

## *The Convention of Saratoga*

### *Negotiations Begin*

When he received General Gates' agreement to receive a field grade officer authorized to negotiate on his behalf, General Burgoyne on October 14 sent Lieutenant Colonel Robert Kingston, his adjutant general and acting military secretary. (The colonel and his commander had an especially close relationship, beginning in 1759 when he became a lieutenant in Burgoyne's regiment, the 6th Light Dragoons.) Kingston, under a flag of truce, presented himself at an American advanced outpost at the southern end of the remains of the bridge over the Fishkill, where he was met by Gates' deputy adjutant general, James Wilkinson. The ever-officious Wilkinson tried to persuade Kingston to hand over his commander's message, but the Briton refused. "General Gates has agreed to receive the message," replied Kingston, "and I am not authorized to deliver it to any other person." Wilkinson blindfolded and escorted him about a mile down the Albany Road to Gates' headquarters, located southeast of the Dutch Church. There, the colonel and former British major greeted one another "familiarly." "General Gates, your servant," offered the former, to which the general responded, "Kingston, how do you do."<sup>1</sup>

After a few minutes of polite remarks, Kingston read a memorandum. It was a response to a somewhat petulant letter Gates had written on the twelfth, of which excerpts follow:

I had the Honour to receive Your Excellency's Letter by Lady Ackland, the Respect due to her lady Ship's rank, the Tenderness due to her Person and Sex, were alone Sufficient Recommendation to entitle her to my Protection; considering my Preceding Conduct, with Respect to those of your Army, whom the Fortune of War has placed in my Hands. I am surprised your Excellency, should think that I could consider the greatest attention to Lady Ackland in the Light of an Obligation....The Cruelties which mark the Retreat of Your Army in burning the Gentlemen's and Farmer's Houses, as they pass along, is almost amongst civilized nations, without a Precedent, they should not endeavour to ruin those, they could not conquer, this conduct betrays more the vindictive Malice of a Monk than the Generosity of a Soldier.... At the Solicitation of Major Williams, I am prevailed upon to offer him and Major Meiborn in Exchange for Co. Ethan Allen—Your Excellency's Objection to my last Proposals for the

Exchange of Col. Ethan Allen, I must consider as trifling, as I cannot but suppose that the Generals of the Royal Army act in equal Concert with those of the Generals of The Armies of the United States....<sup>2</sup>

In his memorandum in reply, read by Kingston, Burgoyne defended the destruction of General Schuyler's manor and buildings as being militarily necessary because they shielded Americans advancing during the aborted attack of the tenth. He also pointed out that the old barracks had burned by accident, in spite of efforts to save them. Concerning the exchange of prisoners held by Gates for Ethan Allen, Burgoyne properly stated that he could not treat for the exchange of prisoners of war taken by Sir William Howe, especially as Allen's case had been the subject of negotiations between Howe and General Washington.<sup>3</sup>

After reading that thinly-veiled reminder to Gates to mind his manners, Kingston presented the letter that Burgoyne had prepared with the approval of the council of war of the thirteenth. Wilkinson is our witness for what followed:

So soon as he had finished, to my utter astonishment, General Gates put his hand in his pocket, pulled out a paper, and presented it to Kingston, observing, "There Sir, are the terms upon which General Burgoyne must surrender." The Major [sic] seemed thunderstruck, but read the paper, whilst the old chief surveyed him intently through his spectacles. Having finished the perusal of the propositions of General Gates, Major [sic] Kingston appeared exceedingly mortified, and said to the General, "I must beg leave to decline delivering this paper to Lieutenant-General Burgoyne, because although I cannot presume to speak for him, I think the propositions it contains cannot be submitted to." The General observed that he might be mistaken, and there could be no impropriety in his delivering them. Kingston requested that they might be sent by one of his own officers, which the general declined, and remarked "That as he had brought the message, he ought to take back the answer;" to which the Major [sic] reluctantly consented, took leave, and I again filleted him, and at his request conducted him to our advanced guard....<sup>4</sup>

What was it about General Gates' preempting the opening of the negotiations by presenting a seven-article set of terms that so surprised Wilkinson and Kingston? And what made those terms so repugnant that Kingston insisted he not be required to transmit them? The answer to the first question is that traditional practice allowed the party initiating the negotiations to propose terms that the enemy could accept, reject, or modify. Answering the second question requires reviewing the terms Gates proposed:

- The first article rehearsed the conditions that had brought Burgoyne to seek terms. His army had suffered "repeated defeats." Desertions and casualties had reduced his numbers; shortages were crippling him; his enemy surrounded his encampment, and had cut off his retreat. Therefore his army could "only be allowed to surrender [as] prisoners of war."
- The second article proposed that the officers and soldiers could keep their personal property, accompanied by the gratuitous comment that "generals of the United States never permit individuals to be pillaged."

