

**ALFRED  
THAYER  
MAHAN**

SEA POWER IN ITS  
RELATIONS TO THE WAR  
OF 1812. VOLUME 1

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**the War of 1812. Volume 1**

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# **A. T. Mahan**

## **Sea Power in its Relations to the War of 1812 / Volume 1**

### **PREFACE**

The present work concludes the series of "The Influence of Sea Power upon History," as originally framed in the conception of the author. In the previous volumes he has had the inspiring consciousness of regarding his subject as a positive and commanding element in the history of the world. In the War of 1812, also, the effect is real and dread enough; but to his own country, to the United States, as a matter of national experience, the lesson is rather that of the influence of a negative quantity upon national history. The phrase scarcely lends itself to use as a title; but it represents the truth which the author has endeavored to set forth, though recognizing clearly that the victories on Lake Erie and Lake Champlain do illustrate, in a distinguished manner, his principal thesis, the controlling influence upon events of naval power, even when transferred to an inland body of fresh water. The lesson there, however, was the same as in the larger fields of war heretofore treated. Not by rambling operations, or naval duels, are wars decided, but

by force massed, and handled in skilful combination. It matters not that the particular force be small. The art of war is the same throughout; and may be illustrated as really, though less conspicuously, by a flotilla as by an armada; by a corporal's guard, or the three units of the Horatii, as by a host of a hundred thousand.

The interest of the War of 1812, to Americans, has commonly been felt to lie in the brilliant evidence of high professional tone and efficiency reached by their navy, as shown by the single-ship actions, and by the two decisive victories achieved by little squadrons upon the lakes. Without in the least overlooking the permanent value of such examples and such traditions, to the nation, and to the military service which they illustrate, it nevertheless appears to the writer that the effect may be even harmful to the people at large, if it be permitted to conceal the deeply mortifying condition to which the country was reduced by parsimony in preparation, or to obscure the lessons thence to be drawn for practical application now. It is perhaps useless to quarrel with the tendency of mankind to turn its eyes from disagreeable subjects, and to dwell complacently upon those which minister to self-content. We mostly read the newspapers in which we find our views reflected, and dispense ourselves easily with the less pleasing occupation of seeing them roughly disputed; but a writer on a subject of national importance may not thus exempt himself from the unpleasant features of his task.

The author has thought it also essential to precede his work by

a somewhat full exposition of the train of causes, which through a long series of years led to the war. It may seem at first far-fetched to go back to 1651 for the origins of the War of 1812; but without such preliminary consideration it is impossible to understand, or to make due allowance for, the course of Great Britain. It will be found, however, that the treatment of the earlier period is brief, and only sufficient for a clear comprehension of the five years of intense international strain preceding the final rupture; years the full narrative of which is indispensable to appreciating the grounds and development of the quarrel,—to realize what they fought each other for.

That much of Great Britain's action was unjustifiable, and at times even monstrous, regarded in itself alone, must be admitted; but we shall ill comprehend the necessity of preparation for war, if we neglect to note the pressure of emergency, of deadly peril, upon a state, or if we fail to recognize that traditional habits of thought constitute with nations, as with individuals, a compulsive moral force which an opponent can control only by the display of adequate physical power. Such to the British people was the conviction of their right and need to compel the service of their native seamen, wherever found on the high seas. The conclusion of the writer is, that at a very early stage of the French Revolutionary Wars the United States should have obeyed Washington's warnings to prepare for war, and to build a navy; and that, thus prepared, instead of placing reliance upon a system of commercial restrictions, war should have been

declared not later than 1807, when the news of Jena, and of Great Britain's refusal to relinquish her practice of impressing from American ships, became known almost coincidentally. But this conclusion is perfectly compatible with a recognition of the desperate character of the strife that Great Britain was waging, that she could not disengage herself from it, Napoleon being what he was; and that the methods which she pursued did cause the Emperor's downfall, and her own deliverance, although they were invasions of just rights, to which the United States should not have submitted.

If war is always avoidable, consistently with due resistance to evil, then war is always unjustifiable; but if it is possible that two nations, or two political entities, like the North and South in the American Civil War, find the question between them one which neither can yield without sacrificing conscientious conviction, or national welfare, or the interests of posterity, of which each generation in its day is the trustee, then war is not justifiable only; it is imperative. In these days of glorified arbitration it cannot be affirmed too distinctly that bodies of men—nations—have convictions binding on their consciences, as well as interests which are vital in character; and that nations, no more than individuals, may surrender conscience to another's keeping. Still less may they rightfully pre-engage so to do. Nor is this conclusion invalidated by a triumph of the unjust in war. Subjugation to wrong is not acquiescence in wrong. A beaten nation is not necessarily a disgraced nation; but the nation or man

is disgraced who shirks an obligation to defend right.

From 1803 to 1814 Great Britain was at war with Napoleon, without intermission; until 1805 single handed, thenceforth till 1812 mostly without other allies than the incoherent and disorganized mass of the Spanish insurgents. After Austerlitz, as Pitt said, the map of Europe became useless to indicate distribution of political power. Thenceforth it showed a continent politically consolidated, organized and driven by Napoleon's sole energy, with one aim, to crush Great Britain; and the Continent of Europe then meant the civilized world, politically and militarily. How desperate the strife, the author in a previous work has striven fully to explain, and does not intend here to repeat. In it Great Britain laid her hand to any weapon she could find, to save national life and independence. To justify all her measures at the bar of conventional law, narrowly construed, is impossible. Had she attempted to square herself to it she would have been overwhelmed; as the United States, had it adhered rigidly to its Constitution, must have foregone the purchase of the territories beyond the Mississippi. The measures which overthrew Napoleon grievously injured the United States; by international law grievously wronged her also. Should she have acquiesced? If not, war was inevitable. Great Britain could not be expected to submit to destruction for another's benefit.

The author has been indebted to the Officers of the Public Records Office in London, to those of the Canadian Archives, and to the Bureau of Historical Research of the Carnegie

Institution of Washington, for kind and essential assistance in consulting papers. He owes also an expression of personal obligation to the Marquis of Londonderry for permission to use some of the Castlereagh correspondence, bearing on the peace negotiations, which was not included in the extensive published *Memoirs and Correspondence of Lord Castlereagh*; and to Mr. Charles W. Stewart, the Librarian of the United States Navy Department, for inexhaustible patience in searching for, or verifying, data and references, needed to make the work complete on the naval side.

*A.T. MAHAN.*

September, 1905.

# CHAPTER I

## COLONIAL CONDITIONS

The head waters of the stream of events which led to the War of 1812, between the United States and Great Britain, must be sought far back in the history of Europe, in the principles governing commercial, colonial, and naval policy, accepted almost universally prior to the French Revolution. It is true that, before that tremendous epoch was reached, a far-reaching contribution to the approaching change in men's ideas on most matters touching mercantile intercourse, and the true relations of man to man, of nation to nation, had been made by the publication, in 1776, of Adam Smith's "Inquiry into the Nature and Causes of the Wealth of Nations;" but, as is the case with most marked advances in the realm of thought, the light thus kindled, though finding reflection here and there among a few broader intellects, was unable to penetrate at once the dense surface of prejudice and conservatism with which the received maxims of generations had incrustated the general mind. Against such obstruction even the most popular of statesmen—as the younger Pitt soon after this became—cannot prevail at once; and, before time permitted the British people at large to reach that wider comprehension of issues, whereby alone radical change is made possible, there set in an era of reaction consequent upon

the French Revolution, the excesses of which involved in one universal discredit all the more liberal ideas that were leavening the leaders of mankind.

The two principal immediate causes of the War of 1812 were the impressment of seamen from American merchant ships, upon the high seas, to serve in the British Navy, and the interference with the carrying trade of the United States by the naval power of Great Britain. For a long time this interference was confined by the British Ministry to methods which they thought themselves able to defend—as they did the practice of impressment—upon the ground of rights, prescriptive and established, natural or belligerent; although the American Government contended that in several specific measures no such right existed,—that the action was illegal as well as oppressive. As the war with Napoleon increased in intensity, however, the exigencies of the struggle induced the British cabinet to formulate and enforce against neutrals a restriction of trade which it confessed to be without sanction in law, and justified only upon the plea of necessary retaliation, imposed by the unwarrantable course of the French Emperor. These later proceedings, known historically as the Orders in Council,<sup>1</sup> by their enormity dwarfed all previous causes of complaint, and with the question of impressment constituted the vital and

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<sup>1</sup> Order in Council was a general term applied to all orders touching affairs, internal as well as external, issued by the King in Council. The particular orders here in question, by their extraordinary character and wide application, came to have a kind of sole title to the expression in the diplomatic correspondence between the two countries.

irreconcilable body of dissent which dragged the two states into armed collision. Undoubtedly, other matters of difficulty arose from time to time, and were productive of dispute; but either they were of comparatively trivial importance, easily settled by ordinary diplomatic methods, or there was not at bottom any vital difference as to principle, but only as to the method of adjustment. For instance, in the flagrant and unpardonable outrage of taking men by force from the United States frigate "Chesapeake," the British Government, although permitted by the American to spin out discussion over a period of four years, did not pretend to sustain the act itself; the act, that is, of searching a neutral ship of war. Whatever the motive of the Ministry in postponing redress, their pretexts turned upon points of detail, accessory to the main transaction, or upon the subsequent course of the United States Government, which showed conscious weakness by taking hasty, pettish half-measures; instead of abstaining from immediate action, and instructing its minister to present an ultimatum, if satisfaction were shirked.

In the two causes of the war which have been specified, the difference was fundamental. Whichever was right, the question at stake was in each case one of principle, and of necessity. Great Britain never claimed to impress American seamen; but she did assert that her native-born subjects could never change their allegiance, that she had an inalienable right to their service, and to seize them wherever found, except within foreign territory.

From an admitted premise, that the open sea is common to all nations, she deduced a common jurisdiction, in virtue of which she arrested her vagrant seamen. This argument of right was reinforced by a paramount necessity. In a life and death struggle with an implacable enemy, Great Britain with difficulty could keep her fleet manned at all; even with indifferent material. The deterioration in quality of her ships' companies was notorious; and it was notorious also that numerous British seamen sought employment in American merchant ships, hoping there to find refuge from the protracted confinement of a now dreary maritime war. Resort to impressment was not merely the act of a high-handed Government, but the demand of both parties in the state, coerced by the sentiment of the people, whose will is ultimately irresistible. No ministry could hope to retain power if it surrendered the claim to take seamen found under a neutral flag. This fact was thoroughly established in a long discussion with United States plenipotentiaries, five years before the war broke out.

On the other hand, the United States maintained that on the sea common the only jurisdiction over a ship was that of its own nation. She could not admit that American vessels there should be searched, for other purposes than those conceded to the belligerent by international law; that is, in order to determine the nature of the voyage, to ascertain whether, by destination, by cargo, or by persons carried, the obligations of neutrality were being infringed. If there was reasonable cause for suspicion, the

vessel, by accepted law and precedent, might be sent to a port of the belligerent, where the question was adjudicated by legal process; but the actual captor could not decide it on the spot. On the contrary, he was bound, to the utmost possible, to preserve from molestation everything on board the seized vessel; in order that, if cleared, the owner might undergo no damage beyond the detention. So deliberate a course was not suited to the summary methods of impressment, nor to the urgent needs of the British Navy. The boarding officer, who had no authority to take away a bale of goods, decided then and there whether a man was subject to impressment, and carried him off at once, if he so willed.

It is to the credit of the American Government under Jefferson, that, though weak in its methods of seeking redress, it went straight back of the individual sufferer, and rested its case unswervingly on the broad principle.<sup>2</sup> That impressment, thus practised, swept in American seamen, was an incident only, although it grievously aggravated the injury. Whatever the native allegiance of individuals on board any vessel on the open ocean, their rights were not to be regulated by the municipal law of the belligerent, but by that of the nation to which the ship belonged, of whose territory she was constructively a part, and whose flag therefore was dishonored, if acquiescence were yielded to an infringement of personal liberty, except as conceded by obligations of treaty, or by the general law of nations.

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<sup>2</sup> Instructions of Madison, Secretary of State, to Monroe, Minister to Great Britain, January 5, 1804. Article I. American State Papers, vol. iii. p. 82.

Within British waters, the United States suffered no wrong by the impressment of British subjects—the enforcement of local municipal law—on board American vessels; and although it was suggested that such visits should not be made, and that an arriving crew should be considered to have the nationality of their ship, this concession, if granted, would have been a friendly limitation by Great Britain of her own municipal jurisdiction. It therefore could not be urged upon the British Government by a nation which took its stand resolutely upon the supremacy of its own municipal rights, on board its merchant shipping on the high seas.

It is to be noted, furthermore, that the voice of the people in the United States, the pressure of influence upon the Government, was not as unanimous as that exerted upon the British Ministry. The feeling of the country was divided; and, while none denied the grievous wrong done when an American was impressed, a class, strong at least in intellectual power, limited its demands to precautions against such mistakes and to redress when they occurred. The British claim to search, with the object of impressing British subjects, was considered by these men to be valid. Thus Gouverneur Morris, who on a semi-official visit to London in 1790 had had occasion to remonstrate upon the impressment of Americans in British ports, and who, as a pamphleteer, had taken strong ground against the measures of the British Government injurious to American commerce, wrote as follows in 1808 about the practice of seizing British subjects in American ships: "That we, the people of America, should

engage in ruinous warfare to support a rash opinion, that foreign sailors in our merchant ships are to be protected against the power of their sovereign, is downright madness." "Why not," he wrote again in 1813, while the war was raging, "waiving flippant debate, lay down the broad principle of national right, on which Great Britain takes her native seamen from our merchant ships? Let those who deny the right pay, suffer, and fight, to compel an abandonment of the claim. Men of sound mind will see, and men of sound principle will acknowledge, its existence." In his opinion, there was but one consistent course to be pursued by those who favored the war with Great Britain, which was to insist that she should, without compensation, surrender her claim. "If that ground be taken," he wrote, "the war [on our part] will be confessedly, as it is now impliedly, unjust."<sup>3</sup> Morris was a man honorably distinguished in our troubled national history—a member of the Congress of the Revolution and of the Constitutional Convention, a trained lawyer, a practised financier, and an experienced diplomatist; one who throughout his public life stood high in the estimation of Washington, with whom he was in constant official and personal correspondence. It is to be added that those to whom he wrote were evidently in sympathy with his opinions.

So again Representative Gaston, of North Carolina, a member of the same political party as Morris, speaking from his seat in

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<sup>3</sup> Diary and Letters of Gouverneur Morris, vol. ii. pp. 508, 546.

the House in February, 1814,<sup>4</sup> maintained the British doctrine of inalienable allegiance. "Naturalization granted in another country has no effect whatever to destroy the original primary allegiance." Even Administration speakers did not deny this, but they maintained that the native allegiance could be enforced only within its territorial limits, not on the high seas. While perfectly firm and explicit as to the defence of American seamen,—even to the point of war, if needful,—Gaston spoke of the British practice as a right. "If you cannot by substitute obtain an abandonment of the right, or practice, to search our vessels, regulate it so as to prevent its abuse; waiving for the present, not relinquishing, your objections to it." He expressed sympathy, too, for the desperate straits in which Great Britain found herself. "At a time when her floating bulwarks were her whole safeguard against slavery, she could not view without alarm and resentment the warriors who should have manned those bulwarks pursuing a more gainful occupation in American vessels. Our merchant ships were crowded with British seamen, most of them deserters from their ships of war, and all furnished with fraudulent protections to prove them Americans. To us they were not necessary." On the contrary, "they ate the bread and bid down the wages of native seamen, whom it was our first duty to foster and encourage." This competition with native seamen was one of the pleas likewise of the New England opposition, too much of which was obstinately and reprehensibly factious.

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<sup>4</sup> Annals of Congress. Thirteenth Congress, vol. ii. pp. 1563; 1555-1558.

"Many thousands of British seamen," said Governor Strong of Massachusetts, in addressing the Legislature, May 28, 1813, "deserted that service for a more safe and lucrative employment in ours." Had they not, "the high price for that species of labor would soon have induced a sufficient number of Americans to become seamen. It appears, therefore, that British seamen have been patronized at the expense of our own; and should Great Britain now consent to relinquish the *right of taking her own subjects*, it would be no advantage to our native seamen; it would only tend to reduce their wages by increasing the numbers of that class of men."<sup>5</sup> Gaston further said, that North Carolina, though not a commercial state, had many native seamen; but, "at the moment war was declared, though inquiry was made, I could not hear of a single native seaman detained by British impressment."

It is desirable, especially in these days, when everything is to be arbitrated, that men should recognize both sides of this question, and realize how impossible it was for either party to acquiesce in any other authority than their own deciding between them. "As I never had a doubt," said Morris, "so I thought it a duty to express my conviction that British ministers would not, *dared not*, submit to mediation a question of essential right."<sup>6</sup> "The way to peace is open and clear," he said the following year. "Let the right of search and impressment be acknowledged as

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<sup>5</sup> Niles' Register, vol. iv. p. 234. Author's italics.

<sup>6</sup> Diary and Letters, vol. ii. p. 553.

maxims of public law."<sup>7</sup>

These expressions, uttered in the freedom of private correspondence, show a profound comprehension of the constraint under which the British Government and people both lay. It was impossible, at such a moment of extreme national peril, to depart from political convictions engendered by the uniform success of a policy followed consistently for a hundred and fifty years. For Great Britain, the time had long since passed into a dim distance, when the national appreciation of the sea to her welfare was that of mere defence, as voiced by Shakespeare:

England, hedged in with the main,  
That water-walled bulwark, still secure  
And confident from foreign purposes.<sup>8</sup>

This little world,  
This precious stone set in the silver sea,  
Which serves it in the office of a wall,  
Or as a moat defensive to a house  
Against the envy of less happier lands.<sup>9</sup>

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<sup>7</sup> Ibid., p. 560. Those unfamiliar with the subject should be cautioned that the expression "right of search" is confined here, not quite accurately, to searching for British subjects liable to impressment. This right the United States denied. The "right of search" to determine the nationality of the vessel, and the character of the voyage, was admitted to belligerents then, as it is now, by all neutrals.

<sup>8</sup> King John, Act II. Scene 1.

<sup>9</sup> King Richard II., Act II. Scene 1.

By the middle of the seventeenth century, the perception of Great Britain's essential need to predominate upon the sea had dawned upon men's minds, and thence had passed from a vague national consciousness to a clearly defined national line of action, adopted first through a recognition of existing conditions of inferiority, but after these had ceased pursued without any change of spirit, and with no important changes of detail. This policy was formulated in a series of measures, comprehensively known as the Navigation Acts, the first of which was passed in 1651, during Cromwell's Protectorate. In 1660, immediately after the Restoration, it was reaffirmed in most essential features, and thenceforward continued to and beyond the times of which we are writing. In form a policy of sweeping protection, for the development of a particular British industry,—the carrying trade,—it was soon recognized that, in substance, its success had laid the foundations of a naval strength equally indispensable to the country. Upon this ground it was approved even by Adam Smith, although in direct opposition to the general spirit of his then novel doctrine. While exposing its fallacies as a commercial measure, he said it exemplified one of two cases in which protective legislation was to be justified. "The defence of Great Britain, for example, depends very much upon the number of its sailors and shipping. The Act of Navigation therefore very properly endeavors to give the sailors and shipping of Great Britain the monopoly of the trade of their own country.... It is not impossible that some of the regulations of this famous

Act may have proceeded from national animosity. They are as wise, however, as though they had all been dictated by the most deliberate wisdom.... The Act is not favorable to foreign commerce, nor to the opulence which can arise from that; but defence is of much more importance than opulence. The Act of Navigation is perhaps the wisest of all the commercial regulations of England."<sup>10</sup> It became a dominant prepossession of British statesmen, even among Smith's converts, in the conduct of foreign relations, that the military power of the state lay in the vast resources of native seamen, employed in its merchant ships. Even the wealth returned to the country, by the monopoly

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<sup>10</sup> Inquiry into the Nature and Causes of the Wealth of Nations. Edited by J.E. Thorold Rogers. Oxford, 1880, pp. 35-38. In a subsequent passage (p. 178), Smith seems disposed somewhat to qualify the positive assertion here quoted, on the ground that the Navigation Act had not had time to exert much effect, at the period when some of the most decisive successes over the Dutch were won. It is to be observed, however, that a vigorous military government, such as Cromwell's was, can assert itself in the fleet as well as in the army, creating an effective organization out of scanty materials, especially when at war with a commercial state of weak military constitution, like Holland. It was the story of Rome and Carthage repeated. Louis XIV. for a while accomplished the same. But under the laxity of a liberal popular government, which England increasingly enjoyed after the Restoration, naval power could be based securely only upon a strong, available, and permanent maritime element in the civil body politic; that is, on a mercantile marine. As regards the working of the Navigation Act to this end, whatever may be argued as to the economical expediency of protecting a particular industry, there is no possible doubt that such an industry can be built up, to huge proportions, by sagacious protection consistently enforced. The whole history of protection demonstrates this, and the Navigation Act did in its day. It created the British carrying trade, and in it provided for the Royal Navy an abundant and accessible reserve of raw material, capable of being rapidly manufactured into naval seamen in an hour of emergency.

of the imperial markets, and by the nearly exclusive possession of the carrying trade, which was insured to British commerce by the elaborate regulations of the Act, was thought of less moment. "Every commercial consideration has been repeatedly urged," wrote John Adams, the first United States Minister to Great Britain, "but to no effect; seamen, the Navy, and power to strike an awful blow to an enemy at the first outbreak of war, are the ideas which prevail."<sup>11</sup> This object, and this process, are familiar to us in these later days under the term "mobilization;" the military value of which, if rapidly effected, is well understood.

