

The Gaspee Affair as Conspiracy

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On the afternoon of June 9, 1772, His Majesty's schooner *Gaspee* grounded on a shoal called Namquit Point in Narragansett Bay. From the time of their arrival in Rhode Island's waters in February, the *Gaspee* and her commander, Lieutenant William Dudingston, had been the cause of much commercial frustration of local merchants. Dudingston was insolent, described by one local newspaper as more imperious and haughty than the Grand Turk himself. Past accounts of his pettish nature followed him from port to port.[1]

The lieutenant was also shrewd. Aware that owners of seized vessels — rather than navy captains deputized in the customs service — would triumph in any cause brought before Rhode Island's vice-admiralty court, Dudingston had favored the district vice-admiralty court at Boston instead, an option available to customs officials since 1768.[2] Aside from threatening property of Rhode Islanders through possible condemnation of seizures, utilization of the court at Boston invigorated opposition to trials out of the vicinage, a grievance which had irritated merchants within the colony for some time.[3]

Finally the lieutenant was zealous — determined to be a conscientious customs officer even if it meant threatening Rhode Island's flourishing illicit trade in non-British, West-Indian molasses. Governor Joseph Wanton of Rhode Island observed that Dudingston also hounded little packet boats as they plied their way between Newport and Providence. Though peevish, the lieutenant was not foolish. He suspected that these vessels might be transporting commodities other than those of local origin.[4]

In a scene which had occurred repeatedly from February to June 1772, Dudingston, on the afternoon of June 9, had signaled the *Hannah*, a packet boat, to heave to. Defying the order, *Hannah's* master continued sailing up Narragansett Bay with *Gaspee* in close pursuit. He lured the schooner into shallow water where it ran aground. With *Gaspee* perched defenselessly upon a sand spit, aggrieved merchants meant to have their revenge. John Brown, prominent merchant and respected resident of Providence, assisted by Abraham Whipple, sea captain and employee, led a party of approximately three score in eight longboats to Namquit Point. There in the early morning of June 10 they injured the lieutenant gravely, imprisoned the crew temporarily, and put torch to the *Gaspee*, burning it to the water's edge.

The vessel's destruction evoked an angry response from Great Britain. Convinced that an impartial trial could not be secured in the colonies, the ministry appointed a royal commission of inquiry to meet at Newport, gather evidence, and seek

indictments with the cooperation of Rhode Island's superior court. Indicted persons would be sent to England for trial.[5] The news of the commission ended a two-year period of calm in the colonies by intensifying discontent toward parliamentary and ministerial measures. The greatest clamor occurred in Virginia's House of Burgesses. Its members voted resolutions establishing a committee of correspondence while urging other colonies to do likewise; by December 1773, eleven had appointed similar bodies.

These are the well-known facts of the Gaspee affair, and its significance as a causative factor in the coming of the American Revolution. Most historical interpretations have suggested that, after prompting nearly all of the provincial assemblies to form committees of correspondence, the episode ceased to be an issue capable of fanning the growing flame of revolution. [6] By the end of June 1773 the affair was rendered moribund by two developments — the five commissioners had failed to recommend indictments to the colony's superior court — news of the passage of the Tea Act had arrived in America. However, Thomas Jefferson would allude to the affair in the Declaration of Independence three years later.

If the Gaspee affair ceased to be a concern of continental interest by the end of summer 1773, why was it cited as a cause of American discontent in 1776? A clearer understanding of the event's impact upon the movement for independence might be ascertained by resolving this apparent paradox. Interestingly, developments surrounding destruction of the *Gaspee* serve as a model case study of Bernard Bailyn's conspiracy thesis, an interpretation which illuminates the reasons for the prodigious repercussions which the affair created not only in America but also in England; more importantly, the conspiracy thesis casts new light on the significance of the affair after 1773.

According to Bailyn, colonials who opposed parliamentary and ministerial policies which affected Americans believed that corrupt ministers in England were conspiring to subvert republican principles of government in the colonies, thus reducing Americans to a state of slavery. Colonials verified their suspicions with several proofs — the Stamp Act, which threatened the individual's control over his property — the presence in the colonies of officials who misled the ministry with false impressions concerning American affairs —the Townshend program which, in addition to levying taxes upon revenue, further strengthened the growing power of the customs service in North America — and, certainly, deployment of troops to Boston in 1768.[7]

Bailyn also contends that the king's informers in America succeeded in convincing influential people in government that a conspiracy was afoot — that a radical colonial elite was determined to subvert royal authority in America. To what extent did the ministry consider *Gaspee's* burning a conspiracy against royal authority in Rhode Island? It is true that the schooner's destruction had created greater impact in England than in America. Few Americans were moved to condemn this assault upon a royal vessel. Colonial violence, either against British personnel or British vessels, was a frequent occurrence in the colonies. In Rhode Island alone, three royal vessels had

been attacked — *St. John* in 1764, *Liberty* in 1769, and *Gaspee* in 1772. [8] Colonial mobs had attacked officers in the service of the crown, among them collector Charles Dudley, and numerous tidewaiters, pilots and navy captains, including William Reid of *Liberty* and William Dudingston of *Gaspee*.

