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"Custom Has the Force of Law": Local Officials and Contraband in the Bahamas and the Floridas, 1748-1779

by Alan L. Karras

The British colonies in East and West Florida and the Bahamas were frontier outposts. They were not central to European colonial ventures in the same way as Jamaica and Veracruz. British imperial perspective considered these settlements little more than "buffers," separating the established colonies of mainland North America from hostile groups of Amerindians (principally Creeks, Cherokees, and Choctaws), as well as from Spanish imperial outposts in Cuba, Santo Domingo, and remote Louisiana.¹ The importance of such border societies to British officials in Westminster ought to be measured in terms of national security rather than in terms of economic productivity (i.e., how many and what kind of crops they produced for European consumption).² As a result of

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1. For an example of one of these British perceptions, see the "Report of the Committee on the State of the Bahama Islands," *Votes of the House of Assembly* (1789), 123-30, Department of Archives, Nassau, Bahamas. This is a contemporary assessment of how important the Bahamas actually were. The histories of Spanish Louisiana and Florida are often grouped together and seen as buffers for the more important plantation and mining colonies further south. See, for example, Herbert Bolton, *The Spanish Borderlands: A Chronicle of Old Florida and the Southwest* (New York, 1921), viii.
2. For statistical evidence that supports this claim, see the tables of imports and exports in Sir Charles Whitworth, *State of Trade of Great Britain, in its Imports and Exports, Progressively from the Year 1697-1773* (London, 1774), esp. 68-77, 79, 85. Also see David J. Weber, *The Spanish Frontier in North America* (New Haven, Conn., 1992), 172-76, 179-83.

their peripheral position within the imperial field of vision, imperial representatives in such places had significant leeway to negotiate and compromise—both with their own subjects and with those who lived in neighboring foreign jurisdictions.³

To increase the economic value of their societies, British settlers in the Floridas and the Bahamas established commercial relationships with neighboring Spanish colonists. Not infrequently, London bureaucrats even encouraged commerce between their colonial outposts and adjacent Spanish settlements. Ministers possessed indisputable knowledge that such trading connections violated Spain's colonial statutes and mercantile policies; so must they have realized that British subjects who broke the laws of another country ran the risk of running afoul of their own country's law in the process.⁴ Moreover, Spanish authorities in Cuba or Louisiana seldom acted to diminish the intercourse between their own populations and British subjects.⁵ When the Iberians did intervene, British officials in the colonies neither protested particularly long nor especially loudly. That they raised their voices at all is best interpreted as a gesture to their subject populations, who had become used to flouting regulations, laws, and policies with impunity. A louder outcry, with accompanying requests for a European remedy, could well have drawn too much attention to the widespread illicit activities tolerated in the colonies.

Nevertheless, both British and Spanish authorities resident in the Americas also understood that periodically playing by the

3. John Brewer discussed the centralizing tendencies of the British and Spanish administrations that took place during this period. At the same time, resistance to centralized authority took place within the colonies; see Brewer, *The Sinews of Power: War, Money, and the English State, 1688-1783* (Cambridge, Mass., 1990), 176.
4. Frances Armytage, *The Free Port System in the British West Indies: A Study in Commercial Policy, 1766-1822* (London, 1953), 27.
5. See Cecil Johnson, *British West Florida, 1763-1783* (New Haven, 1943), 43ff for discussions of Britain's initial reticence to engage in, and then silent support of, illegal trading. The petition of the West Florida Assembly and Council to the Board of Trade makes this very clear. They were trying to find a way to acquire property by instigating a trade they knew to be illegal; see Robert Rea and Milo Howard Jr., eds., *The Minutes, Journals, and Acts of the General Assembly of British West Florida* (University, Ala., 1979), 48; Allan Christelow, "Contraband Trade between Jamaica and the Spanish Main, and the Free Port Act of 1766," *Hispanic American Historical Review* 22 (May 1942): 314-15; Harry Bernstein, *Origins of the Inter-American Interest, 1700-1812* (Philadelphia, 1945), 23. The clearest general discussion of the problem from the Spanish

rules—here defined as seizing property and confiscating it for violating the “laws of trade”—could have some strategic benefits. Of course, colonists who lived under their jurisdiction suffered, at least in an immediate sense. But the odd confiscation or two released local officials from more concerted preventative efforts. By portraying contraband commerce to their European masters as non-existent, or at least irregular and infrequent, officials could evidence their successful and ongoing effort to eradicate smuggling altogether.⁶ Colonial authorities, therefore, appeared much tougher than they actually were, and pesky metropolitan officials often saw little need for closer attention or costly military enforcement. From the colonists’ perspectives (regardless of the monarch under whom they lived), selective interventions meant that their familiar culture of illegality could be continued directly under the noses of the European states.⁷ While none of them liked to see private property sacrificed through confiscation, and while the owners of seized cargoes frequently complained loudly within the colony, authorities in these settlements understood that not raising too much commotion likely provided long-term benefits that far outweighed any short-term losses.

Though colonial governors constituted the single most important group of officials involved in commercial enforcement, they were by no means the only ones concerned with it. Custom house officers and collectors, coast guard (or *guarda costa*) authorities, magistrates and judges, and even some locally elected officials regularly grappled with the question of what to do with those caught with contraband. Such individuals recurrently found themselves interpreting laws. In effect, they negotiated the terrain between two

side can be found in Jack D.L. Holmes, “Some Economic Problems of Spanish Governors of Louisiana,” *Hispanic American Historical Review* 42 (November 1962): 521-43.

6. Correspondence between Europe and the imperial representatives in the colonies is full of such claims. For one example, see Governor Bernard to Lord Egremont, 25 October 1763, CO5/755, Public Record Office, London, England (hereafter PRO), 67.
7. Discussions of governors negotiating with the local populations about responses to cutting off illegal trade can be found in Bernstein, *Origins of Inter-American Interest*, 33-51; Bolton, *The Spanish Borderlands*, 237-49; Weber, *Spanish Frontier*, 200-201 ff.; John W. Caughey, *Bernardo de Gálvez in Louisiana, 1776-1783* (Berkeley, Calif., 1934), 9-57. Also see Robin F.A. Fabel, *The Economy of British West Florida, 1763-1783* (Tuscaloosa, Ala., 1988), ch.4.

divergent political and economic landscapes: one in European capitals and one in the colonies.⁸

These landscapes were evidenced by a series of laws that regulated inter-imperial commerce. Dating from 1651 and being reasserted in 1692, the English Navigation Acts underwent further revisions during the eighteenth century. Prohibitions were implemented against importing and exporting *any* foreign goods into British colonies in non-British ships. This effectively meant that any foreign ships found in British ports could be presumed to be in contravention of the law, and that any goods that happened to be found on board those vessels could legally be seized, condemned, and sold. In 1766, the British modified this law by establishing "free ports" in some of their colonies where foreign ships could dock and foreigners could safely buy British manufactures. They could pay with bullion, which was preferred, or with locally grown produce (which was itself enumerated), but they could not import European manufactured goods.⁹ Laws also prohibited the importation in British ships of non-British manufactures and other enumerated goods, without the payment of duty (which was applied at the rate of 2.5 percent to 4.5 percent). A Spanish ship that entered Florida, for example, violated British law if it removed British produce or if it brought in foreign goods or manufactures.¹⁰

8. It should be noted that sometimes a state's mechanisms of support and available resources did not provide a full complement of enforcement personnel. In such cases, actions were frequently "privatized." In the Spanish world, for example, *guarda costas* were often private ships that the governor had commissioned. Their financial success was thus often dependent upon capturing ships, regardless of whether or not the seizure was legal; see G. Earl Sanders, "Counter-Contraband in Spanish America," *The Americas* 34 (July 1977): 74. In the British world, officials were often dependent upon fees for their own livelihood; this frequently resulted in false impoundments or other forms of corruption; see John Leddy Phelan, "Authority and Flexibility in the Spanish Imperial Bureaucracy," *Administrative Science Quarterly* 5 (June 1960): 47-65.
9. There is an excellent discussion of the laws being created in the Duke of Newcastle's Papers, vol. 286, Add. Ms. 32971, ff. 16-43, British Library, London, England. The largest question was whether or not bullion could be legally imported to the colonies in foreign ships.
10. See Francis Ludlow Holt, *A System of the Shipping and Navigation Laws of Great Britain* (London, 1820), 61. The main laws were 7 and 8 Will. III c. 22, 12 Charles II c18, and 15 Charles II. There were enumerated exceptions, but only after 1766 and only in the free ports in Jamaica and Dominica. Later, in 1787, the Bahamas opened free ports, after trying to get permission for them for years.

Similarly, the Navigation Acts prohibited British ships trading in British colonies from either importing foreign produce or exporting British produce to foreign territories without first paying prescribed duties. To circumvent such restrictions, ships' captains would regularly declare that they were en route to another port in the same colony (or another British colony) even as they set sail directly for a foreign port.¹¹ Many deceived dock stewards in this way because the rate of profit on their illegally imported goods in foreign ports was significantly higher than it would have been in those places to which they were legally restricted.