- The third article required that Burgoyne's troops be escorted to New England, "marching by easy marches, and sufficiently provided for...."
- The fourth permitted the officers to wear their side arms, and in general to "be treated with the liberality customary in Europe, as long as they, by proper behaviour, continue to deserve it; but those who are apprehended having broken their parole, as some British officers have done, must expect to be close confined."
- The next article required the surrender of all "public stores, artillery, arms, ammunition, carriages, &c. &c."
- The sixth article—the core of his proposal—provided that once the articles were signed, Burgoyne's troops would form in their encampments, "where they will be ordered to ground their arms, and may there upon be marched to the river side, to be passed over on their way towards Bennington."
- The final article extended the truce until sunset to give the British commander time to reply.

Gates had offered Burgoyne terms tantamount to a demand for unconditional surrender.<sup>5</sup>

The entire episode alarmed Wilkinson. As soon as he had escorted Kingston, he hurried back to his commander and asked whether "he had not given Burgoyne an advantage by not waiting to receive his overtures, before he presented his own terms?" Gates' perspicacity was not unlimited, and he could not see that he had done so. Skeptical about the wisdom of Gates' proposals, Wilkinson inquired "Whether he meant, in any extremity, to recede from the propositions he had made?" Gates admitted that he was bluffing, and that he "would relax a great deal to get possession of the enemy's arms."<sup>6</sup> He had essentially demanded unconditional surrender, but was prepared to accept less.

An old gamester, Burgoyne was no stranger to bluffs. He knew that, in spite of his bravado, Gates must be concerned about British moves between the Hudson Highlands and Albany. Burgoyne knew his position was hopeless and that he had to surrender, but he might yet exploit the victor's concerns to ameliorate the conditions. He was also a proud and brave man who commanded men who deserved the best he could gain for them, even if what he gained was more psychological than substantive. Conditions would have to become much worse before he would submit to an unconditional surrender.

After Kingston returned with Gates' draft proposals, Burgoyne convened his council and prepared his response:

- To the first proposal he replied that his army, however reduced, will never admit that their retreat is cut off, "while they have arms in their hands";
- He responded to the third article proposing his army's transfer under American escort to New England with one of his own providing that "free passage be granted to this army to Great Britain upon conditions of not serving again in North America during the present contest, and a proper port to be assigned for the entry of transports to receive the troops, whenever General Howe shall order";

- He replied to the article relating to officers' retaining their side arms that as, "There being no officer in this army under, or capable of being under the description of breaking paroles, this article needs no answer";
- He agreed to deliver all public stores, excepting arms. That exception was important to his rejecting...
- ...the sixth article: "The article is inadmissable in any extremity. Sooner than this army will consent to ground their arms in their encampment will they rush on the enemy, determined to take no quarter." He would capitulate—with his men marching out of their positions under arms and entitled to the honors of war.<sup>7</sup>

Kingston returned to Gates' headquarters with Burgoyne's reply and the following: "If General Gates does not recede from the 6th article, the treaty ends at once.... The army will to a man proceed to any act of desperation, rather than submit to that article.... The cessation of arms ends this evening."<sup>8</sup>

The negotiations assumed a strange character because Horatio Gates was a victorious general uncertain whether he could impose his will upon the defeated foe. His legion of critics, contemporary and later, attributed that state to his inherently weak and craven character and to his not being the real architect of victory: that honor, his critics argue, belonged to others, notably Schuyler and Arnold. Gates, on the other hand, was merely the unworthy beneficiary of their heroic deeds. Does this verdict have any merit?

The fortunes of war gave the American commander overwhelming advantages. He had frustrated the enemy's strategic designs and inflicted a decisive tactical defeat. His army included thirteen infantry brigades and one light corps (Morgan's Corps of riflemen and light infantry). That corps and five of the brigades were Continentals; militia comprised the other eight. Also present were 498 members of Stevens' Independent Battalion of Artillery, 376 light cavalrymen, and seventy-one members of Baldwin's detachment of engineers and artificers. That army, exclusive of bateauxmen, totaled at least 20,365 effectives.<sup>9</sup> General Burgoyne's Orderly Book documents his strength as 6,350, excluding 1,100 sent to Canada, for a total of 5,250 officers and men.<sup>10</sup> The Americans enjoyed an almost four-to-one numerical advantage.

Gates' much larger force had the Europeans surrounded. Their supplies were down to four days' rations, and their ammunition stores had been severely depleted. Burgoyne's men were physically and emotionally drained. And their last realistic hope for relief had vanished when Burgoyne received Sir Henry Clinton's letter of the sixth of October.

