THE ABROGATION OF THE TREATY OF 1832
BETWEEN THE UNITED STATES AND RUSSIA

A Thesis
Presented in Partial Fulfillment of the Requirements
for the Degree Master of Arts

by

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1960

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ACKNOWLEDGMENT

I would like to thank Professor Francis Weisenburger and Professor Charles Morley for their help in the preparation of this thesis. It was sincerely appreciated, and will long be remembered.

I. M. S.
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PREFACE

Upon undertaking an investigation of the conflict which arose between the United States and Russia with regard to the abrogation of the Treaty of 1832, one finds that there is no easy solution to the question: which was the side of justice? The crisis arose from deep prejudices, and at times a possible solution went beyond the sanctions of international law. International law could not be brought in to settle the dispute because each side refused to give up its position, which rested on the belief in the right of each country to settle and regulate its internal order. On the one hand, Russia cannot be blamed for interpreting her own internal laws to favor her argument; on the other hand, the United States cannot be blamed for attempting to undo the wrong that Russia was performing when she refused to admit American Jews into the Russian Empire.

Russia's refusal to admit American Jews, naturalized or native born, into her territory was based on the assumption that the Jews were a hindrance to her population, and that she could not give American Jews rights which she did not give to her own Jews. Surely, Russia did face a serious internal problem. Of course, Russia's actions were narrow from the point of view of an American, but the historical development of the Russian Empire, and the problems that it faced when the Jewish problem arose tend to explain, if not to justify, such actions.
The United States, in 1911, was in no mood for conciliation in regard to the Jewish problem; therefore, the situation between the two counties reached a climax in that same year, when President Taft ordered our ambassador at St. Petersburg to abrogate the Treaty. The decision to abrogate the Treaty was a wise one for President Taft realized that the United States' case did not rest on wholly firm ground and that it would be better not to arouse criticism by rash action.

The whole story of the abrogation begins in 1832, and involves discussions of a series of discriminations by Russia, of American Jewish opinion, and of action by the United States government to come to terms with Russia on the weaknesses of the Treaty. The present aim of this paper is to discuss the abrogation crisis, and to draw general conclusions as to the guilt of Russia, the American attitude, and the general meaning of the treaty.
CHAPTER I

INTRODUCTION

The immediate historical background of the Treaty of 1832 between the United States and the Russian Empire begins with the presidency of John Quincy Adams. The negotiation of the Treaty with Russia was in accordance with a policy which received impetus when John Quincy Adams was President, 1825-29, and had for its object the acceptance by other nations of broader views of international trade than had previously existed up to that time. Contrary to the ideas which were held by Americans in 1811 about the Treaty, it was considered a liberal and enlightened measure when it was formulated.

The efforts to obtain a treaty of this sort actually began before the Presidency of John Quincy Adams. On December 16, 1733, Francis Dana, the first American minister at St. Petersburg, reported to the Continental Congress that in consequence of American independence being recognized by Great Britain, he soon expected to be engaged in talks with the Empress' ministers in order to formulate a commercial treaty.¹

Dana was not successful, and later envoys also tried without success to come to some sort of commercial treaty with Russia. After

these attempts proved futile, Russia's attitude suddenly changed after the war between Russia and Turkey had confirmed Russian predominance in the region of the Black Sea.²

In 1830, Henry Middleton, the American minister to Turkey concluded a treaty with that country; this treaty contained an article which provided that American merchants should have in Turkey the same treatment as those of the most favored nations. John Randolph, who was minister at St. Petersburg in 1830, studied the treaty with Turkey, and presented a project of a similar kind with Russia under the instructions from Martin Van Buren, our Secretary of State.³ James Buchanan, who succeeded Randolph, was instructed by Secretary of State, Edward Livingston, to renew the negotiations of his predecessor.

Buchanan negotiated with Count Nesselrode, Russian Minister of Foreign Affairs, and on December 18, 1832, the Treaty of Commerce and Navigation was signed. Buchanan signed for the United States, and Nesselrose represented the Russian Empire.

The process of negotiating with the Russians was not an easy task, for, Buchanan spent many wasted hours arguing and pleading with the

² The Turkish War (1828-29) was concluded at Adrianople, and Russia acquired the left bank of the Lower Danube, and the eastern shore of the Black Sea.

³ Hunt, loc. cit.

Russians for minor concessions, discussing revisions, and going over the contents of other treaties. Buchanan carried on these discussions with the utmost dignity, and his patience was rewarded when Count Nesselrode called him to his office, and final plans were detailed.

After the negotiations, Buchanan noticed that Russian acceptance of the Treaty meant that the United States held a higher position not only in the circles of the court, but also with the other foreign dignitaries. He felt that the Russian attitude toward the United States had undergone a change for the better and that the very fact of concluding the Treaty had distinguished the United States from other commercial nations.

On February 22, 1833, the Treaty of Commerce and Navigation was forwarded by President Jackson to the Senate, and five days thereafter, it was agreed to by an unanimous vote. On May 11, 1833, ratifications of the Treaty were exchanged.

The Treaty which is of primary interest for the topic of this thesis was formulated and set down in twelve articles. All of the articles, except the first, dealt with commercial problems. These problems are outside of the scope of our problem, for, they deal with tonnage, freight, and duties. The first article of the Treaty was

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6 Congressional Record, 62 Congress, Second Session, p. 319.
one which was found in United States commercial treaties with Prussia, Sweden, and Austria. This article was to become the basis for dispute between the United States and Russia. Therefore, it is of the utmost importance to quote it in full:

There shall be between the territories of the high contracting parties a reciprocal liberty of commerce and navigation. The inhabitants of their respective States shall mutually have liberty to enter the ports, places, and rivers of the territories of each party, wherever foreign commerce is permitted. They shall be at liberty to sojourn and reside in all parts whatsoever of said territories, in order to attend to their affairs; and they shall enjoy, to that effect, the same security and protection as natives of the country wherein they reside, on condition of their submitting to the laws and ordinances there prevailing, and particularly to the regulations in force concerning commerce.

The American minister and his Russian counterpart had no hesitations when they placed their signatures on this document; in fact, the first article gave neither party any apprehensions about its interpretation. As Buchanan's own note testifies, Article I was not even discussed, and neither believed that it was of enough importance to discuss. Both accepted Article I as a common part of any treaty of navigation and commerce.

In spite of the fact that Article I was not even considered as being controversial, it was to become by 1864, the center of a

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7 Moore, Buchanan, II, p. 289. See this for full text of the Treaty of 1832.

8 Ibid., p. 294.
controversy which was to rage until 1911. This simple statement of 
obligations by the contracting parties came to be used as a weapon 
by which Russia and the United States interpreted their claims in 
the abrogation crisis; however, it is first necessary to see how the 
Russian Empire began to interpret this Article for the justification 
of her policy of discrimination.
CHAPTER II

DISCRIMINATION BEGINS

To understand the crisis that came to a head in 1911 one must first understand the actions of Russia in regard to discrimination against Jews. Russia began around 1865 to refuse the visa to American Jews, naturalized or native born, who wished to enter Russia. This was quite a reversal, for up to this time, there had been no discussion about the Treaty, and many looked upon it as a perfect model of ideal co-operation.

The change in Russia's attitude and the resulting crisis are clearer when one realizes the basic changes that were occurring in the world. Firstly, many Jewish immigrants were arriving on American shores from the Russian Empire. Secondly, Russian policy toward her own Jews was stiffening. These two factors combined to form the background to the abrogation crisis which took over fifty years to come to a head; therefore, without a knowledge of these two factors, it is impossible to understand American reaction to Russia's refusal to issue Jewish passports.

Under the terms of the 1832 agreement, inhabitants of the United States had the right to visit Russia, when they were given the right to sojourn and reside in all parts of the Russian territory where foreign commerce was permitted. Russia interpreted the clause,
that foreigners had to submit to the prevailing laws and ordinances, in her own way so as to refuse the passport to Jews.\(^1\) Thus, each side used the treaty to defend its own stand.

Russian discrimination against American Jews can be seen as early as October, 1864, when a Bernard Bernstein, who was born in Russian Poland in 1823, and who emigrated to the United States in 1846, decided to return to his homeland. Upon returning to Poland, he was arrested, and imprisoned on the charge of having failed to perform military duty. Six days after his arrest, Bernstein wrote to the State Department and asked for help since he had received naturalization papers in 1856. The Department of State on November 29, 1864 instructed the legation at St. Petersburg to take steps to secure his release. After negotiations with Russia, Bernstein was released in March, 1865.\(^2\) The discrimination which occurred against Bernstein did not involve the refusal of a visa, but did bring to the surface another aspect of the problem. Russia had refused to recognize Bernstein as a naturalized American citizen; therefore, he had been placed in prison. If Russia had recognized him as an American citizen, she could not have placed him in prison for violating a law only applicable to Russian citizens.

Russian discrimination continued, and in 1880, a Jew, Henry Pinkos, had been ordered out of St. Petersburg. When the United States

\(^1\) Congressional Record, 62 Congress, Second Session, p. 317.

