⁸⁹ Fish secured the president’s consent to an offer of non-fortification of the Haro Strait, but only if the United States got San Juan.⁹⁰ He also “hinted” to the British that they should cede Vancouver Island “either in return for a money payment or in exchange for other territory.” Given the United States’ financial situation, a “money payment” would have been peanuts unless it had consisted of an offer to waive some of the *Alabama* claims. Moreover, the administration would have encountered enormous political difficulty in ceding any territory except, perhaps, the Point Roberts and Lake of the Woods enclaves or some part of Alaska. It was indeed suggested, “though not with any authority,” that Britain might abandon its claims to the San Juan archipelago in return for “a bit of Alaska.” As things turned out, this might have been worth following up, especially since Trutch had indicated that there was “a portion of the [BC-Alaska] boundary line” that might “give rise to dispute.” Other possibilities mentioned were British relinquishment of the remaining islands with arbitration over San Juan alone, continuation of its joint military occupation for the term of the US access to Canada’s inshore fisheries, and even British purchase of the US claim to San Juan with “territory or some other equivalent.”⁹¹

On 8 April, after a pessimistic private discussion of San Juan with de Grey – “he apprehends more difficulty there than on any other question” – Fish suggested leaving to arbitration the amount the United States should pay for fisheries access. De Grey was encouraging, and Fish

⁸⁷ De Grey to Granville, 17 and 21 March, PRO 30/29/63, fos. 117, 135; Tenterden to Granville’s private secretary, Robert Meade, 21 March 1871, PRO 30/29/106. De Grey had privately told Fish that, if he agreed “either to arbitrate the San Juan Water boundary or to accept” the Middle Channel, “the British Government might be brought to accept” the American *Alabama* proposals, which were encountering opposition in the cabinet. See Fish Diary, 18 March 1871.

⁸⁸ Fish Diary, 18 March 1871; Thornton to Granville, 21 March 1871, PRO 30/29/80, fo. 119. See also de Grey to Granville, 17 March 1871, PRO 30/29/63, fo. 120.

⁸⁹ Compare with the 1 April telegram, “Seen by the Queen,” FO 5/1299, fos. 180–82, 217; PRO 30/29/63, fo. 197.

⁹⁰ Fish Diary, 19 and 28 March 1871.

⁹¹ Private letters to Granville from: De Grey, 17 and 21 March, 4 and 7 April 1871, PRO 30/29/63; Northcote, 26 March, PRO 30/29/74; Thornton, 21 March, PRO 30/29/80; and Tenterden, 7 April, PRO 30/29/106.

responded that if “the *Alabama*[,] the Fisheries[,] and the Navigation of the St. Lawrence could be settled upon terms somewhat reasonable,” he personally would consider arbitration over San Juan. On 13 April, Fish showed the president an agreed formula for Britain to express regret for the *Alabama*’s escape from Liverpool. He then declared that the San Juan question was unlikely to be resolved without arbitration, and he gained Grant’s reluctant consent to this by explaining: “we may be allowed to put in evidence the despatches of our Ministers &c. which tend to show that the sole object of deflecting the 49th parallel before it reaches the [Pacific] ocean was to give to G.B. the possession of the Southern part of Vancouver Island.” Grant also accepted arbitration of the fisheries’ price, provided navigation of the St. Lawrence was satisfactorily arranged, and he advised Fish to consult “some leading Senators.” So Fish saw the former firebrand, Senator Chandler, gaining his backing for arbitration on the fisheries and, “if nothing better [could] be had,” San Juan.⁹² Fish then told de Grey that, if they could “settle the other questions, we shall arrange arbitration on San Juan.” On 19 April, de Grey said that the British cabinet would accept the new US fisheries proposals, and he asked that the commission now take up San Juan.⁹³

Generally, de Grey and Fish broached matters privately, returned to their “caucuses” to explain “the position of the enemy” and to seek advice, and then resumed discussion. “When a settlement has been pretty much arrived at, we all meet, ... open the points which have already been decided, let off a proper amount of gas, ... and come to the foregone conclusions.”⁹⁴ So when the full commission addressed the border issue, proceedings had probably already been choreographed. De Grey proposed a “Middle Channel” boundary, with all channels open to ships of both countries.⁹⁵ Fish countered with a boundary down Haro Strait, with the United States undertaking not to fortify the islands. This, de Grey said, would mean conceding “the whole question which has been at

⁹² Fish Diary, 13 April 1871. Chandler suggested including Bancroft’s 1846–48 letters in the American arbitration case.