In this light, and in the light of the preceding experience of a hundred and fifty years, we must regard the course of the British Ministry through that period, extremely critical to both nations, which began when our War of Independence ended, and issued in the War of 1812. We in this day are continually told to look back to our fathers of the Revolutionary period, to follow their precepts, to confine ourselves to the lines of their policy. Let us then either justify the British ministries of Pitt and his successors, in their obstinate adherence to the traditions they had received, or let us admit that even ancestral piety may be carried too far, and that venerable maxims must be brought to the test of existing conditions.

The general movement of maritime intercourse between countries is commonly considered under two principal heads: Commerce and Navigation. The first applies to the interchange

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<sup>11</sup> Works of John Adams, vol. viii. pp. 389-390.

of commodities, however effected; the second, to their transportation from port to port. A nation may have a large commerce, of export and import, carried in foreign vessels, and possess little shipping of its own. This is at present the condition of the United States; and once, in far gone days, it was in great measure that of England. In such case there is a defect of navigation, consequent upon which there will be a deficiency of native seamen; of seamen attached to the country and its interests, by ties of birth or habit. For maritime war such a state will have but small resources of adaptable naval force; a condition dangerous in proportion to its dependence upon control of the sea. Therefore the attention of British statesmen, during the period in which the Navigation Act flourished, fastened more and more upon the necessity of maintaining the navigation of the kingdom, as distinguished from its commerce. Subsidiary to the movement of commerce, there is a third factor, relatively stationary, the consideration of which is probably less familiar now than it was to the contemporaries of the Navigation Act, to whom it was known under the name *entrepôt*. This term was applied to those commercial centres—in this connection maritime centres—where goods accumulate on their way to market; where they are handled, stored, or transshipped. All these processes involve expenditure, which inures to the profit of the port, and of the nation; the effect being the exact equivalent of the local gains of a railroad centre of the present day. It was a dominant object with statesmen of the earlier period to draw

such accumulations of traffic to their own ports, or nations; to force trade, by ingenious legislation, or even by direct coercion, to bring its materials to their own shores, and there to yield to them the advantages of the *entrepôt*. Thus the preamble to one of the series of Navigation Acts states, as a direct object, the "making this Kingdom a staple<sup>12</sup> [emporium], not only of the commodities of our plantations, but also of the commodities of other countries, and places, for the supply of the plantations."<sup>13</sup> An instructive example of such indirect effort was the institution of free ports; ports which, by exemption from heavy customary tolls, or by the admission of foreign ships or goods, not permitted entrance to other national harbors, invited the merchant to collect in them, from surrounding regions, the constituents of his cargoes. On the other hand, the Colonial System, which began to assume importance at the time of the Navigation Act, afforded abundant opportunity for the compulsion of trade. Colonies being part of the mother country, and yet transoceanic with reference to her, maritime commerce between them and foreign communities could by direct legislation be obliged first to seek the parent state, which thus was made the distributing centre for both their exports and imports.

For nearly three centuries before the decisive measures taken

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<sup>12</sup> This primary meaning of the word "staple" seems to have disappeared from common use, in which it is now applied to the commercial articles, the concentration of which at a particular port made that port a "staple."

<sup>13</sup> Bryan Edwards, *West Indies*, vol. ii. p. 448.

by the Parliament of the Commonwealth, the development and increase of English shipping, by regulation of English trade, had been recognized as a desirable object by many English rulers. The impulse had taken shape in various enactments, giving to English vessels privileges, exclusive or qualified, in the import or export carriage of the kingdom; and it will readily be understood that the matter appeared of even more pressing importance, when the Navy depended upon the merchant service for ships, as well as for men; when the war fleets of the nation were composed of impressed ships, as well as manned by impressed sailors. These various laws had been tentative in character. Both firmness of purpose and continuity of effort were lacking to them; due doubtless to the comparative weakness of the nation in the scale of European states up to the seventeenth century. During the reigns of the first two Stuarts, this weakness was emphasized by internal dissensions; but the appreciation of the necessity for some radical remedy to the decay of English naval power remained and increased. To this conviction the ship-money of Charles the First bears its testimony; but it was left to Cromwell and his associates to formulate the legislation, upon which, for two centuries to come, the kingdom was thought to depend, alike for the growth of its merchant shipping and for the maintenance of the navy. All that preceded has interest chiefly as showing the origin and growth of an enduring national conviction, with which the United States came into collision immediately after achieving independence.

The ninth of October, 1651, is the date of the passing of the Act, the general terms of which set for two hundred years the standard for British legislation concerning the shipping industry. The title of the measure, "Goods from foreign ports, by whom to be imported," indicated at once that the object in view was the carrying trade; navigation, rather than commerce. Commerce was to be manipulated and forced into English bottoms as an indispensable agency for reaching British consumers. At this time less than half a century had elapsed since the first English colonists had settled in Massachusetts and Virginia. The British plantation system was still in its beginnings, alike in America, Asia, and Africa. When the then recent Civil War ended, in the overthrow of the royal power, it had been "observed with concern that the merchants of England had for several years usually freighted Dutch ships for fetching home their merchandise, because the freights were lower than in English ships. Dutch ships, therefore, were used for importing our own American products, while English ships lay rotting in harbor."<sup>14</sup> "Notwithstanding the regulations made for confining that branch of navigation to the mother country, it is said that in the West India Islands there used, at this time, out of forty ships to be thirty-eight ships Dutch bottoms."<sup>15</sup> English mariners also, for want of employment, went into the Dutch service. In this way seamen for the navy disappeared, just as, at a later day, they did

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<sup>14</sup> Macpherson, *Annals of Commerce*, vol. ii. p. 443.

<sup>15</sup> Reeves, *History of the Law of Navigation*, Dublin, 1792, p. 37.

into the merchant shipping of the United States.

The one great maritime rival of England, Holland, had thus engrossed, not only the carrying trade of Europe at large, most of which, from port to port, was done by her seamen, but that of England as well. Even of the English coasting trade much was done by Dutch ships. Under this competition, the English merchant marine was dwindling, and had become so inadequate that, when the exclusion of foreigners was enforced by the Act, the cry at once arose in the land that the English shipping was not sufficient for the work thus thrust upon it. "Although our own people have not shipping enough to import from all parts what they want, they are needlessly debarred from receiving new supplies of merchandise from other nations, who alone can, and until now did, import it."<sup>16</sup> The effect of this decadence of shipping upon the resources of men for the navy is apparent.

The existence of strained relations between England and Holland facilitated the adoption of the first Navigation Act, which, as things were, struck the Dutch only; they being the one great carrying community in Europe. Although both the letter and the purpose of the new law included in its prohibitions all foreign countries, the commercial interests of other states were too slight, and their commercial spirit too dull, to take note of the future effect upon themselves; whether absolutely, or in relation to the maritime power of Great Britain, the cornerstone of which was then laid. This first Act directed that

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<sup>16</sup> Macpherson, vol. ii. p. 444.

no merchandise from Asia, Africa, or America, including therein English "plantations," as the colonies were then styled,<sup>17</sup> should be imported into England in other than English-built ships, belonging to English subjects, and of which "the master and mariners are also, for the most part of them, of the people of this commonwealth." This at once reserved a large part of the external trade to English ships; and also, by the regulation of the latter, constituted them a nursery for English seamen. To the general tenor of this clause, confining importation wholly to English vessels, an exception was made for Europe only; importations from any part of which was permitted to "such foreign ships and vessels as do truly and properly belong to the people of that country or place of which the said goods are the growth, production, or manufacture."<sup>18</sup> Foreign merchantmen might therefore import into England the products of their own country; but both they and English vessels must ship such cargoes in the country of origin, not at any intermediate port.

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<sup>17</sup> Reeves, writing in 1792, says that there seemed then no distinction of meaning between "plantation" and "colony." Plantation was the earlier term; "'colony' did not come much into use till the reign of Charles II., and it seems to have denoted the political relation." (p. 109.) By derivation both words express the idea of cultivating new ground, or establishing a new settlement; but "plantation" seems to associate itself more with the industrial beginnings, and "colony" with the formal regulative purpose of the parent state.

<sup>18</sup> The Navigation Acts of 1651, 1660, 1662, and 1663, as well as other subsequent measures of the same character, can be found, conveniently for American readers, in MacDonal's *Select Charters Illustrative of American History*. Macmillan, New York. 1899.

The purpose of these provisos, especially of the second, was to deprive Holland of the profit of the middleman, or the *entrepôt*, which she had enjoyed hitherto by importing to herself from various regions, warehousing the goods, and then re-exporting. The expense of these processes, pocketed by Dutch handlers, and the exaction of any dues levied by the Dutch Treasury, reappeared in increased cost to foreign consumers. This appreciation of the value of the *entrepôt* underlay much of the subsequent colonial regulation of England, and actuated the famous Orders in Council of 1807, which were a principal factor in causing the War of 1812. A second effect of these restrictions, which in later times was deemed even more important than the pecuniary gain, was to compel English ships to go long voyages, to the home countries of the cargoes they sought, instead of getting them near by in Dutch depots. This gave a corresponding development to the carrying trade—the navigation—of the Commonwealth; securing greater employment for ships and seamen, increasing both their numbers and experience, and contributing thereby to the resources of the navy in men. "A considerable carrying trade would be lost to us, and would remain with the merchants of Holland, of Hamburg, and other maritime towns, if our merchants were permitted to furnish themselves by short voyages to those neighboring ports, and were not compelled to take upon themselves the burden of bringing these articles from the countries where they were produced."<sup>19</sup>

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<sup>19</sup> Reeves, History of the Law of Navigation, p. 162.

The Act of 1660, officially known as that of 12 Charles II., modified the provisos governing the European trade. The exclusion of goods of European origin from all transportation to England, save in ships of their own nation, was to some extent removed. This surrender was censured by some, explicitly, because it again enabled the Dutch to collect foreign articles and send them to England, thereby "permitting competition with this country in the longer part of the voyage;" to the injury, therefore, of British navigation. The remission, though real, was less than appeared; for the prohibitions of the Commonwealth were still applied to a large number of specified articles, the produce chiefly of Russia and Turkey, which could be imported only in their national ships, or those of England. As those countries had substantially no long voyage shipping, trade with them was to all practical purposes confined to English vessels.<sup>20</sup> The concession to foreign vessels, such as it was, was further qualified by heavier duties, called aliens' duties, upon their cargoes; and by the requirement that three-fourths of their crew, entering English ports, should be of the same nationality as the ship. The object of this regulation was to prevent the foreign state from increasing its tonnage, by employing seamen other than its own. This went beyond mere protection of English vessels, and was a direct attack, though by English municipal law, upon the growth of

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<sup>20</sup> For instance, in 1769, eighteen hundred and forty vessels passed the Sound in the British trade. Of these only thirty-five were Russian. Considerably more than half of the trade of St. Petersburg with Europe at large was done in British ships. Macpherson, vol. iii. p. 493.

foreign shipping.

This purpose indeed was authoritatively announced from the bench, construing the Act in the decision of a specific case. "Parliament had wisely foreseen that, if they restrained the importation or exportation of European goods, unless in our own ships, and manned with our own seamen, other states would do the same; and this, in its consequences, would amount to a prohibition of all such goods, which would be extremely detrimental to trade, and in the end defeat the very design of the Act. It was seen, however, that many countries in Europe, as France, Spain, and Italy, could more easily buy ships than build them; that, on the other hand, countries like Russia, and others in the North, had timber and materials enough for building ships, but wanted sailors. It was from a consideration of this inaptness in most countries to accomplish a complete navigation, that the Parliament prohibited the importation of most European goods, unless in ships owned and navigated by English, or in ships of the *build of* and manned by sailors of that country of which the goods were the growth. The consequence would be that foreigners could not make use of ships they bought, though English subjects might. This would force them to have recourse to our shipping, and the general intent of the Act, to secure the carrying trade to the English, would be answered as far as it possibly could." It was therefore ruled that the tenor of the Act forbade foreigners to import to England in ships not of their own building; and, adds the reporter, "This exposition

of the Act of Navigation is certainly the true one."<sup>21</sup> Having thus narrowed foreign competition to the utmost extent possible to municipal statutes, Parliament made the carrying industry even more exclusively than before a preserve for native seamen. The Commonwealth's requirement, that "the most" of the crew should be English, was changed to a definite prescription that the master and three-fourths of the mariners should be so.

Under such enactments, with frequent modification of detail, but no essential change of method, British shipping and seamen continued to be "protected" against foreign competition down to and beyond the War of 1812. In this long interval there is no change of conception, nor any relaxation of national conviction. The whole history affords a remarkable instance of persistent policy, pursued consecutively for five or six generations. No better evidence could be given of its hold upon the minds of the people, or of the serious nature of the obstacle encountered by any other state that came into collision with it; as the United States during the Napoleonic period did, in matters of trade and carriage, but especially in the closely related question of Impressment.

Whether the Navigation Act, during its period of vigor, was successful in developing the British mercantile marine and supporting the British Navy has been variously argued. The subsequent growth of British navigation is admitted; but whether this was the consequence of the measure itself has been disputed.

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<sup>21</sup> Opinion of Chief Baron Parker, quoted by Reeves, pp. 187-189.

It appears to the writer that those who doubt its effect in this respect allow their convictions of the strength of economical forces to blind them to the power of unremitting legislative action. To divert national activities from natural channels into artificial may be inexpedient and wasteful; and it may be reasonable to claim that ends so achieved are not really successes, but failures. Nevertheless, although natural causes, till then latent, may have conspired to further the development which the Navigation Act was intended to promote, and although, since its abolition, the same causes may have sufficed to sustain the imposing national carrying trade built up during its continuance, it is difficult to doubt the great direct influence of the Act itself; having in view the extent of the results, as well as the corroborative success of modern states in building up and maintaining other distinctly artificial industries, sometimes to the injury of the natural industries of other peoples, which the Navigation Act also in its day was meant to effect.

The condition of British navigation in 1651 has been stated. The experience of the remaining years of the Protectorate appears to have confirmed national opinion as to the general policy of the Act, and to have suggested the modifications of the Restoration. To trace the full sequence of development, in legislation or in shipping, is not here permissible; the present need being simply to give an account, and an explanation, of the strength of a national prepossession, which in its manifestation was a chief cause of the events that are the theme of this book.

A few scattered details, taken casually, seem strikingly to sustain the claims of the advocates of the system, bearing always in mind the depression of the British shipping industry before the passage of the law. In 1728 there arrived in London from all parts beyond sea 2052 ships, of which only 213 were under foreign flags, less than one in nine. In Liverpool, in 1765, of 1533 entered and cleared, but 135 were foreign; in Bristol, the same year, of 701 but 91 foreign. Of the entire import of that year only 28 per cent, in money value, came from Europe; the carriage of the remaining 72 per cent was confined to British ships. It may, of course, be maintained that this restriction of shipping operated to the disadvantage of the commerce of the kingdom; that there was direct pecuniary loss. This would not be denied, for the object of the Act was less national gain than the upbuilding of shipping as a resource for the navy. Nevertheless, at this same period, in 1764, of 810 ships entering the great North German commercial centre, Hamburg, 267—over one-third—were British; the Dutch but 146, the Hamburgers themselves 157. A curious and suggestive comparison is afforded by the same port in 1769. From the extensive, populous, and fruitful country of France, the *entrepôt* of the richest West Indian colony, Santo Domingo, there entered Hamburg 203 ships, of which not one was French; whereas from Great Britain there came a slightly larger total, 216, of which 178 were British.

Such figures seem to substantiate the general contemporary opinion of the efficacy of the Navigation Act, and to support

the particular claim of a British writer of the day, that the naval weakness of Holland and France was due to the lack of similar measures. "The Dutch have indeed pursued a different policy, but they have thereby fallen to a state of weakness, which is now the object of pity, or of contempt. It was owing to the want of sailors, and not to the fault of their officers, that the ten ships of the line, which during their late impudent quarrel with Britain had been stipulated to join the French fleet, never sailed."<sup>22</sup> "The French Navy, which at all times depended chiefly upon the West India trade for a supply of seamen, must have been laid up, if the war (of American Independence) had continued another year."<sup>23</sup> Whatever the accuracy of these statements,<sup>24</sup> — and they are those of a well-informed man,—they represented a general conviction, not in Great Britain only but in Europe, of the results of the Navigation legislation. A French writer speaks of it as the source of England's greatness,<sup>25</sup> and sums up

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<sup>22</sup> Chalmers, *Opinions on Interesting Subjects of Public Law and Commercial Policy Arising from American Independence*, p. 32.

<sup>23</sup> *Ibid.*, p. 55.

<sup>24</sup> A French naval historian supports them, speaking of the year 1781: "The considerable armaments made since 1778 had exhausted the resources of personnel. To remedy the difficulty the complements were filled up with coast-guard militia, with marine troops until then employed only to form the guards of the ships, and finally with what were called 'novices volontaires,' who were landsmen recruited by bounties. It may be imagined what crews were formed with such elements."—*Troude, Batailles Navales*, vol. ii. p. 202.

<sup>25</sup> Raynal, *Histoire Philosophique des deux Indes*, vol. vii. p. 287 (Edition 1820). Raynal's reputation is that of a plagiarist, but his best work is attributed to far greater

his admiration in words which recognize the respective shares of natural advantages and sagacious supervision in the grand outcome. "Called to commerce by her situation, it became the spirit of her government and the lever of her ambition. In other monarchies, it is private individuals who carry on commerce, but in that happy constitution it is the state, or the nation in its entirety."

In Great Britain itself there was substantial unanimity. This colored all its after policy towards its lately rebellious and now independent children, who as carriers had revived the once dreaded rivalry of the Dutch. To quote one writer, intimately acquainted with the whole theory and practice of the Navigation Acts, they "tend to the establishment of a monopoly; but our ancestors ... considered the defence of this island from foreign invasion as the first law in the national policy. Judging that the dominion of the land could not be preserved without possessing that of the sea, they made every effort to procure to the nation a maritime power of its own. They wished that the merchants should own as many ships, and employ as many mariners as possible. To induce, and sometimes to force, them to this application of their capital, restrictions and prohibitions were devised. The interests of commerce were often sacrificed to this object." Yet he claims that in the end commerce also profited, for "the increase in the number of ships became a spur to seek out employment for them." In 1792, British

registered shipping amounted to 1,365,000 tons, employing 80,000 seamen. Of these, by common practice, two-thirds—say 50,000—were available for war, during which it was the rule to relax the Act so far as to require only one-fourth of the crew to be British. "That the increase in our shipping is to be ascribed to our navigation system appears in the application of it to the trade of the United States. When those countries were part of our plantations, a great portion of our produce was transported to Great Britain and our West India Islands in American bottoms; they had a share in the freight of sugars from those islands to Great Britain; they built annually more than one hundred ships, which were employed in the carrying trade of Great Britain; but since the Independence of those states, since their ships have been excluded from our plantations, and that trade is wholly confined to British ships, we have gained that share of our carrying trade from which they are now excluded."<sup>26</sup> In corroboration of the same tendency, it was also noted during the war with the colonies, that "the shipyards of Britain in every port were full of employment, so that new yards were set up in places never before so used."<sup>27</sup> That is, the war, stopping the intrusion of American colonists into the British carrying trade, just as the Navigation Act prohibited that of foreign nations, created a demand for British ships to fill the vacancy; a result perfectly in keeping with the whole object of the navigation system. But when

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<sup>26</sup> Reeves, pp. 430-434.