The Spanish also implemented laws regulating intercolonial commerce. The Spanish Crown prohibited all imports from and exports to any foreign colony or country, whether in Spanish or foreign boats. Commercial voyages generally could only deal with specified ports and certain merchants in those ports. After 1764, goods exported from Spain, moreover, had a 6 percent *ad valorem* duty applied before they were imported into the Spanish-American colonies.¹²

Of course, residents of Spanish territories often ignored Iberian mercantile restrictions and got their supplies from willing

11. The Free Port Acts were designed to allow British traders to avoid breaking their own law, while encouraging Spanish ships to violate Iberian prohibitions. For a brief history of the Navigation Acts, albeit one that is not exceptionally detailed with regard to the individual statutes, see Joseph Allen, *The Navigation Laws of Great Britain: Historically and Practically Considered* (London, 1849), 17-44; also see Appendix C for a comparison of the law in 1660 and 1848. The best general history of the Navigation Act with regard to the colonial trade can be found in Holt, *A System of the Shipping and Navigation Laws*, 22-84.

12. As David Weber wrote, "Spanish policy generally limited trade to Spanish goods, handled by Spanish merchants, on Spanish vessels"; *Spanish Frontier*, 175-76. The clearest general discussion of Spanish trading restrictions can be found in D.A. Brading, "Bourbon Spain and its American Empire," in *The Cambridge History of Latin America*, ed. Leslie Bethell, 11 vols. (Cambridge, Eng., 1984-1995), 1: 413-415. Also see Armytage, *The Free Port System*, 22-23; and C. H. Haring, *Trade and Navigation between Spain and the Indies in the time of the Hapsburgs* (Cambridge, Eng., 1913) for discussions of the history of the laws. Haring's work lays the early history of Spanish navigation policies out very clearly. The 6 percent figure resulted from a liberalization of trading laws in 1764; see William Robertson, *The History of America*, 3 vols. (London, 1793), 3: 331. Robertson reckoned that taxes before 1764 as well as for foreign goods coming from Spain into the American colonies amounted to 25 percent of their value, increasing the likelihood for smuggling; see 3: 422 n 74.

trading partners in nearby foreign colonies.¹³ Though highly regularized, Spanish supply routes were infrequent; goods arrived only at specific moments in any given year. If a shortage developed between shipments, or if agricultural products arrived damaged or spoiled, colonists legally had no recourse but to settle for inferior products or do without, until the next *flota* arrived. In this way, many inhabitants of Cuba, Louisiana, and Hispaniola benefited from illegal commerce with British residents in the Bahamas and in Pensacola, West Florida. For example, British manufactures entered Spanish New Orleans aboard prohibited British ships. The British traders left New Orleans with either Spanish money, which was acceptable but legally questionable, or foreign produce intended to be exported to Europe as British in origin—clearly an illegal practice.¹⁴ Both Spanish and British mercantile policies were regularly contravened in this manner, albeit in different ways.¹⁵

France's *exclusif* similarly prevented its colonists from engaging in any trade with foreign shippers, except for the slave trade. In 1767, the French established two free ports, but both were elsewhere in the Caribbean. More of these ports were opened in 1784, allowing foreign boats to bring in edibles and merchandise that was in short supply in the colonies, but again none of them involved

13. Sanders, "Counter-Contraband in Spanish America," 60-61, 76-78. Sanders argued that the Spanish were willing participants in the contraband system because of inconvenient trading routes and the Spanish Bourbons' rigorous attempts to maintain the mercantile system. Though his argument is based on evidence from Colombia, it can apply to all of Spain's American dominions. Also see Vera Lee Brown, "Anglo-Spanish Relations in the Closing Years of the Colonial Era," *Hispanic American Historical Review* 5 (August 1922): 329ff; John Caughey, "Bernardo de Gálvez and the English Smugglers on the Mississippi, 1777," *Hispanic American Historical Review* 12 (February 1932): 46-58. A discussion of Spanish trade liberalization can be found in "Report to the King on Don. A. O'Reilly's Statements," in Joseph M. White, ed., *A New Collection of the Laws, Charters, and Local Ordinances of the Governments of Great Britain, France, and Spain, relating to the concessions of land in their respective Colonies*. (Philadelphia, 1839), 402.
14. A discussion of the "liberal . . . tho not licentious" legal position of allowing the importation of bullion can be found in Duke of Newcastle's Papers, vol. 286, Add. Mss. 32971, ff. 16-43, British Library.
15. Indeed, the British were aware of the language of the treaties between themselves and Spain. As the Memorialist on the Treaties with Spain wrote, "each party engaging only for the Restraint of *his own* subjects" each could also allow the colonists of the other country to trade in the foreign ports; see Add. Mss. 32971, f. 37, British Library.

territories in this part of the region.¹⁶ As in Spanish America, imperial restrictions in French America were at least circumvented and occasionally ignored altogether.

Had such extremely restrictive commercial policies been vigorously enforced, colonists of all European backgrounds would have endured even more frequent shortages of produce and manufactured goods than they already suffered. They would also have had to pay exorbitant prices for almost anything that they intended to purchase, without regard to quality. Settlers might well have responded to these conditions by vocalizing their dissent to the ways in which local officials adhered to European commercial policies. Overt resistance, as happened further north on the mainland, clearly had the potential to make the colonies ungovernable.¹⁷ As a result, at least in times of peace, contraband flowed with minimal official harassment. If an overly zealous bureaucrat scrutinized behavior too closely and acted to stop what he observed, his days in office were numbered.¹⁸

Despite having a sizable range of reactions to smuggling at their disposal, colonial governments generally enforced navigation acts *only* during wartime. Responses took one of several forms: establishing a (more) vigilant naval and/or military presence, raising the salaries of customs officials so that they would not be prone to bribery and forgery, or increasing prosecutions against colonists who violated *cédulas*, statutes, and edicts. By acting expeditiously against smuggling during periods of declared hostilities, officials appeared to be patriotic even as they continued to allow consumer

16. François Zuccarelli and John-Paul Bondi, *Les Colonies de la Revolution* (Paris, 1989), 130; Philip Boucher, *Les Nouvelles Frances: France in America, 1500-1815* (Providence, R.I., 1989), 92; Jean Tarrade, *Le Commerce Colonial de la France à la fin de l'Ancien Régime: L'évolution du régime de "l'Exclusif" de 1763 à 1789*, 2 vols. (Paris, 1972), 2: parts 1 and 2.
17. See John W. Tyler, *Smugglers and Patriots: Boston Merchants and the Advent of the American Revolution* (Boston, 1986). Also see Oliver Dickerson, *The Navigation Acts and the American Revolution* (Philadelphia, 1951), esp. ch. 11 for an alternative and, I think, ultimately unconvincing case. It is also important to realize that the northern colonies were generally perceived to be peripheral to the main colonizing impulse for Britain, which was the Caribbean and, increasingly, India. The difference between the two sets of peripheries is significant. In the 1760s, the colonies that are the subject of this essay were just getting started. Those further to the north had a longer history of ignoring imperial directives when it was convenient for them to do so.
18. A very brief discussion of several illustrations can be found in Fabel, *Economy of British West Florida*, 90-91; Holmes, "Some Economic Problems," 523-26; Weber, *Spanish Frontier*, 200-201.

demand to be satisfied. The large number of seizures reported during wars certainly resulted in the penetration of foreign and other prohibited goods into the local marketplace. Of course, these goods clandestinely entered the marketplace during peaceful years; prohibited products were just more openly traded in times of war. Those individuals who seized the ships of former, albeit unofficial, trading partners during hostilities gained recognition from their home governments. When peace was reestablished and vigilance once again diminished, contraband commerce quickly resumed.¹⁹

Spain and Britain officially remained at peace from 1748 (Treaty of Aix-la-Chappelle) until Spain allied with France late in 1761. Peace broke out again as the Seven Years' War concluded in 1763 and lasted until 1779, when Spain joined France and the rebellious American colonies against George III. Tensions between Spain and England's respective colonies ebbed and flowed with these tides of peace and war. European hostilities almost always meant an increased military presence in the Western Hemisphere. Large numbers of European sailors and soldiers, most of whom had minimal experience in the Americas, prevented local populations from easily transgressing commercial policy. Colonists did not suddenly become motivated to stop smuggling by a patriotic call to arms against their foreign trading partners. Rather, colonists who facilitated illegal trading were simply subjected to greater scrutiny of their actions. More than that, at least in part because consumer demand did not diminish, colonial governments authorized individual privateers to seize foreign ships as legal prizes of war. The vessels' contents could then be sold, coincidentally satisfying, at least partially, consumer demand. As European governments acknowledged this patriotism by privateers, local residents in the Americas continued to get access to goods and produce to which they had become accustomed.