⁹³ De Grey to Granville (cables and letter), 14 and 16 April, PRO 30/29/63, fos. 248, 250–51; FO 5/1302, fo. 236; Macdonald to Tucker, 16 and 18 April (Pope, *Memoirs of Macdonald*, 109, 120); Fish, Diary, 19 April 1871. Macdonald did *not* regard the US offer on fisheries as adequate or as likely to be acceptable to the Canadian Parliament.

⁹⁴ Iddesleigh, *Diaries*, 213–14 (24 April 1871); Northcote to Granville, 5 May 1871, PRO 30/29/74, fo. 387; Macdonald to Tupper (Pope, *Memoirs of Macdonald*, 120, 123); Fish Diary, 22 April 1871.

⁹⁵ Britain had thought this ensured by the 1846 treaty, but the Americans (and the legally qualified British commissioners) held that it applied only to the Juan De Fuca Straits and to whichever channel proved to be the true border. The British made one further attempt to secure free navigation of all channels, but Fish refused lest it facilitate smuggling. He did say, though, that unless maritime access was abused it was unlikely to be impeded (FO 5/1303, fos. 178–80).

issue”; Britain would not leave San Juan except “under the decision of an arbitrator.” There could be no settlement of the other questions without one of the “water boundary” too, so he must insist that the United States accept arbitration. Fish agreed, provided “all other questions could be satisfactorily adjusted.” Given the earlier American appetite for a straightforward territorial transfer (preferably of considerably more than the San Juan archipelago), acceptance of arbitration was a major concession.

In return, Fish required that arbitration be on American terms, with the arbitrator limited to a decision between the Haro and the Rosario channels. Moreover, admissible evidence should include speeches in Parliament or Congress relating to the 1846 treaty, diplomatic correspondence, and “the statement” of anybody who was a cabinet minister at the time – in short, McLane’s report that Aberdeen would offer the Haro Channel, and Benton’s and Buchanan’s statements that this was how the British proposal had been understood. De Grey asked why the Middle Channel was thus to be excluded. Fish said that it “was scarcely practicable for navigation”⁹⁶ and that it would leave British and American possessions so close “as to afford facilities for smuggling.” De Grey briefly contested this – land boundaries all involved even greater proximity – and observed that the 1868 treaty had empowered the arbiter to consider such an “alternative line.” That, Fish replied, was one reason why it had not passed the Senate: the United States would accept only a simple Haro or Rosario choice. De Grey said he must refer this to his government, but the two sides then proceeded to discuss possible arbitrators⁹⁷ and to order the drafting of treaty articles “in the sense of the proposals made by the United States.”⁹⁸

Historian James O. McCabe, in his book on the San Juan Island dispute, regarded the British decision “to agree to exclusion [from the arbitration] of the Middle Channel” as “inexplicable.”⁹⁹ In fact, its ra-

⁹⁶ It is, in fact, big enough to take today’s Washington State car ferries.

⁹⁷ In the 1860s Swiss arbitration had been envisaged, but the Americans now amused de Grey by specifying an emperor. Of these the United States would not have Austria, Britain Russia. That left Germany and Brazil: the United States chose Germany.

⁹⁸ The British commissioners’ report of proceedings (FO 5/1303, fos. 38-44, 46); Fish’s diary of 19 April 1871 records that San Juan was discussed, but it gives no details, which may indicate that he encountered no surprises.