\(^2\) Hearing Before the Committee on Foreign Affairs (House of Representatves), Monday, December 11, 1911, Washington, 1911, p. 105. Bernstein's case formed the subject of a report to Congress. Message of President Grant, February 8, 1873, H. Ex. Doc. 197, 42 Congress, Third Session.
legation heard of this, the prefect of the city was approached, and a delay of three days was obtained for Pinkos. After the American consulate obtained more extensions for Pinkos, the Russian prefect refused to grant any more time; therefore, Pinkos was forced to leave the city without having had a chance to properly take care of his business. While Pinkos and his family were still in the city, they lived in a state of apprehension from day to day, for they had no assurance from the officials that they would be permitted to remain for the next day. Since Pinkos was an American citizen, a note was sent to the Russian government. Evarts, who conducted the correspondence, emphasized the duty of the United States to seek impartially to protect all of its citizens of whatever faith or origin, to protest. The United States could not fail to look upon the expulsion of one of its citizens from Russia on the ground that he professed the Jewish faith, other than as a grievance similar to the kind that Russia would find if the United States expelled one of her citizens. It was also suggested that Pinkos should be entitled to some kind of compensation for the rude and disrupting way in which he was expelled from Russia, simply because he was a Jew.

Finally, Pinkos was forced to leave Russia, although his departure was plagued by the inefficiency of the Russian officials. He paid his

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passage and sent his baggage on board a vessel at Cronstadt, and prepared to embark. As he was preparing to embark, the police asked for his passport, and sent him back to the capital. The situation was complicated by the fact that he had already sent his luggage ahead, and the captain of the boat had refused to return his passage money, whereby, the family remained penniless in St. Petersburg. The American consul again took up his pen, and it was decided in a dispatch dated August 10, 1880, that proper representation should be made to the Russian government in this case.\textsuperscript{5} After the family finally left Russia, the attitude of the American government stiffened and was expressed in a dispatch of September 16, 1880, from the United States legation in the capital, that registered complaint with regard to the treatment of American Jews.\textsuperscript{6}

Foster, representing the Secretary of State, protested to Baron Jomini in a note against the treatment which Pinkos had received. Foster was in charge of the legation when the affair arose, and carried out the Secretary of State's order to protest.

After 1890 many of the Russian Jews who came to the United States in the sixties and seventies, had prospered in their new land, and decided to revisit friends, relatives, and to travel in the land of

\textsuperscript{5} Hearing Before the Committee on Foreign Affairs, p. 110.

\textsuperscript{6} Note to Baron Jomini, Minister of Foreign Affairs, appears in papers relating to the Foreign Relations of the U. S., Washington, GPO, 1880, p. 881.
their birth; this desire gave rise to action on Russia's part, whereby she refused to issue the passports of these Jews, who had become naturalized American citizens.

Harry Culter was one of the leading citizens of the State of Rhode Island. He was active in the militia and was elected lieutenant colonel of the National Guard. The mayor of his city appointed him as a commissioner to visit foreign municipalities for the purpose of making investigations of the municipal forms of government. 7 Culter received his passport from the Secretary of State's office, and also received a notice for Jews; 8 this was a notice to American citizens formerly subjects of Russia, who wanted to return to that country.

The notice was issued by Elihu Root, Secretary of State at the time, and stated that under Russian Law, a Russian subject who becomes a citizen of another country without the consent of the Russian Government was deemed to have committed an offense for which he was liable to arrest if he returned to Russia without obtaining the permission of the Russian government. It was stated that, the American Government dissented from this provision of Russian law, but that an American citizen, formerly a subject of Russia, placed himself "within the jurisdiction of Russian law," and could not "expect immunity from its

7 Congressional Record, 62 Congress, Second Session, p. 318.

8 The notice of May 28, 1907 was issued by Mr. Root, Secretary of State. It appears in full on p. 475 of the Congressional Record, 62 Congress, Second Session.
operations."9 The Secretary stated that admission to Russia depended upon one's passport being viseed by a Russian diplomatic official.

Cutler received this notice, but still decided to attempt to have his passport viseed, since he wanted to include St. Petersburg on the list of cities to be visited, and he still had a family in Russia. With the idea of mixing business with the personal interest of seeing relatives in Russia, he appeared at the Russian Consulate in New York the day before he sailed. The clerk of the consulate was cordial, and told him to go below to the office. After Cutler requested a visa, the clerk handed to him an application which read as follows:10

Name_________ where born_________. Religion_______.
Business or tourist_________. Have you been a citizen
of any other country?____________________

New York_________. Signature___________.

After receiving the application, Cutler filled in the name and where he was born, which was Elizabethgrad, but he refused to fill in the blank for religion. The consul told him that he must fill in the blank or the application would be rejected. Cutler refused to do this since he was an American citizen and on American soil.

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9 Hearing Before the Committee on Foreign Affairs, p. 55. This is taken from the testimony of Cutler before the House Committee.

10 Ibid., p. 52.
A conversation began between Cutler and Baron Schlippenbach, Russian Consul. During the course of the conversation, the Baron was informed that Cutler was a manufacturer and would represent his firm on the visit. After a little hesitation, Cutler was told to see a Russian attorney, a Polevoy, who would receive affidavits from Cutler certifying that the trip was to be a business one. The applicant was also told to file a copy of his commission from the mayor. If Cutler did these things, he was to receive a visa for six months. Cutler did not receive the visa, because he refused to submit to the questioning about his religion.

The case of Cutler is not only interesting because it involved an American citizen being asked about his religion on American soil, but also because the Russian Consul considered that Cutler was still a Russian citizen since he did not get the permission of the Russian government to leave Russia. The applicant considered that he entered the United States when he was not his own free agent, since he had been forced to flee Jewish Massacres in Russia, but the Russian Consul still considered him a citizen of Russia, and held him responsible to Russian laws in the embassy.

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11 Ibid.
12 Ibid., p. 54.
13 Cutler's background shows that he arrived in the United States a young boy. His father was killed in a massacre. Christian friends saved the Cutler family by placing Christian emblems on their home.
At the time of the abrogation crisis, Russia still held to the theory of indefeasible allegiance, whereby, she did not recognize the right of any Russian subject to acquire foreign citizenship without first obtaining her permission. The United States had also recognized this at the time of the formation of the Treaty, but by 1911 had come to repudiate this doctrine.\(^1\) This is evidenced by the fact that over a period of years millions were being naturalized. The impossibility of any agreement with the Russian Empire is seen by this difference in opinions on indefeasible allegiance.

The case of Harry Cutler is only one of many which show that Russia refused to recognize Jews who had emigrated to America and had been naturalized as American citizens.

One more case will suffice to show the attitude of the Russian government regarding the problem. Louis J. Horowitz came to the United States at the age of fifteen, and had been naturalized.\(^2\) He desired to visit the place of his birth, and at the same time go to St. Petersburg for the purpose of investigating various matters concerning the proposed contract between the Russian government and his company regarding the construction of a passenger depot.

He left for England on March 31, 1908, in a hurry; therefore, he requested the company's local manager at Washington to secure his

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\(^1\) A statute of Congress of July 27, 1868 states that the right of expatriation is a natural and inherent right of all people. It is further stated, "Any declaration, instruction,... or decision...which restricts, impairs or question the right of expatriation is... declared inconsistent." See Section 1999, Revised Statutes.

\(^2\) Congressional Record, 62 Congress, Second Session, p. 326.
visa, and mail it to him. After the representative of the Thompson-Starret Co.—a great building company—tried to get a visa, and ran into difficulties, he retained Messrs. Penfield and Penfield to attend to the securing of a visa. Judge Penfield presented the passport at the Russian embassy in Washington, but received a denial when he was forced to say that Horowitz was a Jew. 16

Frequently, an American found his way into Russia, but often suffered from discomfort and hardship, due to the lack of respect shown to American Jewish citizens. Herman Bernstein was an American citizen, who had been born in Germany and had lived the early part of his life in Russia. He decided to visit Russia, and secured a passport from the State Department in 1908. Having secured the passport, he went to the Russian consulate in New York to have it viseed. He was told that while the Russian officials discriminated against American citizens on religious ground, they made no discrimination if such citizens were willing to cross the ocean on Russian steamers in which the Russian government was interested. Contrary to the difficulty that Cutler and Horowitz faced, Bernstein received a visa since he promised to travel on the "St. Petersburg" of the Russian Volunteer Fleet. 17

Bernstein visited Russia and returned to the United States, but desired in 1909 to return. As he again approached the Consul at

16 Ibid.
17 Herman Bernstein, "My American Passport in Russia," The Independent, LXII (December 28, 1911), p. 73.
New York to receive a visa, he was turned down by Baron Schlippenbach due to the fact that he was a Jew; hence, it can be seen how Cutler and Bernstein received the same answer from the official. Since he was in Russia the year before, Bernstein did obtain his visa for one more year.\textsuperscript{18} His experiences in Russia show that Russian officials showed little consideration for his personal belongings, and often corruption reigned, where reason and dignity was absent. While he was at Odessa, he presented his passport to the local police officer, who threatened to keep him for three days. Upon asking for an answer, the officer grumbled, and answered, "You'll have to wait."\textsuperscript{19} After Bernstein threatened to call the American Consulate, the officer gave him the passport with the official stamps. The importance of this example does not lie in the fact that Bernstein experienced these hardships but in the fact that American citizens were humiliated due to their religion, either on Russian soil as in the case of Bernstein, or on their own soil as in the case of Horowitz and Cutler.