19. Discussions of the relationship between the eighteenth-century Spanish and British empires, and their competing understandings of state and empire, can be found in Brown, "Anglo-Spanish Relations in the Closing Years of the Colonial Era," 329-43; idem, "Contraband Trade: A Factor in the Decline of Spain's Empire in America," *Hispanic American Historical Review* 8 (May 1928): 178-89. For a discussion of the contraband trade between Jamaica and the Spanish Main colonies, see Christelow, "Contraband Trade." J.R. McNeill discussed contraband trade in Cuba and Louisbourg in *Atlantic Empires of France and Spain: Louisbourg and Havana, 1700-1763* (Chapel Hill, N.C., 1985), 197-202.

As hostilities subsided and treaties were enacted, local officials reverted to their tolerant ways. Claims regularly went back to Europe that severe problems—starvation of slaves, for example—developed with the disruption of supply routes during the war.²⁰ To prevent catastrophe or ease existing conditions, colonial officers urged their metropolises to suspend immediate restrictive trade regulations immediately. Their goal was to lure back traders who, before the war, had engaged in clandestine commerce. In most cases, their supplications brought about a temporary lifting of some trading restrictions. When Europe decided that material conditions had improved and shortages in the colonies dissipated, whether or not they actually had, ministers generally ceased to approve regulatory exceptions. Illegal commerce then reemerged in full force.²¹

In 1752, a year of peace, the Attorney General for the Bahamas, John Gambier, wrote to the colony's governor, John Tinker, that "[s]ome of our Vessels that go to the Windward [within the Government of the Bahamas] to cut Wood have been chased by some Spanish . . . *Guarda Costas*." He brought bad news, he thought, when he reported that "some of them have been absolutely taken."²² The Attorney General did not much like the idea that Spanish boats could get away with harassing British ships in British waters. Governor Tinker forwarded Gambier's complaint to the Board of Trade in London, which in turn transmitted it to the Secretary of State.²³

British records contain no evidence that a diplomatic remonstrance was lodged at the Spanish Court. Yet Gambier's complaint accused the Spanish of piracy during peacetime, grounds for action if ever they existed. In order to understand why no protests were

20. For one example of this kind of claim, see Governor Maxwell of the Bahamas to Lord Sydney, 17 May 1784, CO 23/25, 104, PRO. In this letter, he revealed that he had allowed American ships to supply the islands with flour—because of its scarcity. Another example can be found in the draft letter to Mr. President Bishop [of Barbados], 29 May 1800, CO 28/66, PRO. Bishop had allowed foreign ships because he claimed that there was an urgent shortage of timber that could not be supplied by British ships.

21. For one example of such policy, along with the new problems of illegality that resulted from it, see "Report to the Board of Trade, n.d. [1786], BT 6/81, 144-145, PRO.

22. *Guarda Costas* were often private individuals who had been commissioned to serve in this capacity by local Spanish authorities. They shared with the state any prizes that they recovered; extract of a Letter from John Gambier to Governor Tinker, 7 April 1752, CO 23/15, 60, PRO.

23. See Extracts from the Board of Trade, 9 July 1752, CO 23/15, 58, PRO.

made, it becomes necessary to reconstruct how and why the two colonies' ships came to be in the same area. Doing so makes it apparent that the Bahamians were not likely blameless. Complaints from London to Madrid, had they been made, could well have fallen on deaf ears, or worse, inspired an investigation.

On the one hand, the British overtly encouraged trade with the Spanish, which they knew directly to contravene Spanish law. Had the British complained, Spanish authorities might have learned that their own American residents were in British waters, which was forbidden.²⁴ Conversely, Spanish officials might have learned that British ships, laden with prohibited European goods, regularly entered Spanish waters. Ignoring cries from British subjects in the Bahamas over their lost property, the London government likely assumed that this seizure was the price of doing business outside of proscribed trading patterns. It should therefore be thought of as a short-term sacrifice for long-term benefit.²⁵ No protest was lodged. Still, the seizures make little sense.

The area to the windward of Nassau includes much of the Bahamian archipelago, as well as the Turks and Caicos Islands. Extending several hundred miles to the southeast of New Providence, these small islands were home to pirates and smugglers alike.²⁶ The *guarda costas* regularly detained and seized ships with which they had previously engaged in contraband trade. Local officials needed to decide what to report to their European masters and what to ignore. By informing Europe that seizures had taken place in areas where *guarda costas* should not have been (beyond agreed-upon territorial waters), the officials ran the risk of stopping a profitable intercourse, tipping off those in Europe who might oth-

24. Armytage, *The Free Port System*, 23-26.

25. In other words, the British government probably chose to exclude the colonists' presentation of Spanish villainy from the realm of the possible. If it were true that the Spanish ship was in British waters, a diplomatic protest would have required the Spanish to explain their position. It would likely then be revealed that they were there as traders, and if that were suggested as an explanation, the British government's policy of encouraging the Spanish to ignore Iberian statutes might be exposed, plunging the Crown into a potentially hostile situation. Indeed, it was better to say nothing, write off the loss, and continue with business as usual.

26. Non-Bahamians, including those living in Bermuda and on Hispaniola, Cuba, and occasionally Jamaica frequently came to these low-lying islands to fish and to rake for salt. Pirates had earlier used some of these places as bases from which to carry out their own occupation, which principally required them to stop European-bound ships filled with bullion from the Spanish territories.

erwise have been unaware of the extent of illicit commercial interaction.²⁷ All American colonists almost certainly knew that the Spanish port of Monte Christi on Hispaniola (also to Nassau's windward) had become a *de facto* free port.²⁸ Goods that could not be legally imported and exported under one or more of the French, British, and Spanish statutes were openly exchanged there with little imperial intervention and a great deal of local hand wringing.²⁹

To return to the specifics of Attorney General Gambier's 1752 case, one of two scenarios likely took place. The Spanish *guarda costas* could easily have been engaged in a contraband trade within Bahamian waters. They seized their trading partners in an effort to cover their tracks and escape detection, coincidentally not paying for the goods that they had just received. The second, and probably more likely, possibility was that the British ships were not just cutting wood within the Bahamas. Rather, they were trading at Monte Christi, or elsewhere on Hispaniola, and managed to run into Spanish *guarda costas* on their way either to or from that island. Spanish sailors could be neither bribed nor deterred from capturing the ship and sharing in the prize. Perhaps the British crew did not have enough money or goods to ransom their ship. What is clear is that if the British government had made a diplomatic protest in defense of its ship, the Spanish could well have focused

27. William Masterson, *Jurisdiction in Marginal Seas* (New York, 1929), 37-42. In general, the British enforced a territorial waters claim of two leagues; the Spanish enforced three. This translates respectively into six nautical miles and nine nautical miles. In 1765, the British extended their claim to three leagues.

28. Monte Christi, on the north coast of Hispaniola, certainly was to the windward of the Bahamas. Ships from all of the American colonies regularly visited the port near the border between the French and Spanish sides. In Monte Christi, the French and Spanish engaged in commerce with the British (as well as the Dutch, the Danes, and North Americans). Ships en route to and from the port often interacted, either trading or warning each other about lurking naval or other enforcement vessels. Examples of what went on at Monte Christi can be found in "Deposition of Martin Garland," 31 May 1787, CO 5/1068, 18, PRO; as well as William Taggart's Declaration, 21 April 1760, CO 152/46, 267, PRO.

29. The Bahamian Governor believed that perhaps as many as five hundred cargoes entered Monte Christi a year. Many American cargoes during wartime carried war supplies that the British government believed allowed the French to rearm. In effect, during wars, the British supplied their enemies through Monte Christi; Michael Craton, *A History of the Bahamas* (London, 1962), 145; idem and Gail Saunders, *Islanders in the Stream: A History of the Bahamian People*, 2 vols. (Athens, Ga. 1992), 2: 159-60.

more attention on Monte Christi than colonists desired. Protesting the loss of a single ship had to be weighed against the continued upward influx of bullion that accompanied silence.

Other officials in the region were not nearly as diligent in reporting violations of British commercial policy as was Attorney General Gambier. Indeed, some representatives of European government actually attempted to regularize and systematize the region's prevailing culture of illegality. Reasoning that if it could not be completely eradicated, it could at least become more predictable, they sought the establishment of free ports. These entrepôts of commerce were designed to facilitate many transactions that had been prohibited under the navigation acts of at least one empire; they represented the eighteenth century's liberalization of European mercantile policy. For example, Monte Christi was, while never officially recognized, a free port where the region's colonists had taken matters into their own hands.³⁰

In 1764, Andrew Symmer, Agent for the Turks Islands, soon to be brought under the Bahamian government's control, enumerated his territory's trading patterns: "To the Spanish West Indies, our Exports are chiefly Flour, a great Quantity of Onions, negroes, plank, European, and East India Goods. The returns are bullion, Indigo, Cochineal, Raw Hides and Cacao."³¹ British traders in Turks and Caicos, Symmer believed, could supply European goods of superior quality to, and at lower prices than, those available from Spain. As a result, Symmer sought to encourage the Spanish to break their metropole's laws. As he explained, "[t]he Heavy Duties laid by Spain, upon every article of commerce, whether exported or imported into their American dominions, and their extensive Coast, are such advantages, in carrying on a contraband commerce."³² Symmer went on to recommend establishing a free port in his vicinity. "[I]f the Spanish Colonists (who are the properest Judges of the particular times, to avoid their *Guarda Costas*) had free Liberty to come into such Port or Ports, as the Government should judge Proper," he argued, "it would lessen the Values [of any

30. An extended discussion of free ports is found in Armytage, *The Free Port System*, 12 ff.

31. Andrew Symmer to the Lords of Trade, n.d [1764], CO 23/16, 124, PRO. It is likely that the flour Symmer mentioned came from British North America and crossed the Turks and Caicos en route to the Spanish on Hispaniola. In 1764, this would have been a violation of the Navigation Act.