⁹⁹ McCabe, *San Juan Water Boundary*, 121. McCabe similarly questions de Grey’s agreement to accept, as evidence in the arbitration, Congressional/Parliamentary debates and diplomatic reports of interviews: McCabe suggests that de Grey “was not familiar enough with the diplomatic correspondence ... to appreciate that the United States rested their case ... primarily on” such evidence (102). Given the American side’s 15 March 1871 emphasis on the 1840s diplomatic record and its claim next day that Aberdeen had “misled” McLane by promising the Haro canal but then (under Pelly’s influence) redrafting his offer, this seems unlikely.

tionale was clear. To secure the package deal on all outstanding questions that both sides wanted, the United States had accepted Britain's *sine qua non* – arbitration on the water boundary. Britain had in return to accept the arbitration parameters required by Fish, without which (experience suggested) no treaty could have gained Senate ratification. De Grey made this point when telegraphing to Foreign Secretary Lord Granville on 20 April: “[I fear] that you, & especially some other members of the Cabinet, will dislike the restriction imposed upon the arbitrator to decide between the Haro & Rosario channels – but the point is one on which the Senate are very strong, & which will not be yielded.”¹⁰⁰

Telegraphs now enabled the British government to intervene in negotiations much more directly than in time past – to the point of banning split infinitives from the treaty text.¹⁰¹ But interventions were confined to the *Alabama* and fisheries questions, while de Grey's San Juan suggestions were always endorsed. Gladstone left Granville to decide on limiting the arbitrator to Haro and Rosario, but added: “It is a great matter to lay San Juan aside.” Granville then approved.¹⁰² However, when the Foreign Office read the precise wording – that the arbitrator should determine whether the British or the American boundary claim was “most in accordance with the true interpretation” of the 1846 treaty – opinion was that “it [did] not advance a settlement” since the arbitrators were “not likely to decide absolutely in favour of one or the other channel: neither being strictly in the terms of the Treaty.” Granville, however, had hopes that this might reopen the possibility of the Middle Channel: he believed “neither claim to be strictly tenable – but if this is the decision of the Arbitrator ..., we shall be no worse off than at present, and a compromise might then be negotiated.”¹⁰³

This arbitration was to be independent of the arrangements for settling the *Alabama* claims. But the two topics nearly became linked again when the United States claimed for indirect as well as direct *Alabama* damages.

A more natural explanation is that de Grey saw this concession, too, as one without which no settlement could have been reached.

¹⁰⁰ British commissioners to Granville, 20 April 1871, FO 5/1303, fo. 65; De Grey to Granville, 21 April 1871, PRO 30/29/63, fo. 263.

¹⁰¹ Andrew Lang, *Life, Letters, and Diaries of Sir Stafford Northcote ...* (Edinburgh: William Blackwood and Sons, 1891), 238, 240. Cables cost the British commissioners the enormous sum of five thousand pounds.

¹⁰² Gladstone to Granville, 21 April 1871, in Agatha Ramm, ed., *The Political Correspondence of Mr. Gladstone and Lord Granville 1868–1876* (Royal Historical Society, Camden Society 3rd series, 1952, vols. 81–82, no. 518); Granville to de Grey, 21 April 1871, FO 5/1299, fo. 292.

¹⁰³ Two minutes on the back of the account of the 19 April 1871 commission meeting (which arrived on 2 May 1871), the first probably by Hammond, the second clearly Granville's (FO 5/1303, fo. 45).

During the subsequent crisis negotiations, Fish and Schenk suggested that Britain trade San Juan for US abandonment of the indirect claims, but nothing came of this.¹⁰⁴ Eventually, the boundary arbitration went ahead in Berlin.

The American case was presented by George Bancroft, the British case by another veteran of the dispute, Admiral Prevost. Prevost invoked the legal principle that a treaty's words should be taken "in the sense[] in which they were commonly used" when it was concluded. Rosario Strait was then "the only channel between the Continent and Vancouver's Island generally known and commonly used by sea-going vessels," and the 1846 words "the Channel" "denoted those waters" in the "common usage" of the day. According to "the charts then in use, it would readily answer the description given ... in the Treaty." "Haro Strait" would not. This is because it started not "under the 49th parallel" but some way further south; moreover, had the treaty-makers intended it, they would have specified it explicitly since it already had a name. A line through Rosario Strait "satisfie[d] the great aim, which either party had ... prior to" the treaty's conclusion, whereas adoption of "Haro" would have deprived the Queen "*of a right of access to her own possessions* [north of 49°] through the only then known and navigable channel."