The cases of Harry Cutler, Louis J. Horowitz, and Bernstein are only significant in that they bring out actual cases of discrimination on the part of Russia against American citizens, this discrimination being due to the fact that they were Jews. At first, Russia claimed that she did not recognize the right of expatriation, but, suddenly

\textsuperscript{18} \textit{Ibid.}, p. 74.

\textsuperscript{19} \textit{Ibid.}, p. 75.
took up the Treaty of 1832 to justify her exclusion of American Jews, naturalized or native.

Russia insisted that the Treaty gave her the right to exclude any peoples that she considered dangerous to her interests. The first article was interpreted to mean that Russia could prohibit the entry of Jews if she desired, for, it was stated that all incoming visitors would have to conform to the laws of the land, and that the Russian government maintained that the Treaty did not permit every American citizen to enter Russia.

The United States found it necessary to protest against the Russian interpretation of the Treaty—article I—, and American opinions began to be formulated in dispatches to the Russian government. One of the earliest attempts of a Secretary of State to set this position on a firm basis was the masterly dispatch of Secretary of State James G. Blaine of July 29, 1881 to which the Russian government never sent a reply. Blaine's presentation of the subject was so profound and comprehensive that his successors in office found but one point that he did not touch upon—the inquisition into the religious belief of American citizens bearing the passport of the United States.

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21 Literary Digest, "Russia's Protest Against Us," XLIV (April 20, 1912), p. 804.


23 Ibid.
Blaine forcefully contested the argument put forward by Russia that her Treaty with the United States must be read subject to the provisions of her municipal law—which constituted the Jews an inferior class. He wrote that these questions of the conflict of local law and international treaty stipulations had been among the most common among those which engaged the attention of publicists, who generally agreed that where a treaty created a privilege for aliens in express terms it could be limited by the operation of domestic laws without a serious breach of good faith which governs the intercourse of nations. So long as such a formal agreement in favor of the citizens of another state existed, the law governing natives in like cases was manifestly inapplicable. Hence, the authorities in the United States asserted that the local laws of Russia could not override the obligations of the treaty which gave the right to sojourn and visit to American citizens.

What were the Russian Laws which were prohibiting the entrance of American Jews? They were those which specifically prohibited foreign Jews from establishing themselves in Russia, and becoming Russian subjects. Only the following categories were permitted to establish themselves where Jews were allowed to live: those whom the government


25 Statement of Blaine can be found on p. 1474 in Congressional Record, and also in Foreign Relations, 1881, p. 1030.

26 Congressional Record, 62 Congress, Second Session, p. 495. See this for a complete listing of the Russian Laws.
might employ in the administration of the war and navy, as physicians; those whom the government judged necessary to exercise the functions of rabbi; those who came to Russia for the purpose of founding factories or works, except brandy distilleries, and who furnish proofed that their capital for that purpose amounted to at least 15,000 roubles.

Supposedly, foreign Jews, and especially those who are agents of important foreign commercial houses were permitted to visit the manufacturing and commercial localities of Russia, known as such, and to reside there a certain length of time, according to the circumstances or the case; however, these people had to apply to the Ministry of Interior for authorization. Other Jews, who only wanted to enter Russia for social and personal reasons were not considered eligible for a visa. The Russian government took the attitude that they already had millions of Jewish subjects, and it did not want to allow more "parasitic elements" to penetrate Russia.

Although Russia did have laws which allowed certain classes of Jews to enter, she indiscriminately prohibited the entrance of all Jews. The Case of Louis J. Horowitz shows that she refused to visé his passport, although he went to Russia to discuss the building of a station.

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27 Ibid.

28 Prince Lobanow in a note to Breckinridge, our minister in Russia, stated on August 12, 1895 that only those Jews who would not be a parasitic element could be admitted. Dispatch is in Foreign Relations, 1895, p. 1968.
CHAPTER III

THE PROBLEM DEVELOPS

A basic discussion of the Crisis over the Treaty of 1832 showed that Russia began to discriminate against American Jews as early as 1865, and openly began thereafter to refuse the visa to American Jews, naturalized or native. The United States answered this discrimination with sporadic attempts at protest; one of the most famous attempts was the reply of James G. Blaine in which he stated that Russian discrimination could not be based on municipal law since municipal law could not be placed above international treaty obligations.

In regard to Russian discrimination in the beginning American Secretaries of State and ministers of the Russian Empire exchanged views on the subject, but it was thought that the matter would be easily corrected after the proper diplomatic exchange. At the same time, public opinion in the United States saw little to become alarmed about. The situation began to change in the late nineteenth century, when debate in Congress became active, and the diplomatic channels began to be concerned with dispatches relating to the problem of the visa.

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This diplomatic correspondence shows that discrimination was not just the policy and individual attitudes of officials, but expressed the views of the Russian government.

On February 16, 1893, John W. Foster, American Secretary of State, addressed to Prince Cantacuzene, Russian legate in Washington, a note concerning the case of Mannie Lerin. Miss Lerin was a duly naturalized American citizen, who was born at Odessa, Russia. She desired to visit her parents in Russia but was denied a visa. The American Consul did not understand the refusal since Russia had previously refused the visa to men who had fled military service. The answer to this came on February 20, 1893 when Prince Cantacuzene stated that Miss Lerin had declared herself a Jewess, and the consul acted accordingly by refusing to visa her passport. Hence, as early as 1893, Russia was following a policy of discrimination.

In 1895 Mr. Breckinridge, American minister in St. Petersburg, stated that he was directed by his government to bring to the attention of the Czar's government the discrimination practiced by the Russian Consul in New York. He reiterated that it was repugnant

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1 The case of Miss Lerin can be found in *Congressional Record*, 62 Congress, Second Session, p. 490.


3 *Foreign Relations*, II, 1895, p. 1057.
for a foreign official located in the United States to apply a religious test to any American citizen, and that it was impossible for the United States to acquiesce in the application of such a test within its jurisdiction by the agents of a foreign power. Russia's reply that her officials were acting according to instructions of the government did not satisfy the American official. American officials had a great deal of hope that the Russian government would take up the question and that such practices would soon stop.

The answer to Breckinridge came in a dispatch of June 13 from Herbert Pierce, chargé d'Affaires ad interim, to Edwin F. Uhl, acting Secretary of State. Pierce had the opportunity to discuss the situation with Prince Lobanow, Minister of Foreign Affairs, and they talked about the Jews in the United States. Pierce called the attention to the importance and position of American Jews, and particularly to the difficulty that Russia's actions was causing in the United States. The Prince was pleasant and answered that he would consult with the Minister of Interior in order to see if the situation could not be remedied. After the meeting, the American official called on Baron Osten Sacken, to whom all questions concerning the Jews had been forwarded. During the discussion, the visa matter came up, and Pierce was told that the passport matter was under discussion.

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4 Ibid.

5 The dispatch can be found in Foreign Relations, 1895, p. 1058.

6 Congressional Record, 62 Congress, Second Session, p. 493.
Baron Osten Sacken stated that Russia looked upon the presence of foreign Jews as detrimental to the Russian system; therefore she was forced to refuse the visa to Jews, who would only swell the existing population.  

Although the Baron was firm in his opinion, he admitted that there should be a change in the practices. Pierce expressed the hope that the Imperial government would find it compatible with its policy to admit American citizens without inquiry in regard to religion when passports were presented for the visa. It was asserted that America could not acquiesce in the discrimination against the Jews, who had proved themselves to be good and law-abiding citizens. Whatever the opinion of Russia might be, Pierce stated that his country was bound to protect its Jewish citizens, who had no designs on remaining in Russia when they applied for a visa.  

The diplomatic correspondence continued, and in the same year, Breckinridge wrote to Olney, Secretary of State, and presented the problem concerning the visa. Breckinridge stated that two difficulties existed. First, it was difficult to get the Russians to consider

7 Ibid.
8 *Foreign Relations*, 1895, p. 1058.
9 *Congressional Record*, 62 Congress, Second Session, p. 493.
the question separately and simply as a conflict over the interpretation of the Treaty; hence, the United States had to convince Russia that the Passport Question and the Jewish Question were different problems. Breckinridge also found that Russia lacked a sincere appreciation for the seriousness of the matter, and considered the Passport Question as an administrative matter.  

The American minister also wrote to Baron Osten Sacken and gave him a lesson in United States Constitutional Law. The minister politely explained that American laws are passed by a democratic method and that it was unthinkable that the United States could condone Russia's behavior in the rejection of passports.

After this correspondence, a series of letters flowed between Prince Lobanow and Breckinridge. The Prince stated that Russian refusals were not founded on religious objections since the laws of Russia recognized the right of many Jews to enter. These Jews had the right to apply to the Minister of Interior, who selected them on the basis of internal administration, not on the basis of their religion. He reiterated that Russians gave as much freedom to their Jews, as Americans gave, but Russia reserved the right to limit the entrance of certain types. Lobanow had no reservations

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10 Ibid.