British-American subjects who placed a high premium on royal authority protested these outrages vociferously. Collector Dudley — who referred to the incident as "this dark Affair" — confided his suspicions to Admiral John Montagu, commander-in-chief of British naval forces in North America:

I shall first of all premise that the Attack upon the *Gaspee* was not the Effect of Sudden Passion and Resentment, but of cool deliberation and forethought: her local Circumstances at the Time she was burnt did not raise the first Emotion to that enormous Act it had been long determined she should be destroyed." [9]

One anonymous observer — his account bears strong resemblance to Dudley's — carried the argument further:

Some measures necessary to raise a sufficient Number of People to engage in this wicked attempt — a Drum was beat Thro' the Town with an avowed intention of making all Persons acquainted with it, that all Persons might join in the Common Cause; and many Persons were called upon and invited in a more particular Manner to engage in the design. [10]

Anonymous viewed the attack as a concerted rebellion in which all Rhode Islanders, with drums beating and banners flying, had risen up in violent challenge to royal authority. [11] Taking exception to this idea, the Reverend Mr. Ezra Stiles of Newport wrote: "I am well assured, notwithstanding the exaggerated Accounts about beating up For volunteers in the Streets of Providence, the Thing was conducted with . . . Secrecy and Caution. . . ." [12] He did not believe that the people of Rhode Island had in effect levied war against their King.

Dudley's premise became Admiral Montagu's food for thought. Montagu would soon write to Lord Hillsborough, secretary of state for the colonies. [13] that the attack had been an open, armed conflict by the people of Rhode Island against one of the king's vessels. Many Rhode Islanders resented the construction which their act of protest had been given by the king's American informers. The *Providence Gazette* — September 26, 1772 — captured the mood;

We further learn, that the Affair of burning the *Gaspee* Schooner, having been greatly exaggerated and misrepresented, the Ministry were highly incensed on the Occasion; but that on the Arrival of Capt. Sheldon, from this Port, with Dispatches from his Honor the Governor, containing a true Representation of Facts, the Clamour against the Colony has abated, and was almost entirely subsided when the last Accounts came away.

Many Rhode Islanders were also resentful of the casual way in which facts were 'colored.' The ministry was told that some "two hundred men in eight boats" had participated in the attack and that they had murdered the officer. Thomas Hutchinson, another correspondent of the king, wrote, "it was supposed [that Dudingston was] mortally wounded. . . ."[14] Dudingston had not died; the participants numbered close to sixty or seventy, rather than two hundred.

Other stories circulating in the press illustrated the extent of misrepresentation of facts. A reprint from a London paper asserted, "It is rumoured about town [London], that Admiral Montagu, and the other Commissioners, who went with him on the expedition to Rhode Island, had been tarred and feathered, and were returned over land to Boston in a very woeful condition." [15] Actually, none of the commissioners had experienced any physical abuse while at Newport. When a store ship caught fire in Boston harbor, the printer of one Boston newspaper sighed relief that the accident had occurred during the day and was witnessed by the ship's crew: ". . . otherwise it might have been Matter of Representation to the Board of Admiralty at Home to have immediately fitted out a Fleet in order to apprehend certain Persons, to be sent beyond the Seas to be tried, as in the Case of the Gaspee schooner at Rhode-Island." Nevertheless, the incident was erroneously reported. Londoners were told that the vessel had been "set on fire by some of the inhabitants of this metropolis [Boston], a great number of whom were taken up and committed to gaol. — it is probable, there has been more Letter-Writing," [16]

Lord Hillsborough's references to the *Gaspee's* destruction betrayed the same attitudes which Dudley had voiced earlier: "The King's Servants are clearly of opinion that a Transaction of such a nature, in which so great a number of Persons was concerned, could not have happened without previous meetings concert, nor without such preparation as could not, in the nature of it be concealed from Observation." If the plan were so public, thought Hillsborough, why had the colony's officials failed to forestall it? Hillsborough's successor, Lord Dartmouth, though less suspicious, was hopeful that Governor Wanton would vigorously endeavor to discover "the Authors & abettors of so heinous an Offence." [17]

