**AMERICANS WITH ATTITUDES**

The Growth of Smuggling in the Colonies

 by George H. Smith

 Since the seventeenth century American commerce had been regulated by a complex system of British laws. The basic idea behind this “mercantile system,” as Adam Smith called it—or “mercantilism,” as it was later called—was fairly simple. The colonies were to produce raw materials, many of which could be shipped only to Britain, and Britain, in turn, would produce finished products to sell to the colonies.

 During the 1720s and 1730s, while Robert Walpole was the English Prime Minister, many of the trade laws were loosely enforced, if at all. Walpole’s motto, “Let sleeping dogs lie,” was reflected in his attitude toward the American colonies. A free-trader at heart, Walpole allowed the Board of Trade, the enforcement arm of mercantilism, to languish. And to the important position of Secretary of State for the Southern Department, Walpole appointed the like-minded Thomas Pelham, Duke of Newcastle.

 The Duke of Newcastle was responsible for American affairs. More interested in the patronage of his office than in enforcing commercial regulations, Newcastle pursued a policy which the Irish statesman Edmund Burke later called “salutary neglect.” That is to say, Newcastle pretty much left the colonies alone, allowing customs officials to take bribes in exchange for looking the other way. In the view of Burke and other proponents of free trade, this neglect—or “corruption,” as some called it—allowed both Americans and Britons to prosper. It was said that Newcastle had a closet-full of unopened dispatches from colonial governors who were complaining about American lawlessness.

 As a result of salutary neglect, smuggling was rampant in the colonies, and most Americans saw nothing wrong with it. They did not look kindly on government interference with their commercial activities. They agreed with Thomas Jefferson that free trade is a “natural right.”

 For example, in 1756 and 1757, some 400 chests of tea were imported into Philadelphia, but only sixteen were imported legally. Indeed, three-quarters or more of the tea consumed by Americans was illegal. In 1763, the British government estimated the value of commodities smuggled into the colonies at 700,000 pounds annually, an enormous sum at that time.

 The preference for inexpensive tea was not peculiar to Americans. Over half the tea consumed in England was smuggled, and English smugglers, like their American counterparts, could get quite indignant when their free-trade activities were interrupted by government. Consider this reaction of an English smuggler when his vessel was boarded and his men arrested by Captain Bursack of the Speedwell, a British revenue cutter.

 The period of salutary neglect came to end during the Seven Years’ War (1756-63)—known in America as the French and Indian War—when many American merchants engaged in trade with the French. Trading with the enemies of Britain during wartime was something of a tradition among the colonials. During an earlier war, for instance, American merchants used neutral ports in the Caribbean to exchange their provisions for French molasses, while bribing customs officers to obtain false clearance papers.

 One method of trading with the enemy was especially popular in Rhode Island, the smuggling capital of America. Flags of truce were used to exchange prisoners, and merchants found that these could be purchased at reasonable prices from colonial governors. Then, after hiring some men who spoke French to pose as prisoners, and sailing under flags of truce, American merchants traded with the French West Indies.

 This illegal trade continued during the Seven Years’ War, especially during its later phase when inhabitants of the French West Indies were desperate for food. Merchants from Newport, Boston, New York, Philadelphia, and other ports carried foodstuffs to the enemy for handsome profits.

 Pennsylvania’s governor, William Denny, conducted a brisk trade in flags of truce. He sold so many that by 1759 the flags were traded openly on the New York market.

 This commerce with the French enemy infuriated British military commanders, but it was difficult to stop. Smugglers were typically acquitted by sympathetic American juries, and informing on a smuggler could prove dangerous. When a New Yorker wrote an article that implicated two justices of New York’s Supreme Court in the nefarious traffic, newspapers refused to print it. Then the informer was hauled in a cart through the streets, pelted with filth, and thrown in jail.

 Americans continued their smuggling ways after the close of the Seven Years’ War in 1763.

 In 1763, Prime Minister George Grenville cracked down on bribery and illicit trade. Eight warships and twelve armed ships were sent to patrol American waters and pull in smugglers. Previously, many customs officers had remained in England while sending low-paid underlings to America to do the dirty work. Grenville ordered these officers to take up their posts in America or resign. They would be fired immediately if they neglected their duties.

 Grenville was just getting started. Customs duties had been designed to regulate the flow of trade, not to raise revenue. Indeed, the trade laws cost four times more to enforce than they brought in, so Grenville set to work on a long list of proposals to raise revenue and curtail smuggling. In 1764, Parliament enacted these proposals, commonly called the Sugar Act, into law.

 Six sections of the Sugar Act dealt with new taxes, and over forty additional sections were devoted to far-reaching changes in commercial regulations, including rigorous methods of enforcement. These regulations were a bureaucratic nightmare that greatly increased the cost of doing business and, in some cases, made compliance for merchants engaged in intercolonial trade nearly impossible. Any small vessel engaged in inland trade would probably be guilty of some violation or other, even when there was no criminal intent. This left the door open for racketeering by customs officers who lined their pockets by seizing vessels for technical violations.

 The Sugar Act created this abuse by implementing new guidelines for prosecuting accused smugglers. The owner of a seized vessel had to pay the cost of his trial in advance or forfeit everything. Even if he was exonerated, the owner could not recover these court costs. Nor could he sue a customs officer, so long as the judge certified that the seizure had been made with probable cause. To make matters worse, the government did not have to present evidence of fraud. The owner was presumed guilty and had to prove his innocence.

 Even rigorous enforcement of the Sugar Act could not always shield customs officers from the wrath of irate Americans. This was especially true in Rhode Island where, unlike most other colonies, the governor was elected by popular vote, not appointed by the Crown. Moreover, when a customs officer caught a smuggler red-handed he had to face a judge and prosecuting attorney who were native Rhode-Islanders—men sympathetic to the cause of free trade. The judge might call a trial on short notice when he knew the customs officer was far away and unable to testify, thereby resulting in a dismissal for lack of evidence. Or if a judge had no choice but to convict a smuggler and confiscate his ship, he might later sell the vessel back to the smuggler for a fraction of its true value. But the simplest way to keep the wheels of commerce turning was to grease the eagerly outstretched palms of customs officers.

 As these examples illustrate, Americans who had grown accustomed to decades of “salutary neglect” deeply resented the post-war efforts of the British government to impose taxes—especially when those taxes were raised for the express purpose of maintaining 10,000 British troops in the colonies.