11 This correspondence can be found in the Congressional Record, 62 Congress, Second Session, pp. 494-5.

12 See case of Louis J. Horowitz who was refused a visa but came within the accepted categories of Russian Law.

13 Foreign Relations, 1895, p. 1064.
about this discrimination since he felt that it was beneficial to warn American Jews ahead of time because it saved them from a lot of danger. As far as the American Constitution was concerned, he did not consider it as a part of the question; hence, there could not be a valid objection to the questioning by the Russian Consul.

Breckinridge answered that the exercise of authority by the Russian Consuls within the United States was a distinct violation of American institutions, and that Lobanow's argument that Jews were refused a visa for the benefit of internal order had no basis. 14

Alvey A. Adee, acting Secretary of State, received the correspondence that had taken place between American and Russian officials, and formulated a reply. 15 The actions of Breckinridge were sanctioned, and the Secretary went on to state that apart from the constitutional objections to the discrimination by Russian Consuls in the United States, his government could not sanction the subjection of its Jews to such a discrimination—the refusal of a visa. Although Prince Lobanow suggested that his government's consular regulations did not apply to all Jews, the facts showed that denial came to all American Jews who applied for a visa. Since Russian officials in the United States refused the authentication of legal documents of Jews who


owned property in Russia, the Secretary found it necessary to protest also on this point. Adee pointed to the fact that this refusal was a violation of Article X of the Treaty. Article X safeguarded the property rights of American citizens, who held property in Russia, and it also gave American citizens the right to dispose of their personal belongings within the jurisdiction of the Russian Empire.16

On October 23, Uhl wrote to Pierce after he had received material relating to Russian Laws which Prince Lobanow had sent to Breckinridge.17 The papers were studied, and Uhl came to the conclusion the Lobanow had failed to touch upon the main point of the problem; he had only sent a list of Russian Laws, which did little to clear up the matter. Uhl felt that Lobanow had completely ignored the problem in regard to the questioning of Russian Consular officials, who inquired of American Jewish citizens as to their faith. The American government did not consider it as a question as to whether Russia had ordered her officials to ask these questions but rather as to whether the Imperial government had any such right to assume the right to discriminate.18 This question of the American govern-

16 See John Bassett Moore, The Works of James Buchanan, II, p. 296 for the text of Article X.

17 Laws were sent by Lobanow on August 12, 1895, and can be found in Congressional Record, 62 Congress, Second Session, p. 495.

18 Foreign Relations, 1895, p. 1070.
ment, was ignored by Lobanow in the dispatch of August 12, 1895. If the United States would acquiesce in the claim that Russia did have the right to carry on this discrimination, the Secretary doubted whether the American people would endure it.

A study of the diplomatic correspondence has shown little but the different positions that both parties had taken. By 1904 a note appeared from Mr. Hay, Secretary of State to McCormick, an official at the American embassy in St. Petersburg; this note was very important, for, it reflected an important change in the American attitude.\textsuperscript{19}

The note was sent to inform the officials that the House of Representatives had adopted a resolution on April 21 of that year; the resolution called for the President to renew negotiations with the governments of countries where discrimination was made between American citizens on the ground of religious faith. The resolution further instructed the President to insure to all citizens equal freedom and travel and the right to sojourn in countries without discrimination due to race, creed, or religious faith.\textsuperscript{20} Hay instructed McCormick to inform the Russian Foreign Ministry that action had been taken by the House and that it would be wise if the Russian government took cognizance of this. A copy of the resolution was also sent.

\textsuperscript{19} Letter was of July 1, 1904 and can be found in \textit{Foreign Relations}, 1904, p. 790.

McCormick also saw that public opinion in America was beginning to be felt. He expressed this in a dispatch to Count Lamsdorff, an official in the Foreign Ministry; the American official felt that if the two sides did not come to an agreement, public opinion in America might dictate a different solution to the problem. \(^{21}\) Since public opinion was so important and could make its desires felt in Congress, McCormick feared that the chances for a solution other than abrogation would not have an opportunity to develop; therefore, he asked the Russian official to consider the significance of the resolution. The President also felt that Russia could not get any advantage from the exclusion of a class of tourists and men of business whose character and position in life were such as to offer a guarantee against the abuse of Russian hospitality. \(^{22}\) American officials found it hard to believe that some of the ablest citizens of the United States could bring about an internal revolution in Russia by simply visiting for personal reasons.

Russia replied to the note of McCormick and the resolution. In view of the action by the House which asserted disapproval of Russia's action, and the note of McCormick, in which the dissatisfaction of the President was expressed, Russia promised that she


would set up a commission to study possible means to modify her laws. Although Russia promised to set up the commission, she never notified the United States of any results, and it is doubted if the commission ever existed. 23

The American government cannot be blamed for losing patience with the Russians, for, it received no satisfaction in its attempts to settle the matter by diplomatic correspondence. Protests of the United States were met by ambiguity and false promises. The attempt to meet American inquiries by the setting up of a commission proved to be of no value since there is doubt that such a commission existed. When American officials made an attempt to confer with Prince Lobanow, he sent them a listing of Russian Laws.

Since the Russians made little attempt to bring the problem out of the range of an administrative matter, they are to be blamed for showing a complete lack of interest in working out a solution to the problem. Prince Lobanow could not have been less interested when he stated that the practices were not based on the religious faith of the applicants. If he did not base the granting of a visa on the applicant's religion, he should have been able to explain the

23 Count Lamsdorff replied on October 4, 1904, and stated that the commission was instituted by Supreme Order on December 17, 1903. See letter on page 794, Foreign Relations, 1904.
presence of a blank on the application for a visa; this blank inquired about the applicant's religion.

Russia could not understand the importance that the United States put on the visa question because she did not look upon the Jewish problem as an international question. The problem of the visa was only considered in terms of her own treatment of the Jews; therefore, it is not difficult to understand the situation that existed. On the other hand, the United States was eager to come to a settlement. 24

Not only American diplomats sought a solution to the problem. Members of Congress also began to introduce resolutions in order to express disapproval. The first resolution concerning the Jewish problem was passed in 1879; this resolution concerned the case of T. Rosenstraus, a naturalized American citizen, who was prohibited from holding real estate in Russia. A resolution was passed which stated that such disabilities were antagonistic to the enlightened spirit of American institutions, which demanded free exercise of religious belief and no disabilities therefrom. 25

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24 Breckinridge made it clear to the Russians that the United States looked to a settlement. He brought out the example of a German and English protest against a law which discriminated by requiring the administration of a consular oath to exporters. After the protest, the United States refrained from the action. Foreign Relations, 1895, p. 1072.

The resolution further stated that the rights of the citizens of the United States should not be impaired at home or abroad because of religious belief and that if existing treaties between the United States and other countries should be found to discriminate in this or any other manner, the President was to be instructed to take immediate action to have the treaties amended as to remedy the grievance.

The next resolution was introduced by S. S. Cox of New York; this resolution was brought about by the threatened expulsion of James G. Moses from St. Petersburg. The resolution called on the President to send to the House all correspondence between the Department of State and the American ministers in Russia. After this request, President Arthur sent it to the House. Cox again introduced a resolution which called for the President to transmit further correspondence. Having passed this resolution, the House passed two other supporting resolutions.

In February, 1892 the House passed a resolution which was meant to inquire into the operation of the anti-Jewish laws of Russia in regard to American Jews. Both Houses of Congress resolved that the President should be directed to inform the Congress whether the laws of the Russian Empire discriminated against American Jews and whether

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26 See 47 Congress, First Session; Executive Document, No. 192. Cox's resolution was passed on January 30, 1882.
this violated the Treaty of 1832. 27

The spirit of protest continued, for, on June 10, 1892, Irvine Dugan of Ohio introduced a resolution in the House which called for the severance of diplomatic relations with Russia. The American public was becoming more aware of Russia's practices. The resolution directed the President to sever diplomatic relations until such a time as the Russian government should cease to discriminate against American Jews. After the resolution was sent to the Commission on Foreign Affairs, no action was taken. 28 Although the resolution was not acted upon, it is important to remember that hostile feeling had manifested itself.

Examples show that the House of Representatives was taking the leading role in the introduction of resolutions. The Senate tended to be rather conservative, and one finds few resolutions originating in it. Also, the House tended to urge on the President and the State Department by the resolutions which instructed the President to send State Department documents to the Congress.

27 House Resolution, No. 94, 52 Congress, First Session; See Hearing Before the Committee on Foreign Affairs, p. 305.

In 1897 Adolp Kutner, a California banker, desired to visit Russia but was refused a visa on the grounds that he was a Jew. Senator J. C. Perkins introduced a resolution which was referred to the Committee on Foreign Relations. Since Kutner was quite wealthy and could not in any way become a parasitic element in Russia, the senator introduced the resolution; it requested that the United States should ask Russia to specifically declare whether American citizens were excluded on account of their religious faith. If they were excluded due to this, then the Russian government should be requested to remove such an obstacle and prohibition in order to permit American Jews to enter. The Senate resolution was much milder than the House resolution which called for severance of ties.

A prominent Jewish member of the lower house of Congress, Henry M. Goldfogle, introduced a series of resolutions which were all aimed at rebuking Russia's discriminations as they pointed to Russian violation of the Treaty of 1832. In 1902 Goldfogle introduced the first of his important resolutions.