For the United States, Bancroft argued essentially on the basis of McLane's report of his final conference with Lord Aberdeen, which, Bancroft claimed, should be read in the light of "the latest, most authentic, and best map of the [Oregon] territory," that of Wilkes. McLane had believed Britain would offer division by a line along the 49th parallel to the sea and "thence by the Canal de Arro and Straits of Fuca to the Ocean." This line met objections to the United States' 49th parallel claim by leaving Britain, in the words of both Aberdeen and Peel, "the whole of Vancouver's Island, with equal right to the navigation of the Straits." The treaty's language had seemed perfectly clear in Washington, "as departing from the line of the parallel ... only so far as to yield [to Britain] the southern extremity of Vancouver's Island, and no more." If that was not what Aberdeen had meant, he should have made it clear – in which context, Bancroft cited Vattel's legal principle: "If he who could and should express himself plainly and fully has not done so, so much the worse for him." Bancroft concluded with a discussion

¹⁰⁴ Nevins, *Hamilton Fish*, 536–37; Granville to Gladstone, 17 February, and Gladstone to Granville, 7 March 1872 (Ramm, *Political Correspondence*, nos. 659, 675). Gladstone was not enthusiastic; Granville thought the "best bargain" for the United Kingdom would be abandonment of the claim to San Juan in return for the dropping of *all* US claims for *Alabama* damages. Both, though, were very conscious that there was now "a new party" to the San Juan dispute – Canada.

of the two channels. Haro was “the broadest and the deepest, and the shortest and the best.” From 48° 46’ southwards, it was the only channel separating Vancouver Island from “the Continent” (which, “according to all geographical usage,” included “the intervening cluster of small islands”). By contrast, the “so-called” Rosario Straits touch neither the “continent” nor Vancouver Island and divide only “small islands from small islands”; they were, indeed, “not straits at all” but only Vancouver’s “track ... on his way from Admiralty Inlet to the north.” Both parties then tabled further statements attacking each other’s arguments. The United States also made much of Britain’s readiness to compromise on the “Middle Channel,” arguing that it had thereby abandoned the position that Rosario Strait represented the treaty channel: only two channels had been contemplated at the time of the treaty, and, with Rosario thus dropped, Haro remained.

The German emperor referred these submissions to two lawyers, Drs. Ferdinand Grimm and Levin Goldschmidt, and a geographer, Professor Heinrich Kiepert. On 10 September 1872 Goldschmidt tabled a paper rejecting most of the arguments advanced on either side. He held that the 1846 treaty’s term “channel” “[could] be understood only as the totality of the waters” between the mainland and Vancouver Island north of the De Fuca straits. It was “highly probable” that the parties to that treaty “would have chosen the true middle line” even if they had possessed “the present exact maps”: had they “intended the middle line, they must have chosen the wording of the treaty”; had they envisaged “another line, they could not have chosen this wording.” Goldschmidt would presumably have favoured some version of the British “Middle Channel” compromise proposals. But, in 1871, the British commissioners had abandoned this position, thereby, as Goldschmidt put it, restricting the arbitrator “to the decision: Whether the [Haro or the Rosario] ... claim is in accordance with the true interpretation of the treaty.” In Goldschmidt’s view, neither was, and the arbitrator could only say so.¹⁰⁵ That, as we have seen, had been Lord Granville’s view, but he had hoped that an arbitrator’s decision to that effect might open the way to a compromise.

Grimm and Kiepert disagreed. When the referees met on 25 and 26 September 1872, Goldschmidt suggested asking the United States and Britain whether the intent of their 1846 treaty really had been that the

¹⁰⁵ David Hunter Miller, trans. and ed., *Northwest Water Boundary: Report of the Experts summoned by the German Emperor as Arbitrator ...* (Seattle: University of Washington Press, 1942), 31–67, esp. 31, 37, 63, 65, 67; the italics are present in the originals. The Kaiser prudently gave no reasons for his award; however, in 1938, the report upon which it was based was passed to the State Department.