### *The Clinton Factor*

The British commander in the north had known since receiving Clinton's message of October 6 that although elements of Sir Henry's army would advance upriver toward Albany, Clinton would neither assume responsibility for the army at Saratoga nor undertake a breakthrough to rescue his embattled comrade.<sup>11</sup> But Gates did not know that Clinton's objectives were so limited. He knew with but imprecise detail of the fall of Forts Clinton and Montgomery. He had also received letters from General Israel Putnam, American commander in

the Hudson Highlands, dated October 11 and 12, telling him that the enemy had penetrated to the town of Fishkill.<sup>12</sup> Gates was very much aware that after the forts' fall, British Major General John Vaughan was sailing upstream. However, neither Vaughan nor Burgoyne anticipated that he would be able to materially affect the latter's fortunes, unless Gates became sufficiently alarmed to divide the force surrounding Burgoyne at Saratoga or became distracted during negotiations.

Although he did not divide his force on the upper Hudson, Gates did become sufficiently distracted to wish to terminate those negotiations as early as possible. Although he frequently received information about British activity, he remained ignorant of the enemy's intentions. Hence the strained negotiations between the unimperial victor and the desperately opportunistic suitor.

Burgoyne followed his rejection of Gates' sixth article and the announcement that he considered the cease fire as ending that evening with proposed terms of his own and the stipulation that Kingston would return for an answer at 10:00 on the morning of the fifteenth for Gates' answer. Kingston received Gates' answers from Wilkinson at the stipulated hour and delivered them to his commander.<sup>13</sup>

- Burgoyne's first proposal: "The troops to march out of their camp with the honours of war, and the artillery of the entrenchments, which will be left as hereafter, may be regulated." Gates' response: "The troops to march out of their camp, with the honours of war, and the artillery of the entrenchments to the verge of the river, where the old fort [Fort Hardy] stood, where their arms and artillery must be left."
- The second proposal provided for free passage of his army to a port from whence its men would be transported to Great Britain upon the condition of not serving again in North America during the war, "whenever General Howe shall so order." Gates agreed, but specified Boston as the port of embarkation.
- The third proposal provided for voiding the second one for persons exchanged.
- The fourth proposal provided for the officers' retention of their personal property and that their baggage not be searched, "the Lieutenant-General giving his honour that there are no public stores secreted therein...." Gates agreed.
- The fifth proposed that the officers would not be separated from their men, and would be lodged according to rank. Gates agreed, so far as circumstances permitted.
- The sixth proposal covered the inclusion of the noncombatants in the treaty; Gates agreed.
- The seventh proposal provided that the Canadians be permitted to return to Canada and not be surrendered; the American raised no objection.
- The eighth proposed that three officers, not above the rank of captain, receive passports to carry dispatches to Sir William Howe, Sir Guy Carleton, and Great Britain by way of New York City, and that the dispatches not be opened; Gates agreed.

- The penultimate proposal stipulated that “the foregoing articles are to be considered only as preliminary for framing a treaty, in the course of which others may arise to be considered by both parties, for which purpose it is proposed that two officers of each army shall meet and report their deliberations to their respective Generals.” Gates’ response is revealing: “The capitulation to be finished by 2 o’clock this day, and the troops march from their encampment at five, and be in readiness to march towards Boston tomorrow morning.”

The dispatch with which Gates agreed to so many of the proposals, especially his insistence that negotiations conclude by two o’clock and that the troops lay down their arms by five, confirmed Burgoyne in believing what he wanted to believe: that the British advance upriver toward Albany was, in fact, causing the American commander concerns that would operate in his favor.

Though events seemed to justify the Briton’s innate optimism, the weight of his opponent’s immediate worries became less onerous. Sometime during October 15 a letter, dated the eleventh, arrived from General Putnam with the welcome news that the British force operating in the Hudson Highlands was smaller than he had earlier reported, numbering no more than 3,000 or 4,000, too small to pose a serious strategic threat to Gates’ rear.<sup>14</sup> In fact, even “Old Put’s” revised estimate was too high, for Vaughan had no more than 2,000 effectives with him.