<sup>27</sup> Macpherson, vol. iv. p. 10.

hostilities with France began again in 1793, and lasted with slight intermission for twenty years, the drain of the navy for seamen so limited the development of the British navigation as to afford an opening for competition, of which American maritime aptitude took an advantage, threatening British supremacy and arousing corresponding jealousy.

Besides the increase of national shipping, the idea of *entrepôt* received recognition in both the earlier and later developments of the system. Numerous specified articles, produced in English colonies, could be carried nowhere but to England, Ireland, or another colony, where they must be landed before going farther. Because regularly listed, such articles were technically styled "enumerated;" "enumerated commodities being such as must first be landed in England before being taken to foreign parts."<sup>28</sup> From this privilege Ireland was soon after excepted; enumerated goods for that country having first to be landed in England.<sup>29</sup> Among such enumerated articles, tobacco and rice held prominent places and illustrate the system. Of the former, in the first half of the eighteenth century, it was estimated that on an average seventy-two million pounds were sent yearly to England, of which fifty-four million were re-exported; an export duty of sixpence per pound being then levied, besides the cost of handling. Rice, made an enumerated article in 1705, exemplifies aptly the ideas which influenced the multifold manipulation

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<sup>28</sup> Macpherson, *Annals of Commerce*, vol. i. p. 485-486.

<sup>29</sup> Bryan Edwards, *West Indies*, vol. ii. p. 450.

of the nation's commerce in those days. The restriction was removed in 1731, so far as to permit this product to be sent direct from South Carolina and Georgia to any part of Europe south of Cape Finisterre; but only in British ships navigated according to the Act. In this there is a partial remission of the *entrepôt* exaction, while the nursing of the carrying trade is carefully guarded. The latter was throughout the superior interest, inseparably connected in men's minds with the support of the navy. At a later date, West India sugar received the same indulgence as rice; it being found that the French were gaining the general European market, by permitting French vessels to carry the products of their islands direct to foreign continental ports. Rice and sugar for northern Europe, however, still had to be landed in England before proceeding.

The colonial trade in general was made entirely subservient to the support and development of English shipping, and to the enrichment of England, as the half-way storehouse. Into England foreign goods could be imported in some measure by foreign vessels, though under marked restrictions and disabilities; but into the colonies it was early forbidden to import any goods, whatever their origin, except in English-built ships, commanded and manned in accordance with the Act. Further, even in such ships they must be imported from England itself, not direct; not from the country of origin. The motive for this statute of 1663<sup>30</sup> is avowed in the preamble: to be with a view of maintaining

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<sup>30</sup> Officially, Statute of 15 Charles II.

a greater correspondence and kindness between them and the mother country, keeping the former in a firmer dependence upon the latter, and to make this kingdom the staple both of the commodities of the plantations, and of other countries in order to supply them. Further, it was alleged that it was the usage of nations to keep their plantation trade to themselves.<sup>31</sup> In compensation for this subjection of their trade to the policy of the mother country, the supplying of the latter with West India products was reserved to the colonists.

Thus, goods for the colonies, as well as those from the colonies, from or to a foreign country,—from or to France, for example,—must first be landed in England before proceeding to the ultimate destination. Yet even this cherished provision, enforced against the foreigner, was made to subserve the carrying trade—the leading object; for, upon re-exportation to the colonies, there was allowed a drawback of duties paid upon admission to England, and permanent upon residents there. The effect of this was to make the articles cheaper in the colonies than in England itself, and so to induce increased consumption. It was therefore to the profit of the carrier; and the more acceptable, because the shipping required to bring home colonial goods was much in excess of that required for outward cargoes, to the consequent lowering of outward freights. "A regard to the profits of freights," writes a contemporary familiar with the subject,

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<sup>31</sup> Reeves, p. 50.

"as much as the augmentation of seamen, dictated this policy."<sup>32</sup> From the conditions, it did not directly increase the number of seamen; but by helping the shipping merchant it supported the carrying industry as a whole.

Upon the legislative union of Scotland with England, in 1707, this *entrepôt* privilege, with all other reserved advantages of English trade and commerce, was extended to the northern kingdom, and was a prominent consideration in inducing the Scotch people to accept a political change otherwise distasteful, because a seeming sacrifice of independence. Before this time they had had their own navigation system, modelled on the English; the Acts of the two parliaments embodying certain relations of reciprocity. Thenceforward, the Navigation Act is to be styled more properly a British, than an English, measure; but its benefits, now common to all Great Britain, were denied still to Ireland.

It will be realized that the habit of receiving exclusive favors at the expense of a particular set of people—the colonist and the foreigner—readily passed in a few generations into an unquestioning conviction of the propriety, and of the necessity, of such measures. It should be easy now for those living under a high protective tariff to understand that, having built up upon protection a principal national industry,—the carrying trade,—involving in its ramifications the prosperity of a large proportion of the wealth-producers of the country, English statesmen would

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<sup>32</sup> Chalmers, *Opinions on Interesting Subjects*, p. 28.

fear to touch the fabric in any important part; and that their dread would be intensified by the conviction, universally held, that to remove any of these artificial supports would be to imperil at the same time the Royal Navy, the sudden expansion of which, from a peace to a war footing, depended upon impressment from the protected merchant ships. It will be seen also that with such precedents of *entrepôt*, for the nourishing of British commerce, it was natural to turn to the same methods,—although in a form monstrously exaggerated,—when Napoleon by his decrees sought to starve British commerce to death. In conception and purpose, the Orders in Council of 1807 were simply a development of the *entrepôt* system. Their motto, "No trade save through England,"—the watchword of the ministry of Canning, Castlereagh, and Perceval, 1807-12,—was merely the revival towards the United States, as an independent nation, of the methods observed towards her when an assemblage of colonies, forty years before; the object in both cases being the welfare of Great Britain, involved in the monopoly of an important external commerce, the material of which, being stored first in her ports, paid duty to her at the expense of continental consumers.

Nor was there in the thought of the age, external to Great Britain, any corrective of the impressions which dominated her commercial policy. "Commercial monopoly," wrote Montesquieu, "is the leading principle of colonial intercourse;" and an accomplished West Indian, quoting this phrase about 1790, says: "The principles by which the nations

of Europe were influenced were precisely the same: (1) to secure to themselves respectively the most important productions of their colonies, and (2) to retain to themselves exclusively the advantage of supplying the colonies with European goods and manufactures."<sup>33</sup> "I see," wrote John Adams from France, in 1784, "that the French merchants regard their colonies as English merchants considered us twenty years ago." The rigor of the French colonial trade system had been relaxed during the War of American Independence, as was frequently done by all states during hostilities; but when Louis XVI., in 1784, sought to continue this, though in an extremely qualified concession, allowing American vessels of under sixty tons a limited trade between the West Indies and their own country, the merchants of Marseilles, Bordeaux, Rochelle, Nantes, St. Malo, all sent in excited remonstrances, which found support in the provincial parliaments of Bordeaux and Brittany.<sup>34</sup>

A further indication of the economical convictions of the French people, and of the impression made upon Europe generally by the success of the British Navigation Act, is to be seen in the fact that in 1794, under the Republic, the National Convention issued a decree identical in spirit, and almost identical in terms, with the English Act of 1651. In the latter year, said the report of the Committee to the Convention, "one-half the navigation of England was carried on by foreigners.

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<sup>33</sup> Bryan Edwards, *West Indies*, vol. ii. p. 443-444 (3d Edition).

<sup>34</sup> *Works of John Adams*, vol. viii. p. 228.

She has imperceptibly retaken her rights. Towards the year 1700 foreigners possessed no more than the fifth part of this navigation; in 1725 only a little more than the ninth; in 1750 a little more than a twelfth; and in 1791 they possessed only the fourteenth part of it."<sup>35</sup> It is perhaps unnecessary to add that the colonial system of Spain was as rigid as that of Great Britain, though far less capably administered. So universal was the opinion of the day as to the relation of colonies to navigation, that a contemporary American, familiar with the general controversy, wrote: "Though speculative politicians have entertained doubts in regard to favorable effects from colonial possessions, taking into view the expenses of their improvement, defence, and government, no question has been made but that the monopoly of their trade greatly increases the commerce of the nations to which they are appurtenant."<sup>36</sup> Very soon after the adoption of the Constitution, the Congress of the United States, for the development of the carrying trade, enacted provisions analogous to the Navigation Act, so far as applicable to a nation having no colonies, but with large shipping and coasting interests to be favored.

To such accepted views, and to such traditional practice, the independence of the thirteen British colonies upon the

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<sup>35</sup> Compare with Sheffield, *Observations on the Commerce of the American States* (Edition February, 1784), p. 137, note; from which, indeed, these figures seem to have been taken, or from some common source.

<sup>36</sup> Coxe's *View of the United States of America*, Philadelphia, 1794, p. 330.

American continent came not only as a new political fact, but as a portentous breach in the established order of things. As such, it was regarded with uneasy jealousy by both France and Spain; but to Great Britain it was doubly ominous. Not only had she lost a reserved market, singly the most valuable she possessed, but she had released, however unwillingly, a formidable and recognized rival for the carrying trade, the palladium of her naval strength. The market she was not without hopes of regaining, by a compulsion which, though less direct, would be in effect as real as that enforced by colonial regulation; but the capacity of the Americans as carriers rested upon natural conditions not so easy to overcome. The difficulty of the problem was increased by the fact that the governments of the world generally were awaking to the disproportionate advantages Great Britain had been reaping from them for more than a century, during which they had listlessly acquiesced in her aggressive absorption of the carriage of the seas. America could count upon their sympathies, and possible co-operation, in her rivalry with the British carrier. "It is manifest," wrote Coxe in 1794, "that a prodigious and almost universal revolution in the views of nations has taken place with regard to the carrying trade." When John Adams spoke of the United States retaliating upon Great Britain, by enacting a similar measure of its own, the minister of Portugal, then a country of greater weight than now, replied: "Not a nation in Europe would suffer a Navigation Act to be made by any other at this day. That of England was made in times

of ignorance, when few nations cultivated commerce, and no country but she understood or cared anything about it, but now all courts are attentive to it,"<sup>37</sup> so much so, indeed, that it has been said this was the age of commercial treaties. It was the age also of commercial regulation, often mistaken and injurious, which found its ideals largely in the Navigation Act of Great Britain, and in the resultant extraordinary processes of minute and comprehensive interference, with every species of commerce, and every article of export or import; for, while the general principles of the Navigation Act were few and simple enough, in application they entailed a watchful and constant balancing of advantages by the Board of Trade, and a consequent manipulation of the course of commerce,—a perfectly idealized and sublimated protection. The days of its glory, however, were passing fast. Great Britain was now in the position of one who has been first to exploit a great invention, upon which he has an exclusive patent. Others were now entering the field, and she must prepare for competition, in which she most of all feared those of her own blood, the children of her loins; for the signs of the menacing conditions following the War of Independence had been apparent some time before the revolt of the colonies gained for them liberty of action, heretofore checked in favor of the mother country. In these conditions, and in the national

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<sup>37</sup> Works of John Adams, vol. viii. p. 341. Adams says again, himself: "It is more and more manifest every day that there is, and will continue, a general scramble for navigation. Carrying trade, ship-building, fisheries, are the cry of every nation."—Vol. viii. p. 342.

sentiment concerning them, are to be found the origin of a course of action which led to the War of 1812.

Under the Navigation Act, and throughout the colonial period, the transatlantic colonies of Great Britain had grown steadily; developing a commercial individuality of their own, depending in each upon local conditions. The variety of these, with the consequent variety of occupations and products, and the distance separating all from the mother country, had contributed to develop among them a certain degree of mutual dependence, and consequent exchange; the outcome of which was a commercial system interior to the group as a whole, and distinct from the relations to Great Britain borne by them individually and collectively. There was a large and important intercolonial commerce,<sup>38</sup> consistent with the letter of the Navigation Act, as well as a trade with Great Britain; and although each of these exerted an influence upon the other, it was indirect and circuitous. The two were largely separate in fact, as well as in idea; and the interchange between the various colonies was more than double that with the mother country. It drew in British as well as American seamen, and was considered thus

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<sup>38</sup> From an official statement, made public in 1784, it appears that in the year 1770 the total trade, inward and outward, of the colonies on the American Continent, amounted to 750,546 tons. Of this 32 per cent was coastwise, to other members of the group; 30 with the West Indies; 27 with Great Britain and Ireland; and 11 with Southern Europe. Bermuda and the Bahamas, inconsiderable as to trade, were returned among continental colonies by the Custom House.—Sheffield, *Commerce of the American States*, Table VII.

to entail the disadvantage that, unless America were the scene of war, the crews there were out of reach of impressment; that measure being too crude and unsystematic to reach effectively so distant a source of supply. Curiously enough, also, by an act passed in the reign of Queen Anne, seamen born in the American colonies were exempted from impressment.<sup>39</sup> "During the late Civil War (of American Independence) it has been found difficult sufficiently to man our fleet, from the seamen insisting that, since they had been born in America, they could not be pressed to serve in the British navy."<sup>40</sup> In these conditions, and especially in the difficulty of distinguishing the place of birth by the language spoken, is seen the foreshadowing of the troubles attending the practice of Impressment, after the United States had become a separate nation.

The British American colonies were divided by geographical conditions into two primary groups: those of the West India Islands, and those of the Continent. The common use of the latter term, in the thought and speech of the day, is indicated by the comprehensive adjective "Continental," familiarly applied to the Congress, troops, currency, and other attributes of sovereignty, assumed by the revolted colonies after their declaration of independence. Each group had special commercial characteristics—in itself, and relatively to Great Britain. The islands, whatever their minor differences of detail, or their

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<sup>39</sup> Chalmers, *Opinions*, p. 73.

<sup>40</sup> *Ibid.*, p. 18.

mutual jealousies, or even their remoteness from one another, —Jamaica being a thousand miles from her eastern sisters,— were essentially a homogeneous body. Similarity of latitude and climate induced similarity of social and economical conditions; notably in the dependence on slave labor, upon which the industrial fabric rested. Their products, among which sugar and coffee were the most important, were such as Europe did not yield; it was therefore to their advantage to expend labor upon these wholly, and to depend upon external sources for supplies of all kinds, including food. Their exports, being directed by the Navigation Act almost entirely upon Great Britain, were, in connection with Virginia tobacco, the most lucrative of the "enumerated" articles which rendered tribute to the *entrepôt* monopoly of the mother country. It was in this respect particularly, as furnishing imports to be handled and re-exported, that the islands were valuable to the home merchants. To the welfare of the body politic they contributed by their support of the carrying trade; for the cargoes, being bulky, required much tonnage, and the entire traffic was confined to British ships, manned three-fourths by British seamen. As a market also the islands were of consequence; all their supplies coming, by law, either from or through Great Britain, or from the continental colonies. Intercourse with foreign states was prohibited, and that with foreign colonies allowed only under rare and disabling conditions. But although the West Indies thus maintained a large part of the mother country's export trade, the smallness of

their population, and the simple necessities of the slaves, who formed the great majority of the inhabitants, rendered them as British customers much inferior to the continental colonies; and this disparity was continually increasing, for the continent was growing rapidly in numbers, wealth, and requirements. In the five years 1744-48, the exports from Great Britain to the two quarters were nearly equal; but a decade later the continent took double the amount that the islands demanded. The figures quoted for the period 1754-58 are: to the West Indies, £3,765,000; to North America, £7,410,000.<sup>41</sup> In the five years ending 1774 the West Indies received £6,748,095; the thirteen continental colonies, £13,660,180.<sup>42</sup>

Imports from the continent also supported the carrying trade of Great Britain, but not to an extent proportionate to those from the islands; for many of the continental colonies were themselves large carriers. The imports to them, being manufactured articles, less bulky than the exports of the islands, also required less tonnage. The most marked single difference between the West India communities and those of the continent was that the latter, being distributed on a nearly north and south line, with consequent great divergences of climate and products, were essentially not homogeneous. What one had, another had not. Such differences involve of course divergence of interests, with consequent contentions and jealousies, the influence of which

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<sup>41</sup> Macpherson, vol. iii. p. 317.

<sup>42</sup> Report of Committee of Privy Council, Jan. 28, 1791, pp. 21-23.

was felt most painfully prior to the better Union of 1789, and never can wholly cease to act; but, on the other hand, it tends also to promote exchange of offices, where need and facility of transport combine to make such exchange beneficial to both. That the intercourse between the continental colonies required a tonnage equal to that employed between them and the West Indies,—testified by the return of 1770 before quoted,<sup>43</sup>—shows the existence of conditions destined inevitably to draw them together. The recognition of such mutual dependence, when once attained, furthers the practice of mutual concession for the purpose of combined action. Consequently, in the protracted struggle between the centripetal and centrifugal forces in North America, the former prevailed, though not till after long and painful wavering.

While thus differing greatly among themselves in the nature of their productions, and in their consequent wants, the continental colonists as a whole had one common characteristic. Recent occupants of a new, unimproved, and generally fertile country, they turned necessarily to the cultivation of the soil as the most remunerative form of activity, while for manufactured articles they depended mainly upon external supplies, the furnishing of which Great Britain reserved to herself. For these reasons they afforded the great market which they were to her, and which by dint of habit and of interest they long continued to be. But, while thus generally agricultural by force of circumstances, the

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<sup>43</sup> Ante, p. 31 (note).

particular outward destinations of their surplus products varied. Those of the southern colonies, from Maryland to Georgia, were classed as "enumerated," and, with the exception of the rice of South Carolina and Georgia, partially indulged as before mentioned, must be directed upon Great Britain. Tobacco, cotton, indigo, pitch, tar, turpentine, and spars of all kinds for ships, were specifically named, and constituted much the larger part of the exports of those colonies. These were carried also chiefly by British vessels, and not by colonial. The case was otherwise in the middle colonies, Pennsylvania, New York, New Jersey, and in Connecticut and Rhode Island of the eastern group. They were exporters of provisions,—of grain, flour, and meat, the latter both as live stock and salted; of horses also. As the policy of the day protected the British farmer, these articles were not required to be sent to Great Britain; on the contrary, grain was not allowed admission except in times of scarcity, determined by the price of wheat in the London market. The West Indies, therefore, were the market of the middle colonies; the shortness of the voyage, and the comparatively good weather, after a little southing had been gained, giving a decisive advantage over European dealers in the transportation of live animals. Flour also, because it kept badly in the tropics, required constant carriage of new supplies from sources near at hand. Along with provisions the continental vessels took materials for building and cooperage, both essential to the industry of the islands,—to the housing of the inhabitants, and to the transport of their sugar, rum, and

molasses. In short, so great was the dependence of the islands upon this trade, that a well-informed planter of the time quotes with approval the remark of "a very competent judge," that, "if the continent had been wholly in foreign hands, and England wholly precluded from intercourse with it, it is very doubtful whether we should now have possessed a single acre in the West Indies."<sup>44</sup>

Now this traffic, while open to all British shipping, was very largely in the hands of the colonists, who built ships decidedly cheaper than could be done in England, and could distribute their tonnage in vessels too small to brave the Atlantic safely, but, from their numbers and size, fitted to scatter to the numerous small ports of distribution, which the badness of internal communications rendered advantageous for purposes of supply. A committee of the Privy Council of Great Britain, constituted soon after the independence of the United States to investigate the conditions of West India trade, reported that immediately before the revolt the carriage between the islands and the continent had occupied 1610 voyages, in vessels aggregating 115,634 tons, navigated by 9718 men. These transported what was then considered "the vast" American cargo, of £500,000 outward and £400,000 inward. But the ominous feature from the point of view of the Navigation Act was that this was carried almost wholly in American bottoms.<sup>45</sup> In short, not to speak of

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<sup>44</sup> Bryan Edwards, *West Indies*, vol. ii. p. 486.