border must run through either Haro Strait or Rosario Strait – if so, all three referees preferred Haro. But, with Kiepert’s support, Grimm produced a paper arguing against thus referring the question back to the parties as these wanted a settlement, not an invitation to negotiate a new arbitration treaty or new boundary.¹⁰⁶ Grimm also tabled his own report, again with Kiepert’s support. This, too, reviewed the arguments on each side, giving more weight than had Goldschmidt to McLane’s and Benton’s belief that “the boundary went through Haro Strait.” And, unlike Goldschmidt, Grimm held that “on all sides the [treaty’s] deviation from the generally governing rule of the 49th parallel was regarded as for the purpose ... of keeping the whole of Vancouver Island for Great Britain.¹⁰⁷ This is a not inconsiderable support for the hypothesis that that channel was meant which lies nearest to Vancouver Island.” Grimm concluded that the treaty’s reference to the boundary channel as dividing the continent from Vancouver Island “fits only Haro Strait, which touches Vancouver Island, and does not fit Rosario Strait.” Also the further provision for the boundary

to go southerly through the middle of the said channel, corresponds most with the direction and natural state of Haro Strait, as the natural, widest, and deepest main connection between the Gulf of Georgia and the Strait of Fuca, and as that water which is the natural southerly continuation of that gulf and therefore can be considered as therewith forming one channel.

Grimm and Kiepert recommended accordingly, declaring for good measure that, even had the arbitrator been empowered to consider the “Middle Channel,” Haro Strait would still have been preferable.¹⁰⁸ The Kaiser duly pronounced in its favour.

Prevost wanted to ask the Kaiser for his reasons, but neither Gladstone nor Granville thought this wise. They did, though, accept Prevost’s idea of coming to a joint agreement with the US government on “an official

¹⁰⁶ Miller, *Northwest Water Boundary*, 69–73.

¹⁰⁷ The treaty text gave no reasons for this “deviation.” However, it not only set out a border that left Britain all Vancouver Island but also provided for the free “navigation of the whole of the said channel and straits” through which the border was to run. This was to ensure Britain access by sea to the Fraser River (an access that had in later years become far more important). British apologists concluded that the treaty’s intent had been, not simply to avoid partitioning Vancouver Island, but also to divide the intervening islands so as to guarantee free access to the Fraser. Americans saw such access as requiring no more than free navigation of the Haro Strait; they also tended to argue – and Britain strongly to deny – that, before 1846, the United States had been entitled to at least the full 49th parallel border, and that any “deviation” therefrom represented a concession that should be narrowly interpreted.

¹⁰⁸ Miller, *Northwest Water Boundary*, 3–29 (esp. 27) and 73.

map defining the Haro Channel”;¹⁰⁹ Prevost and Richards, now the Admiralty hydrographer, were told “to go over the chart and draw the exact line which they considered to be in conformity with the Award.” In Washington, Fish feared this would require a further survey, but Thornton observed that they already had plenty of survey maps. Working from them, Fish appreciated, would “save a great deal of trouble and expense.” Next day he produced a US Coast Survey chart and pencilled on it “what he conceived to be the boundary line,” with which Thornton also agreed. Fish later told Thornton he had given orders that the line, “as the United States’ Government believed it to be, should be laid down” on one British and one American map and sent to London for inspection. This was done, tactfully only on Admiralty charts, at the Coast Survey Office “under the supervision” of Boundary Commissioner Campbell.¹¹⁰ The result went to Britain, where it was compared “with the chart [already] prepared by the Admiralty” and was found “as nearly identical as could be expected.”¹¹¹ Prevost was sent to Washington with four maps: one deliberately left unmarked; one showing what the British regarded as the Haro “Channel” shaded in blue; one marked red with “what the British propose as the boundary line”; and one with this line “marked in Red ... & in Blue what they say is our proposed line.” These lines “very nearly” coincided, but at two points Fish successfully pressed for changes.¹¹² The long defunct Water Boundary Commission was then formally revived. Thornton and Prevost (for Britain) and Fish (for the United States) marked the line on four copies of the relevant Admiralty chart.¹¹³

Had the HBC moved faster in 1846 Vancouver’s chart could well have been affixed to the treaty Britain then offered, with provision for the boundary to follow his “track” as the established channel of navigation.

¹⁰⁹ Granville to Gladstone, 30 October 1872, and Gladstone to Granville, 1 November 1872 (Ramm, *Political Correspondence*, nos. 779, 781).