32. Ibid.

Contraband Trade] . . . by transferring a great Part of their Usual Cargoes to British America."³³

Symmer advocated free ports for Turks and Caicos (and the Bahamas) because he wanted to encourage the Spanish from the neighboring colonies of Cuba and Santo Domingo to trade with Grand Turk and New Providence. He believed that allowing Spanish bullion to flow into the fledgling colonies through trade would increase government coffers, largely through collected duty. At the same time, he hoped that individual accumulations would dramatically rise which, in turn, would help to bring settlers into the region.³⁴

The British government would willingly have had to ignore part of its own laws to do what Symmer suggested. Shipping American or European products in non-British bottoms violated the Navigation Act.³⁵ Local authorities like Symmer, who supported free ports, were prepared to jettison their own rules to assist the amassing of individual colonist's profits. Using an eighteenth-century version of "trickle-up" economics, they maintained that more money would enter the economy by making subterranean commerce legitimate and subjecting it to taxes. Government would therefore benefit. Increased cash circulating in the colonies would guarantee higher levels of popular support for any regime. Had London officials acquiesced to Symmer's effort to get them to open a free port in his neighborhood, Spanish traders would then have violated their own laws. But because Britain and Spain were at peace, British authorities thought twice. Choosing instead to open ports in islands that were not quite frontiers, the metropole prevented Symmer's scheme from being realized.

The quintessential colonial entrepreneur, Andrew Symmer had gone to the colonies so that he might accumulate capital and improve his material circumstances. Once there, he discovered that his own government's navigation and revenue regulations impeded him from accomplishing his goals as quickly as he had anticipated.

33. Ibid.

34. A parallel argument is made in Bryan Edwards, "Thoughts on the Late Proceedings of Government respecting the Trade of the West India Islands with the United States of North America," (London, 1784), 45-46, copy located in the British Library. Also see Craton and Saunders, *Islanders in the Stream*, 162. Indeed, this is an argument quite similar to the one that would later be made in Adam Smith, *Wealth of Nations*, ed. R.H. Campbell and A.S. Skinner, 2 vols. (Oxford, Eng., 1976), 2: 910 ff.

35. See Lawrence A. Harper, *The English Navigation Laws: A Seventeenth-Century Experiment in Social Engineering* (New York, 1939), 394-414.

Symmer needed to find a way that could guarantee both his own individual capital accumulation *and* a steady stream of income to the state. He soon began to manipulate the law and its enforcement, and his actions initially produced a salubrious effect. He and his compatriots in the Turks, Caicos, and southern Bahamas attracted non-British, especially Spanish and French, ships to trade with local residents. He managed to keep things relatively quiet for about five years. In 1770, however, Bahamian governor Thomas Shirley (the brother of William Shirley, former Governor of both Massachusetts and the Bahamas) determined to consolidate his own position by favoring his London superiors over local residents. He reported Symmer to ministers in London, obliquely accusing Symmer of trading with the Spanish without collecting British duties. Symmer's response was characteristically clear and unambiguous: "If by an illicit Commerce Governor Shirley meant a defrauding his Majesty of the Revenue of the Duties laid by act of Parliament, it could be attempted by no other Person in Turks Islands but myself."³⁶ Claiming that local custom superseded the law, Symmer continued, "[o]n my first arrival at Turks Islands I found it had been a practice with the French and Spanish colonial Vessels to come over and purchase such Manufactures from British Vessels as were denied by the Laws of [France and Spain]. . . . [A]s they paid chiefly in Cash for what they purchased, I thought the trade Advantageous."³⁷ In other words the ends justified the means.

There is no malice here. Symmer did not deny that he encouraged illegal trading. Claiming that contraband had been tolerated in the past because it brought in revenue in the form of bullion, Symmer implied that colonial officials understood, in a way which European authorities could not, that practice must dictate what was legal and what was not.³⁸ As did other officials on

36. Andrew Symmer to the Earl of Hillsborough, 5 January 1770, CO 23/19, 32, PRO.

37. *Ibid.*

38. The full argument went something like this: illegal trade had been tolerated in the past because it helped to mollify the population, who had easier access to foreign coin. This could then be used to pay taxes on legitimate commerce. Hence, smuggling was necessary for colonists to pay their tax bills. Colonial officials understood this in a way that those in Europe did not. Increasing clandestine trade, and thus the revenue it produced for the state, could therefore only be desirable. It did not matter that it was illegal; practice dictated legality and illegality. See Joseph M. White, *A new collection of*

the Atlantic's frontiers, Symmer decided—with the acquiescence of local residents—that financial accumulation obtained by individual colonists outweighed the government's right to regulate trade in order to guarantee its own income.³⁹ The debate over how residents of fledgling British colonies interacted with the law as they strove to amass wealth was in no way unique to the Bahamas. Indeed, similar discussions took place across the gulf stream in Florida.

In 1769, ministers in London paid more attention than normal to East Florida. Spanish subjects, ordinarily resident in Cuba, had taken to fishing in British territorial waters around the peninsula and in the Keys. The fishermen made gifts to local Native Americans who, imperial officials believed, assisted the Spaniards whenever they happened through the region. Because the British had recently instituted a policy against giving gifts to the indigenes, metropolitan officials worried that the Cubans might bribe the Indians to turn against the small number of British provincial settlers.⁴⁰ Official Iberian policy also discouraged any trading

laws, charters and local ordinances of the governments of Great Britain, France and Spain; relating to the concessions of land in their respective colonies, together with the laws of Mexico and Texas on the same subject, to which is prefixed Judge Johnson's translation of Azo and Manuel's Institutes of the civil law of Spain, 2 vols. (Philadelphia, 1839), 1: 36 In this instance, local official Symmer did not get the British government's support. It soon placed the Turks Islands under the direct control of Nassau. Had the islands had more than a population of 150, the outcome may well have been more favorable to colonial residents. It is worth noting, for example, that the Bahamian Assembly did not agree with Governor Shirley and the Secretary of State. Shirley was forced to dissolve his Assembly. Indeed, this clearly shows the split between those who lived in the colony and those who would rule them. See Craton and Saunders, *Islanders in the Stream*, 162-63.

39. Allan Christelow made an abstract argument that the contraband trade was necessary to the fiscal health of the colonies; "Contraband Trade," 316-317. This is the same argument made in Jean-Claude Waquet, *Corruption: Ethics and Power in Florence 1600-1770*, trans. Linda McColl, (University Park, Penn., 1991), esp. 20.
40. See James Grant to the Secretary of State, 15 May 1769, CO 5/550, PRO, for an example of a response to the British state's concern about violations of the new Indian policy. The best discussion of the evolving British policy with native Americans in the region can be found in J. Russell Snapp, *John Stuart and the Struggle for Empire on the Southern Frontier* (Baton Rouge, La., 1996), esp. 56-67; Paul David Nelson, *General James Grant: Scottish Soldier and Royal Governor of East Florida* (Gainesville, Fla., 1993), 53-55.

with and gift giving to Native Americans, so the Cubans, in fact, contravened their own laws.⁴¹

When a few British settlers learned of the Spanish incursions into Florida and the presents to the Indians, they pressured local authorities to act. Colonial officials then had to balance competing interests. On the one hand, they had a legal obligation to prohibit both native and British contact with the Spanish fishermen. On the other hand, they surely knew that the Cubans might just be willing to enter into a mutually beneficial commercial relationship with British Floridians. In exchange for European products in scarce supply at home, the Cubans would provide much-needed bullion to the Floridas.⁴² Attempting to avoid any conflict that might imperil their fledgling colony, imperial minions in East Florida argued generally that peace with the Amerindians (and, by extension, the Spanish) would benefit Britain's long-term commercial development and encourage regional stability. The resultant safety and security could then be used to promote further settlement.⁴³ Florida's British governors as a result found themselves defending Spanish trade with (and gift-giving to) the Amerindians, both to their imperial masters in London and to a small and xenophobic settler population.⁴⁴