If he had been privy to Sir Henry Clinton’s instructions, Gates would have had even less reason for being anxious. Vaughan was to probe his way northward toward Burgoyne, give whatever help he could, and join him if that proved necessary. But Clinton doomed any chance of success Vaughan could have had. He knew, or should have known from intelligence given him, that large vessels could not ascend the river beyond Livingston’s Manor, about forty-five miles short of Albany. Beyond the Manor, only shallow-draft boats could move upstream. However, he embarked the soldiers on transports that drew too much water to approach Albany. By the fifteenth Vaughan reached Esopus, burned the village, and heard a rumor that Burgoyne had surrendered. During the seventeenth he reached Livingston Manor, where his pilots announced that they had reached the head of navigation and could go no farther. Vaughan spotted rebels observing his uncomfortable situation and learned from them that Gates had defeated Burgoyne on the seventh. A week later Clinton received orders from Sir William Howe to send him 2,000 men, and on the twenty-second he directed Vaughan to return to New York City.<sup>15</sup>

The details of those events were not clear to Burgoyne and Gates at Saratoga as their negotiations played out in an atmosphere of bluff. The former still read omens of hope in his suspicions of his opponent’s liberality; and Gates, although feeling less pressure from downriver, remained determined to encompass the enemy’s defeat as quickly as possible.

Burgoyne, having come to the quick conclusion that the reason Gates was so eager to conclude a treaty must be that Clinton’s expedition was getting closer to Albany, sought to gain time to permit that expedition to come to his relief or, at least, to pressure Gates to grant even more favorable terms. The British general convened another council that decided to inform the rebel commander that, while the basis for an agreement was agreed to, some minor issues required additional exploration that would take more time than Gates had stipulated. Burgoyne would appoint two officers to meet with two from Gates “to propound, discuss, and settle those subordinate articles, in order that the treaty in due form may be executed as soon as possible.”<sup>16</sup>

After receiving notice of the council’s decision, Gates appointed Brigadier William Whipple, a signer of the Declaration of Independence and commander of a brigade of New

Hampshire militia, and the omnipresent Wilkinson to meet the British commissioners, Lieutenant Colonel Nicholas Sutherland and Captain James H. Craig. Gates' aide-de-camp, Major Isaac Pierce, acted as the meeting's secretary. The commissioners met during the afternoon of the sixteenth near one of General Schuyler's sawmills. After lengthy discussion, they signed and exchanged articles of capitulation, and about 8:00 that evening parted to report to their respective commanders.<sup>17</sup>

When Wilkinson reached headquarters about 11:00, he found the following letter from Captain Craig:

Camp at Saratoga, 15 Oct.  
1/2 past 10 o'clock

Sir,

Upon reporting the proceedings of this evening to Lieutenant-General Burgoyne I was happy to receive his approbation of and ready concurrence in every article that has been agreed upon between us; it however appears upon a retrospect of the treaty, that our zeal to complete it expeditiously has led us unto the admission of a term in the title very different from his meaning, and that of the principal officers of this army, who have been consulted on this important occasion. We have, Sir unguardedly called that a treaty of capitulation, which the army means only as a treaty of convention. With the single alteration of this word, Lieutenant-Colonel Sutherland and myself will meet you at the stipulated time tomorrow morning with the fair copy signed by General Burgoyne...

I hope, sir, you will excuse my troubling you so late, but I thought it better than by any delay to prevent the speedy conclusion of a treaty which seems to be the wish of both parties, and which may prevent the further effusion of blood between us, I beg your immediate answer...<sup>18</sup>

Gates did not believe the choice of terms was very important, except as a possible salve to the defeated enemy's pride. His adjutant responded: "Colonel Wilkinson's compliments to Captain Craig, Major General Gates will admit the alteration required."<sup>19</sup> Thus, the Articles of Capitulation became the Articles of Convention, and Gates believed that by substituting a word the wearisome negotiations were finally ended.

### *Final Delays*

His hopes proved premature. General Burgoyne was playing for time, hoping that events on the lower Hudson would operate in his favor. The Freiherr von Riedesel recorded why Gates was too sanguine, and Burgoyne optimistic:

In the night from the 15th to the 16th a man came allegedly from Albany, who asserted that General Clinton was advancing to Albany, and was probably there by now. This perplexed us very much, particularly as this informer had not seen the corps of General Clinton, but had the information only third-hand from hearsay. General Burgoyne was filled with hope again, and

wanted to break the already agreed preliminary terms, even if both the deputy officers had given their approval to the amendment. A council of war was called together again, and the first question was raised as to whether General Burgoyne could break the already approved convention with honor. This was answered by a majority with No. Then, whether the news which had been received could be accepted as true, and whether such would improve our situation or not, This was answered by No.<sup>20</sup>

In spite of his council's votes and against all odds, John Burgoyne continued to oppose surrender, nurturing the illusion that Sir Henry Clinton would save him. More revealing was the faith he had in the courage and skill of his soldiers. Burgoyne believed that operating on interior lines, able to counterattack at any point on their perimeter with support from his still-impressive artillery, would allow his men to gain time for reinforcements to arrive from the lower Hudson. He determined to stall for more time, and reached a compromise with the council's majority. To that end, he dispatched the following note to General Gates:

[I]n the course of the Night [of October 15/16] Lieut. Genl. Burgoyne received intelligence that a considerable Force has been detached from the Army under the Command of Major General Gates during the course of the Negotiations depending between them, Lieut. General Burgoyne conceives this, if true, to be not only a violation of the Cessation of arms, but subversive to the principles upon which the Treaty Originated, Viz. a great Superiority of Numbers in General Gates' Army. Lieut. General Burgoyne therefore requires that two Officers on his part be permitted to see that the strength of the Forces now opposed to him is such as will convince him that no detachments have been made, and that the same principle of Superiority on which the Treaty First began still exists.<sup>21</sup>

Grasping for every conceivable delaying tactic, Burgoyne finally exhausted Gates' patience. The American commander dispatched Wilkinson with this terse reply: "No violation of the treaty has taken place. The requisition therefore contained in your message...is inadmissible. It now remains with your Excellency to ratify or Dissolve the treaty." Gates closed by adding that he expected "your immediate reply."<sup>22</sup>

Wilkinson recalled that after he had transmitted his commander's message Burgoyne tried to justify his conduct by declaring that not only his reputation but service to his King and the honor of British arms required the most cautious circumspection. He referred to the information derived from camp rumors, as well as authentic information supplied by a loyalist who had come through the lines the previous night. His informant had, no doubt, seen men moving southward. They were, however, New York militiamen who, their term having expired, refused to remain in camp. The British general went on to aver his men's spirit and the belief that there was not a man who did not "pant for action." The American called attention to the soldiers lining the hills on the east side of the river and those surrounding Burgoyne's troops on the south, west, and north. But the general continued to declare that he would not sign the convention and that the truce would end in one hour.

Wilkinson's narrative, detailed and lengthy, is important reading for a full understanding of these important events:



[A]nd after a moment's pause, I added, "Be pleased, Sir, to favour me with your determination?" He [Burgoyne] answered, "I do not recede from my purpose; the truce must end." "At what time, Sir?" "In one hour." We set our watches, and on taking leave, I observed, "After what has passed, General Burgoyne, there can be no treaty; your fate must be decided by arms, and General Gates washes his hands of the blood which may be spilled." "Be it so," said he, and I walked off with the most uncomfortable sensations; for our troops were much scattered, having encompassed the British army in three parts out of four; the men had got the treaty in their heads, and had lost their passion for combat, and what was worse we had been advised of the loss of Fort Montgomery, and a rumour had just arrived that Esopus was burnt, and the enemy proceeding up the river; but I had not proceeded fifty rods, when Major [sic] Kingston ran after me and hailed; I halted and he informed me, that General Burgoyne was desirous to say a few words to me; I returned, when he addressed me by observing, that "General Gates had in the business depending between them, been very indulgent, and therefore he would hope for time to take the opinion of his general officers, in a case of such magnitude to the two armies; as it was far from his disposition to trifle in an affair of such importance.".... I asked what time he would require? He mentioned two hours; and we again set our watches, and I retired, promising to wait at our picket for his answer.<sup>23</sup>

One can wish for a less egocentric source than James Wilkinson, but he often preserved the most detailed, nuanced narrative available. The above quotation includes the clearest depiction of what Americans had riding on the outcome of these negotiations. He did not portray the men who defeated Burgoyne as heroic figures, eager to exact condign vengeance on a hated foe. Rather, they had expended their "passion for combat" and were worried about events south of Albany. Like men who have survived combat always have, they longed for at least a cessation of arms and palpable evidence that they were victors. They had "got the treaty into their heads."

Amidst the stench of dead animals, in cold, damp weather surrounded by loyal, but weary and hungry men, Burgoyne convened his final council. Its task was to consider whether the treaty, in light of prevailing conditions, was binding on the army, and if the commander's honor was engaged to sign it. He persuaded himself that he was not bound by events, and he would not executethe treaty upon the sole consideration of a point of honor. He continued to believe with almost pathetic faith that by great exertions and over cominghardships the army might yet be relieved.

His generals did not share his optimism. Even if Sir Henry were where unreliable reports placed him, the distance from Saratoga was "such as to render any relief from him improbable during the time our provisions could be made to last." One general reported that his opinion was "if the convention is not signed, he apprehends there will be considerable desertion." Two others baldly stated that the British 47th Regiment could no longer be depended upon. Another believed that the morale of the soldiers in the 62nd Regiment was so poor that they were "not equal to their former exertions." Like the American soldiers, Burgoyne's men "have got the convention in their heads as desirable." Many of the ablest officers were absent, sick, or wounded. Some of the British officers thought their men would stand firm if attacked, but "the most sanguine do not think any part of the army in that elevation and alacrity of spirit necessary for undertaking desperate enterprises." Further, if the treaty were broken off, a renewal of fighting would be hopeless, and a defeat would be "fatal to the army," while a victory could not

save them, “as they have neither provisions to advance nor retreat against an enemy, who, by experience, we know are capable of rallying at every advantageous post.” Finally, the life and property of “every provincial and dependent of this army depends upon the execution of this treaty.”<sup>24</sup>