<sup>45</sup> Chalmers, *Opinions*, p. 133.

an extensive practice of smuggling, facilitated by a coast line too long and indented to be effectually watched,—mention of which abounds in contemporary annals,<sup>46</sup>—a very valuable part of the British carrying trade was in the hands of the middle colonists, whose activity, however, did not stop even there; for, not only did they deal with foreign West Indies,<sup>47</sup> but the cheapness of their vessels, owing to the abundance of the materials, permitted them to be used also to advantage in a direct trade with southern Europe, their native products being for the most part "not enumerated." As early as 1731, Pennsylvania employed eight thousand tons of shipping, while the New England colonies at the same time owned forty thousand tons, distributed in six hundred vessels, manned by six thousand seamen.

The New Englanders, like their countrymen farther south, were mostly farmers; but the more rugged soil and severer climate gave them little or no surplus for export. For gain by traffic, for material for exchange, they therefore turned to the sea, and became the great carriers of America, as well as its great fishers. An English authority, writing of the years immediately preceding the War of Independence, states that most of the

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<sup>46</sup> See, for instance, the Colden Papers, Proceedings N.Y. Historical Society, 1877. There is in these much curious economical information of other kinds.

<sup>47</sup> A comparison of the figures just quoted, as to the British West Indies, with Sheffield's Table VII., indicates that the trade of the Continent with the foreign islands about equalled that with the British. The trade with the French West Indies, "open or clandestine, was considerable, and wholly in American vessels."—Macpherson, vol. iii. p. 584.

seamen sailing out of the southern ports were British; from the middle colonies, half British and half American; but in the New England shipping he admits three-fourths were natives.<sup>48</sup> This tendency of British seamen to take employment in colonial ships is worthy of note, as foreshadowing the impressment difficulties of a later day. These, like most of the disagreements which led to the War of 1812, had their origin in ante-revolutionary conditions. For example, Commodore Palliser, an officer of mark, commanding the Newfoundland station in 1767, reported to the Admiralty the "cruel custom," long practised by commanders of fishing ships, of leaving many men on the desert coast of Newfoundland, when the season was over, whereby "these men were obliged to sell themselves to the colonists, or piratically run off with vessels, which they carry to the continent of America. By these practices the Newfoundland fishery, supposed to be one of the most valuable nurseries for seamen,<sup>49</sup> has long been an annual drain."<sup>50</sup> In the two years, 1764-65, he estimates that 2,500 seamen thus went to the colonies; in the next two years, 400. The difference was probably due to the former period being immediately after a war, the effects of which it reflected.

The general conditions of 1731 remained thirty years later, simply having become magnified as the colonies grew in

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<sup>48</sup> Sheffield, *Commerce of the American States*, p. 108.

<sup>49</sup> That is, for the navy.

<sup>50</sup> Macpherson, *Annals of Commerce*, vol. iii. p. 472.

wealth and population. In 1770 twenty-two thousand tons of shipping were annually built by the continental colonists. They even built ships for Great Britain; and this indulgence, for so it was considered, was viewed jealously by a class of well-informed men, intelligent, but fully imbued with the ideas of the Navigation Act, convinced that the carrying trade was the corner-stone of the British Navy, and realizing that where ships were cheaply built they could be cheaply sailed, even if they paid higher wages. It is true, and should be sedulously remembered, especially now in the United States, that the strength of a merchant shipping lies in its men even more than in its ships; and therefore that the policy of a country which wishes a merchant marine should be to allow its ships to be purchased where they most cheaply can, in order that the owner may be able to spend more on his crew, and the nation consequently to keep more seamen under its flag. But in 1770 the relative conditions placed Great Britain under serious disadvantages towards America in the matter of ship-building; for the heavy drafts upon her native oak had caused the price to rise materially, and even the forests of continental Europe felt the strain, while the colonies had scarcely begun to touch their resources. In 1775, more than one-third of the foreign trade of Great Britain was carried in American-built ships; the respective tonnage being, British-built, 605,545; American, 373,618.<sup>51</sup>

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<sup>51</sup> Macpherson, vol. iv. p. 11. The great West India cargo of 1772, an especial preserve of the Navigation Act, was carried to England in 679 ships, of which one-

British merchants and ship-owners knew also that the colonial carriers were not ardent adherents of the Navigation Act, but conducted their operations in conformity with it only when compelled.<sup>52</sup> They traded with the foreigner as readily as with the British subject; and, what was quite unpardonable in the ideas of that time, after selling a cargo in a West Indian port, instead of reloading there, they would take the hard cash of the island to a French neighbor, buying of him molasses to be made into rum at home. In this commercial shrewdness the danger was not so much in the local loss, or in the single transaction, for in the commercial supremacy of England the money was pretty sure to find its way back to the old country. The sting was that the sharp commercial instinct, roving from port to port, with a keen scent for freight and for bargains, maintained a close rivalry for the carrying trade, which was doubly severe from the natural advantages of the shipping and the natural aptitudes of the ship-owners. Already the economical attention of the New Englanders to the details of their shipping business had been noted, and had earned for them the name of the Dutchmen of North America; an

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third were built in America.

<sup>52</sup> "The contraband trade carried on by plantation ships in defiance of the Act of Navigation was a subject of repeated complaint." "The laws of Navigation were nowhere disobeyed and contemned so openly as in New England. The people of Massachusetts Bay were from the first disposed to act as if independent of the mother country."—Reeves, pp. 54, 58. The particular quotations apply to the early days of the measure, 1662-3; but the complaint continued to the end. In 1764-5, "one of the great grievances in the American trade was, that great quantities of foreign molasses and syrups were clandestinely run on shore in the British Colonies."—p. 79.

epithet than which there was then none more ominous to British ears, and especially where with the carrying trade was associated the twin idea of a nursery of seamen for the British Navy.

A fair appreciation of the facts and relations, summarized in the preceding pages from an infinitude of details, is necessary to a correct view of the origin and course of the misunderstandings and disagreements which finally led to the War of 1812. In 1783, the restoration of peace and the acknowledgment of the independence of the former colonies removed from commerce the restrictions incident to hostilities, and replaced in full action, essentially unchanged, the natural conditions which had guided the course of trade in colonial days. The old country, retaining all the prepossessions associated with the now venerable and venerated Navigation Act, saw herself confronted with the revival of a commercial system, a commercial independence, of which she had before been jealous, and which could no longer be controlled by political dependence. It was to be feared that supplying the British West Indies would increase American shipping, and that British seamen would more and more escape into it, with consequent loss to British navigation, both in tonnage and men, and discouragement to British maritime industries. Hence, by the ideas of the time, was to be apprehended weakness for war, unless some effective check could be devised.

What would have been the issue of these anxieties, and of the measures to which they gave rise, had not the French Revolution intervened to aggravate the distresses of Great Britain, and to

constrain her to violent methods, is bootless to discuss. It remains true that, both before and during the conflict with the French Republic and Empire, the general character of her actions, to which the United States took exception, was determined by the conditions and ideas that have been stated, and can be understood only through reference to them. No sooner had peace been signed, in 1783, than disagreements sprang up again from the old roots of colonial systems and ideals. To these essentially was due the detailed sequence of events which, influenced by such traditions of opinion and policy as have been indicated, brought on the War of 1812, which has not inaptly been styled the second War of Independence. Madison, who was contemporary with the entire controversy, and officially connected with it from 1801 to the end of the war, first as Secretary of State, and later as President, justly summed up his experience of the whole in these words: "To have shrunk from resistance, under such circumstances, would have acknowledged that, on the element which forms three-fourths of the globe which we inhabit, and where all independent nations have equal and common rights, the American People were not an independent people, but colonists and vassals. With such an alternative war was chosen."<sup>53</sup> The second war was closely related to the first in fact, though separated by a generation in time.

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<sup>53</sup> American State Papers, Foreign Relations, vol. i. p. 82.

## **CHAPTER II**

# **FROM INDEPENDENCE TO JAY'S TREATY, 1794**

The colonial connection between Great Britain and the thirteen communities which became the original States of the American Union was brought to a formal conclusion in 1776, by their Declaration of Independence. Substantially, however, it had already terminated in 1774. This year was marked by the passage of the Boston Port Bill, with its accessory measures, by the British Parliament, and likewise by the renewal, in the several colonies, of the retaliatory non-importation agreements of 1765. The fundamental theory of the eighteenth century concerning the relations between a mother country and her colonies, that of reciprocal exclusive benefit, had thus in practice yielded to one of mutual injury; to coercion and deprivation on the one side, and to passive resistance on the other. On September 5 the representatives of twelve colonies assembled in Philadelphia; Georgia alone sending no delegates, but pledging herself in anticipation to accept the decisions taken by the others. One of the first acts of this Congress of the Continental Colonies was to indorse the resolutions by which Massachusetts had placed herself in an attitude of contingent rebellion against the Crown, and to pledge their support to her in case of a resort to arms.

These several steps were decisive and irrevocable, except by an unqualified abandonment, by one party or the other, of the principles which underlay and dictated them. The die was cast. To use words attributed to George the Third, "the colonies must now either submit or triumph."

The period which here began, viewed in the aggregate of the national life of the United States, was one of wavering transition and uncertain issue in matters political and commercial. Its ending, in these two particulars, is marked by two conspicuous events: the adoption of the Constitution and the Commercial Treaty with Great Britain. The formation of the Federal Government, 1788-90, gave to the Union a political stability it had hitherto lacked, removing elements of weakness and dissensions, and of consequent impotence in foreign relations; the manifestation of which since the acknowledgment of independence had justified alike the hopes of enemies and the forebodings of friends. Settled conditions being thus established at home, with institutions competent to regulate a national commerce, internal and external, as well as to bring the people as a whole into fixed relations with foreign communities, there was laid the foundations of a swelling prosperity to which the several parts of the country jointly contributed. The effects of these changes were soon shown in a growing readiness on the part of other nations to enter into formal compacts with us. Of this, the treaty negotiated by John Jay with Great Britain, in 1794, is the most noteworthy instance; partly because it terminated one long

series of bickerings with our most dangerous neighbor, chiefly because the commercial power of the state with which it was contracted had reached a greater eminence, and exercised wider international effect, than any the modern world had then seen.

Whatever the merits of the treaty otherwise, therefore, the willingness of Great Britain to enter into it at all gave it an epochal significance. Since independence, commercial intercourse between the two peoples had rested on the strong compelling force of natural conditions and reciprocal convenience, the true foundation, doubtless, of all useful relations; but its regulation had been by municipal ordinance of either state, changeable at will, not by mutual agreement binding on both for a prescribed period. Since the separation, this condition had seemed preferable to Great Britain, which, as late as 1790, had evaded overtures towards a commercial arrangement.<sup>54</sup> Her consenting now to modify her position was an implicit admission that in trade, as in political existence, the former mother country recognized at last the independence of her offspring. The latter, however, was again to learn that independence, to be actual, must rest on something stronger than words, and surer than the acquiescence of others. This was to be the lesson of the years between 1794 and 1815, administered to us not only by the preponderant navy of Great Britain, but by the petty piratical fleets of the Barbary powers.

From the Boston Port Bill to Jay's Treaty was therefore

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<sup>54</sup> American State Papers, Foreign Relations, vol. i. p. 121.

a period of transition from entire colonial dependence, under complete regulation of all commercial intercourse by the mother country, to that of national commercial power, self-regulative and efficient, through the adoption of the Constitution. Upon this followed international influence, the growing importance of which Great Britain finally recognized by formal concessions, hitherto refused or evaded. During these years the policy of her government was undergoing a process of adjustment, conditioned on the one hand by the still vigorous traditional prejudices associated with the administration of dependencies, and on the other by the radical change in political relations between her remaining colonies in America and the new states which had broken from the colonial bond. This change was the more embarrassing, because the natural connection of specific mutual usefulness remained, although the tie of a common allegiance had been loosed. The old order was yielding to the new, but the process was signalized by the usual slowness of men to accept events in their full significance. Hitherto, all the western hemisphere had been under a colonial system of complete monopoly by mother countries, and had been generally excluded from direct communication with Europe, except the respective parent states. In the comprehensive provisions of the British Navigation Act, America was associated with Asia and Africa. Now had arisen there an independent state, in political standing identical with those of Europe, yet having towards colonial America geographical and commercial relations

very different from theirs. Consequently there was novelty and difficulty in the question, What intercourse with the remaining British dominions, and especially with the American colonies, should be permitted to the new nation? Notwithstanding the breach lately made, it continued a controlling aim with the British people, and of the government as determined by popular pressure, to restore the supremacy of British trade, by the subjection of America, independent as well as colonial, to the welfare of British commerce. Notably this was to be so as regards the one dominant interest called Navigation, under which term was comprised everything relating to shipping,—ship-building, seafaring men, and the carrying trade. Independence had deprived Great Britain of the right she formerly had to manipulate the course of the export and import trade of the now United States. It remained to try whether there did not exist, nevertheless, the ability effectually to control it to the advantage of British navigation, as above defined. "Our remaining colonies on the Continent, and the West India Islands," it was argued, "with the favorable state of English manufactures, may still give us almost exclusively the trade of America;" provided these circumstances were suitably utilized, and their advantages rigorously enforced, where power to do so still remained, as it did in the West Indies.

Although by far the stronger and more flourishing part of her colonial dominions had been wrested from Great Britain, there yet remained to her upon the continent, in Canada and

the adjacent provinces, a domain great in area, and in the West India Islands another of great productiveness. Whatever wisdom had been learned as regards the political treatment of colonies, the views as to the nature of their economical utility to the mother country, and their consequent commercial regulation, had undergone no enlargement, but rather had been intensified in narrowness and rigor by the loss of so valuable a part of the whole. No counteractive effect to this prepossession was to be found in contemporary opinion in Europe. The French Revolution itself, subversive as it was of received views in many respects, was at the first characterized rather by an exaggeration of the traditional exclusive policy of the eighteenth century relating to colonies, shipping, and commerce. In America, the unsettled commercial and financial conditions which succeeded the peace, the divergence of interests between the several new states, the feebleness of the confederate government, its incompetency to deal assuredly with external questions, and lack of all power to regulate commerce, inspired a conviction in Great Britain that the continent could not offer strong, continued resistance to commercial aggression, carried on under the peaceful form of municipal regulation. It was generally thought that the new states could never unite, but instead would drift farther apart.

The belief was perfectly reasonable; a gift of prophecy only could have foretold the happy result, of which many of the most prominent Americans for some time despaired. "It will not be

an easy matter," wrote Lord Sheffield,<sup>55</sup> "to bring the American States to act as a nation; they are not to be feared as such by us. It must be a long time before they can engage, or will concur, in any material expense.... We might as reasonably dread the effects of combinations among the German as among the American states, and deprecate the resolves of the Diet, as those of Congress." "No treaty can be made that will be binding on the whole of them." "A decided cast has been given to public opinion here," wrote John Adams from London, in November, 1785, "by two presumptions. One is, that the American states are not, and cannot, be united."<sup>56</sup> Two years later Washington wrote: "The situation of the General Government, if it can be called a government, is shaken to its foundation, and liable to be overturned at every blast. In a word, it is at an end.... The primary cause of all our disorders lies in the different state governments, and in the tenacity of that power which underlies the whole of their systems. Independent sovereignty is so ardently contended for." "At present, under our existing form of confederation, it would be idle to think of making commercial regulations on our part. One state passes a prohibitory law respecting one article; another state opens wide the avenue for its admission. One assembly makes a system, another assembly unmakes it."<sup>57</sup>

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<sup>55</sup> Commerce of the American States (Edition February, 1784), pp. 198-199.

<sup>56</sup> Works of John Adams, vol. viii. p. 290.

<sup>57</sup> Washington's Correspondence, 1787, edited by W.C. Ford, vol. viii. pp. 159, 160, 254.

Under such conditions it was natural that a majority of Englishmen should see power and profit for Great Britain in availing herself of the weakness of her late colonists, to enforce upon them a commercial dependence as useful as the political dependence which had passed away. Were this realized, she would enjoy the emoluments of the land without the expense of its protection. This gospel was preached at once to willing ears, and found acceptance; not by the strength of its arguments, for these, though plausible, were clearly inferior in weight to the facts copiously adduced by those familiar with conditions, but through the prejudices which the then generation had received from the three or four preceding it. The policy being adopted, the instrument at hand for enforcing it was the relation of colonies to mother countries, as then universally maintained by the governments of the day. The United States, like other independent nations, was to be excluded wholly from carrying trade with the British colonies, and as far as possible from sending them supplies. It was urged that Canada, and the adjacent British dominions, encouraged by this reservation of the West India market for their produce, would prove adequate to furnishing the provisions and lumber previously derived from the old continental colonies. The prosperity once enjoyed by the latter would be transferred, and there would be reconstituted the system of commercial intercourse, interior to the empire, which previously had commanded general admiration. The new states, acting commercially as separated communities, could oppose

no successful rivalry to this combination, and would revert to isolated commercial dependence; tributary to the financial supremacy of Great Britain, as they recently had been to her political power. In debt to her for money, and drawing from her manufactures, returns for both would compel their exports to her ports chiefly, whence distribution would be, as of old, in the hands of British middlemen and navigators. Just escaped from the fetters of the carrying trade and *entrepôt* regulations, the twin monopolies in which consisted the value of a colonial empire, it was proposed to reduce them again under bondage by means for which the West India Islands furnished the leverage; for "the trade carried on by Great Britain with the countries now become the United States was, and still is, so connected with the trade carried on to the remaining British colonies in America, and the British islands in the West Indies, that it is impossible to form a true judgment of the past and present of the first, without taking a comprehensive view of all, as they are connected with, and influence, each other."<sup>58</sup>

Before the peace of 1783, the writings of Adam Smith had gravely shaken belief in the mercantile system of extraordinary trade regulation and protection as conducive to national prosperity. Though undermined, however, it had not been overthrown; and even to doubters there remained the exception, which Smith himself admitted, of the necessity to protect navigation as a nursery for the navy, and consequently as

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<sup>58</sup> Report of the Committee of the Privy Council, Jan. 28, 1791, p. 20.

a fundamental means of national defence. Existence takes precedence of prosperity; the life is more than the meat. Commercial regulation, though unfitted to increase wealth, could be justified as a means to promote ship-building; to retain ship-builders in the country; to husband the raw materials of their work; to force the transport of merchandise in British-built ships and by British seamen; and thus to induce capital to invest, and men to embark their lives, in maritime trade, to the multiplication of ships and seamen, the chief dependence of the nation in war. "Keeping ships for freight," said Sheffield, "is not the most profitable branch of trade. It is necessary, for the sake of our marine, to force or encourage it by exclusive advantages." "Comparatively with the number of our people and the extent of our country, we are doomed almost always to wage unequal war; and as a means of raising seamen it cannot be too often repeated that it is not possible to be too jealous on the head of navigation." He proceeds then at once to draw the distinction between the protection of navigation and that of commerce generally. "This jealousy should not be confounded with that towards neighboring countries as to trade and manufactures; nor is the latter jealousy in many instances reasonable or well founded. Competition is useful, forcing our manufacturers to act fairly, and to work reasonably." Sheffield was the most conspicuous, and probably the most influential, of the controversialists on this side of the question at this period; the interest of the public is shown by his pamphlet passing through six editions in a twelvemonth.

He was, however, far from singular in this view. Chalmers, a writer of much research, said likewise: "In these considerations of nautical force and public safety we discover the fundamental principle of Acts of Navigation, which, though established in opposition to domestic and foreign clamors, have produced so great an augmentation of our native shipping and sailors, and which therefore should not be sacrificed to any projects of private gain,"—that is, of commercial advantage. "There are intelligent persons who suggest that the imposing of alien duties on alien ships, rather than on alien merchandise, would augment our naval strength."<sup>59</sup>

Colonies therefore were esteemed desirable to this end chiefly. To use the expression of a French officer,<sup>60</sup> they were the fruitful nursery of seamen. French writers of that day considered their West India islands the chief nautical support of the state. But in order to secure this, it was necessary to exercise complete control of their trade inward and outward; of the supplies they needed as well as of the products they raised, and especially to confine the carriage of both to national shipping. "The only use and advantage of the (remaining) American colonies<sup>61</sup> or West India islands to Great Britain," says Sheffield, "are the monopoly of their consumption and the carriage of their produce. It is the advantage to our navigation which in any degree countervails the

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<sup>59</sup> Chalmers, *Opinions*, p. 32.