41. Spanish Indian policy is briefly discussed in Caughey, *Bernardo de Gálvez in Louisiana*, 52. The Spanish borderlands had to contend with a former French presence that treated the Indians very differently. As a result, those in Spain's northern outposts were inclined to follow French precedents and make gifts to the Indians; see Patricia Woods, *French-Indian Relations on the Southern Frontier, 1699-1762* (Ann Arbor, Mich., 1980), 161-62; Fabel, *The Economy of British West Florida*, 50 ff. John TePaske described both the Indian problem that the Spanish had in Florida and the problems associated with Cubans posing as fisherman contravening their own laws—in this case, in Charleston and Newfoundland; *The Governorship of Spanish Florida, 1700-1763* (Durham, N.C., 1964), 73-75, 225-26. In both cases, TePaske showed that the Cuban behavior was nothing new in the late 1760s.
42. The British had a long history of illegally trading with the Spanish. It is nicely discussed, along with the perceived shortage of bullion; Fabel, *Economy of British West Florida*, 75-80; Armytage, *Free Port System*, 25-27. A general discussion of the perceived money shortage around the colonies can be found in John J. McCusker and Russell Menard, *Economy of British America, 1607-1789* (Chapel Hill, N.C., 1991), 338-41.
43. All of this logic, of course, was carried on under the auspices of a treaty with the Indians, limiting European settlement to the northeast corner of Florida in 1765. See Helen Hornbeck Tanner, *Zéspedes in East Florida, 1784-1790* (Jacksonville, Fla., 1989), xii; Snapp, *John Stuart*, esp. ch. 4.
44. See, for example, Fabel, *Economy of British West Florida*, 75-81. If the governors defended Spanish practices to the local settler population, it is because many

East Florida Governor James Grant argued that until the province was more widely planted, with more settlers along the coast, several hundred HabaZeros would annually continue to fish in Florida's territorial seas despite laws on British statute books.⁴⁵ Until a real physical impediment to foreign fishing could be constructed, Grant could do little about Cubans coming ashore and traveling among Native Americans. British East Florida simply did not have enough settlers to support a more active police authority. Grant's solution to the fishermen, therefore, required further British migration to Florida.⁴⁶

Grant acknowledged the legal breach to his superiors in London, even as he tried to shape their response to it. He implied that acting against the Spanish fishermen might well create *more* problems for Floridians than doing nothing. For the British, as for the Indians, some advantages could accrue from contradicting the law. "[The Spanish] give them [the Amerindians] presents to keep them in Temper," after all. This had the effect of preventing "the accidents and Attacks which the [Amerindians] were accustomed to in Florida."⁴⁷ According to Grant, "the Indians now precluded from any intercourse with French or Spanish governments, are willing even to have recourse to their former Enemies in order to make the most of them . . . as far as I can learn no harm is intended to His Majesty's Subjects by the Indians who receive the presents."⁴⁸

of them sought a completely unregulated interaction with the Amerindians. See Snapp, *John Stuart*, 66. A brief general history of settlement in East Florida can be found in Lawrence Henry Gipson, *The British Empire Before the American Revolution*, 15 vols. (New York, 1936-1970), 9: 194-99.

45. See James Grant to Lord Hillsborough, 15 May 1769, CO 5/550, 51, PRO. Also, Grant to Hillsborough, 6 November 1769, CO 5/551, 3, and 27 March 1770, CO 5/551, 21, PRO. The Spanish were given eighteen months to sell their property and leave Florida under Article XX of the 1763 Treaty of Paris; see "The Definitive Treaty of Peace and Friendship between His Britannick Majesty, the most Christian King, and the King of Spain concluded at Paris, the 10th day of February, 1763."
46. Grant began to make this argument in his letter to Hillsborough dated 12 December 1770; see CO 5/552, 5, PRO. The argument itself was nothing new. Grant used a criticism against his policy implementations to argue in favor of more settlement. He had been trying to do this for a period of years.
47. James Grant to Hillsborough, 15 May 1769, CO 5/550, 51, PRO.
48. Ibid. Paul David Nelson argued that Grant was instructed to leave all dealings with the Indians to the Superintendent for Indian Affairs; *General James Grant: Scottish Soldier and Governor of East Florida* (Gainesville, Fla., 1993), 55. Also see John R. Alden, *John Stuart and the Southern Colonial Frontier* (Ann Arbor, Mich., 1944), esp. 57. Grant himself did not object to giving presents to the Indians; rather it was the local white population that wanted freedom to exploit them at will.

James Grant did not believe that the Spanish actively sought to foment discord in his colony. Nor did he urge that the extralegal fishing activity be halted. Indeed, it is clear that it continued since succeeding governors also observed an annual visit of Spanish fishermen to Florida's gulf coast waters.⁴⁹ Imperial officials on the spot, like Grant, effectively took for themselves the ability to shape colonial policy—even if it explicitly contradicted imperial directives and regulations. They did so, at least in part, by controlling the supply of information from one side of the Atlantic to the other.

Convincing those in Europe was not often easy, as Symmer's story indicates. Metropolitan ministers clearly understood what colonies were supposed to do for their governments and deviations from standard policies required meticulous attention to detail, persuasive logic, and, if all else failed, a willingness to ignore rules and requests that might injure colonial development. To return to the case at hand, in the summer of 1769, Governor Grant received a note from British Secretary of State Lord Hillsborough advising him that all interactions between the Spanish and the Amerindians must cease. Hillsborough ordered Grant to "forbid, and take every method in your power to prevent, any intercourse between the subjects of Spain and the Savages within the Territories under your Government which . . . if suffered to pass without notice, be extended to dangerous connections."⁵⁰

The Governor promptly replied that he would prevent the Spanish from having any dealings with the "Savages within the territories under my Government."⁵¹ Even so, he again politely reminded Hillsborough that he did not believe a threat to British rule existed. The Cubans had no public meetings with the local Creek Indians, nor did they intend to settle anywhere in Florida or even intrude on British settlements. (One could even make a plausible case that because the Spanish did not go near British settlements, they were technically outside the territory under Grant's jurisdiction, even though King George held a claim upon all of the region.) Grant may well have been right; an annual flotilla of Spanish fishermen posed no real threat. Nevertheless,

49. See Governor James Moultrie to Lord Dartmouth, 21 February 1774, CO 5/554, 6, PRO.

50. Lord Hillsborough to James Grant, 4 May 1769, CO 5/550, 55, PRO.

51. James Grant to Lord Hillsborough, 6 December 1769, CO 5/551, 5, PRO. See also "An Attempt towards a short description of West Florida," 22 July 1773, CO 5/550, 310.

Hillsborough understood that had it been in Spanish shoes, pretended fishing and the exchange of gifts would have been a perfect way to reconnoiter unsettled areas for future invasions or settlement. Britain had, after all, itself used the same pretense against the Spanish in Mexico and along the Central American coast.⁵²

By the end of 1770, Grant had clearly come to understand the imperial position. At the same time, however, he revealed that he had not yet prevented the Cubans from fishing British Florida's coast. His responses became a bit more nuanced. "In time of peace it was contrary to the Interest of Spain to seduce our Indian neighbours," he wrote; "If [the Spanish] had persuaded them to commit hostilities against the King's Florida subjects, it could not have been kept a secret, and the discovery of such a measure must in its consequences have been attended with a Stop to the Fishery of which they were in quiet possession. But their views and policy will be very different in case of a War, their Fishery will then of course be interrupted, and their Vessels frequently taken by the King's Ships or Private Ships of War. . . . [They] will . . . do everything in their power to draw the Indians into a War with the King's subjects."⁵³

Grant justified his unwillingness to follow explicit instructions by using the logic of international affairs. European cycles of peace and war—rather than bureaucratic policies arbitrarily imposed—should determine the level of statutory compliance. What was harmless at that moment, because peace existed between Spain and Britain, could later have significant repercussions. For example, "if [Spanish fishermen] should succeed," Governor Grant mused, then during war time "those [Creek] Savages can over-run this Province and Georgia, distress the Frontier Settlements of South Carolina, and may be Instrumental in bringing on a General Indian War all over the Continent, for none of them are fond of having the English only for neighbours."⁵⁴ Grant saw his voice as one of moderation. He wanted London to understand that he grasped local

52. There was a long history of sending out British subjects to cut logwood (and reconnoiter) in Spanish-claimed, but uninhabited, territory in Mexico. For a legal opinion that supports the legality of these activities, see Sir William Godolphin to the Earl of Arlington, 10-20 May 1672, Granville Papers, PRO 30/29/3/1, PRO.

53. James Grant to Lord Hillsborough, 12 December 1770, CO 5/552, 5, PRO.

54. *Ibid.* Here Grant adopted the Ministry's use of the term "savages" and was also more concerned with the idea of a buffer colony than he had previously been.

conditions better than they did, even as he appreciated imperial concerns. He could condone, or at least ignore, illegal behavior much more easily when “national security interests” were not so great—during peacetime. At the same time, he needed to consider what *might* happen during a war. Allowing too much deviation from established rules could potentially have a devastating impact.