The lengthy, lurching pace of the negotiations wore upon the American commander’s nerves. A messenger was dispatched to learn from Wilkinson what had passed between him and General Burgoyne. The adjutant general sent him a report on the status of the situation, then waited near General Schuyler’s burned manor, where he was joined by Gates’ aide-de-camp, Major Isaac Pierce, to await the results of the enemy’s council of war.

After three-quarters of an hour, Wilkinson watched as British Lieutenant Colonel Nicholas Sutherland crossed the creek and joined the two American officers. He brought discouraging word: “Well, our business will be knocked in the head after all.” When asked why, he replied, “[T]he officers had got the devil in their heads, and could not agree.” Wilkinson claimed that he answered, “I am

sorry for it, as you will now lose not only your fusee [fusil, a light musket often carried by officers], but your whole baggage.” The Briton expressed regret and helplessness.

Wilkinson again saved the day by suddenly remembering the letter Captain Craig had sent him the previous night, which resulted in designating the surrender document a “treaty of convention.” Sutherland asked for it, but Wilkinson refused. “I shall hold it as a testimony of the good faith of a British commander,” he replied. After Sutherland promised to return it within fifteen minutes, the American relented, turned over the document, and Sutherland raced back to headquarters. Gates, meanwhile, had sent orders to break off negotiations unless Burgoyne immediately ratified the convention. Wilkinson assured his commander that he was doing his best to bring the negotiations to a happy conclusion and would personally report to him in half an hour. Sutherland returned with Craig carrying the convention—ratified by General Burgoyne.<sup>25</sup>

Thus ended the bargaining by which John Burgoyne surrendered a British army to a former half-pay major.

### *The Resulting Convention*

The convention by which General Burgoyne surrendered his army contained twelve articles, including:

- The first and most important provided for the soldiers’ marching out of their encampment “with the Honours of War” to the site of colonial Fort Hardy, where, at their officers’ command, they would pile their arms and leave their artillery. They would thus receive the respect due men who had served faithfully as long as reasonable hope for success existed, according to the accepted practices of war;
- The second, and eventually most controversial, article granted the army free passage to Great Britain, “on Condition of not serving again in North America during the present Contest,” and designated Boston as the port of embarkation. This provision quickly became a major source of criticism of General Gates’ negotiations, building upon the obvious fact that returning the army to Europe would free a comparable force for service against the Americans;

- The third article dealt with issues of exchange;
- The fourth and fifth articles dealt with moving the convention troops to Boston;
- The sixth article secured officers' personal property, "General Burgoyne giving his Honour that there are no public Stores secreted therein"—another source of controversy;
- The seventh article provided that officers would not be separated from their men, and that officers would be quartered according to rank and permitted to assemble their units for "necessary purposes of Regularity";
- The eighth article confirmed that everyone in Burgoyne's army, "whether composed of sailors, batteauxmen, artificers, drivers, independent companies, and followers of the army, of whatever country," shall be considered British subjects for the purposes of these articles.
- The ninth article read: "All Canadians and Persons belonging to the Canadian Establishment, consisting of sailors, Batteau Men, Artificers, Drivers, Independent Companies, and many other Followers of the Army, who come under no particular Description, are to be conducted immediately by the shortest Route, to the first British Post on Lake George...." This provision's purpose was to deliver loyalists from the vengeance of the victorious rebels;
- The tenth article granted three officers "not exceeding the Rank of Captain" passage to carry secured dispatches to Sir William Howe, Sir Guy Carleton, and to Great Britain;
- The eleventh article placed the officers on parole and permitted them to wear side arms;
- The twelfth article allowed the defeated army to send to Canada for its clothing and baggage.

The terms closed with these words: "These Articles are to be mutually signed and exchanged tomorrow Morning at 9 o'clock, and the Troops under Lieut. General Burgoyne are to march out of their Intrenchments [sic] at three o'clock in the Afternoon.... To prevent any Doubts that might arise from Lieut. General Burgoyne's name not being mentioned in the above Treaty, Major General Gates hereby Declares that he is understood to be comprehended in as fully as if his name had been specifically mentioned."<sup>26</sup>

During the night, Captain Alexander Campbell of the 62nd Regiment, whom Burgoyne had sent to Sir Henry Clinton on September 28, returned to the British lines with a rather devastating reply to the former's request for orders:

Not having any instructions from the Commander in Chief [Sir William Howe] relative to the northern army, and ignorant of even his intentions concerning its operations (except his wishes it may get to Albany) Sir Henry Clinton cannot presume to send orders to General Burgoyne. But he thinks it is impossible General Burgoyne could really suppose Sir Henry Clinton had any idea of penetrating to Albany.<sup>27</sup>

That depressing message confirmed yet again the hopelessness of Burgoyne's situation.