<sup>60</sup> Jurien de la Gravière, *Guerres Maritimes*, Paris, 1847, vol. ii. p. 238.

<sup>61</sup> Canada, Newfoundland, Bermuda, etc.

enormous expense of protecting our islands. Rather than give up their carrying trade it would be better to give up themselves." The *entrepôt* system herein found additional justification, for not only did it foster navigation by the homeward voyage, confined to British ships, and extort toll in transit, but the re-exportation made a double voyage which was more than doubly fruitful in seamen; for from the nearness of the British Islands to the European continent, which held the great body of consumers, this second carriage could be done, and actually was done, by numerous small vessels, able to bear a short voyage but not to brave an Atlantic passage. Economically, trade by many small vessels is more expensive than by a few large, because for a given aggregate tonnage it requires many more men; but this economical loss was thought to be more than compensated by the political gain in multiplying seamen. It was estimated in 1795 that there was a difference of from thirty-five to forty men in carrying the same quantity of goods in one large or ten small vessels. This illustrates aptly the theory of the Navigation Act, which sought wealth indeed, but, as then understood, subordinated that consideration distinctly to the superior need of increasing the resources of the country in ships and seamen. Moreover, the men engaged in these short voyages were more immediately at hand for impressment in war, owing to the narrow range of their expeditions and their frequent returns to home ports.

In 1783, therefore, the Navigation Act had become in general

acceptance a measure not merely commercial, but military. It was defended chiefly as essential to the naval power of Great Britain, which rested upon the sure foundation of maritime resources thus laid. Nor need this view excite derision to-day, for it compelled then the adhesion of an American who of all in his time was most adverse to the general commercial policy of Great Britain. In a report on the subject made to Congress in 1793, by Jefferson, as Secretary of State, he said: "Our navigation involves still higher considerations than our commerce. As a branch of industry it is valuable, but as a resource of defence essential. It will admit neither neglect nor forbearance. The position and circumstances of the United States leave them nothing to fear on their land-board; ... but on their seaboard they are open to injury, and they have there too a commerce (coasting) which must be protected. This can only be done by possessing a respectable body of citizen-seamen, and of artists and establishments in readiness for ship-building."<sup>62</sup> The limitations of Jefferson's views appear here clearly, in the implicit relegation of defence, not to a regular and trained navy, but to the occasional unskilled efforts of a distinctly civil force; but no stronger recognition of the necessities of Great Britain could be desired, for her nearness to the great military states of the world deprived her land-board of the security which the remoteness of the United States assured. With such stress laid upon the vital importance of merchant seamen to national safety, it is but a step in thought

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<sup>62</sup> American State Papers, Foreign Relations, vol. i. p. 303.

to perceive how inevitable was the jealousy and indignation felt in Great Britain, when she found her fleets, both commercial and naval, starving for want of seamen, who had sought refuge from war in the American merchant service, and over whom the American Government, actually weak and but yesterday vassal, sought to extend its protection from impressment.

Up to the War of American Independence, the singular geographical situation of Great Britain, inducing her to maritime enterprise and exempting her from territorial warfare, with the financial and commercial pre-eminence she had then maintained for three-fourths of a century, gave her peculiar advantages for enforcing a policy which until that time had thriven conspicuously, if somewhat illusively, in its commercial results, and had substantially attained its especial object of maritime preponderance. Other peoples had to submit to the compulsion exerted by her overweening superiority. The obligation upon foreign shipping to be three-fourths manned by their own citizens, for instance, rested only upon a British law, and applied only in a British port; but the accumulations of British capital, with the consequent facility for mercantile operations and ability to extend credits, the development of British manufactures, the extent of the British carrying trade, the enforced storage of colonial products in British territory, with the correlative obligation that foreign goods for her numerous and increasing colonists must first be brought to her shores and thence transshipped,—all these circumstances made the British islands

a centre for export and import, towards which foreign shipping was unavoidably drawn and so brought under the operation of the law. The nation had so far out-distanced competition that her supremacy was unassailable, and remained unimpaired for a century longer. To it had contributed powerfully the economical distribution of her empire, greatly diversified in particulars, yet symmetrical in the capacity of one part to supply what the other lacked. There was in the whole a certain self-sufficingness, resembling that claimed in this age for the United States, with its compact territory but wide extremes of boundary, climates, and activities.

This condition, while it lasted, in large degree justified the Navigation Act, which may be summarily characterized as a great protective measure, applied to the peculiar conditions of a particular maritime empire, insuring reciprocal and exclusive benefit to the several parts. It was uncompromisingly logical in its action, not hesitating at rigid prohibition of outside competition. Protection, in its best moral sense, may be defined as the regulation of all the business of the nation, considered as an interrelated whole, by the Government, for the best interests of the entire community, likewise regarded as a whole. This the Navigation Act did for over a century after its enactment; and it may be plausibly argued that, as a war resort at least, it afterwards measurably strengthened the hands of Great Britain during the wars of the French Revolution. No men suffered more than did the West India planters from its unrelieved enforcement

after 1783; yet in their vehement remonstrance they said: "The policy of the Act is justly popular. Its regulations, until the loss of America, under the various relaxations which Parliament has applied to particular events and exigencies as they arose, have guided the course of trade without oppressing it; for the markets which those regulations left open to the consumption of the produce of the colonies were sufficient to take off the whole, and no foreign country could have supplied the essential part of their wants materially cheaper than the colonies of the mother country could supply one another."

Thus things were, or were thought to be, up to the time when the revolt of the continental colonies made a breach in the wall of reciprocal benefit by which the whole had been believed to be enclosed. The products of the colonies sustained the commercial prosperity of the mother country, ministering to her export trade, and supplying a reserve of consumers for her monopoly of manufactures, which they were forbidden to establish for themselves, or to receive from foreigners. She on her part excluded from the markets of the empire foreign articles which her colonies produced, constituting for them a monopoly of the imperial home market, as well in Great Britain as in the sister colonies. The carriage of the whole was confined to British navigation, the maintenance of which by this means raised the British Navy to the mastery of the seas, enabling it to afford to the entire system a protection, of which convincing and brilliant evidence had been afforded during the then recent Seven Years'

War. As a matter of political combination and adjustment, for peace or for war, the general result appeared to most men of that day to be consummate in conception and in development, and therefore by all means to be perpetuated. In that light men of to-day must realize it, if they would adequately understand the influence exercised by this prepossession upon the course of events which for the United States issued in the War of 1812.

In this picture, so satisfactory as a whole, there had been certain shadows menacing to the future. Already, in the colonial period, these had been recognized by some in Great Britain as predictive of increasing practical independence on the part of the continental colonies, with results injurious to the empire at large, and to the particular welfare of the mother kingdom. In the last analysis, this danger arose from the fact that, unlike the tropical West Indies, these children were for the most part too like their parent in political and economical character, and in permanent natural surroundings. There was, indeed, a temporary variation of activities between the new communities, where the superabundance of soil kept handicrafts in abeyance, and the old country, where agriculture was already failing to produce food sufficient for the population, and men were being forced into manufactures and their export as a means of livelihood. There was also a difference in their respective products which ministered to beneficial exchange. Nevertheless, in their tendencies and in their disposition, Great Britain and the United States at bottom were then not complementary, but

rivals. The true complement of both was the West Indies; and for these the advantage of proximity, always great, and especially so with regard to the special exigencies of the islands, lay with the United States. Hence it came to pass that the trade with the West Indies, which then had almost a monopoly of sugar and coffee production for the world, became the most prominent single factor in the commercial contentions between the two countries, and in the arbitrary commercial ordinances of Great Britain, which step by step led the two nations into war. The precedent struggle was over a market; artificial regulation and superior naval power seeking to withstand the natural course of things, and long successfully retarding it.

The suspension of intercourse during the War of Independence had brought the economical relations into stronger relief, and accomplished independence threatened the speedy realization of their tendencies. There were two principal dangers dreaded by Great Britain. The West India plantation industry had depended upon the continental colonies for food supplies, and to a considerable extent also financially; because these alone were the consumers of one important product—rum. Again, ship-building and the carrying trade of the empire had passed largely into the hands of the continental colonists, keeping on that side of the Atlantic, it was asserted, a great number of British-born seamen. While vessels from America visited many parts of the world, the custom-house returns showed that of the total inward and outward tonnage of the thirteen colonies,

over sixty per cent had been either coastwise or with the West Indies; and this left out of account the considerable number engaged in smuggling. Of the remainder, barely twenty-five per cent went to Great Britain or Ireland. In short, there had been building upon the western side of the ocean, under the colonial connection, a rival maritime system, having its own products, its own special markets, and its own carrying trade. The latter also, being done by very small vessels, adapted to the short transit, had created for itself, or absorbed from elsewhere, a separate and proportionately large maritime population, rivalling that of the home country, while yet remaining out of easy reach of impressment and remote from immediate interest in European wars. One chief object of the Navigation Act was thus thwarted; and indeed, as might be anticipated from quotations already made, it was upon this that British watchfulness more particularly centred. As far as possible all interchange was to be internal to the empire, a kind of coasting trade, which would naturally, as well as by statute, fall to British shipping. Protective regulation therefore should develop in the several parts those productions which other parts needed,—the material of commerce; but where this could not be done, and supplies must be sought outside, they should go and come in British vessels, navigated according to the Act. "Our country," wrote Sheffield, in concluding his work, "does not entirely depend upon the monopoly of the commerce of the thirteen American states, and it is by no means necessary to sacrifice any part of our carrying

trade for imaginary advantages never to be attained."<sup>63</sup>

A further injury was done by the cheapness with which the Americans built and sold ships, owing to their abundance of timber. They built them not only to order, but as it were for a market. Although acceptable to the mercantile interest, and even indirectly beneficial by sparing the resources for building ships of war, this was an invasion of the manufacturing industry of the kingdom, in a particular peculiarly conducive to naval power. The returns of the British underwriters for twenty-seven shipping ports of Great Britain and Ireland, during a series of years immediately preceding the American revolt, no ship being counted twice, showed the British-built vessels entered to be 3,908, and the American 2,311.<sup>64</sup> The tonnage of the latter was more than one-third of the total. The intercourse between the American continent and the West Indies, not included in this reckoning, was almost wholly in American bottoms. The proportion of American-built shipping in the total of the empire is hence apparent, as well as the growth of the ship-building industry. This of course was accompanied by a tendency of mechanics, as well as seamen, to remove to a situation so favorable for employment. But the maintenance of home facilities for building ships was as essential to the development of naval power as was the fostering of a class of seamen. In this respect, therefore, the ship-building of America was detrimental

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<sup>63</sup> p. 288.

<sup>64</sup> Coxe, *View of the United States*, p. 346.

to the objects of the Navigation Act; and the evil threatened to increase, because of a discernible approaching shortness of suitable timber in the overtaxed forests of Europe.

Such being the apparent tendency of things, owing to circumstances relatively permanent in character, the habit of mind traditional with British merchants and statesmen, formed by the accepted colonial and mercantile systems, impelled them at once to prohibitory measures of counteraction, as soon as the colonies, naturally rival, had become by independence a foreign nation. For a moment, indeed, it appeared that broader views might prevail, based upon a sounder understanding of actual conditions and of the principles of international commerce. The second William Pitt was Chancellor of the Exchequer at the time the provisional articles of peace with the United States were signed, in November, 1782; and in March, 1783, he introduced into the House of Commons a bill for regulating temporarily the intercourse between the two nations, so far as dependent upon the action of Great Britain, until it should be possible to establish a mutual arrangement by treaty. This measure reflected not only a general attitude of good will towards America, characteristic of both father and son, but also the impression which had been made upon the younger man by the writings of Adam Smith. Professing as its objects "to establish intercourse on the most enlarged principles of reciprocal benefit," and "to evince the disposition of Great Britain to be on terms of most perfect amity with the United States of America," the bill admitted the ships

and vessels of the United States, with the merchandise on board, into all the ports of Great Britain in the same manner as the vessels of other independent states; that is, manned three-fourths by American seamen. This preserved the main restrictions of the Navigation Act, protective of British navigation; but the merchandise, even if brought in American ships, was relieved of all alien duties. These, however, wherever still existing for other nations, were light, and this remission slight;<sup>65</sup> a more substantial concession was a rebate upon all exports from Great Britain to the United States, equal to that allowed upon goods exported to the colonies. As regarded intercourse with the West Indies, there was to be made in favor of the thirteen states a special and large remission in the rigor of the Act; one affecting both commerce and navigation. To British colonies, by long-standing proscription, no ships except British had been admitted to export or import. By the proposed measure, the United States, alone among the nations of the world, were to be allowed to import freely any goods whatsoever, of their own growth, produce, or manufacture, in their own ships; on the same terms exactly as British vessels, if these should engage in the traffic between the American continent and the islands. Similarly, freedom to export colonial produce was granted to American bottoms from the West Indies to the United States. Both exports and imports, thus

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<sup>65</sup> Reeves, p. 381. Nevertheless, foreign nations frequently complained of this as a distinction against them (Report of the Committee of the Privy Council, Jan. 28, 1791, p. 10).

to be authorized, were to be "liable to the same duties and charges only as the same merchandise would be subject to, if it were the property of British native-born subjects, and imported in British ships, navigated by British seamen."<sup>66</sup> In short, while the primary purpose doubtless was the benefit of the islands, the effect of the measure, as regarded the West India trade, was to restore the citizens of the now independent states to the privileges they had enjoyed as colonists. The carrying trade between the islands and the continent was conceded to them, and past experience gave ground to believe it would be by them absorbed.

It was over this concession that the storm of controversy arose and raged, until the outbreak of the French Revolution, by the conservative reaction it provoked in other governments, arrested for the time any change of principle in regard to colonial administration, whatever modifications might from time to time be induced by momentary exigencies of policy. The question immediately argued was probably on all hands less one of principle than of expediency. Superior as commercial prosperity and the preservation of peace were to most other motives in the interest of Pitt's mind, he doubtless would have admitted, along with his most earnest opponents, that the fostering of the national carrying trade, as a nursery to the navy and so contributory to national defence, took precedence of purely commercial legislation. With all good-will to America, his prime object necessarily was the welfare of Great Britain; but this he, contrary

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<sup>66</sup> Bryan Edwards, *West Indies*, vol. ii. p. 494 (note).

to the mass of public opinion, conceived to lie in the restoration of the old intercourse between the two peoples, modified as little as possible by the new condition of independence. He trusted that the habit of receiving everything from England, the superiority of British manufactures, a common tongue, and commercial correspondences only temporarily interrupted by the war, would tend to keep the new states customers of Great Britain chiefly, as they had been before; and what they bought they must pay for by sending their own products in return. This constraint of routine and convenience received additional force from the scarcity of capital in America, and its abundance in Great Britain, relatively to the rest of Europe. The wealthiest nation could hold the Americans by their need of accommodations which others could not extend.

In so far there probably was a general substantial agreement in Great Britain. The Americans had been consumers to over double the amount of the West Indies before the war, and it was desirable to retain their custom. Nor was the anticipation of success deceived. Nine years later, despite the rejection of Pitt's measure, an experienced American complained "that we draw so large a proportion of our manufactures from one nation. The other European nations have had the eight years of the war (of Independence) exclusively, and the nine years of peace in fair competition, and do not yet supply us with manufactures equivalent to half of the stated value of the shoes

made by ourselves."<sup>67</sup> In the first year of the government under the Constitution, from August, 1789, to September 30, 1790, after seven years of independence, out of a total of not quite \$20,000,000 imports to the United States, over \$15,000,000 were from the dominions of Great Britain;<sup>68</sup> and nearly half the exports went to the same destination, either as raw material for manufactures, or as to the distributing centre for Europe. The commercial dependence is evident; it had rather increased than diminished since the Peace. As regards American navigation, the showing was somewhat better; but even here 217,000 tons British had entered United States ports, against a total of only 355,000 American. As of the latter only 50,000 had sailed from Great Britain, it is clear that the empire had retained its hold upon its carrying trade, throughout the years intervening between the Peace and the adoption of the Constitution.

As regards the commercial relations between the two nations, these results corresponded in the main with the expectations of those who frustrated Pitt's measure. He had conceived, however, that it was wise for Great Britain not only to preserve a connection so profitable, but also to develop it; to multiply the advantage by steps which would promote the prosperity and consequent purchasing power of the communities involved. This

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<sup>67</sup> Coxe's View, p. 318.

<sup>68</sup> American State Papers, Foreign Affairs, vol. i. p. 301. Jefferson added, "These imports consist mostly of articles on which industry has been exhausted,"—*i.e.*, completed manufactures. The State Papers, Commerce and Navigation, give the tabulated imports and exports for many succeeding years.

was the object of his proposed concession. During the then recent war, no part of the British dominions—save besieged Gibraltar—had suffered so severely as the West Indies. Though other causes concurred, this was due chiefly to the cessation of communications with the revolted colonies, entailing failure of supplies indispensable to their industries. Despite certain alleviations incidental to the war, such as the capture of American vessels bound to foreign islands, and the demand for tropical products by the British armies and fleets, there had been great misery among the population, as well as financial loss. The restoration of commercial intercourse would benefit the continent as well as the islands; but the latter more. The prosperity of both would redound to the welfare of Great Britain; for the one, though now politically independent, was chained to her commercial system by imperative circumstances, while of the trade of the other she would have complete monopoly, except for this tolerance of a strictly local traffic with the adjoining continent. As for British navigation, the supreme interest, Pitt believed that it would receive more enlargement from the increase of productiveness in the islands, and of consequent demand for British manufactures, than it would suffer loss by American navigation. More commerce, more ships. Then, as at the present day, the interests of Great Britain and of the United States, in their relations to a matter of common external concern, were not opposed, but complementary; for the prosperity of the islands through America would make for the prosperity of Great

Britain through the islands.

This, however, was just the point disputed; and, in default of the experience which the coming years were to furnish, fears not wholly unreasonable, from the particular point of view of sea power, as then understood, were aroused by the known facts of American shipping enterprise, both as ship-builders and carriers, even under colonial trammels. John Adams, who was minister to Great Britain from 1785 to 1788, had frequent cause to note the deep and general apprehension there entertained of the United States as a rival maritime state. The question of admission to the colonial trade, as it presented itself to most men of the day, was one of defence and of offence, and was complicated by several considerations. As a matter of fact, there was no denying the existence of that transatlantic commercial system, in which the former colonies had been so conspicuous a factor, the sole source of certain supplies to an important market, reflecting therein exactly Great Britain's own position relatively to the consumers of the European continent. The prospect of reviving what had always been an *imperium in imperio*, but now uncontrolled by the previous conditions of political subjection, seemed ominous; and besides, there was cherished the hope, ill-founded and delusive though it was, that the integrity of the empire as a self-sufficing whole, broken by recent revolt, might be restored by strong measures, coercive towards the commerce of the United States, and protective towards Canada and the other remaining continental colonies. It was believed by some that

the agriculture, shipping, and fisheries of Canada, Nova Scotia, and Newfoundland, despite the obstacles placed by nature, could be so fostered as to supply the needs of the West Indies, and to develop also a population of consumers bound to take off British manufactures, as the lost colonists used to do. This may be styled the constructive idea, in Sheffield's series of propositions, looking to the maintenance of the British carrying trade at the expense of that of the United States. This expectation proved erroneous. Up to and through the War of 1812, the British provinces, so far from having a surplus for export, had often to depend upon the United States for much of the supplies which Sheffield expected them to send to the West Indies.

The proposition was strongly supported also by a wish to aid the American loyalists, who, to the number of many thousands, had fled from the old colonies to take refuge in the less hospitable North. These men, deprived of their former resources, and having a new start in life to make, desired that the West India market should be reserved for them, to build up their local industries. Their influence was exerted in opposition to the planters, and the mother country justly felt itself bound to their relief by strong obligation. Conjoined to this was doubtless the less worthy desire to punish the successful rebellion, as well as to hinder the growth of a competitor. "If I had not been here and resided here some time," wrote John Adams, in 1785, "I should not have believed, nor could have conceived, such an union of all Parliamentary factions against us, which is a

demonstration of the unpopularity of our cause."<sup>69</sup> "Their direct object is not so much the increase of their own wealth, ships, or sailors, as the diminution of ours. A jealousy of our naval power is the true motive, the real passion which actuates them. They consider the United States as their rival, and the most dangerous rival they have in the world. I can see clearly they are less afraid of the augmentation of French ships and sailors than American. They think they foresee that if the United States had the same fisheries, carrying trade, and same market for ready-built ships, they had ten years ago, they would be in so respectable a position, and in so happy circumstances, that British seamen, manufacturers, and merchants too, would hurry over to them."<sup>70</sup> These statements, drawn from Adams's association with many men, reflect so exactly the line of argument in the best known of the many controversial pamphlets published about that time,—Lord Sheffield's "Observations on the Commerce of the American States,"—as to prove that it represented correctly a preponderant popular feeling, not only adverse to the restoration of the colonial privileges contemplated by Pitt, but distinctly inimical to the new nation; a feeling born of past defeat and of present apprehension.