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30 House Report, p. 308.

31 House Resolution, No. 183, 57 Congress, First Session; March 28, 1902.
This resolution instructed the Secretary of State to inform the House of Representatives whether American citizens of the Jewish faith were being barred or excluded from entering Russia. If they were, he was to report to the House what steps the American State Department had taken to correct the matter. The resolution was passed.\textsuperscript{32}

The Representative kept up his efforts to correct the situation arising from the Russian discrimination; hence, he introduced another resolution in 1904. This resolution called upon the President to strive to obtain a policy of uniformity in regard to Russia's treatment of American Christians and Jews who desired to obtain a visa. On February 18 the House Committee on Foreign Affairs granted a hearing to the resolution, and on April 16 it was reported back; however, it was sent back in a substitute form. The substitute was adopted on April 21.\textsuperscript{33}

The years between 1904 and 1908 saw no further action from Congress. Perhaps this can be explained by not only the internal trouble, but also the external affairs of Russia. On the one hand, Russia experienced the Revolution of 1905; on the other hand, she


\textsuperscript{33} House Resolution, No. 113, 58 Congress, Second Session; January 4, 1904.
also found herself in a war with Japan in that same year. Evidently, Russia's involvements overshadowed the visa question.

In 1908 Goldfogle introduced a resolution which was meant to bring the diplomatic correspondence to Congress. The resolution was also a general inquiry into the attempts of the State Department to negotiate a settlement, especially after the Resolution of April 21, 1904. Goldfogle's motion was referred to Committee and was laid on the table due to the insistence of Secretary of State, Elihu Root, who advised that it would not be compatible with the best public interests at the time to communicate the correspondence to Congress.34

While Congress was receiving various resolutions in regard to the visa question, the executive branch also made an attempt to settle the dispute. President Roosevelt wrote to Count Witte, Prime Minister, on September 10, 1905 and asked him to consider the question of granting visas to reputable American Jews. The President felt that this would remove the last cause of irritation between the two countries; however, the letter to the Count was never answered.35 For an explanation of this indifference, one notes in the Memoirs of Witte references as to how inefficiently the government was run and how this lent itself to the aggravation of the problem. As

34 House Report, p. 312.

early as 1905, the Minister of the Interior, Bulygin, recommended that together with the introduction of new passport regulations all the restrictions upon the right of foreign Jews to enter the Empire should be removed. The Minister realized that these restrictions accomplished little and only complicated international problems. After the Duma was created many of the governmental dossiers were returned to the respective ministers. As far as can be ascertained, this recommendation was buried at the Ministry of the Interior.36

All attempts to discuss the Treaty proved to be fruitless. Neither the American diplomats, nor the President, could channel the anti-Russian feeling into constructive action such as was needed to bring about a reinterpretation of the Treaty. Action on the part of Congress meant that public opinion was becoming aroused, and with Congressional action the actual time of abrogation came nearer.

Russia's stubbornness had an undesirable effect for those who wished to see a settlement arranged without resort to harsh language and threats of abrogation. Since Russia refused to discuss the problem, she discredited herself in American public opinion, and it was public opinion, not Congressional resolutions, not diplomatic dispatches, and not Presidential action, which finally forced President Taft to abrogate the Treaty.

36 Ibid.
CHAPTER IV

THE TREATY IS ABROGATED

Russia's stand was not favorably received by the American Public for several reasons. Americans considered that the provisions of the Treaty were too vague, thus allowed the discrimination to take place. They desired a more definite but flexible document which would be responsive to their opinions on indefeasible allegiance and the right of all American citizens to travel without discrimination due to religion. Americans also found it very difficult to believe that Russia was considering the problem seriously when she allowed Jewish passports to be viséed in London. Although Americans became indignant with Russia's behavior, they were willingly to admit to an interpretation of the Treaty which would recognize certain rights of Russia, especially in regard to the Jewish problem in Russia. The clause which stated that persons should submit to the laws and ordinances there prevailing was interpreted to mean that Russia could have the right to limit the actions of American Jews who had already arrived, but could not refuse them a visa on the basis of religion.

1 American Journal of International Law, "Passport Question Between the United States and Russia," VI, (January, 1912), p. 188.
Many Americans favored a middle of the road policy which would not lead to abrogation. Fortunately for those who wanted an immediate abrogation, these were in the minority. Theodore Roosevelt was one of those who proposed a different policy, as he favored arbitration by the Hague Court. In October, 1911 he announced that it was axiomatic that the United States should not submit permanently to the continuance of the Treaty when it was construed according to a principle, which, if openly avowed at the time of its making would have prevented American representatives from even considering the possibility of making it. Although Roosevelt recognized the fact that the Treaty would have had no chance of being made at that time (1911), since it discriminated against American citizens, he suggested that arbitration should be tried before the Hague Court. Before exercising the rights granted in the Treaty for abrogation, he urged the United States to seek impartial advice from such an authoritative body as the Court, who would rule on Article I. Since Russia took a leading part in the Hague Conference, Roosevelt felt that the United States had a right to ask that Russia apply the principles which she not only put forth during the conference, but supported in diplomatic channels. The arbitration of Article I was an opportunity to


3 Article XII stated that the Treaty would cease upon notification but would remain in force one year after the note. The Treaty ceased to exist on January 1, 1913.
test Russian sincerity.

Louis Marshall, a prominent American Jewish attorney, took up his pen in support of immediate abrogation. He asked, "How will arbitration solve the problem?" If the United States entered into an agreement to arbitrate, it would but be entering into a new agreement with Russia. Marshall assumed that Russia had broken the Treaty, and doubted that she would even stand by a decision of the Hague Court. If it would be taken for granted that Russia would recognize the binding force of the Court, then the United States would face no danger in appearing; however, should the decision be adverse to the interests of Russia, no progress would have been made. It seemed likely that Russia would simply repeat what she had said in the past—that the acceptance of the American interpretation was opposed to her policy and would give notice of abrogation.

However desirable a settlement by the Court might be, Marshall felt that the matter was not arbitrable. In opposition to the beliefs of Roosevelt, he contended that there were controlling

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reasons to believe that no controversy, the determination of which was dependent on or involved the interpretation of a provision of the Constitution of the United States, or any rights of citizenship, should be deemed arbitrable. At all events, arbitration would probably prove futile, for, the United States government would be forced to abrogate the Treaty if the decision went against its contentions.

Another point of view was that Roosevelt's proposal was not to arbitrate the question of abrogating the Treaty, but to get the decision of the Hague Tribunal before taking such a step.\footnote{Ibid.} All felt that the Treaty would have to be abrogated in the end if Russia continued to treat American Jews as she had done; yet, there was a feeling that rashness would not solve the problem.\footnote{Many leading Americans feared that the Russian Jews would have to pay for the consequences of an anti-Russian policy on the part of America; therefore, they cautioned their Jewish brethren.}

American Jews took the initiative in 1911. Several prominent Jews decided that it would be necessary to organize a national committee; hence, the National Citizen's Committee was born. The purpose of the Committee was not only to channel the protest, directly to the Congress, but also to represent the drive to abrogate the Treaty as an American movement and not a Jewish Movement. William
G. McAdoo, prominent American statesman and not one of Jewish background, served as chairman of the Committee.  

He was already familiar with the terms of the Treaty when he was called upon to serve, and thought that the only possible way of accomplishing anything was to abrogate the Treaty on the ground that Russia had persistently violated the terms, so far as American Jews were concerned. After accepting the chairmanship, McAdoo gave the Committee space in the Hudson Terminal to use for a headquarters. 

A series of public meetings were held during the last part of November and the first part of December, 1911, in order to stir up public opinion. On November 19, nearly 2,000 Jews crowded Faneuil Hall in Boston at a protest meeting. The speakers included Congressman Henry M. Goldfogle, who had been active in the campaign for abrogation, John A. Keeliher, and Grand Master Dorf of the Order, B'rioth Abraham. Goldfogle spoke and reviewed his efforts to get Congressional action. The Question was not put forth as a Jewish Question, but as an American Question, which involved the quality of American citizens before the world. The Representative tried to label the question as an American Question in order to widen the

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9 William G. McAdoo, Crowded Years (Boston, 1931), p. 122.

10 It must be stated that Russia also discriminated against American Catholics who desired to visit Russia. Usually, Russian discrimination was directed toward priests.
appeal. Rabbi Friederman of the Baldwin Synagogue followed Goldfogle, and stated that the rights of the individual should be given first consideration by Russia. When a man became a citizen of the United States, he swore allegiance to its institutions, and it would not be just for the United States not to guarantee protection against the abuses of the Russian government.\footnote{Boston's Jews' Mass Meeting," \textit{New York Times}, November 20, 1911, p. 5.}

The Clergy of Newark, New Jersey, also joined the protest in that same month. On November 28, a mass meeting was held in that city at the B'Nai Jeshurun Synagogue. This meeting also was called to protest against Russia's discrimination. Ex-Governor Franklin Murphy presided. After several clergyman of different denominations addressed the meeting, resolutions were drawn up which demanded abrogation. Rabbi Solomon Foster presented Murphy who gave a brief speech in favor of abrogation. After he spoke, a Presbyterian minister, Lyman W. Allen, spoke in favor of abrogation.\footnote{"Newark Clergy Join in Russian Protest," \textit{New York Times}, November 28, 1911, p. 2.}

Rev. Lyman W. Allen declared that the Russian passport question was not one that concerned Jews alone, but one which affected every American citizen. He asserted that in the United States the government recognized no race or religion, but that all citizens had the same rights, with the privilege of enjoying the rights of an American
anywhere in the world.