Imperial officers who physically resided in the colonies, like Grant and Symmer, became mediators. They negotiated the interactions between European governments and colonial populations by effectively deciding which laws would be enforced and when. Most officials understood local residents’ need for protection against intruders, populations’ widespread desires to amass profit and accumulate property, and antipathies towards anything that prevented them from reaching those goals. Government representatives in the colonies also understood their state’s purpose in defending the lives and property of subjects while simultaneously allowing them to acquire yet more property.

In Grant’s case, for example, allowing the Spanish to interact with the Amerindians aided British colonists. The influx of Spanish bullion used to pay for the fishermen’s food and other goods would eventually find its way into British coffers, even if it passed first through native hands.⁵⁵ Preventing such commercial connections, though upholding the letter and spirit of the law, potentially prevented the frontier colony’s prosperity and socioeconomic development by denying colonists the opportunity to increase their capital quickly.

Officials also associated strict compliance with armed conflict. A fledgling colony could certainly never prevail against a foreign invasion without the help of His Majesty’s military forces. Similarly, a frontier colony could prevail against armed internal dissent (caused by dissatisfied settlers) without imperial help. London Ministers were aware of the high costs of an increased naval presence. At least in the short-run, this effectively silenced a more vocal

55. Bullion had technically been exempted from the British prohibition on importing goods in foreign bottoms. The problem came when the bullion had been spent. Removing produce from American colonies was forbidden, though removing European goods duly navigated was less problematic. Here the British chose to look in the other direction. See Christelow, “Contraband Trade,” 324-325. Moreover, Spanish receipt of British goods would have also been illegal from the Spanish perspective if the Cubans failed to pay duty upon their return to Cuba.

and organized state effort to exact rigid statutory compliance in Florida.⁵⁶ The financial expense of enforcing laws appeared greater than did the risks to governmental authority that resulted from looking away when governors ignored the letter of the law. Indeed, the British government rarely supplied the funds or even the personnel required to uphold its statutes. As a result, the British government created an open invitation to extralegal activities.

Ministers in Europe knew that to insist on strict legal adherence would require money and men which, especially in times of peace, could easily cost more than the revenue generated under strict statutory compliance. Moreover, rigid adherence to the law could threaten a colony's prosperity and perhaps even its stability. If colonists could not amass individual fortunes, they would leave and in-migration would suffer. In many ways, the late eighteenth-century Atlantic world's structures permitted, perhaps even encouraged, a culture of illegality.⁵⁷

British East Florida did not survive the American Revolution. The colony capitulated in 1781 and, under the terms of the 1783 Treaty of Peace, returned to Spanish control. The British evacuated their settlers, chiefly to the Bahamas. Under Spanish authority, East Florida remained both a frontier colony and an entrepôt of illegal trade with an ironic reversal of roles. After the war, the British and later Americans were accused of violating Spain's commercial statutes.⁵⁸ The Spanish governor then faced the same problems that Grant had encountered.

56. The British naval forces in the area were strict constructionists of the law. Naval authorities often stopped and seized ships that broke the law, or which they believed broke the law. (Of course, during peacetime, they also received a share of ships that were confiscated for commercial infringement.) This much displeased many in the colonial population. In some cases, the navy refused to intervene, even after it had been asked to do so, because local populations regularly violated commercial statutes. The navy avoided assisting illegal actors in protecting their contraband trade; see, for example, Fabel, *Economy of British West Florida*, 77.

57. The conflict between popular understandings of which illegal activity would be tolerated and which prevented regularly manifested itself after the American Revolution. Alexander Hamilton's papers are full of his efforts to prevent contraband trade while bolstering state authority. For an illustration of a conflict between the state and its citizenries, and the role of those charged with implementing unpopular policy, see Thomas Slaughter, *The Whiskey Rebellion: Frontier Epilogue in the American Revolution* (New York, 1987).

58. See, for example Janice Borton Miller, "The Struggle for Free Trade in East Florida and the Cédula of 1793," *Florida Historical Quarterly* 55 (July 1976): 48-59.

The case of West Florida presented an equally problematic situation for governing officials, and an equally thriving illegal trade system. A direct result of its small size and its geographic proximity to Cuba, Mexico, and Louisiana, British West Florida from its inception had commerce with Spain as a primary objective.⁵⁹ The colony's principal settlers believed that such intercolonial traffic, if London tolerated it, might annually yield £300,000.⁶⁰ West Floridians decided that it was in their interest to encourage Spanish neighbors to violate Iberian laws and trade with neighboring British provincials. The spectacularly entrepreneurial way by which West Florida's population planned to realize this large sum required local officers, including the Governor, to stretch laws well beyond their intended limits.

Yet, it happened: British West Florida's officials agreed to aid the colony's entrepreneurs. In 1768, authorities sent a provincial sloop both to Havana and to Campeche. Though it had a pretense of official business—obtaining documents and information relating to a Spanish seizure of a British-registered vessel several years earlier—the Florida sloop's voyage accomplished something more immediately useful. The West Florida crew revealed to Spanish merchants and local authorities that commercial intercourse between the two empires would be welcomed in the British colony. Though illegal in both Seville and London, Pensacola encouraged the commerce.⁶¹ The mission brought results. West Florida Lieutenant Governor Montfort Browne reported that “[n]o less

59. For a discussion of efforts to circumvent both British and Spanish Navigation laws and facilitate commercial connections between the two sets of colonies, see Cecil Johnson, *British West Florida, 1763-1783* (New Haven, Conn., 1943), 43-44. Also see “Some Account of the Government of East and West Florida,” *Gentleman's Magazine* 33 (1763): 552-54, for a plan to lure the contraband bullion trade from the West Indies to West Florida. A more recent discussion can be found in Fabel, *Economy of British West Florida*, ch. 4.

60. Representation of the Council and Assembly to the Board of Trade and Plantations, 22 November 1766, CO 5/584, 297, PRO. Overestimation always took place in such documents, but this does not mean that the *idea* of increasing trade can be easily dismissed.

61. British Law prohibited the importation of goods to British territories in non-British ships or in vessels that had not first docked in England. The British state's response to sending the provincial sloop into Spanish ports is extraordinarily telling. It thanked the Governor for the information he had acquired on the lost ship. It ignored, completely, the information on encouraging an illegal trade; see the Earl of Shelburne to Montfort Browne, 23 February 1768, CO 5/585, PRO. For a discussion of the Navigation Acts, see Holt, *A System of the Shipping and Navigation Laws*, 22-84.

than five or six Spanish vessels have come in here [Pensacola] since the sloop's return to the great satisfaction of the Merchants and Inhabitants of the Province." Indeed, as he wrote, there were "three in the harbour laden chiefly with Bullion and some logwood &ca, which they are bartering for British merchandise."⁶² It bears mentioning that Pensacola was *not* a free port.

As more ships from Spanish territories docked in West Florida, British coffers filled with Spanish bullion. The British assured themselves that they did not break as many of their own laws as did the Spanish.⁶³ Of course, both sides engaged in an explicitly prohibited commerce. It is, nevertheless, conceivable that Lieutenant Governor Browne exaggerated its extent in order to portray a healthier colonial trade and revenue stream than in fact existed. Doing so, he reasoned, might induce London ministers to overlook the large number of flagrant legal transgressions.⁶⁴

The British in West Florida (as well as those residing further north) themselves made regular trading ventures from Mobile and Pensacola to the Spanish colony at New Orleans.⁶⁵ Only a few of these excursions ended up as subjects of correspondence between British and Spanish diplomats, or between British colonial officials and London ministers.⁶⁶ The prohibited commercial exchanges they described generally benefited residents in both imperial worlds. Colonists—Spanish, British, and the remaining Louisiana French—collectively pushed the Seventh Article of the 1763 Treaty

62. Montfort Browne to Lord Shelburne, 1 February 1768, CO 5/585, PRO.

63. A very brief discussion of some of the situations where this occurred can be found in Fabel, *Economy of British West Florida*, 85ff. The main Spanish laws to have been broken are discussed in Holmes, "Some Economic Problems," 523.

64. Lt. Governor Montfort Browne has not been the subject of a sustained biography. Little that could not be found on his list of professional qualifications is known. For a brief resumé of his stormy career in the 1760s and 1770s, see Johnson, *British West Florida*, 61n. A discussion of his policies can also be found there on pp. 61-75. Browne owned property in West Florida and was constantly trying to balance his own personal interests against professional responsibilities in the colony. For one example, see Fabel, *Economy of British West Florida*, 12-13. Also see local residents' complaints against Browne in CO 5/585, 207, PRO; and "A Letter from a Gentleman in Pensacola, to his Friend in South Carolina," printed in the year 1767, Add. MSS 21673, f. 40-43, British Library.

65. France ceded Louisiana to Spain in compensation for the losses of the Floridas in 1763; Weber, *Spanish Frontier*, 198-203.