¹¹⁰ Thornton to Granville, 18 and 23 November 1872, and 16 and 23 December 1872, *Correspondence Respecting the Award of the Emperor of Germany in the Matter of the Boundary Line ...*, 9–12 (P.P. 1873, lxxiv); Fish Diary, 21 and 22 November 1872, 12, 14, and 19 December 1872.

¹¹¹ The process can be partly followed through the maps described by Penfold (most of which appear in +191–200 and 211–20). On 14 November 1872, Richards forwarded charts to illustrate his understanding of the award (Penfold, nos. 519, 525).

¹¹² Alterations were also agreed in the verbal description of the boundary line that Prevost had brought from London. See Fish Diary, 12 and 26 February 1873; Granville’s answer to a Parliamentary Question (*Hansard*, 11 February 1873, 279–80); and Tenterden’s 10 February briefing note, “San Juan Charts” (PRO 30/29/106).

¹¹³ Fish Diary, 10 March 1873; *Protocol Signed at Washington ... Defining the Boundary Line through the Canal de Haro in Accordance with the Award of the Emperor of Germany ...*, 2–3 (P.P. 1873, lxxiv); Penfold, nos. 523 and 524.

And the Senate would probably have accepted this.¹¹⁴ But, in European diplomatic practice, it was not then usual to incorporate maps into the basic treaties defining boundary changes. Instead, the treaties described these verbally and appointed commissions to mark the new lines both on the ground and on maps.¹¹⁵ The 1846 Oregon Treaty appointed no such commission. But the HBC soon brought Britain to propose one. However, the United States held back until 1856, largely for reasons of cost. Nor, when it came, did the Water Boundary Commission prove a success.¹¹⁶ The existence of two maps (Vancouver's and Wilkes's) showing two different navigation channels ensured rival interpretations of the treaty. Both sides had their territorial imperatives: Britain refused to give up San Juan, while the United States would not relinquish any territory to which it felt itself entitled. Arbitration was the only way out, and arranging this proved difficult, partly because of unconnected developments like the American Civil War but also because of disagreement as to whether the arbiter might or might not award the "Middle Channel" compromise that would have given Britain San Juan. So it took, overall, nearly three decades before the relatively minor (albeit, in 1859, briefly dangerous) dispute was laid to rest by the marking of a line, "in conformity with" the German award, on charts that were to serve "as a perpetual record of agreement ... in the matter of the line of Boundary ... under the First Article of the Treaty concluded ... on the 15th of June 1846."¹¹⁷

¹¹⁴ No known interests were then at stake; the Senate had shown that, provided it could get 49° on the mainland, it did *not* want to risk war with Britain; and, by the time the British offer had arrived, war with Mexico had rendered this prospect even less attractive.

¹¹⁵ This had been done by the treaties concluded in 1815 between Russia, Austria, Prussia, and Saxony. Similar provisions were made: in 1856, in respect of Russia's Bessarabian cessions to Turkey, with the commission's "Definitive Act" next year both describing the new border verbally and marking it on two maps (see Clive Parry, ed., *The Consolidated Treaty Series* (Dobbs Ferry, NY: Oceana Publications, 1969), 114: 416-17, 116:457-63); in 1859, in respect of Austria's cession of most of Lombardy to France/Sardinia, with maps included in the resultant "Final Act for Frontier Declaration" of 1860 (Parry, *Consolidated Treaty*, 121:147-48, 122:158-76); and, in 1860, in respect of Sardinia's Savoy cessions to France, with a detailed border description and counter-signed maps following in 1861 (Parry, *Consolidated Treaty*, 122:25, 124:3-10). In 1871, however, France and Germany negotiated over their new border on the basis of a green line drawn on a September 1870 German General Staff map of Alsace (Parry, *Consolidated Treaty*, 143:39-40, 164-65).

¹¹⁶ The work of the companion commission marking the 49th parallel border on the mainland was less contentious, though certainly not entirely smooth.

¹¹⁷ These charts were accompanied by a "Definition of the Boundary Line," but, untypically, this gave primacy to the line on the charts: its verbal descriptions of "courses and distances" were "not assumed to be perfectly accurate" but only "as nearly so as is supposed to be necessary to a practical definition of the line laid down on the chart and intended to be the boundary line." See Parry, *Consolidated Treaty*, 146:37-39.