A Jewish clergyman, Rabbi Julius Silberfeld, declared that the whole trouble with Russia was due to the autocracy of Nicholas II. He also asserted that the reason for the Russian government's refusal to admit the American Jews was to avoid trouble in case there was an outbreak against Jewish subjects, when there would be the risk of an American Jew being killed in anti-Semitic riots. 13

The next speaker clearly brought out the aim that the National Committee was striving for the labeling of the problem as an American and not a Jewish problem. Dr. E. A. Wasson urged that the protest being made against Russia was one of American patriotism and humanitarianism, hence, Russia could not refuse the visa to American Jews. Other speakers voiced the same opinion.

Other meetings in the United States expressed the same sympathies for the Jews. A detailed record would not only be too cumbersome and detailed, but also would do little but repeat the same type of occurrences. In order to give a representative picture of the atmosphere that existed, a few examples will be cited.

From Albany, New York, came the report of a mass meeting held in the Assembly Chamber itself for the purpose of protesting the actions of Russia. The meeting was held under the chairmanship of

13 Ibid.
Governor Dix, who set the tempo of the meeting by his sympathetic remarks.\textsuperscript{14} American churches began to protest, hence, the Federal Council of the Churches of Christ, which embraced thirty-one denominations of evangelical protestant denominations in America, also took part in the protest. Dr. Charles C. Macfarland, Secretary of the Social Service Commission of the Federation, came out for the passage of a resolution in favor of abrogation.\textsuperscript{15} Pittsburgh Jews on December 10, held a mass meeting in the Washington Place Synagogue to protest against the refusal of visas. Amid the thundering applause, there came forth resolutions which called upon the United States to abrogate immediately the Treaty. On the day before, a mass meeting was held in St. Louis—and, as was rarely the case in St. Louis, a synagogue was packed with enthusiastic people, who thunderously applauded when Russia was denounced for her action.\textsuperscript{16}

Protest, Protest, Protest; these words occurred over and over again in the public media. The enthusiasm, the vigor, the desire to see an end to the Treaty reach significant proportions in the United States of December, 1911. Perhaps the most significant boost that


the National Citizen's Committee received came from Bishop Anderson of Boston, who praised the stand of the Massachusetts League on the Passport Question. He joined with members of the League in denouncing the Russian government for refusing full privileges to American Jews. He also sent a letter in which he lauded the whole movement, stating that it was humiliating to learn that Russia had discriminated against American citizens. He brought the issue out of the realm of the protest of a religious minority when he stated that all Americans should stand loyally together and refuse to accept such a discrimination. The Bishop not only recognized that the discrimination was wrong but also that it was a national problem.

The National Citizen's Committee arranged a mass meeting to be held on December 6 at Carnegie Hall in New York. This meeting turned out to be a huge success, and if public opinion can be said to give an accurate picture of a nation's feelings, it can be said that the time had come for abrogation.

Leading members of both Houses of Congress and prominent men of all parties and classes throughout the United States attended. The speakers for the evening included William G. McAdoo, chairman of the National Citizen's Committee, Andrew D. White, former

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18 Ibid.
ambassador to Russia, William Randolph Hearst, Dr. J. J. Schurman, President of Cornell University, Senator James O'Gorman, Governor Woodrow Wilson of New Jersey, former Congressman William S. Bennett, Congressman William Sulzer, and others. The speakers were enthusiastically applauded by a full house of Jews and Christians.

Andrew D. White called upon the matter to be set before the Hague Tribunal. He felt that after arbitration should be found useless, an abrogation would be proper, but he also pointed to the pecuniary loss that the United States would suffer upon abrogation.

Governor Wilson, who was a presidential hopeful, drew cheers from the crowd. He said that the object of the meeting was not agitation, but simply to present a plain case of treaty violation. He did not feel that it was necessary to conjecture the reasons and did not fear any great financial loss would insure. The economic relations of the two countries were not based upon sentiment, but upon interest. The Governor summed up the state of public opinion in his closing remarks. He eloquently presented the American point of view:

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19 Congressional Record, 62 Congress, Second Session, p. 343.
I am glad that this question has been thus brought into the open. There is here a greater stake than any other upon which we could set our heart. Here is the final test of our ability to square our policies with our principles... We are not here to express our sympathy with our Jewish fellow-citizens, but to make evident our sense of identity with them. This is not their cause; it is America's...

Yet, the story had two component parts. On the one hand, public reaction had come to a high pitch in December, 1911; on the other hand, Congressional action had also reflected public agitation. In February, 1911, Herbert Parsons of New York introduced a joint resolution in the House. The resolution called upon the President to denounce the Treaty of 1832, on the ground that Russia had violated it by subjecting American Jews to discrimination of a religious nature. Five other resolutions in identical terms were also introduced in the House. On April 6, William Sulzer of New York introduced a resolution substantially similar to the Parsons resolution, but referred not to "religious belief" alone, but to "race or religion." Senator Culberson had meanwhile introduced a resolution calling for immediate abrogation. No action on any of


22 Ibid.
these was taken by either House of Congress. After Congress assembled on December 4, Sulzer again introduced his resolution calling for the termination of the Treaty, and it was passed on December 13, by a vote of 301 to 1 (87 members did not vote). 23

A hearing was held by the House Committee on Foreign Affairs on Monday, December 11, 1911, in order to receive various opinions on the Sulzer Resolution. Many prominent Jews were present and gave testimony. Judge Salzburger, who was then President of the American Jewish Committee, made the initial statement, and it was a masterly presentation of the Jewish side. 24 Louis Marshall summed up the case after other testimony had been given.

Marshall testified about the financial aspects of the problem upon which Governor Wilson had commented in his speech at Carnegie Hall. Mary had been concerned about the loss of trade that might occur if the Treaty would be abrogated. Americans had invested a great deal of money in Russian firms, and it was feared that either Russia would make reprisals or raise tariff walls. Marshall pointed out that the Jews in the United States were also aware of the problem but that they felt that their contributions to the American economy

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23 Congressional Record, 62 Congress, Second Session, p. 349, Joint Resolution No. 166.

24 Cyrus Adler, I Have Considered the Days, (Philadelphia, 1941), p. 293.
deserved more respect than the contribution of Russian commerce.
He pointed out that in 1910, exports were $17,730,414, while imports
during that same year amounted to $17,377,212, hence, exports exceeded
the imports by the amount of $452,599. The amount of American trade
in the preceding twenty years had not increased sharply.

Speaking about New York, he stated that the recent strike in the
clothing making industry presented a good example of the strength
of the Jewish labor force. Marshall had been called in to help
settle the strike; therefore, he had an accurate knowledge of the
numbers in the various groups. Of 70,000 men on strike, 60,000 were
Jews; many had come from Russia, or her possessions. These Jews
were fruitfully participating in that industry, which produced over
$250,000,000 annually; Marshall felt that this proved the value of
the Jew in the American economy, and would do a great deal to dis-
sipate the fears of those who worried about pecuniary troubles.

The Sulzer Resolution plainly stated that the rights of American
citizens could not be impaired at home, or abroad because of race
or religion. It also stated that the position of the American
government could not and would not allow it to enter into any compact
which discriminated against any class of its citizens. Russia was

25 Statistical Abstract of the United States, Department of
Commerce and Labor, XXXIII, 1910, pp. 333-4.

26 Statement of Louis Marshall can be found in House Report,
p. 87.
declared to be the "violator" of the Treaty of 1832 by refusing to honor the passports of American Jews. The President was instructed to inform the Russian government of the termination.

President Taft did not share the same spirit as those who desired an immediate abrogation of the Treaty. Perhaps he pursued the wiser policy, for, he realized that the Treaty could be ended without reference to Russia as the "violator." The labeling of Russia as the treaty violator, and the accusing her of serious discrimination were charges that made the Sulzer Resolution not only offensive to the Russians, but also displeasing to American diplomats, who saw that abrogation could be achieved by a more acceptable method. With this view in mind, President Taft had instructed Ambassador Guild to take up the matter with the Russian government. The President knew that the Treaty would have to be abrogated but stalled for time in order to allow Guild to sound out the possibility of a settlement.

After Guild had no success with the Russians, Taft realized that the Treaty would have to be abrogated, but was determined that the Sulzer Resolution, which he considered offensive to Russia, would not be the tool for abrogation.

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27 Congressional Record, 62 Congress, Second Session, p. 349.

On December 18, Taft sent to the Senate a special message which stated that on December 15, he had directed Ambassador Guild to denounce the Treaty, and that the notification was actually delivered to the Russian Foreign Office on December 17. Ignoring the Sulzer Resolution, which had been passed by the House in the previous week, the President asked the Senate alone to approve of his action, although he had no serious objection if the House wanted to acquiesce in the Senate's approval.