66. Indeed, British residents resided openly in New Orleans. Several cases where diplomatic remonstrance was made can be found in Caughey, "Bernardo de Gálvez and the English Smugglers on the Mississippi," 46-58.

of Paris to its limit. This article promised free navigation on the Mississippi River. Spanish authorities in New Orleans (beginning with Antonio Ulloa in 1767 and, more importantly, with Alejandro O'Reilly two years later) officially remained dedicated to upholding the letter of the law. Free *navigation* on the Mississippi, however, in no way implied free *trade* between Spanish and British colonists.⁶⁷

Residents of both colonies avoided strict statutory compliance because they materially benefitted. Plying up and down the lower Mississippi was completely acceptable, even though foreign ships docking in Spanish territory remained prohibited, especially for commercial intercourse. Because Louisiana colonists *wanted* to trade with the British, officials who tried to enforce the distinction between trade and navigation caused significant local uproar. Not coincidentally, this also made carrying out the rest of their official responsibilities all the more difficult.⁶⁸

In 1772, the Council of West Florida received information from Governor Peter Chester that British subjects regularly sold British-built ships in the French West Indies. Moreover, Chester asserted that the French buyers had been allowed to keep the vessels' original British registers.⁶⁹ With these documents and their accompanying flags, French traders continued to gain access to the Mississippi; (the French had given up their trading rights when they ceded Louisiana to Spain). French-crewed ships, though claiming to be

67. A close reading of the seventh article guaranteed only free *navigation* on the river. Vessels belonging to the subjects of either France (later Spain) and Britain could not be stopped or made liable to pay any duties. *Trade* on the river was never discussed. See *A Collection of all the Treaties of Peace, Alliance, and Commerce between Great Britain and other Powers, from the Revolution in 1688 to the Present Time* 2 vols. (London, 1772), 2: 277. For a discussion of the administration of O'Reilly and his relationship with British merchants, see Brown, "Anglo-Spanish Relations in America in the Closing Years of the Colonial Era," 369-72.

68. In fact, about one thousand French subjects drove Spanish Governor Ulloa out of the colony at the end of 1768. They likely did so for interfering in their (illicit) trading practices; Montfort Browne to Lord Hillsborough, 1 December 1768, CO 5/586, 11, PRO; Browne to Hillsborough, 18 February 1769, CO 5/586, 81, PRO; Weber, *Spanish Frontier*, 201-202; Caughey, *Bernardo de Gálvez*, 29ff. See Holmes, "Some Economic Problems," 524-28, for discussions of Ulloa's successor's (Alejandro O'Reilly) efforts to prevent contraband and cause New Orleans to behave more like other Spanish colonies in America.

69. While selling a British-built ship was not technically illegal under the Navigation Act, it was illegal to include the British register in the sale. See Johnson, *West Florida*, 192. Also see Holt, *A System of the Shipping and Navigation Laws*.

British, sold French goods to French residents of the formerly French colony. West Floridians suspiciously viewed these trading visits as a threat to their own navigation (and pretended trading) rights in Louisiana. Officials in Pensacola urged the London government to act against such fraud. Though residents of West Florida acted illegally on a regular basis, they sought to distinguish their own transgressions from those of foreigners. As their first step, West Floridians pestered the Admiral in charge of Britain's naval station in Jamaica, Sir George Rodney, to intercept the French when they tried to enter the Mississippi.⁷⁰

Rodney declined to act. Claiming that he had no ships to send, Rodney maintained that he and other British naval officers had earlier tried to stop the French imposters and received no assistance whatsoever from the mainland colonists. He asserted that the very British subjects who now requested his assistance had themselves willfully violated their own country's navigation acts in the not-too-distant past. Furthermore, Rodney implied that provincial residents generally gained from their own clandestine foreign trade and that corrupt British officials found ways to admit prohibited goods into British territory.

Whether in the form of bribes or as smuggled goods, British subjects in West Florida profited from ships with false registers. As Rodney observed, "the Commanders of the [British naval] Ships that have from time to time been sent to Pensacola have been under the strictest orders to cruize on your coast for the Protection of your Trade and Commerce as well as to prevent any illicit or contraband commodities being brought to or from your Province by Foreigners or others."⁷¹ He placed the blame for his ship's failure to stop the contraband trade squarely on the shoulders of

70. See the West Florida Council Minutes, 15 December 1772, CO 5/590, 131, PRO. An excellent discussion of the ways in which the British were able to control, de facto, the trade on the Mississippi can be found in Johnston, *West Florida*, 192-93. Spanish contemporaries reckoned that the British trade amounted to something like \$585,000 of \$600,000 annually. This is perhaps an exaggeration, but in any case it points to the degree to which the British had managed to get around both their own and Spanish law.

71. George Rodney to Peter Chester, n.d., CO 5/590, 265, PRO. In general, London's official policies supported Rodney and other naval officers in their efforts to halt the trade. On an unofficial level, if West Florida could achieve economic self-sufficiency and bring revenue into the British treasury, then the colony's method of acquiring such wealth diminished in significance; it would bring in wealth rather than create additional government expenditure.

Pensacola's population: "if the Captains had not been prevailed on to remain in Port, which they have informed they were by repeated entreaties from your Excellency and Council no doubt but a great part of your grievances might have been redressed and a Check put on the practice that doubtless is hurtful to the fair British Trader."⁷²

The Floridians had been bested at their own illegal game. Because the French regularly plied Florida's Gulf waters, Governor Chester had kept the British navy away so that Florida might be able to lure them into port for trade. When the French began to pretend to be British, however, in order to compete in the Mississippi, the colonial governor sought naval assistance. Colonial officials clearly spoke out of both sides of their mouths, and Rodney refused to play their game and selectively enforce imperial policies.

Free navigation on the Mississippi remained a thorny issue. Despite their strict public stance, Spanish officials infrequently seized British ships for illegal trading in Louisiana. To have done so would likely have increased the colony's French residents' antipathy. Governor Luís de Unzaga rationalized a rare interference in the colony's illegal Mississippi commerce in 1774: "[A]s from the Permission of a free Navigation, it does not follow that a free commerce should be opened, which the King [of Spain] prohibits in the Ports of America, Nash [a Rhode Island merchant] being more than suspected of having carried on an illicit Trade with the Country People, bringing his Goods into the City in his own Long Boat, and with his own sailors, who were taken up at the moment they were landing."⁷³ Unzaga did not bring to bear the full weight of the force available to him. To have done so could have provoked the colony's residents into action against him. A result of understanding local conditions and the particularities of life for those

72. Ibid.

73. Luís de Unzaga and Amezezo to Governor Peter Chester, 17 June 1774, CO 5/591, 423, PRO. The Nash case is also discussed in Johnson, *West Florida*, 194. Johnson argued that it was remarkable that Spanish authorities arrested Nash. This ignores the law itself. Governor Unzaga had clearly tried to uphold the principle that navigation and trade were not the same thing. (The British government would ultimately agree with this position.) His population did not support him, as they wanted to trade with the British, which ultimately led to releasing Nash and his goods. The law had been effectively rewritten; see Caughey, "Bernardo de Gálvez and the English Smugglers on the Mississippi," 50; Thomas N. Ingersoll, *Mammon and Manon in Early New Orleans: The First Slave Society in the Deep South, 1718-1819* (Knoxville, Tenn., 1999), 157; Fabel, *Economy of British West Florida*, 92-93.

whom he governed, Unzaga's tenure as governor lasted seven years, precisely because he understood that the population wanted, or perhaps needed, to trade illegally.

By contrast, Don Bernardo de Gálvez assumed control of New Orleans early in 1777. He was twenty-one years old, idealistic, and the nephew of Spain's Secretary of the Indies. Gálvez saw the eradication of contraband commerce as one of his principal missions. His mettle was quickly tested. In April 1777, a British schooner seized three small Spanish vessels on Lake Pontchartrain.⁷⁴ Gálvez ordered—as he had fully intended to do as part of his plan to clean house, and in seeming retaliation—all British ships then on the Mississippi to be arrested, condemned, and sold. He correctly surmised that they were not simply navigating the river. The amounts garnered from the eleven seized British vessels, according to the British Government report, totaled \$54,475—no insignificant sum, even after allowing for an inflated claim.⁷⁵

As might be expected, hostilities between Gálvez and Governor Peter Chester of West Florida rapidly escalated. The seizures of British property were simply too great to ignore. Absent a declaration of war, colonial Florida's officials believed that they needed to protest their subjects' losses. The London government concurred, entered diplomatic remonstrances, and waited.⁷⁶ West Florida's governor dispatched special agents Alexander Dickson and John Stephenson to New Orleans to investigate the real causes of the April seizure.

74. Johnson, *West Florida*, 196; Fabel, *Economy of British West Florida*, 97-98. That a twenty-one year old was named to be governor of a province clearly suggests its peripheral location within the imperial gaze. Gálvez, nonetheless, was certain to enjoy support at home; his uncle, Don José de Gálvez, served as Secretary of State and as the ranking official on the Council of the Indies. Gálvez claimed that the Spanish boats seized were bringing tar to be shipped to Havana and *not* to West Florida. See Caughey, "Bernardo de Gálvez and the English Smugglers on the Mississippi," 52. A discussion of the Spanish failure to eradicate contraband in general can be found in Sanders, "Counter-Contraband in Spanish America," 59-85.