### *Surrender*

Lieutenant Digby described the opening event that occurred in the British camp on the morning of October 17 under the heading, "A day famous in the annals of America":

Gen. Burgoyne desired a meeting of all the officers early that morning, at which he entered into a detail of his manner of acting since he had the honour of commanding the army, but he was too full to speak; heaven only could tell his feelings at the time. He dwelled much on his orders to make the wished for junction with General Clinton, and as to how his proceedings had turned out, we must (he said) be as good judges as himself. He then read over the Articles of Convention, and informed us the terms were even easier than we could have expected from our situation, and concluded with assuring us, he never would have accepted any terms, had we provisions enough, or the least hopes of our extricating ourselves any other way....<sup>28</sup>

The defeated army paraded about 10:00 a.m. and, with drums beating the "Grenadier's March," tramped to the site of Fort Hardy. At their officers' command they lay down their arms. Some embittered soldiers broke their pieces, and the Germans, in violation of the Convention, concealed their colors. With a rare respect for Burgoyne's men, Gates ordered that no Americans witness their humiliation. Doctor Thacher described these important historic events in his *Journal*:

18th—At the appointed hour yesterday morning the Americans marched into the lines of the British to the tune of Yankee Doodle, where they continued till the royal army had marched to the place appointed and deposited their arms according to the treaty.... It is a circumstance characteristic of the amiable and benevolent disposition of General Gates, that, unwilling to aggravate the painful feelings of the royal troops he would not permit the American soldiers to witness the degrading act of piling their arms. This instance of delicacy and politeness, at the moment of triumph, towards an enemy who had committed the most unprecedented outrages, is a mark of true magnanimity, and deserves the highest praise, though it deprives our army of the satisfaction to which they are justly entitled.<sup>29</sup>

Burgoyne—in full dress, accompanied by his general officers, and escorted by Wilkinson—rode to meet General Gates, who received them wearing a plain blue coat. Wilkinson, appropriately, introduced the two commanders. The commanders saluted in the then-current fashion by raising their hats. Burgoyne spoke first: "The fortunes of war, General Gates, have made me your prisoner." No stranger to military protocol, the former Royal Army major replied: "I shall always be ready to bear testimony that it has not been through any fault of your Excellency." Burgoyne introduced Major Generals Phillips and von Riedesel, who in turn presented their subordinate commanders. Gates introduced General Schuyler, who had arrived from Albany, the American brigade commanders present, and Colonel Morgan who, as commander of an independent corps, merited comparable recognition. According to some accounts, Gates invited the Europeans into his tent (or hovel); after a brief interval, the

commanders appeared in front of the marquee, where Burgoyne silently presented his sword, which Gates promptly returned. The officers rejoined their parties and shared a dinner.<sup>30</sup>

While Gates and his unwilling guests dined upon a hastily-prepared meal and drank appropriate, if not candid, toasts, the disarmed and defeated soldiers, to the accompaniment of fife and drum, marched southward along the same muddy road they had followed twice before: once on the way to battle and defeat, and again in retreat to a siege and surrender. American Continentals and militiamen lined both berms, quiet and disciplined, impressing the observant among the defeated with their physical stature and martial mien—in spite of the absence of standardized uniforms. The conduct of the Americans was testimony enough to the quality of discipline and morale that General Gates and his officers had instilled in men not always noted for those soldierly qualities. By dusk the column reached the site of the camp they had occupied on October 8 and where their hospital continued to shelter the casualties of the fighting of September 19 and October 7.

### *Recriminations Begin on Both Sides*

Generals Burgoyne and von Riedesel, with the latter's family and a number of officers, lodged in General Schuyler's Albany mansion. From such comfortable quarters the British commander, on October 20, wrote two letters to Lord George Germain, one an official dispatch and the other a personal note. The dispatch chronicled events following his crossing of the Hudson on September 13 and 14.<sup>31</sup> The private letter was the opening salvo of the defense he would develop more fully during the parliamentary inquiry of 1778. "I rest my confidence in the justice of the King and his councils," began Burgoyne, "to support the General they thought proper to appoint to as arduous an undertaking, and under as positive a direction, as perhaps a cabinet ever framed. It will, I am sure, be remembered my Lord, that a preference of exertions was the only latitude given to me, and that to force a junction with Sir William Howe, or at least a passage to Albany, was the principle, and the spirit of my orders."