Inextricably associated with this feeling was the conviction that the navigation supported by the sugar islands, being a monopoly always under the control of the mother country, and

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<sup>69</sup> Works of John Adams, vol. viii. p. 333.

<sup>70</sup> Works of John Adams, vol. viii. p. 291.

ministering to the *entrepôt* on which so much other shipping depended, was the one sure support of the general carrying trade of the nation. "Considering the bulk of West India commodities," Sheffield had written, "and the universality and extent of the consumption of sugar, a consumption still in its infancy even in Europe, and still more in America, it is not improbable that in a few ages the nation which may be in possession of the most extensive and best cultivated sugar islands, *subject to a proper policy*,<sup>71</sup> will take the lead at sea." Men of all schools concurred in this general view, which is explanatory of much of the course pursued by the British Government, alike in military enterprise, commercial regulation, and political belligerent measures, during the approaching twenty years of war with France. It underlay Pitt's subsequent much derided, but far from unwise, care to get the whole West India region under British control, by conquering its sugar islands. It underlay also the other measures, either instituted or countenanced by him, or inherited from his general war policy, which led through ever increasing exasperation to the war with the United States. The question, however, remained, "What is the proper policy conducive to the end which all desire?" Those who thought with Pitt in 1783 urged that to increase the facilities of the islands, by abundant supplies from the nearest and best source, in America, would so multiply the material of commerce as most to promote the necessary navigation. The West India planters pressed this

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<sup>71</sup> My italics.

view with forcible logic. "Navigation and naval power are not the parents of commerce, but its happy fruits. If mutual wants did not furnish the subject of intercourse between distant countries, there would soon be an end of navigation. The carrying trade is of great importance, but it is of greater still to have trade to carry." To this the reply substantially was that if the trade were thrown open to Americans, by allowing them to carry in their own vessels, the impetus so given to their navigation, with the cheapness of their ships, owing to the cheapness of materials, would make them carriers to the whole world, breaking up the monopoly of British merchants, and supplanting the employment of British ships.

A few statesmen, more far seeing and deeper reasoning,—notably Edmund Burke,—came to Pitt's support, and the West India proprietors, largely resident in England, by their knowledge of details contributed much to elucidate the facts; but their efforts were unavailing. Their argument ran thus: "Only the American continent can furnish at reasonable rates the animals required for the agriculture of the islands, the food for the slaves, the lumber for buildings and for packing produce. Only the continent will take the rum which Europe refuses, and with which the planter pays his running expenses. Owing to irreversible currents of trade, neither British nor island shipping can carry this traffic at a profit to themselves, except by ruinously overcharging the planter. Americans only can do it. Concede the exchange by this means, and the development of sugar and coffee raising, owing

to their bulk as freight, will enlarge British shipping to Europe by an amount much beyond that lost in the local transport. Of the European carriage you will retain a monopoly, as you will of the produce, which goes into your storehouses alone; whence you reap the advantage of brokerage and incidental handling, at the expense of the continental consumer, while your home navigation is enlarged by its export. Refuse this privilege, and your islands sink under French and Spanish competition. French Santo Domingo, especially, exceeds by far all your possessions, both in the extent of soil and quality of product." Very shortly they were able also to say that the French allowed ships to be bought from Americans; and, although in their treaty with the United States they had refused free intercourse to American vessels, a royal ordinance of 1784 permitted it to vessels of under sixty tons' burden.

Within a month of the introduction of Pitt's bill the ministry to which he then belonged fell. The one which followed refrained from dealing at all with the subject, except by recourse to an expedient not uncommon with party leaders, dealing with a new question of admitted intricacy. They passed a bill leaving the whole matter to the Crown for executive action. Accordingly, in July, 1783, a proclamation was issued permitting intercourse between the islands and the American continent, in a long list of specified articles, but only by British ships, owned and navigated as required by the Navigation Act. American vessels were excluded by omission, and while most necessaries for food,

agriculture, and commerce were admitted, one staple article, salt fish, urgently requested by the planters, was forbidden. This was partly to encourage the Newfoundland fisheries and those of Great Britain, and partly to injure American. Both objects were in the line of the Navigation Act, to foster home navigation and impede that of foreigners; fisheries being considered a prime support of each. A generation before, the elder Pitt had inveighed against the Peace of Paris, in 1763, on account of the concession of the cod fisheries. "You leave to France," he said, "the opportunity of reviving her navy." Before the separation, the near and great market of the West India negro population had consumed one-third of the American catch of fish. So profitable a condition could no longer be continued. Salt provisions also, butter, and cheese, were not allowed, being reserved for Irish producers.<sup>72</sup>

The next December the enabling bill was renewed and the proclamation re-issued. At this moment Pitt returned to office. A few months later, in the spring of 1784, Parliament was dissolved, and the ensuing elections carried him into power at the head of a great majority. He made no immediate attempt to resume legislation favoring the American trade with the West Indies. The disposition of the majority of Englishmen in the matter had been plainly shown, and other more urgent commercial reforms engaged his attention. Soon after the receipt of the news in America, some of the states passed

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<sup>72</sup> Chalmers, Opinions, p. 65.

retaliatory measures, on their own account, or authorized the Continental Congress so to act for them. The bad feeling already caused by the non-fulfilment, on both sides, of certain stipulations of the treaty of peace was particularly exasperated by this proclamation; for anticipation, aroused by Pitt's proposed measure, had been nursed into confident expectation during the four months' interval, in which intercourse had been openly or tacitly allowed. It was at this period that Nelson first came conspicuously into public notice, by checking the connivance of the West Indian governors in the infractions of the Navigation Laws; the Act authorizing commanders of Kings' ships to seize offending vessels, and bring them before the Court of Admiralty.<sup>73</sup> It is said also that his experience had much to do with shaping subsequent legislation upon the same prohibitory lines. In America disappointment was bitter. Little concern was felt in England. Concerted action by several states was thought most unlikely, and a more perfect union impossible. While Massachusetts, for example, in 1785 forbade import or export in any vessel belonging in whole or in part to British subjects, the state then next to her in maritime importance, Pennsylvania, in 1786 repealed laws imposing extra charges on British ships, and admitted all nations on equal terms with her sister states. "The ministry in England," wrote Adams, "build all their hopes and schemes upon the supposition of such divisions in America as will forever prevent a combination of the States, either in

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<sup>73</sup> Reeves, pp. 47, 57.

prohibition or in retaliatory duties."<sup>74</sup>

Effective retaliation consequently was not feared, and as for results otherwise, it was doubtless thought best to await the test of experience. Proclamation, annually authorized and re-issued, remained therefore the mode of regulating commerce between the British dominions and the United States up to the date of Jay's treaty. Once only, in 1788, Parliament interfered so far as to pass a law, confining the trade with the West Indies to British-built ships and to certain enumerated articles, in the strict spirit of the Navigation system. Otherwise, intercourse with the United States was throughout this period subject at any moment to be modified or annulled by the single will of the Executive; whereas that with other nations, fixed by statute,—the Navigation Act,—could be altered only by the legislature.<sup>75</sup>

Of this British commercial policy, following immediately upon the recognition of independence, Americans had not the slightest reason to complain. They had insisted upon being independent, and it would be babyish to fret about the consequences, when unpalatable. It was unpleasant to find that Great Britain, satisfied that the carrying trade was the first of her interests, upon which depended her naval supremacy, rigorously excluded Americans from branches of that trade before permitted to them; but in so doing she was simply seeking her own advantage by means of her own laws, as a nation does,

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<sup>74</sup> Works of John Adams, vol. viii. p. 281.

<sup>75</sup> American State Papers, Foreign Relations, vol. i. p. 307.

for instance, when it imposes heavy protective duties. It is quite as legitimate to protect the carrying trade as any other form of industry; and the Navigation Act was no new device, for the special annoyance of Americans. It is very possible that the action of Great Britain at this time was so stupid, that, to use words of Jefferson's, the only way to prophesy what she would do was to ascertain what she ought to do, and infer the contrary. The rule, he said, never failed. This particular stupidity, if such it were,—and there was at least partial ground for the charge,—was simply another case of a most common form of human dulness of perception, preoccupation with a fixed idea. But were the policy wise or foolish, as regards herself, towards the Americans it was not a wrong, but an injury; and, consequently, what the newly independent people had to do was not to complain, but to strike back with retaliatory commercial measures. Jefferson, no friend generally to coercive action, wrote concerning this particular situation, "It is not to the moderation or justice of others we are to trust for fair and equal access to market with our productions, or for our due share in the transportation of them; but to our own means of independence, and the firm will to use them."<sup>76</sup>

Equally, when Great Britain, under the emergencies of the French Revolution, resorted to measures that overpassed her rights, either municipal or international, and infringed our own, the resort should have been to the remedy with which nations defend their rights, as distinct from their interest. The American

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<sup>76</sup> American State Papers, Foreign Relations, vol. i. p. 304.

people, then poor, and habituated to colonial dependence, failed to create for themselves in due time the power necessary to self-assertion; nor did they as a nation realize, what men like John Adams and Gouverneur Morris saw and preached, that in the complicated tangle of warring interests which constitutes every contemporary situation, the influence of any single factor depends, not merely upon its own value, but upon that value taken in connection with other conditions. A pound is but a pound; but when the balance is nearly equal, a pound may turn a scale. Because America could not possibly put afloat the hundred—or two hundred—ships-of-the-line which Great Britain had in commission, therefore, many argued, as many do to-day, it was vain to have any navy. "I believe," wrote Morris in 1794,<sup>77</sup> and few men better understood financial conditions, "that we could now maintain twelve ships-of-the-line, perhaps twenty, with a due proportion of frigates and smaller vessels. And I am tolerably certain that, while the United States of America pursue a just and liberal conduct, *with twenty sail-of-the-line at sea*, no nation on earth will dare to insult them. I believe also, that, not to mention individual losses, five years of war would involve more national expense than the support of a navy for twenty years. One thing I am thoroughly convinced of, that, if we do not render ourselves respectable, we shall continue to be insulted."

A singular, and too much disregarded, instance of the insults

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<sup>77</sup> Morris to Randolph (Secretary of State), May 31, 1794. American State Papers, Foreign Relations, vol. i. p. 409. The italics are Morris's.

to which the United States was exposed, by the absence of naval strength, is found in the action of the Barbary Powers towards our commerce, which scarcely dared to enter the Mediterranean. It is less known that this condition of things was eminently satisfactory to British politicians of the old-fashioned school, and as closely linked as was the Navigation system itself to the ancient rivalry with Holland. "Our ships," wrote the Dutch statesman De Witt, who died in 1672, "should be well guarded by convoy against the Barbary pirates. Yet it would by no means be proper to free that sea of those pirates, because we should hereby be put upon the same footing with East-landers, [*i.e.*, Baltic nations, Denmark, Sweden, etc.] English, Spaniards, and Italians; wherefore it is best to leave that thorn in the sides of those nations, whereby they will be distressed in that trade, while we by convoy engross all the European traffic and navigation."<sup>78</sup> This cynical philosophy was echoed in 1784 by the cultured English statesman, Lord Sheffield, the intimate friend of the historian Gibbon, and editor of his memoirs. "If the great maritime powers know their interests," he wrote, "they will not encourage the Americans to be carriers. That the Barbary States are an advantage to the maritime powers is obvious. If they were suppressed, the little states of Italy, etc., would have much more of the carrying trade. The Armed Neutrality would be as hurtful

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<sup>78</sup> Quoted from De Witt's Interest of Holland, in Macpherson's Annals of Commerce, vol. ii. p. 472.

to the great maritime powers as the Barbary States are useful."<sup>79</sup>

It may be a novel thought to many Americans, that at that time American commerce in the Mediterranean depended largely for protection upon Portuguese cruisers; its own country extending none. When peace was unexpectedly made between Portugal and Algiers in 1793, through the interposition of a British consular officer, a wail of dismay went up to heaven from American shipmen. "The conduct of the British in this business," wrote the American consul at Lisbon, "leaves no room to doubt or mistake their object, which was evidently aimed at us, and that they will leave nothing unattempted to effect our ruin." It proved, indeed, that the British consul's action was not that of his Government, but taken on his own initiative; but the incident not only recalls the ideas of the time, long since forgotten, but in its indications, both of British commercial security and American exposure, illustrates the theory of the Navigation Act as to the reciprocal influence of the naval and merchant services. There was then nothing, in the economical conditions of the United States, to forbid a navy stronger than the Portuguese; yet the consul, in his pitiful appeal to the Portuguese Court, had to write: "My countrymen have been led into their present embarrassment by confiding in the friendship, power, and protection of her Most Faithful Majesty," ... which "lulled our citizens into a

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<sup>79</sup> Observations on the Commerce of the American States, 1783, p. 115. Concerning this pamphlet, Gibbon wrote, "The Navigation Act, the palladium of Britain, was defended, perhaps saved, by his pen."

fatal security."<sup>80</sup> Our lamentable dependence upon others, for the respect we should have extorted ourselves, is shown in the instructions issued to Jay, on his mission to England in 1794. "It may be represented to the British Ministry, how productive of perfect conciliation it might be to the people of the United States, if Great Britain would use her influence with the Dey of Algiers for the liberation of the American citizens in captivity, and for a peace upon reasonable terms. It has been communicated from abroad, to be the fixed policy of Great Britain to check our trade in grain to the Mediterranean. This is too doubtful to be assumed, but fit for inquiry."<sup>81</sup> The Dey had declared war in 1785, this being with the Barbary rulers the customary method of opening piratical action. "If the Dey makes peace with every one," said one of his captains to Nelson, "what is he to do with his ships?"

The experience of the succeeding fifteen years was to give ample demonstration of the truth of Morris's prophecy; but what is interesting now to observe is, that he, who certainly did not imagine twenty ships to be equal to a hundred, accurately estimated the deterrent force of such a body, prepared to act upon an enemy's communications,—or interests,—at a great distance from the strategic centre of operations. A valuable military lesson of the War of 1812 is just this: that a comparatively small force—a few frigates and sloops—placed as the United States Navy was, can exercise an influence utterly disproportionate to its

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<sup>80</sup> American State Papers, Foreign Relations, vol. i. pp. 296-299.

<sup>81</sup> American State Papers, Foreign Relations, vol. i. p. 474.

own strength. Instances of Great Britain's extremity, subsequent to Morris's prediction, are easily cited. In 1796, her fleet was forced to abandon the Mediterranean. In 1799, a year after the Nile, Nelson had to implore a small Portuguese division not to relinquish the blockade of Malta, which he could not otherwise maintain. Under such conditions, apprehension of even a slight additional burden of hostility imposes restraint. Had Morris's navy existed in 1800, we probably should have had no War of 1812; that is, if Jefferson's passion for peace, and abhorrence of navies, could have been left out of the account. War, as Napoleon said, is a business of positions. The commercial importance of the United States, and the position of its navy relatively to the major interests of Great Britain, would together have produced an effect, to which, under the political emergency of the time, the mere commercial retaliation then attempted was quite inadequate. This distressed the enemy, but did not reduce him; and it bitterly alienated a large part of our own community, so that we went into the war a discordant, almost a disunited, nation.

During the years of American impotence under the early confederation, the trade regulations of the British Government, framed on the lines advocated by Lord Sheffield, met with a measure of success which was perhaps more apparent than real; due attention being scarcely paid to the actual loss entailed upon British planters by the heightened cost of supplies, and the consequent effect upon British commerce and navigation.

"Under the present limited intercourse with America," wrote the planter, Edwards, "the West Indies are subject to three sets of devouring monopolies: 1, the British ship-owners; 2, their agents in American ports; 3, their agents in the ports of the islands; all of whom exact an unnatural profit of the planters."<sup>82</sup> Chalmers, looking only to the navigation of the kingdom, which these culprits represented, admits that in the principal supplies Great Britain cannot compete with America; but, "whatever may be the difference in price to the West Indians, this is but a small equivalent which they ought to pay to the British consumer, for enjoying the exclusive supply of sugar, rum, and other West India products."<sup>83</sup> A few figures show conclusively that under all disadvantages the islands increased in actual prosperity, although they fell behind their French competitors, favored by a more liberal policy. In the quiet year 1770, before the revolt of the continent, the British West Indies shipped to the home country produce amounting to £3,279,204;<sup>84</sup> in 1787 this had risen to £4,839,145,<sup>85</sup> a gain of over 30 per cent. Between the same years, exports to the United States, limited after the peace to British ships, had fallen from £481,407 to £196,461. American produce, confined to British bottoms for admission to British colonies, had gone largely to the French islands, with which before the

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<sup>82</sup> West Indies, vol. ii. page 522, note.

<sup>83</sup> Opinions, p. 89.

<sup>84</sup> Macpherson, vol. iii. p. 506.

<sup>85</sup> Ibid., vol. iv. p. 158.

Revolution they could have only surreptitious intercourse. The result was that the British planter had to pay much more for his plantation supplies than did the French, who were furnished by American vessels, built and run much cheaper than British.<sup>86</sup> He was rigidly forbidden also to seek stores in the French islands. Such circuitous intercourse with America, by depriving British ships of the long voyage to the continent, would place the French islands in the obnoxious relation of *entrepôt* to their neighbors, which Holland had once occupied towards England. In all legislation minute care was taken to prevent such injury to navigation. Direct trade with British dominions was the fetich of British policy; circuitous trade its abomination.

Despite drawbacks, a distinct advance was observable also in British navigation; in the development of the British-American colonies, continental and island; and in the intercolonial intercourse and shipping. Immediately after the institution of the new government, the United States enacted laws protective of her own navigation; notably by an alien duty laid upon all foreign tonnage. To consider the probable effects of this legislation, and of the new American institutions, upon British commerce and navigation, a committee of the Privy Council was appointed,

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<sup>86</sup> Bryan Edwards, himself a planter of the time, says (vol. ii. p. 522) that staves and lumber had risen 37 per cent in the British islands, which he attributes to the extortions of the navigation monopoly, "under the present limited intercourse with America." Coxe (View, etc., p. 134) gives lists of comparative prices, in 1790, June to November, in the neighboring islands of Santo Domingo and Jamaica, which show forcibly the burdens under which the latter labored.

to which we owe a digested and authoritative summary of the change of conditions effected by the British measures, between 1783 and 1790. From its report, based upon averages of several years, it appears that in the direct trade between Great Britain and the United States, in which American ships stood on equal terms with British, there had been little variation in value of imports or exports, with the single exception of tobacco and rice. These two articles, which formerly had to pass through Great Britain as an *entrepôt*, now went direct to their destination. The American shipping—navigation—employed in the trade with Great Britain herself, was only one-third of the British; the respective tonnage being 26,564 and 52,595. As this was nearly the proportion of American to British built ships in the colonial period, American shipping before the adoption of the Constitution had not gained at all, under the most favorable treatment conceded to it in British dominions. The Report, indeed, estimated that it had lost by nearly 20 per cent.<sup>87</sup>

In the colonial trade, on the other hand, very marked British gains could be reported. The commercially backward communities of Canada, etc., forbidden now to admit American ships, or to import many articles from the United States, and given special privileges in the West Indies, had more than doubled their imports from the mother country; the amount

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<sup>87</sup> Chalmers, in one of his works quoted by Macpherson (vol. iii. p. 559), estimates the annual entries of American-built ships to British ports, 1771-74, to be 34,587 tons. From this figure the falling off was marked.

rising from £379,411 to £829,088. These sums are not to be regarded in their own triviality, but as harbingers of a development, which it was hoped would fill the void in the British imperial system caused by the loss of the former colonies. The West Indies showed a more gradual increase, though still satisfactory; their exports since 1774 had risen 20 per cent. It was, however, in navigation, avowedly the chief aim of the protective legislation, that the intercolonial results were most encouraging. Through the exclusion of American competition, British tonnage to Canada and the neighboring colonies had enlarged fourfold, from 11,219 to 46,106. The national tonnage engaged between the West Indies and the mother country had grown from 80,482 to 133,736; 60 per cent. More encouraging still, from the ideal point of view of a restored system of mutual support, embracing both sides of the Atlantic, the tonnage employed between Canada and the West Indies had risen from 996 only in 1774, to 14,513 in 1789. In brief, after a careful and systematic examination of the whole field, the committee considered that British navigation had gained 111,638 tons by excluding Americans from branches of trade they had once shared, and still eagerly desired.