Governor Wanton made an attempt to discount the idea that a conspiratorial design by the people of Rhode Island had surfaced on the evening of June 9, 1772. He considered the attack an effort by a few lawless men to rid the colony of a nuisance. The ministry was not convinced. It sought the opinion of the Attorney and Solicitor General who designated the burning an act of treason, a concerted effort to levy war against the king. [14]

In addition to the opinion of the crown lawyers, the king's ministers also acted upon their own suspicions — attitudes and impressions fostered by accurate and inaccurate information provided by informers in America. Mistrust was largely responsible for the appointment of a royal commission. Members of the ministry hoped that such an investigative body would subrogate any inquiry by a grand jury in Rhode Island. They believed that Rhode Islanders and their civil officials could not be

depended upon to bring the guilty persons to justice. One of the king's friends in Rhode Island was certain that the colony's chief magistrates were knowledgeable of a conspiracy to destroy the schooner. He wrote: "Reason and Common Sense forbid any conjecture." He also doubted that "Sophistry or Cunning . . . [could] exculpate, or even extenuate the fault of those men whose Duty it was to preserve the Peace."^[19] Inaccurate reports which verified ministerial distrust were proffered as unimpeachable. Although the attack had been planned in Providence and carried out seven miles from that city, the crown maintained that Newport was the scene of the lawlessness and wished "to be perfectly informed how so daring an attempt could be concerted, prepared and carried into execution in the chief town of our said colony [Newport], the residence of the Governor and principal magistrates thereof. . .^[20]

At the completion of their investigation, the king's five commissioners — Governor Joseph Wanton, Chief Justices Peter Oliver of Massachusetts, Daniel Horsmanden of New York, and Frederick Smyth of New Jersey, and Robert Auchmuty, Jr., vice-admiralty judge for the Boston district — would find no evidence to support the idea of a conspiracy or of a general uprising by Rhode Islanders: they would, conclude "that the whole was conducted suddenly and secretly' on the evening of June 9 and early morning of the following day.^[21] Nevertheless, the ministry believed that a conspiracy had been hatched in Rhode island, an idea which reached Whitehall via two of the king's principal informers in America — Collector Charles Dudley and Admiral John Montagu. Many Rhode Islanders concluded that the admiral had deliberately misrepresented the facts to the State Department.^[22]

The suspicions and mistrust which had characterized British officialdom's attitudes toward the affair were also evident in the reaction of Rhode Islanders, upon gleaning their first reports of the ministry's actions. By late October incomplete and erroneous reports in the colony made reference to a court of oyer and terminer, one to hear and determine, or to try any persons who might be apprehended as a result of the King's generous reward of £1,000, offered in his proclamation.^[23] By the end of November more accurate, although unofficial, reports referred to the appointment of a commission of inquiry. By December 14 official correspondence from the Earl of Dartmouth had arrived at Newport and confirmed the worst fears of Governor Wanton and the General Assembly. A commission of inquiry had indeed been appointed by the king, with powers to send indicted persons to England to stand trial. General Gage was ordered to place a regiment in readiness should the commissioners request the assistance of the army.

First impressions die hard, and many half-truths regarding the real nature of the commission continued to circulate.^[24] As late as December 21, the *Newport Mercury* reflected the public's misinterpretation of the commissioners' powers. The paper mentioned that troops would be used at Rhode Island "to support the *trial* [italics mine] of persons there suspected, or rather informed against....Others say, that these devoted persons are to be taken agreeable to a late act of parliament, and sent for trial to

London!"[25] Whether commissioners were empowered to try persons in Rhode Island, or to inquire into causes of the crime and recommend or hand down indictments — with subsequent trial in England by a jury of Londoners — the commission threatened to undermine legal processes which provided for possible indictment by a Rhode Island grand jury, and conviction or acquittal by the colony's superior court. If commissioners were invested with powers to send persons to England to stand trial, then they posed a threat to the sacrosanct British right of trials in the vicinage by a jury of one's peers. Rhode Island's General Assembly, sufficiently alarmed by news of the commission, appointed an ad hoc committee composed of Deputy Governor Darius Sessions, House Speaker Stephen Hopkins, and others, who communicated with Samuel Adams in December 1772.