The general was pleading his case that the inflexibility of the orders he received required him to force his way to Albany, where he would form a junction with Howe. Failing to obey that mandate would have earned him the censure of "every class and distinction of men in government, in the army and in the public." His apologia followed:

The expediency of advancing being admitted, the consequences have been honourable misfortune. The British have persevered in a strenuous and bloody progress. Had the force been all British, perhaps the perseverance had been longer. But as it was, will it be said, my Lord, that in the exhausted situation described, and in the jaws of famine, and invested by quadruple numbers, a treaty which saves the army to the state, for the next campaign, was not more than could have been expected? I call it saving the army, because if sent home, the state is thereby enabled to send forth the troops now destined for her internal defence; if exchanged, they become a force to Sir William Howe, as effectually, as if any other junction had been made.<sup>32</sup>

The general's defense on the one hand, and the ministry's attempt on the other hand to shift the onus of defeat onto the commanders in America led to the inquiry that prompted Burgoyne to write his *State of the Expedition*, so frequently cited in this and every study of his fateful

campaign.

General Gates had little time to luxuriate in the sunshine of victory. Brigadier Henry Watson Powell, with the battalion companies of his 53rd Regiment, and the German Regiment Prinz Friedrich, Lieutenant Colonel Christian J. Praetorius commanding, continued to hold Fort Ticonderoga and its satellites with a total of about 900 rank and file. General Vaughan, whose troops burned Esopus on October 16, continued to threaten American interests on the lower Hudson. The only immediate response Gates could make was to start marching his Continentals and some of the militiamen southward toward Albany, while other militia returned home.<sup>33</sup>

Victory did not immunize Horatio Gates from controversy and censure. Not only did the Convention's terms expose him to criticism, but the manner in which General Washington received authentic information about Burgoyne's defeat reflected adversely upon Gates. As usual, he cooperated by providing grist for his critics' mill.

On October 18, Gates prepared a report of the conclusion of negotiations and Burgoyne's capitulation for John Hancock, president of the Continental Congress, and enclosed a copy of the Convention's articles, which was proper because he was directly under congressional orders, as Washington had noted on August 2 when he refused to appoint a commander for the Northern Department.<sup>34</sup> Gates entrusted that important and urgent correspondence to his adjutant, the ineffable James Wilkinson, who was recovering from a "convulsive colic." Wilkinson delayed his departure from Albany, and stopped en route to bask in the adulation of friends, including Ann Biddle, his inamorata. The distance between Albany and York, Pennsylvania, where Congress sat while General Howe occupied Philadelphia, was 285 miles. Wilkinson took eleven days to deliver his dispatches—an average speed of less than twenty-six miles per day—arriving on October 31.<sup>35</sup> The overjoyed delegates ordered a gold medal to the Victor of Saratoga and declared a day of thanksgiving.<sup>36</sup>

General Washington received formal word two days later, nearly two weeks after Burgoyne surrendered. However, he had not been completely ignorant of the events in the north. On October 30, he dispatched Lieutenant Colonel Alexander Hamilton to Albany to urge General Gates to send immediate reinforcements from his department. By the time Hamilton arrived Gates had already sent Morgan's Rifle Regiment to rejoin the commander-in-chief; Learned's and Poor's brigades and Colonel Seth Warner's Green Mountain Boys had marched southward to support Israel Putnam near New York City, leaving Gates with three Continental brigades, which he wanted to retain to use in regaining Ticonderoga and protecting the Albany frontier. At Hamilton's request, he immediately ordered Paterson to reinforce Washington, and soon after sent Glover's Brigade, retaining only Nixon's Brigade and almost no militia by November 7.<sup>37</sup>

General Gates' failure to directly report his success to the commander-in-chief was technically defensible, but reflected adversely upon him. Courtesy and respect for Washington's position dictated that the victorious commander of the Northern Department take the time to address at least a brief personal letter to his fellow soldier. Gates, who could be cavalrous to a defeated foe, should have been equally respectful of his senior commander.

The Congress that awarded him the gold medal also sent Gates orders to remain at Albany and to rid the Champlain-Hudson corridor of the enemy. The British did not wait for his challenge. On November 14, he learned that they had evacuated the posts at Ticonderoga, Mount Independence, and on Lakes Champlain and George.<sup>38</sup> (Securing the lower Hudson against Sir Henry Clinton in New York City would prove more difficult, and would engage Gates during the

summer of 1778.)

The saga of Horatio Gates and John Burgoyne was finally ended. The loser returned home to face a parliamentary inquiry; the victor faced a future of criticism and accusations of intrigue, incompetence, and even cowardice.