The effects of the system were most conspicuous in the trade between the West Indies and the United States. The tonnage here employed had fallen from 107,739, before the war, to 62,738. The reflections of the Committee upon this particular are so characteristic of national convictions as to be worth

quoting.<sup>88</sup> "This decrease is rather less than half what it was before the war;<sup>89</sup> but before the war five-eighths belonged to merchants, permanent inhabitants of the countries now under the dominion of the United States, and three-eighths to British merchants residing occasionally in the said countries. At that time, very few vessels belonging to British merchants, resident in the British European dominions, or in the British Islands in the West Indies, had a share in this trade. The vessels employed in this trade can now only belong to British subjects *residing* in the present British dominions. Many vessels now go from the ports of Great Britain, carrying British manufactures to the United States, there load with lumber and provisions for the British Islands in the West Indies, and return with the produce of these islands to Great Britain. The whole of this branch of freight may also be considered as a new acquisition, and was obtained by your Majesty's Order in Council before mentioned,<sup>90</sup> which has operated to the increase of British Navigation, compared to that of the United States in a double ratio; *but it has taken from the navigation of the United States more than it has added to that of Great Britain.*"

The last sentence emphasizes the fact, which John Adams

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<sup>88</sup> Report of the Committee of the Privy Council, Jan. 28, 1791, p. 39.

<sup>89</sup> This awkward expression means that the amount of decrease was rather less than half the before-the-war total.

<sup>90</sup> June 18, 1784, substantially the re-issue of that of Dec. 26, 1783, which Reeves (p. 288) considers the standard exemplar.

had noted, that the object of the Navigation system was scarcely more defensive than offensive, in the military sense of the word. The Act carried provisions meant distinctly to impede the development of foreign shipping, as far as possible to do so by municipal regulation. The prohibition of entrance to a port of Great Britain by a foreign trader, unless three-fourths manned by citizens of the country whose flag she bore, was distinctly offensive in intent. But for this, other states might increase their tonnage by employing seamen not their own, which Great Britain could not do without weakening the reserves available for her navy, and imperative to her defence. Rivalry was thus engendered, and became bitter and apprehensive in proportion to the national interests involved; but at no time had such considerations persuaded the country to depart from its purpose. "The foreign war which those measures first brought upon us, and the odium which they have never ceased to cause, to the present day (1792) among neighboring nations, have not induced the legislature to give up any one of its principles."<sup>91</sup> In the case of the United States, the exasperation aroused was very great. It perpetuated the national animosity surviving from the War of Independence, and provoked retaliation. Before the formation of the better Union this was too desultory and divided to have much effect, and the artificial system of which Sheffield was the chief public champion had the appearance of success which has been described; but as soon as the thirteen

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<sup>91</sup> Reeves, p. 431.

states could wield their power as one whole, under a system at once consistent and permanent, American navigation began to make rapid headway. In 1790 there entered American ports from abroad 355,000 tons of American shipping and 251,000 foreign, of which 217,000 were British.<sup>92</sup> After one year of the discriminating tonnage dues laid by the national Congress, the American tonnage entering home ports from Great Britain had risen, from the 26,564 average of the three years, 1787 to 1789, ascertained by the British committee, to 43,580.<sup>93</sup> In 1801 there entered 799,304 tons of native shipping,<sup>94</sup> and but 138,000 foreign.<sup>95</sup> The amount of British among the latter is not stated; but in the year 1800 there cleared from Great Britain, under her own flag, for the United States, but 14,381 tons.<sup>96</sup> This reversal of the conditions in 1787-89, before quoted,<sup>97</sup> was the result of a gradual progress, noticeable immediately after the American imposition of tonnage duties, and increasing up to 1793, when it was accelerated by the war between Great Britain and France.

It is carefully to be remembered that the British committee, representing strictly the prepossessions of the body by which it was constituted, looked primarily to the development of

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<sup>92</sup> American State Papers, Commerce and Navigation, vol. x. p. 389.

<sup>93</sup> Ibid., Foreign Relations, vol. i. p. 301.

<sup>94</sup> Ibid., Commerce and Navigation, vol. x. p. 528.

<sup>95</sup> Ibid., p. 584.

<sup>96</sup> Macpherson, Annals of Commerce, vol. iv. p. 535.

<sup>97</sup> Ante, pp. 77, 78.

national carrying trade. "As the security of the British dominions principally depends on the greatness of your Majesty's naval power, it has ever been the policy of the British Government to watch with a jealous eye every attempt that has been made by foreign nations to the detriment of its navigation; and even in cases where the interests of commerce and those of navigation could not be wholly reconciled, the Government of Great Britain has always given the preference to the interests of navigation; and it has never yet submitted to the imposition of any tonnage duties by foreign nations on British ships trading to their ports, without proceeding immediately to retaliation."<sup>98</sup> It had, however, submitted to several such measures, retaliatory for the exclusion from the West India trade, enacted by the separate states in the years 1783 to 1789; as well as to other legislation, taxing British shipping by name much above that of other foreigners. This quiescence was due to confidence, that the advantages possessed by Great Britain would enable her to overcome all handicaps. It was therefore with satisfaction that, after six years of commercial antagonism, the committee was able, not only to report the growth of British shipping, already quoted, but to show by the first official statement of entries issued by the American Government,<sup>99</sup> for the first year of its own existence, that for every five American tons entering American ports from over sea, there entered also three British;

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<sup>98</sup> Report of the Committee, p. 85.

<sup>99</sup> *Ibid.*, p. 52.

and that of the whole foreign tonnage there were six British to one of all other nations together.

Upon the whole, therefore, while regretting the evidence in the American statement which showed increasing activity by American shipping over that ascertained by themselves for the previous years,—to be accounted for, as was believed, by transient circumstances,—the committee, after consultation with the leading merchants in the American trade, thought better to postpone retaliation for the new tonnage duties, which contained no invidious distinction in favor of other foreign shipping against British. The system of trade regulation so far pursued had given good results, and its continuance was recommended; though bitterly antagonizing Americans, and maintaining ill-will between the two countries. Upon one point, especially desired by the United States, the committee was particularly firm. It considered that its Government might judiciously make one proposition—and one only—for a commercial treaty; namely, that there should be entire equality of treatment, as to duties and tonnage, towards the ships of both nations in the home ports of each other. "But if Congress should propose (as they certainly will) that this principle of equality should be extended to the ports of our Colonies and Islands, and that the ships of the United States should there be treated as British ships, it should be answered that this demand cannot be admitted even as a subject of negotiation.... This branch of freight is of the same nature with the freight from one American state to another" (that

is, trade internal to the empire is essentially a coasting trade). "Congress has made regulations to confine the freight, employed between the different states, to the ships of the United States, and Great Britain does not object to this restriction."<sup>100</sup> "The great advantages which have resulted from excluding American ships appear in the accounts given in this report; many of the merchants and planters of the West Indies, who formerly resisted this advice, now acknowledge the wisdom of it."<sup>101</sup>

The committee recognized that exclusion from the carrying trade of the British West Indies was in some degree compensated to the American carrier, by the permission given by the Government of France for vessels not exceeding sixty tons to trade with her colonies, actually much greater producers, and therefore larger customers. Santo Domingo in particular, in the period following the American war, had enjoyed a heyday of prosperity, far eclipsing that of all the British islands together. This was due partly to natural advantages, and partly to social conditions,—the planters being generally resident, which the British were not; but cheaper supplies through free intercourse with the American continent also counted for much. From the French West Indies there entered the United States in 1790, 101,417 tons of shipping, of which only 3,925 were French.<sup>102</sup> From the British Islands there came 90,375, but of these all

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<sup>100</sup> Report, p. 96.

<sup>101</sup> *Ibid.*, p. 94.

<sup>102</sup> American State Papers, Commerce and Navigation, vol. x. p. 47.

but 4,057 were British.<sup>103</sup> Returning, the exports from the United States to the two were respectively, \$3,284,656 and \$2,077,757.<sup>104</sup> The flattering testimony borne by these figures to the meagreness of French navigation, in the particular quarter, needed doubtless to be qualified by reference to their home trade from the West Indies, borne in French ships. This amounted in 1788 to 296,435 tons from Santo Domingo alone;<sup>105</sup> whereas the British trade from all their islands employed but 133,736.<sup>106</sup> This, however, was the sole great carrying trade of France; to the United States she sent from her home ports less than 13,000 tons.

It was the opinion of the British committee that the privilege conceded to American shipping in the French islands was so contrary to established colonial policy as to be of doubtful continuance. Still, in concluding its report with a summary of American commercial conditions, which it deemed were in a declining way, it took occasion to utter a warning, based upon these relations of America with the foreign colonies. In case of a commercial treaty, "Should it be proposed to treat on maritime regulations, any article allowing the ships of the United States to protect the property of the enemies of Great Britain in time of war" (that is, the flag to cover the goods), "should on no account be admitted. It would be more dangerous to concede this

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<sup>103</sup> Ibid., p. 45.

<sup>104</sup> Ibid., p. 24.

<sup>105</sup> Coxe, p. 171.

<sup>106</sup> Committee's estimate; Report, p. 43.

privilege to the United States than to any other foreign country. From their situation, the ships of these states would be able to cover the whole trade of France and Spain with their islands and colonies, in America and the West Indies, whenever Great Britain shall be engaged with either of those Powers; and the navy of Great Britain would, in such case, be deprived of the means of distressing the enemy, by destroying his commerce and thereby diminishing his resources." It is well to note in these words the contemporary recognition of the importance of the position of the United States; of the value of the colonial trade; of the bearing of commerce destruction on war, by "diminishing the resources" of an enemy; and of the opportunity of the United States, "from their situation," to cover the carriage of colonial produce to Europe; for upon these several points turned much of the troubles, which by their accumulation caused mutual exasperation, and established an antagonism that inevitably lent itself to the war spirit when occasion arose. The specific warning of the committee was doubtless elicited by the terms of the then recent British commercial treaty with France, in 1786, by which the two nations had agreed that, in case of war to which one was a party, the vessels of the other might freely carry all kinds of goods, the property of any person or nation, except contraband. Such a concession could be made safely to France,—was in fact perfectly one-sided in favoring Great Britain; but to America it would open unprecedented opportunity.

To the state of things so far described came the French

Revolution; already begun, indeed, when the committee sat, but the course of which could not yet be foreseen. Its coincidence with the formation of the new government of the United States is well to be remembered; for the two events, by their tendencies, worked together to promote the antagonism between the United States and Great Britain, which was already latent in the navigation system of the one and the maritime aptitudes of the other. Washington, the first American President, was inaugurated in March, 1789; in May, the States General of France met. In February, 1793, the French Republic declared war against Great Britain, and in March Washington entered on his second term. In the intervening four years the British Government had persisted in maintaining the exclusion of American carrying trade from her colonial ports. During the same period the great French colony Santo Domingo had undergone a social convulsion, which ended in the wreck of its entire industrial system by the disappearance of slavery, and with it of all white government. The huge sugar and coffee product of the island vanished as a commercial factor, and with it the greater part of the colonial carriage of supplies, which had indemnified American shippers and agriculturists for their exclusion from British ports. Of 167,399 American tonnage entering American ports from the West Indies in 1790, 101,417 had been from French islands.

The removal of so formidable a competitor as Santo Domingo of course inured to the advantage of the British sugar and coffee

planter, who was thus more able to bear the burden laid upon him to maintain the navigation of the empire, by paying a heavy percentage on his supplies. This, however, was not the only change in conditions affecting commerce and navigation. By 1793 it had become evident that Canada, Nova Scotia, and their neighbors, could not fill the place in an imperial system which it had been hoped they would take, as producers of lumber and food stuffs. This increased the relative importance of the West India Islands to the empire, just when the rise in price of sugar and coffee made it more desirable to develop their production. Should war come, the same reason would make it expedient to extend by conquest British productive territory in the Caribbean, and at the same time to cut off the supplies of such enemy's possessions as could not be subdued; thus crippling them, and removing their competition by force, as that of Santo Domingo had been by industrial ruin. These considerations tended further to fasten the interest of Great Britain upon this whole region, as particularly conducive to her navigation system. That cheapening supplies would stimulate production, to meet the favorable market and growing demands of the world, had been shown by the object-lesson of the French colonies; though as yet the example had not been followed.

At this time also Great Britain had to recognize her growing dependence upon the sea, because her home territory had ceased to be self-sufficing. Her agriculture was becoming inadequate to feeding her people, in whose livelihood manufactures and

commerce were playing an increasing part. Both these, as well as food from abroad, required the command of the sea, in war as in peace, to import raw materials and export finished products; and control of the sea required increase of naval resources, proportioned to the growing commercial movement. According to the ideas of the age, the colonial monopoly was the surest means to this. It was therefore urgent to resort to measures which should develop the colonies; and the question was inevitable whether reserving to British navigation the trade by which they were supplied was not more than compensated by the diminished production, with its effect in lessening the cargoes employing shipping for the homeward voyage.

Thus things were when war broke out. The two objects, or motives, which have been indicated, came then at once into play. The conquest of the French West Indies, a perfectly legitimate move, was speedily undertaken; and meanwhile orders passing the bounds of recognized international law were issued, to suppress, by capture, their intercourse with the United States, alike in import and export. The blow of course fell upon American shipping, by which this traffic was almost wholly maintained. This was the beginning of a long series of arbitrary measures, dictated by a policy uniform in principle, though often modified by dictates of momentary expediency. It lasted for years in its various manifestations, the narration of which belongs to subsequent chapters. Complementary to this was the effort to develop production in British colonies, by extending to them

the neutral carriage denied to their enemies. This was effected by allowing direct trade between them and the United States to American vessels of not over seventy tons; a limit substantially the same as that before imposed by France, and designed to prevent their surreptitiously conveying the cargoes to Europe, to the injury of British monopoly of the continental supply, effected by the *entrepôt* system, and doubly valuable since the failure of French products.

This concession to American navigation, despite the previous opposition, had become possible to Pitt, partly because its advisability had been demonstrated and the opportunity recognized; partly, also, because the immense increase of the active navy, caused by the war, created a demand for seamen, which by impressment told heavily upon the merchant navigation of the kingdom, fostered for this very purpose. To meet this emergency, it was clearly politic to devolve the supply of the British West Indies upon neutral carriers, who would enjoy an immunity from capture denied to merchant ships of a belligerent, as well as relieve British navigation of a function which it had never adequately fulfilled. The measure was in strict accord with the usual practice of remitting in war the requirement of the Navigation Act, that three-fourths of all crews should be British subjects; by which means a large number of native seamen became at once released to the navy. To throw open a reserved trade to foreign ships, and a reserved employment to foreign seamen, are evidently only different applications of the

one principle, viz.: to draw upon foreign aid, in a crisis to which the national navigation was unequal.

Correlative to these measures, defensive in character, was the determination that the enemy should be deprived of these benefits; that, so far as international law could be stretched, neutral ships should not help him as they were encouraged to help the British. The welfare of the empire also demanded that native seamen should not be allowed to escape their liability to impressment, by serving in neutral vessels. The lawless measures taken to insure these two objects were the causes avowed by the United States in 1812 for declaring war. The impressment of American seamen, however, although numerous instances had already occurred, had not yet made upon the national consciousness an impression at all proportionate to the magnitude of the wrong; and the instructions given to Jay,<sup>107</sup> as special envoy in 1794, while covering many points at issue, does not mention this, which eventually overtopped all others.

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<sup>107</sup> American State Papers, Foreign Relations, vol. i. p. 472.

# **CHAPTER III**

## **FROM JAY'S TREATY TO THE ORDERS IN COUNCIL**

**1794-1807**

While there were many matters in dispute between the two countries, the particular occasion of Jay's mission to London in 1794 was the measures injurious to the commerce of the United States, taken by the British Government on the outbreak of war with France, in 1793. Neutrals are certain to suffer, directly and indirectly, from every war, and especially in maritime wars; for then the great common of all nations is involved, under conditions and regulations which by general consent legalize interference, suspension, and arrest of neutral voyages, when conflicting with acknowledged belligerent rights, or under reasonable suspicion of such conflict. It was held in the United States that in the treatment of American ships Great Britain had transcended international law, and abused belligerent privilege, by forced construction in two particulars. First, in June, 1793, she sent into her own ports American vessels bound to France with provisions, on the ground that under existing circumstance

these were contraband of war. She did indeed buy the cargoes, and pay the freight, thus reducing the loss to the shipper; but he was deprived of the surplus profit arising from extraordinary demand in France, and it was claimed besides that the procedure was illegal. Secondly, in November of the same year, the British Government directed the seizure of "all ships laden with goods the produce of any colony belonging to France, or carrying provisions or other supplies for the use of any such colony." Neutrals were thus forbidden either to go to, or to sail from, any French colony for purposes of commercial intercourse. For the injuries suffered under these measures Jay was to seek compensation.

The first order raised only a question of contraband, of frequent recurrence in all hostilities. It did not affect the issues which led to the War of 1812, and therefore need not here be further considered. But the second turned purely on the question of the intercourse of neutrals with the colonies of belligerents, and rested upon those received opinions concerning the relations of colonies to mother countries, which have been related in the previous chapters. The British Government founded the justification of its action upon a precedent established by its own Admiralty courts, which, though not strictly new, was recent, dating back only to the Seven Years' War, 1756-63, whence it had received the name of the Rule of 1756. At that time, in the world of European civilization, all the principal maritime communities were either mother countries

or colonies. A colonial system was the appendage of every maritime state; and among all there obtained the invariable rule, the formulation of which by Montesquieu has been already quoted, that "commercial monopoly is the leading principle of colonial intercourse," from which foreign states were rigorously excluded. Dealing with such a recognized international relation, at a period when colonial production had reached unprecedented proportions, the British courts had laid down the principle that a trade which a nation in time of peace forbade to foreigners could not be extended to them, if neutrals, in time of war, at the will and for the convenience of the belligerent; because by such employment they were "in effect incorporated in the enemy's navigation, having adopted his commerce and character, and identified themselves with his interests and purposes."<sup>108</sup>

During the next great maritime war, that of American Independence, the United States were involved as belligerents, and the only maritime neutrals were Holland and the Baltic States. These drew together in a league known historically as the Armed Neutrality of 1780, in opposition to certain British interpretations of the rights of neutrals and belligerents; but in their formulated demands that of open trade with the colonies of belligerents does not appear, although there is found one closely cognate to it,—an asserted right to coasting trade, from port to port, of a country at war. The Rule of 1756 therefore remained, in 1793, a definition of international maritime law laid down by

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<sup>108</sup> Wheaton's International Law, p. 753.

British courts, but not elsewhere accepted; and it rested upon a logical deduction from a system of colonial administration universal at that period. The logical deduction may be stated thus. The mother country, for its own benefit, reserves to itself both the inward and outward trade; the products of the colony, and the supplying of it with necessaries. The carriage of these commodities is also confined to its own ships. Colonial commerce and navigation are thus each a national monopoly. To open to neutrals the navigation, the carriage of products and supplies, in time of war, is a war measure simply, designed to preserve a benefit endangered by the other belligerent. As a war measure, it tends to support the financial and naval strength of the nation employing it; and therefore, to an opponent whose naval power is capable of destroying that element of strength, the stepping in of a neutral to cover it is clearly an injury. The neutral so doing commits an unfriendly act, partial between the two combatants; because it aids the one in a proceeding, the origin and object of which are purely belligerent.