After three hours of debate, the Senate Committee on Foreign Relations, instead of reporting a simple resolution giving its approval, made a concession to the Democrats in the Senate and House by including the lower legislative body in a joint resolution. The resolution was totally different from the Sulzer Resolution, and was meant technically to be an amendment in the nature of a substitute. The President considered that he and the Senate alone were to be concerned with the abrogation of the Treaty.

On December 17, Ambassador Guild had handed the note to the Russian government in regard to the termination of the Treaty. The note was wisely stated for it did not refer to Russia as a

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30 Ibid.

31 Ibid.

32 B. P. Egert, The Conflict Between the United States and Russia (St. Petersburg, 1912), p. 15. See this for text of note.
a violator, nor did it contain any phrases about race or religious discrimination, such as the Sulzer Resolution contained. Perhaps Taft was wise in having the Treaty abrogated by the United States ambassador before the Senate had time to consider the joint resolution of Sulzer. It is evident that Sulzer was too much concerned with immediate abrogation and too little concerned the necessity for preserving diplomatic relations with Russia. Since it was not proven that Russia or the United States was in the right, it would have been a serious mistake for the United States to have passed the Sulzer Resolution. It can not be forgotten that the Treaty had not been put before the Hague Court, and Article I was still considered by each side to be its defense.

An emotionally inspired resolution such as the Sulzer Resolution would have done little to support America's position before the world. As it turned out, Taft's note was praised by foreign governments, in fact, the Novoe Vremya of St. Petersburg pointed the tactful way in which Taft had put an end to the question. 33

The Senate affirmed the resolution confirming the action of President Taft on December 19, when, after seven hours of debate, it unanimously adopted the substitute for the Sulzer Resolution. 34

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At one point in the debate, Senator Root of New York, who defended the wording of the document, made a memorable speech. On the following day, the House ratified the Senate resolution. After forty minutes of debate involving various speeches, the resolution was passed unanimously except for the single vote of Macon of Arkansas. Sulzer praised the House for taking the initiative in leading the drive to abrogate the Treaty. By the House action, following that of the Senate, Congress ratified the President's notification of the Termination of the Treaty. Speaker Clark signed the resolution at 2:56 p.m. Vice President Sherman signed it at 3:51 p.m., only after the Senate had remained in session purposely to permit him under the rules to affix his signature while it was in session.

The resolution was sent to President Taft, and he signed it on December 21, with Secretary of State Knox as the only witness. At 10:17 a.m. the Treaty of 1832 was officially abrogated, but automatically continued to exist until January 1, 1913.


36 Ibid.

The Treaty of 1832 had met its end in the year 1911. In some respects, it was a tragic story, for, it is to be regretted that two great powers such as the United States and the Russian Empire could not come to terms on the interpretation of an Article which was so earnestly set forth in 1832. On the one hand, Russia stubbornly refused to consider the Jewish Problem as a part of international affairs; on the other hand, the question had left the realm of international law, and had entered the field of national politics, and abrogation was the only path left open to the United States.
CHAPTER V

RUSSIA TAKES A STAND

The Russian version of the controversy was based on the fact that the visa question was an internal problem, and that the Treaty contained no specific reference to the Jewish problem. In fact, Russian diplomats continually pointed out that the problem had arisen thirty years after the Treaty had been concluded. Russia felt that neither by international law and comity nor by treaty were Americans entitled to treatment that Russia did not accord to her own native Jews. She recognized that America had a legal right to terminate the Treaty; however, she resented the accusations that she was the violator.

Russia's resentment became immediately apparent after the abrogation by the United States. A public meeting took place under the direction of the Pan-Russian National League.\(^1\) This was a very unusual meeting, for ordinarily public meetings to discuss foreign politics were non-existent in Russia. The meeting was called to protest America's abrogation and to show to the world that the Russian people were united. Although the meeting was called for unity against American action, the audience was composed merely of reactionary partizans and high officers.\(^2\)

\(^1\) "Russia's Protest Against Us," The Literary Digest, VIL (April 20, 1912), p. 804.

\(^2\) The Minister of War had prohibited officers under the rank of general from attending.
Motovilov, a member of the Imperial Council, presided and among the speakers were two Nationalist members of the Duma, the Russian Parliament, Protopopov and Bobrinsky. The audience was treated to information about the life of Jews in America, and the Russians seemed to be surprised at the fact that America had Jewish judges, governors, and other officials. Lavrov, was quite anti-American and pointed to the fact that America had insulted Russia by insinuating that she was a violator of the Treaty. He thundereous out that Russia had not violated the Treaty and that the clause which stated that American citizens were subject to the laws and regulations of Russia justified Russia's position. After calling the United States a hypocrite, he mentioned the fact that American Negroes were subjected to discrimination while Russia granted Negroes all privileges. The meeting adopted two resolutions before it ended. One was related to the entrance of Jews in the future, and stated that it was desirable not to admit Jewish citizens of the United States, irrespective of their position and business in society. The second dealt with tariffs and advised the government to undertake a policy to raise tariffs where the United States was concerned.

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3 Ibid.
4 Ibid.
5 Ibid., p. 805.
Russian newspapers spoke enthusiastically about the meeting; however, the Swiet of St. Petersburg even admitted that the meeting was packed. The Rossiia stated that only three Jews had been refused a visa into Russia, a contention which would be hard to verify. 6

Professor Paul Miliukov, leader of the Constitutional Democrats in the Duma, stated that he was glad that Taft did not allow the Sulzer Resolution to become operative. Its passage would have created a feeling of an American collision with Russia. He praised Taft for keeping a delicate problem in the realm of diplomacy. 7

Russia found it quite hard to understand the American censure, when the United States kept out many Russian citizens by means of American Immigration Law. If the Treaty gave the United States the right to insist that Russia open her doors to American Jewish citizens, then Russia demanded that the United States should open its doors to Russian citizens of Asia, who were prohibited from entering the United States. Russia considered that her internal laws could keep American Jews out, just as American laws could keep Russians out, and, in particular, she questioned American Immigration Acts which kept out Orientals, polygamists, and Moslems.

The Russian charge that the United States had no right to criticize Russian Law when its own law discriminated against foreigners is


7 "Russia and America, a Poll of the Press," Outlook, C (January 6, 1912), p. 22.
important in that it gave Russia a good basis for argument. This argument concerning American law was used by Russian diplomats over and over again as a means of showing that America did not practice what she preached; however, American diplomats did find an adequate answer for the Russian charge.

The Chinese-American Burlingame Treaty, concluded on July 28, 1868, and proclaimed on February 5, 1870, did not contain the unqualified declaration which was found in Article I of the Treaty of 1832. This article stated that inhabitants of the respective states shall have liberty to enter the ports, places, and rivers of the territory of each party. Article I of the Burlingame Treaty qualified the rights accorded by the Emperor of China under concessions made by him to the citizens of foreign powers.

On October 5, 1881, the terms of the old Burlingame Treaty were drastically changed as James B. Angell, minister of China, had concluded two new treaties, one of immigration and one of commerce. Thus, relations with China no longer continued in a category which gave substance to Russian criticism of American immigration policy. By the Angell Treaty, China agreed that the United States had the

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8 Hearing Before the Committee on Foreign Affairs, p. 84.

9 Ibid.

10 These treaties between the United States and China were concluded in November 1880; Ratifications were exchanged on July 19, 1881 and it was proclaimed on October 5, 1881.
right to regulate, limit, or suspend immigration, but could not prohibit it.\textsuperscript{11} The limitation had to be reasonable. Teachers, students, merchants, moreover, were allowed to go and come freely, and were accorded all rights of visiting foreigners.\textsuperscript{12}

The Convention regulating Chinese Immigration, concluded on March 17, 1894 and proclaimed on December 18, 1894, was equally clear on this point. Article III reaffirmed the rights of Chinese teachers, merchants, and students.\textsuperscript{13} Article IV stated that Chinese laborers or Chinese of any other class had the protection of the laws of the United States in regard to the most-favored nations, except the right to become naturalized citizens.

Although Russia claimed that the United States was excluding Chinese by internal law, and that she had the same right to use her internal law to exclude American Jews, she did not recognize the fact that the Chinese were excluded from America with the expressed consent of the Chinese government, as a result of the new Angell Treaty. Russia did not have any treaty right to exclude Jews.

Russia's claim that her Moslems had a right to enter the United States under the Treaty of 1832 was a matter of judgment. The United States gave no answer to this except that its internal laws prohibited

\textsuperscript{11} The Statutes at Large of the United States of America, XXII (Washington, 1853), p. 826.

\textsuperscript{12} Ibid., p. 827.

\textsuperscript{13} House Report, p. 85.
the entrance of certain classes of Russian citizens. Nothing more was mentioned, for it was obvious that the United States realized that she was not on firm ground.

Generally, the Russian attack on the United States was bitter. Russia resented the labeling of the question as an American Question for she thought that the Jews in the United States were responsible for this unwarranted crisis. The Russian government was embarrassed that a Jewish minority in the United States could have caused the Treaty to be abrogated, when Russian policy toward her own Jews was not honorable and but was indeed very cruel.