75. See Dickson's and Stephenson's Report to Governor Chester, 1777, CO 5/594, 170.

76. For an indication of the kind of correspondence that led to a diplomatic protest, see Peter Chester to Don Bernardo de Gálvez, 28 May 1778, PRO. Chester was protesting the seizure of property by American rebels and their being allowed to dispose of the "plunder" in Spanish New Orleans when Britain and Spain were at peace.

For his part, Gálvez almost immediately opened the Mississippi to French navigation. Because Spain would likely join the (French and American) war then in progress against Britain, this made perfect sense.⁷⁷ As military hostilities appeared on the horizon, long ignored contraband commerce suddenly became actionable. Many ships that had pretended to be British in order to claim the right of free Mississippi navigation unfurled their French flags immediately upon learning of the Louisiana governor's new policy. This, of course, verified the truth of West Florida's complaint several years earlier.⁷⁸

Governor Gálvez insisted that special agents Dickson and Stephenson present their commissions and instructions to him *before* he would discuss Mississippi River seizures. Their mission failed as a result. When Gálvez read their commissions, he learned that Governor Chester had charged Dickson and Stephenson not simply with collecting details about seizures in the Mississippi but also with learning any Spanish plans for war that might then be afoot in New Orleans. Gálvez's orders to seize British ships struck British officials as a portent of what was to come. He predictably refused to allow the Floridians to come ashore, maintaining that doing so would allow foreigners to investigate a sitting governor's actions, based upon incomplete knowledge of the circumstances and unfamiliarity with Spanish legal traditions. If he had acted against the 1763 Treaty, as they claimed, he would surely face censure from the Council of the Indies in Spain. He had at once neutralized the complaint while simultaneously allowing for further appeals (to his Uncle) in Europe.

Gálvez continued with a particularly eloquent case about the relationship between law and custom. Power to enforce the law had always been evident. Though the law may well have been customarily ignored, this was not his problem: he had the *right* to utilize it. Just as Britain implemented similar policies after 1763 with its North American colonists, so too did Gálvez urge a strict interpretation of statutes already on the books.⁷⁹ While acknowledging a

77. A brief discussion can be found in Holmes, "Some Economic Problems," 529.

78. See Chester to Germain, 10 March and 11 June 1777, CO 5/593, 259 and 311, PRO. For a discussion of the decree opening the Mississippi, see Caughey, "Bernardo de Gálvez and the English Smugglers on the Mississippi," 51; Copy of Dickson's and Stephenson's Report to Governor Chester, 161.

79. The parallel to be made in the years after 1763 is the case that the British government made about legal enforcement of trading restrictions then on the books. New England, and other merchants regularly violated the Navigation

culture of illegality, he did not wish to recognize either its function or its legitimacy. "If when New Orleans belonged to France," Gálvez wrote, and "[t]rade was permitted and encouraged, what was then done cannot be brought as an Example for the present time and if it was tacitly permitted by my predecessors, altho I doubt it...neither can [it] oblige me to permit it Contrary to the Intentions of my Sovereign." The Governor then went on to address the larger problem of illegal trading between colonies. "*Custom has the force of Law, but abuse has not*," he wrote; "And if for such a reason the English could not Suspect or dread their having committed any Infraction to bring on the Confiscation in April last, it was an ill-founded confidence, for a crime is not justified by having often escaped Punishment or by Punishment being retarded."⁸⁰

If Gálvez's motivation for ending prohibited commerce was not completely above reproach, he was nonetheless on solid legal footing. British ships traded illegally with residents of New Orleans. Louisiana's governor ordered the British ships seized immediately after learning of British captures of Spanish vessels in Lake Pontchartrain and several days after another incident in which a British ship, carrying on a contraband trade with the inhabitants of Louisiana, attacked a Spanish ship on the Mississippi River.⁸¹ In that case, the British unsealed the Iberian ship's registers and confined the Captain.

Gálvez's retaliatory actions demonstrate that imperial politics immediately before and during wartime could easily affect inter-colonial relations. Hostility between empires during periods of war exposed smuggling and forced many officials to prevent activities that they had once tacitly sanctioned. British colonists who had been lulled into thinking that their illegal trade would be indefinitely permitted were surprised by Gálvez's actions. They could only feebly justify their behavior by maintaining that Spanish laws

Acts. But that did not mean, from Britain's perspective, that the law had been rewritten. They could enforce it whenever they liked. And they did, mightily irritating colonists—and leading to the American Revolution.

80. Governor Gálvez to Alexander Dickson and John Stephenson, 26 August 1777, CO 5/594, 155, PRO. For a discussion of the force of custom relative to law, see White, *New Collection of the Laws*, 1: 36.

81. Gálvez was aware that this could be an issue and addressed it in his response; see Governor Gálvez to Alexander Dickson and John Stephenson, 26 August 1777, 155-56; Copy of Dickson's and Stephenson's Report to Governor Chester, 161.

applied only *within* Spanish territory and not on international waterways like the Mississippi.

Upon learning the situation's details, London ministers sided with the Spanish government and its Louisiana representative. Maintaining that the borders of Spanish territory were indeed clear, the British government rehearsed the facts. Britain and Spain jointly held river navigation. Spain held all of the territory from the Balize, at the river's mouth, to the Iberville River, as well as all territory on the west side of a line drawn down the center of the Mississippi above the Iberville. Freely navigating the Mississippi meant staying in the middle of the river and away from the shores. Boards to either of the banks, London officials maintained, could justify seizures—usually by the Spanish.⁸² The treaty had always been clear; London officialdom knew it. So too did the colonists.

In efforts to circumvent this policy, floating emporia appeared in Louisiana. In the 1760s and 1770s, ships from West Florida, along with some from Britain's mainland colonies to the North and several British and French Caribbean islands, supplied Louisiana residents with the manufactured goods and agricultural products (such as flour) that they lacked and which Spanish supply routes made difficult to obtain legally. In theory, they did so by enticing customers away from the shore. Those Louisiana residents who could get to the middle of the river, and complete a transaction, violated Spanish laws. Local Spanish authorities would then have had the right to seize any goods that their residents had purchased. But that almost never happened. As importantly, though foreign ships docked in New Orleans could legally be captured, for breaching Spanish laws of trade, they were only occasionally harassed.

When they decided to tolerate legal violations or to enforce statutes, local officials weighed what was politically expedient and economically desirable in the colony against the demands of the European governments that they represented. Because colonial populations favored commercial development and needed its proceeds to achieve higher standards of living, any activities that led to the accumulation of property—even if based on illegal behavior—

82. See George Germain to Governor Peter Chester, 5 August 1778, CO 5/594, 607, PRO. Germain was also careful to make sure that no retaliation against the Spanish took place—at least while Spain and Britain remained at peace with each other. The fact that British merchants resided openly at New Orleans until their expulsion during the war is yet more indication that the culture of illegality existed prior to the outbreak of hostilities.

frequently resulted in imperial directives being ignored and officials issuing denials that such activity took place. Many governors willingly let slide the letter of the law. Still, Bernardo de Gálvez, who the Spanish government would later reward for his conquest of West Florida, clearly chose to favor his employers in Seville over his resident subjects.⁸³ Gálvez could get away with such behavior because he acted on the eve of and during war. Other governors in the region generally favored local interests over those of the state that employed them.⁸⁴

In March of 1781, twenty-one months after war broke out between Britain and Spain, the Spanish overtook West Florida. They gave British colonists approximately eighteen months to evacuate their settlements. Despite an American effort to annex the colony in 1812, it remained in Spanish hands until 1819. Spain gained greater control of Louisiana's ports and navigation of the territory's rivers than it ever had in the days of Gálvez and his predecessors. Yet, the practice of enticing Spanish colonists to contravene Spanish law never altogether disappeared, although this time it was at the behest of United States residents.

As in the past, as long as imperial and national policies restricted trade and consumption, contraband held widespread popular appeal. Colonists wanted goods at fair prices, or at least prices that they could afford to pay. Consumption, whether legal or not, was the key to the upward mobility that many colonists sought. It transcended national and colonial frontiers. And it challenged the scruples of those whose occupation required them to enforce the law. More often than not, they sided with consumers and against their employers, even as they claimed to do just the opposite.

83. For a discussion of Gálvez's promotion, see Weber, *Spanish Frontier*, 268.

84. British subjects in West Florida began to complain about Governor Peter Chester for failing to disobey the British decision not to protest Gálvez's seizure of British ships in the Mississippi. They had apparently determined that he no longer served their interests; see CO 5/595, 401, PRO. Gálvez soon read decrees that put a stop to British contraband by making cheaper goods available from the French and through Cuba. See Caghey, "Bernardo de Gálvez and the English Smugglers on the Mississippi," 58.

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