When the United States in 1776 entered the family of nations, she came without colonies, but in the war attendant upon her liberation she had no rights as a neutral. In the interval of peace, between 1783 and 1793, she had endeavored, as has been seen, to establish between herself and the Caribbean region those conditions of open navigation which were indicated as natural by the geographical relations of the two and their several products. This had been refused by Great Britain; but France had conceded

it on a restricted scale, plainly contrived, by the limitation of sixty tons on the size of vessels engaged, to counteract any attempt at direct carriage from the islands to Europe, which was not permitted. Under these circumstances the United States was brought into collision with the Rule of 1756, for the first time, by the Order in Council of November 6, 1793. A people without colonies, and with a rapidly growing navigation, could have no sympathy with a system, coextensive with Europe, which monopolized the carriage of colonial products. The immediate attitude assumed was one of antagonism; and the wrong as felt was the greater, because the direct intercourse between the United States and the then great French colonies was not incidental to war, but had been established in peace. In principle, the Rule rested for its validity upon an exception made in war, for the purposes of war.

The British Government in fact had overlooked that the Rule had originated in European conditions; and, if applicable at all to the new transatlantic state, it could only be if conditions were the same, or equivalent. Till now, by universal usage, trade from colonies had been only to the mother country; the appearance of an American state with no colonies introduced two factors hitherto non-existent. Here was a people not identified with a general system of colonial exclusiveness; and also, from their geographical situation, it was possible for a European government to permit them to trade with its colonies, without serious trespass on the privileges reserved to the mother country.

The monopoly of the latter consisted not only in the commerce and carrying trade of the colony, but in the *entrepôt*; that is, in the receipt and storage of the colonial produce, and its distribution to less favored European communities,—the profit, in short, of the middleman, or broker. France had recognized, though but partially, this difference of conditions, and in somewhat grudging manner had opened her West Indian ports to American vessels, for intercourse with their own country. This trade, being permitted in peace, did not come under the British Rule; therefore by its own principle the seizures under it were unlawful. Accordingly, on January 8, 1794, the order was revoked, and the application limited to vessels bound from the West Indies direct to Europe.

This further Order in Council preserved the principle of the Rule of 1756, but it removed the cause of a great number of the seizures which had afflicted American shipping. There were nevertheless, among these, some cases of vessels bound direct to France from French colonies, laden with colonial produce; one of which was the first presented to Jay on his arrival in London. In writing to the Secretary of State he says, "It unfortunately happens that this is not among the strongest of the cases;" and in a return made three years later to Congress, of losses recovered under the treaty, this vessel's name does not appear. In the opinion of counsel, submitted to Jay, it was unlikely that the case would be reversed on appeal, because

it unequivocally fell under the Rule.<sup>109</sup> It is therefore to be inferred that this principle, the operation of which was revived so disastrously in 1805, was not surrendered by the British Government in 1794. In fact, in the discussions between Mr. Jay and the British Minister of Foreign Affairs, there seems to have been on both sides a disposition to avoid pronouncements upon points of abstract right. It remained the constant policy of British negotiators, throughout this thorny period, to seek modes of temporary arrangement, which should obviate immediate causes of complaint; leaving principles untouched, to be asserted, if desirable, at a more favorable moment. This was quite contrary to the wishes of the United States Government, which repeatedly intimated to Jay that in the case of the Rule of 1756 it desired to settle the question of principle, which it denied. To this it had attached several other topics touching maritime neutral rights, such as the flag covering the cargo, and matters of contraband.<sup>110</sup>

Jay apparently satisfied himself, by his interviews and observation of public feeling in England, that at the moment it was vain for a country without a navy to expect from Great Britain any surrender of right, as interpreted by her jurists; that the most to be accomplished was the adoption of measures which should as far as possible extend the immediate scope of American commerce, and remove its present injuries, presenting withal a probability of future further concessions. In his letter

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<sup>109</sup> American State Papers, Foreign Relations, vol. i. p. 476.

<sup>110</sup> American State Papers, Foreign Relations, vol. i. pp. 472-474.

transmitting the treaty, he wrote: "That Britain, at this period, and involved in war, should not admit principles which would impeach the propriety of her conduct in seizing provisions bound to France, and enemy's property on board neutral vessels, does not appear to me extraordinary. The articles, as they now stand, secure compensation for seizures, and leave us at liberty to decide whether they were made in such cases as to be warranted by the *existing* law of nations."<sup>111</sup> The italics are Jay's, and the expression is obscure; but it seems to imply that, while either nation, in their respective claims for damages, would be bound by the decision of the commissioners provided for their settlement by the treaty, it would preserve the right to its own opinion as to whether the decision was in accordance with admitted law, binding in the future. In short, acceptance of the Rule of 1756 would not be affected by the findings upon the claims. If adverse to Great Britain, she could still assert the Rule in times to come, if expedient; if against the United States, she likewise, while submitting, reserved the right of protest, with or without arms, against its renewed enforcement.

"As to the principles we contend for," continued Jay, "you will find them saved in the conclusion of the twelfth article, from which it will appear that we still adhere to them." This conclusion specifies that after the termination of a certain period, during which Great Britain would open to American vessels the carrying trade between her West India Islands and the United States,

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<sup>111</sup> Ibid., p. 503.

there should be further negotiation, looking to the extension of mutual intercourse; "and the said parties will then endeavor to agree whether, in any, and what, cases neutral vessels shall protect enemy's property; and in what cases provisions and other articles, not generally contraband, may become such. But in the meantime, their conduct towards each other in these respects shall be regulated by the articles hereinafter inserted on those subjects."<sup>112</sup> The treaty therefore was a temporary arrangement, to meet temporary difficulties, and involved no surrender of principle on either side. Although the Rule of 1756 is not mentioned, it evidently shared the same fate as the other American propositions looking to the settlement of principles; the more so that subsequent articles admitted, not only the undoubted rule that the neutral flag did not cover enemy's goods, but also the vehemently disputed claim that naval stores and provisions were, or might be, contraband of war. Further evidence of the understanding of Great Britain in this matter is afforded by a letter of the law adviser of the Crown, transmitted in 1801 by the Secretary for Foreign Affairs to Mr. King, then United States Minister. "The direct trade between the mother country and its colonies has not during this present war been recognized as legal, either by his Majesty's Government or by his tribunals."<sup>113</sup>

It is to be inferred that the Administration and the Senate,

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<sup>112</sup> American State Papers, Foreign Relations, vol. i. p. 522.

<sup>113</sup> American State Papers, Foreign Relations, vol. ii. p. 491.

while possibly thinking Jay too yielding as a negotiator, reached the conclusion that his estimate of British feeling, formed upon the spot, was correct as to the degree of concession then to be obtained. At all events, the treaty, which provided for mixed commissions to adjudicate upon the numerous seizures made under the British orders, and, under certain conditions, admitted American vessels to branches of British trade previously closed to them, was ratified with the exception of the twelfth article. This conferred on Americans the privilege, long and urgently desired, of direct trade between their own country and the British West Indies on the same terms as British ships, though in vessels of limited size. Greatly desired as this permission had been, it came coupled with the condition, not only that cargoes from the islands should be landed in the United States alone, but also, while the concession lasted, American vessels should not carry "molasses, sugar, coffee, cocoa, or cotton" from the United States to any part of the world. By strict construction, this would prevent re-exporting the produce of French or other foreign colonies; a traffic, the extent of which during this war may be conceived by the returns for a single year, 1796, when United States shipping carried to Europe thirty-five million pounds of sugar and sixty-two million pounds of coffee, products of the Caribbean region. This article was rejected by the Senate, and the treaty ratified without it; but the coveted privilege was continued by British executive order, the regulations in the matter being suspended on account of the war, and the trade opened to American as well as

British ships. Ostensibly a favor, not resting on the obligations of treaty, but on the precarious ground of the Government's will, its continuance was assured under the circumstances of the time by its practical utility to Great Britain; for the trade of that country, and its vital importance in the prevailing wars, were developing at a rate which outstripped its own tonnage. The numbers of native seamen were likewise inadequate, through the heavy demands of the Navy for men. The concurrence of neutrals was imperative. Under the conditions it was no slight advantage to have the islands supplied and the American market retained, by the services of American vessels, leaving to British the monopoly of direct carrying between the colonies and Europe.

Although vexations to neutrals incident to a state of war continued subsequent to this treaty, they turned upon points of construction and practice rather than upon principle. Negotiation was continuous; and in September, 1800, towards the close of Adams's administration, Mr. John Marshall, then Secretary of State, summed up existing complaints of commercial injury under three heads,—definitions of contraband, methods of blockade, and the unjust decisions of Vice-Admiralty Courts; coupled with the absence of penalty to cruisers making unwarranted captures, which emboldened them to seize on any ground, because certain to escape punishment. But no formal pronouncement further injurious to United States commerce was made by the British Government during this war, which ended in October, 1801, to be renewed eighteen months later.

On the contrary, the progress of events in the West Indies, by its favorable effect upon British commerce, assisted Pitt in taking the more liberal measures to which by conviction he was always inclined. The destruction of Haiti as a French colony, and to a great degree as a producer of sugar and coffee, by eliminating one principal source of the world's supply, raised values throughout the remaining Caribbean; while the capture of almost all the French and Dutch possessions threw their commerce and navigation into the hands of Great Britain. In this swelling prosperity the British planter, the British carrier, and the British merchant at home all shared, and so bore without apparent grudging the issuance of an Order, in January, 1798, which extended to European neutrals the concession, made in 1795 to the United States, of carrying West Indian produce direct from the islands to their own country, or to Great Britain; not, however, to a hostile port, or to any other neutral territory than their own.

Although this Order in no way altered the existing status of the United States, it was embraced in a list of British measures affecting commerce,<sup>114</sup> transmitted to Congress in 1808. From the American standpoint this was accurate; for the extension to neutrals to carry to their own country, and to no other, continued the exclusion of the United States from a direct traffic between the belligerent colonies and Europe, which she had steadily asserted to be her right, but which the Rule of 1756

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<sup>114</sup> American State Papers, Foreign Relations, vol. iii. p. 263.

denied. The utmost the United States had obtained was the restitution of privileges enjoyed by them as colonists of Great Britain, in trading with the British West Indies; and this under circumstances of delay and bargain which showed clearly that the temporary convenience of Great Britain was alone consulted. No admission had been made on the point of right, as maintained by America. On the contrary, the Order of 1798 was at pains to state as its motive no change of principle, but "consideration of the present state of the commerce of Great Britain, as well as of that of neutral countries," which makes it "expedient."<sup>115</sup>

Up to the preliminaries of peace in 1801, nothing occurred to change that state of commerce which made expedient the Order of January, 1798. It was renewed in terms when war again began between France and Great Britain, in May, 1803. In consideration of present conditions, the direct trade was permitted to neutral vessels between an enemy's colony and their own country. The United States remained, as before, excluded from direct carriage between the West Indies and Europe; but the general course of the British Administration of the moment gave hopes of a line of conduct more conformable to American standards of neutral rights. Particularly, in reply to a remonstrance of the United States, a blockade of the whole coast of Martinique and Guadaloupe, proclaimed by a British admiral, was countermanded; instructions being sent him that the measure could apply only to particular ports, actually invested by

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<sup>115</sup> American State Papers, Foreign Relations, vol. iii. p. 265.

sufficient force, and that neutrals attempting to enter should not be captured unless they had been previously warned.<sup>116</sup> Although no concession of principle as to colonial trade had been made, the United States acquiesced in, though she did not accept, the conditions of its enforcement. These were well understood by the mercantile community, and were such as admitted of great advantage, both to the merchant and to the carrying trade. In 1808, Mr. Monroe, justifying his negotiations of 1806, wrote that, even under new serious differences which had then arisen, "The United States were in a prosperous and happy condition, compared with that of other nations. As a neutral Power, they were almost the exclusive carriers of the commerce of the whole world; and in commerce they flourished beyond example, notwithstanding the losses they occasionally suffered."<sup>117</sup>

Under such circumstances matters ran along smoothly for nearly two years. In May, 1804, occurred a change of administration in England, bringing Pitt again into power. As late as November 8 of this year, Jefferson in his annual message said, "With the nations of Europe, in general, our friendship and intercourse are undisturbed; and, from the governments of the belligerent powers, especially, we continue to receive those friendly manifestations which are justly due to an honest neutrality." Monroe in London wrote at the same time, "Our

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<sup>116</sup> Ibid., p. 266.

<sup>117</sup> Ibid., p. 175.

commerce was never so much favored in time of war."<sup>118</sup> These words testify to general quietude and prosperity under existing conditions, but are not to be understood as affirming absence of subjects of difference. On the contrary, Monroe had been already some time in London, charged to obtain from Great Britain extensive concessions of principle and practice, which Jefferson, with happy optimism, expected a nation engaged in a life and death struggle would yield in virtue of reams of argument, maintaining views novel to it, advanced by a country enjoying the plenitude of peace, but without organized power to enforce its demands.

About this time, but as yet unknown to the President, the question had been suddenly raised by the British Government as to what constituted a direct trade; and American vessels carrying West Indian products from the United States to Europe were seized under a construction of "direct," which was affirmed by the court before whom the cases came for adjudication. As Jefferson's expressions had reflected the contentment of the American community, profiting, as neutrals often profit, by the misfortunes of belligerents, so these measures of Pitt proceeded from the discontents of planters, shippers, and merchants. These had come to see in the prosperity of American shipping, and the gains of American merchants, the measure of their own losses by a trade which, though of long standing, they now claimed was one of direct carriage, because by continuous voyage, between

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<sup>118</sup> American State Papers, Foreign Relations, vol. iii. p. 98.

the hostile colonies and the continent of Europe. The losses of planter and merchant, however, were but one aspect of the question, and not the most important in British eyes. The products of hostile origin carried by Americans to neutral or hostile countries in Europe did by competition reduce seriously the profit upon British colonial articles of the same kind, to the injury of the finances of the kingdom; and the American carriers, the American ships, not only supplanted so much British tonnage, but were enabled to do so by British seamen, who found in them a quiet refuge—relatively, though not wholly, secure—from the impressment which everywhere pursued the British merchant ship. It was a fundamental conviction of all British statesmen, and of the general British public, that the welfare of the navy, the one defence of the empire, depended upon maintaining the carrying trade, with the right of impressment from it; and Pitt, upon his return to office, had noted "with considerable concern, the increasing acrimony which appears to pervade the representations made to you [the British Minister at Washington] by the American Secretary of State on the subject of the impressment of seamen from on board American ships."<sup>119</sup>

The issue of direct trade was decided adversely to the contention of the United States, in the test case of the ship "Essex," in May, 1805, by the first living authority in England on maritime international law, Sir William Scott. Resting upon the Rule of 1756, he held that direct trade from belligerent colonies

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<sup>119</sup> History of the United States, by Henry Adams, vol. ii. p. 423.

to Europe was forbidden to neutrals, except under the conditions of the relaxing Orders of 1798 and 1803; but the privilege to carry to their own country having been by these extended, it was conceded, in accordance with precedent, that products thus imported, if they had complied with the legal requirements for admission *to use* in the importing country, thenceforth had its nationality. They became neutral in character, and could be exported like native produce to any place open to commerce, belligerent or neutral. United States shippers, therefore, were at liberty to send even to France French colonial products which had been thus Americanized. The effect of this procedure upon the articles in question was to raise their price at the place of final arrival, by all the expense incident to a broken transit; by the cost of landing, storing, paying duties, and reshipping, together with that of the delay consequent upon entering an American port to undergo these processes. With the value thus enhanced upon reaching the continent of Europe, the British planter, carrier, and merchant might hope that British West India produce could compete; although various changes of conditions in the West Indies, and Bonaparte's efforts at the exclusion of British products from the continent, had greatly reduced their market there from the fair proportions of the former war. In the cases brought before Sir William Scott, however, it was found that the duties paid for admission to the United States were almost wholly released, by drawback, on re-exportation; so that the articles were brought to the continental consumer relieved of

this principal element of cost. He therefore ruled that they had not complied with the conditions of an actual importation; that the articles had not lost their belligerent character; and that the carriage to Europe was by direct voyage, not interrupted by an importation. The vessels were therefore condemned.

The immediate point thus decided was one of construction, and in particular detail hitherto unsettled. The law adviser of the Crown had stated in 1801, as an accepted precedent, "that landing the goods and paying the duties in the neutral country breaks the continuity of the voyage;"<sup>120</sup> but the circumstance of drawback, which belonged to the municipal prerogative of the independent neutral state, had not then been considered. The foundation on which all rested was the principle of 1756. The underlying motive for the new action taken—the protection of a British traffic—linked the War of 1812 with the conditions of colonial dependence of the United States, which was a matter of recent memory to men of both countries still in the vigor of life. The American found again exerted over his national commerce a control indistinguishable in practice from that of colonial days; from what port his ships should sail, whither they might go, what cargoes they might carry, under what rules be governed in their own ports, were dictated to him as absolutely, if not in as extensive detail, as before the War of Independence. The British Government placed itself in the old attitude of a sovereign authority, regulating the commerce of a dependency

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<sup>120</sup> American State Papers, Foreign Relations, vol. ii. p. 491.

with an avowed view to the interest of the mother country. This motive was identical with that of colonial administration; the particular form taken being dictated, of course, then as before, by the exigencies of the moment,—by a "consideration of the present state of the commerce of this country." Messrs. Monroe and Pinkney, who were appointed jointly to negotiate a settlement of the trouble, wrote that "the British commissioners did not hesitate to state that their wish was to place their own merchants on an equal footing in the great markets of the continent with those of the United States, by burthening the intercourse of the latter with severe restrictions."<sup>121</sup> The wish was allowable; but the method, the regulation of American commercial movement by British force, resting for justification upon a strained interpretation of a contested belligerent right, was naturally and accurately felt to be a re-imposition of colonial fetters upon a people who had achieved their independence.

The motive remained; and the method, the regulation of American trade by British orders, was identical in substance, although other in form, with that of the celebrated Orders in Council of 1807 and 1809. Mr. Monroe, who was minister to England when this interesting period began, had gone to Spain on a special mission in October, 1804, shortly after his announcement, before quoted, that "American commerce was never so much favored in time of war." "On no principle or pretext, so far, has more than one of our vessels been

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<sup>121</sup> Ibid., vol. iii. p. 145.

condemned." Upon his return in July, 1805, he found in full progress the seizures, the legality of which had been affirmed by Sir William Scott. A prolonged correspondence with the then British Government followed, but no change of policy could be obtained. In January, 1806, Pitt died; and the ministry which succeeded was composed largely of men recently opposed to him in general principles of action. In particular, Mr. Fox, between whom and Pitt there had been an antagonism nearly lifelong, became Secretary for Foreign Affairs. His good dispositions towards America were well known, and dated from the War of Independence. To him Monroe wrote that under the recent measures "about one hundred and twenty vessels had been seized, several condemned, all taken from their course, detained, and otherwise subjected to heavy losses and damages."<sup>122</sup> The injury was not confined to the immediate sufferers, but reacted necessarily on the general commercial system of the United States.

In his first conversations with Monroe, Fox appeared to coincide with the American view, both as to the impropriety of the seizures and the general right of the United States to the trade in dispute, under their own interpretation of it; namely, that questions of duties and drawbacks, and the handling of the cargoes in American ports, were matters of national regulation, upon which a foreign state had no claim to pronounce. The American envoy was sanguine of a favorable issue; but the British

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<sup>122</sup> American State Papers, Foreign Relations, vol. iii. p. 114.

Secretary had to undergo the experience, which long exclusion from office made novel to him, that in the complications of political life a broad personal conviction has often to yield to the narrow logic of particular conditions. It is clear that the measures would not have been instituted, had he been in control, but, as it was, the American representative demanded not only their discontinuance, but a money indemnity. The necessity of reparation for wrong, if admitted, stood in the way of admitting as a wrong a proceeding authorized by the last Government, and pronounced legal by the tribunals. To this obstacle was added the weight of a strong outdoor public feeling, and of opposition in the Cabinet, by no means in accord upon Fox's general views. Consequently, to Monroe's demands for a concession of principle, and for pecuniary compensation, Fox at last replied with a proposition, consonant with the usual practical tone of English statesmanship, never more notable than at this period, that a compromise should be effected; modifying causes of complaint, without touching on principles. "Can we not agree to suspend our rights, and leave you in a satisfactory manner the enjoyment of the trade? In that case, nothing would be said about the principle, and there would be no claim to indemnity."<sup>123</sup>

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<sup>123</sup> Monroe to Madison, April 28, 1806. American State Papers, vol. iii, p. 117.

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