Russian Premier V. N. Kokovstoff agreed to the request of the American Collier's Weekly to express his opinion on the abrogation. Kokovstoff answered a question put to him in regard to the point that the United States had ample reason to abrogate the Treaty since Russia had excluded American Jews. He answered that Russia had not afforded the United States any ground for abrogation. The Treaty had been made exclusively for commercial purposes, and a clause in it had stipulated that American citizens arriving in Russia would be subject to the internal laws and regulations of the Russian Empire. In answer to the question of Russia's treatment of American Jews under the terms of the Treaty, he answered that Russia had treated American

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14 Egert, The Conflict Between the United States and Russia, p. 21.

15 "Russia's Attitude on the Abrogated Treaty," Collier's, III (January 27, 1912), p. 10. Kokovstoff's remarks are printed in full.
American Jews differently than other American citizens because of the presence of certain Russian Laws, which prohibited the entrance of certain categories of foreign Jews into the Russian Empire. After he acknowledged that Russia did treat American Jews differently, he was then asked to discuss specifically the reasons for such discrimination, and his answer was based on economic and social reasons. Russian law established a whole range of restrictions upon its Jewish subjects, and free entry of foreign Jews was impossible under the circumstances.\footnote{16} If Russia would allow American Jews to enter Russia, they would enjoy privileges that Russian Jews did not have. When a foreign Jew, especially from America, came to visit his family in Russia, he could enjoy civil rights that his relatives did not have, and this made it extremely difficult for the Russian government to enforce its own decrees. The minister set this down as the main reason for Russian refusal to allow American Jews to enter. The last question dealt with the meetings as well as the general feeling of protest which was current in Russia. To this he expressed the wish of the Russian government to take no reprisals against the United States.\footnote{17}

\footnote{16} Ibid.

\footnote{17} Kokovstoff's remarks do not conform with the actions of the Imperial Duma, in which a new tariff bill, very anti-American, was introduced.
Kokovstoff's answers were only sincere, and, although resentful, they represented that side of public opinion which saw no need to become alarmed. Although these Russians felt that the United States was abrupt and unjust in its accusation, they were willing to discuss the problem that the presence of American Jews would cause.

Another side of Russian opinion was very anti-Semitic and criticized the United States. As to the question posed by many in America that Russia violated both justice and the requirement of modern civilization by her refusal to grant her Jewish subjects equal rights with her others, and by not affording the same privileges to foreign Jews, many Russians branded this as based on lies which American Jews had spread.18 B. P. Egert, who wrote a book devoted to the abrogation, was violently anti-Semitic and strongly accused the Jews of fermenting the crisis. Egert stated that the matter did not rest in the realm of faith or race, but in the fact that the great majority of Jews by their obstinate unwillingness to engage in useful labor or to bear the common obligations along with others, constituted a great burden to the state.19 He discussed the "root" population of a country in regard to the Jews, who, he said, had not created the Russian state by their sweat and blood; therefore, he saw no reason

18 Egert, p. 23.

19 Ibid.
why the Russian Jewish minority, a parasitic one, should want to share in the dominant position of the Christians. The Jews were also considered a distinct race with certain abilities, which were highly distinctive, giving them a different psychological makeup. Having closed his argument with an appeal to world anti-Semitism, Egert claimed that it was inconsistent to proclaim equal rights for Jews when they did not wish to bear equal duties.

Further action by Russia was seen when many of the Zemstvos, local Russian councils, passed resolutions to stop the purchase of American agricultural machinery before the Treaty of 1832 lost its force. 20 A resolution was also passed which called for the closing of the stores belonging to the Zemstvos that contained American goods.

The Nationalists in the Duma introduced a bill aimed at the total exclusion of American Jews from the Russian Empire. 21 Another bill was introduced which proposed a change in the Russian tariff law in regard to the United States. This proposed a double custom duty as against the ordinary one on articles liable to duty: a duty of 100 per cent per valorem if the article belonged to those which in the ordinary tariff were classified as duty free; and a duty on the same scale defined by the tariff of the United States in all those cases where the duty fixed in the previous points proved to be lower. 22

20 Ibid., p. 145.
22 Egert, p. 45.
All goods imported or exported by vessels sailing under the flag of the United States were to be required to pay double dues, and shipping dues from the vessels of the United States were to be required in twice the ordinary amount, and in case higher shipping dues were required from Russian vessels in the ports of the United States, the shipping dues of Russia were to be correspondingly increased.

Such were the resolutions that came forth in Russia's protest against the United States. It is fair to say that the tone of the speeches and the conduct of the audiences in these assemblies did not call to mind the way in which the affair was being carried on in America. As to the question of a new Treaty, Russia considered that new negotiations were doomed to failure. The most that Russia expected was a new series of agreements to take place in regard to tariffs and duties, with a denial to the United States of its position as a most favored nation. Russia would feel little loss since her exports to the United States were inconsiderable, and consisted principally of pelts and hides, products which other countries would readily accept.

Russia's attitude can be found in the remarks of Egert, who said that it was with superficiality that the Congress and the President

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23 Ibid., p. 47.
abrogated the Treaty. The deliberations which preceded the actual break not only suffered from a lack of knowledge of the conditions in Russia, and from non-comprehension of the subject in its commercial and political significance, but were astonishing by their absolute ignorance of International and Russian Law. He also reiterated the claim that the rights of foreigners in any country, including the right of entrance, were defined by the internal laws of the country involved, and that these laws were independent of international treaty, whether it existed or not. Unless Russian Law should be changed, American Jews were still to be excluded, although no measures would be taken to restrict the entrance of American Christians.

Overlooking many of the extravagant statements that were made concerning the Treaty of 1832, it seems reasonable to say that the Treaty had become inadequate and no longer served the best interests of both countries. Whether rightfully or wrongfully, Russia had interpreted the Treaty to exclude American Jews from her Empire, and America could not tolerate discrimination against an important element of her population. As a point of law, it may be observed that the right to exclude whatever persons it pleases from entrance into its territories has been one of the sovereign rights of a state, and that

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24 Ibid., p. 49.

25 Ibid.
nothing less than an express renunciation of that right has been regarded as preventing the state from asserting it. Russia claimed that by the general terms of the Treaty in which she agreed that inhabitants of the United States should have the liberty to enter her ports and territories, she did not surrender her fundamental right to exclude any class of persons whose presence she might later consider dangerous to her interests.

Russia cannot be blamed for upholding her rights and interpretation of the Treaty of 1832, for the United States could not defend its stand when Russia asked if the United States would allow her Moslem population to enter under the Treaty of 1832. As it turned out, neither side gave a satisfactory answer, for neither wished to, and both only relied on the Article of the Treaty to justify their claims as to the right to exclude or not to exclude the other's citizens.

Russia can be blamed for not trying to come to a settlement with the United States, for she stubbornly resisted any attempts of the United States to come to some sort of settlement. If Russia sincerely desired to solve the problem, she would have sent more encouraging notes than the ones that Lobanow sent to Breckinridge. It was Russia's aloofness and failure to understand the basic position of the Jewish people in the United States which led to the final abrogation of
the Treaty in 1911. Russia turned her back on the passport question because she failed to see that conditions had changed. The position of the Jew in Russia influenced decisions of the Russian Foreign Ministry more than the attempts of the United States to discuss the problem.

The problem of the Russian Jews is perhaps the most pathetic part of the present thesis, for, the Russian Jews stood to gain little by the attempts of their American brothers to achieve a recognition of their rights as American citizens. As Russia constantly interpreted the visa question in terms of her own problems with the Jews, the Russian Jews received a great deal of criticism at home.

If Russia had only understood that her Jewish Problem needed to be divorced from the visa question, important results might have emerged. First, an amiable settlement might have taken place in regard to the visa, and perhaps the Treaty would not have been broken. Secondly, Russia might have made an attempt, and success might have been gained, in the solving of the Jewish problem in Russia. However, since Russia refused to divide the problem and considered American attempts to get a new interpretation as an intrusion in Russian internal affairs in regard to the handling of the Jews, she must be considered culpable in the crisis over the Treaty. She was culpable that she had allowed the crisis to reach
the point of abrogation, but was not guilty in the sense that she was the violator of the Treaty.

The question of violation had really no significance in regard to the Treaty, for, different and changing social conditions had made the Treaty inadequate in the year, 1911; therefore, neither Russia, nor the United States can be considered to be the violator of the Treaty. The Treaty was carried out in good faith until the United States began to receive more Jews, and this caused a change in the social makeup of the American population. It is impossible to judge either side as a violator or as an innocent party when it is recognized that the Treaty was inadequate; however, inadequacy was no reason for complete and abrupt abrogation when one of the parties was willing to compromise on the interpretation. The United States was forced to abrogate the Treaty, due to Russia's lack of appreciation of the American viewpoint.

When abrogation finally came, Taft wisely had it carried out through the proper diplomatic channels, for, he knew that the Sulzer Resolution would gain little respect for the United States in the eyes of the rest of the world. Today it is impossible to tell whether a new treaty would have been negotiated or serious
Russian reprisals would have had a disastrous effect on Russo-American relations. As it turned out, Russia was soon embroiled in the World War, and the issue was forgotten, as it became a dead issue with the downfall of the Russian Empire.
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