The committee believed that the dangers, which the commission of inquiry had set loose, would "affect in the tenderest point the liberties, lives, and properties of all America..." Implying that their rights were threatened by a plotting group bent upon their enslavement. Rhode Island's legislators appealed earnestly to Adams for assistance: "You will consider how natural it is for those who are oppressed, and in the greatest danger of being totally crushed, to look around every way for assistance and advice." [26] In their attempt to alert prominent citizens of other colonies who could best assist them, they had also sent a copy of the Dartmouth letter to John Dickinson of Pennsylvania, asking his advice on the matter. [27]

Samuel Adams thought he had perceived a diabolical design in the commission of inquiry. If so, the commission had the capacity for arousing universal colonial interest. Adams observed:

The Colonies are all embarked in the same bottom. The Liberties of all are alike invaded by the same haughty Power: The Conspirators against their common Rights have indeed exerted their brutal Force, or applied their insidious Arts, differently in the several Colonies, as they thought would best serve their Purpose of Oppression and Tyranny. [28]

Adams' thoughts naturally turned once again to an inter-colonial network of corresponding committees. For several years he had given enthusiastic support to colonial cooperation through ad hoc committees of correspondence within colonial legislatures. Because other colonies had not responded to Adams' appeal, Massachusetts had proceeded unilaterally, establishing town committees throughout the province. But now Virginia, not Massachusetts, was the first to respond to this apparent threat to American liberties. When the policy of overseas trials was first broached in 1768, many members of its House of Burgesses were compelled to voice their concern. Now, reports of the commission — received from Adams and various New England newspapers — triggered debate in March 1773. It culminated in a resolution calling for the formation of committees of correspondence. The preamble drew attention to the prevalence of "various Rumours and Reports" regarding the commission at Newport and the fears which it had generated in Virginia. In an attempt

to "remove the Uneasiness, and to quiet the minds of the People" and to protect the rights of Englishmen eleven Burgesses were appointed to a committee of correspondence and inquiry.

Resolutions urged speedy execution of three proposals. First, the committee would initiate a general correspondence with all the colonies to secure information concerning acts of the "*British Parliament*, or proceedings of Administration, as may relate to or affect the British Colonies in America. . ." Secondly, a particular inquiry into the commission at Rhode Island was ordered. Thirdly, the resolutions would be transmitted to the other legislatures, admonishing them to form their own committees.[29] Yet the tone of the resolutions was decidedly low-pitched. Richard Henry Lee explained why:

. . . our language is so contrived as to prevent the Enemies of America from hurrying this transaction into that vortex of treason, whither they have carried every honest attempt to defend ourselves from their tyrannous designs for destroying our constitutional liberty.[30]

Although Governor Dunmore had dissolved the House of Burgesses after passage of the resolutions, the committee met privately, drafted a circular letter with the resolutions enclosed, and forwarded them to several other provincial legislatures.[31] The Virginia committee also established a communication link with London through a correspondent, John Norton, a Virginian residing in England.[32]

Outflanked by Virginia, the Rhode Island General Assembly was determined to win the second place of honor. It voted resolutions establishing a committee of correspondence on May 7.[33] Other New England colonies soon responded to Rhode Island's initiative. Connecticut acted on May 21. Six days later New Hampshire's assembly unanimously appointed a committee of seven. On the same day Massachusetts Bay, so enthusiastic in the past, followed. Representing views of the General Court, Speaker Thomas Cushing spoke openly of "the Conspirators against our Rights..." He observed that "there has been long a settled Plan to subvert the Political Constitutions of these Colonies and to introduce arbitrary Power. . ."

In July South Carolina augmented the movement for committees. By the autumn of 1773, Georgia, Maryland, Pennsylvania and Delaware had acted. As 1773 neared its end, only three colonies had not yet joined the growing network of provincial committees. Josiah Martin, North Carolina's governor, prorogued the assembly on December 28, but not before the legislature had voted resolutions establishing a committee.[34] New York and New Jersey would not act until 1774, although their reasons for so doing would be motivated by issues unrelated to the Gaspee affair. The royal commission of inquiry had precipitated a chain reaction among provincial legislatures, and it galvanized public indignation toward the apparently deliberate infringement of American liberties by crown officials.

Which provisions in the commission did colonials find most objectionable? In a letter to the editor of the *Providence Gazette*, one 'W.B.' cited the "strange, new-fangled, and unconstitutional Court" on several counts. One worry involved the establishment of a precedent for commissions appointed by the crown. He queried "whether any Attention or Respect ought to be paid to it, which may in the least tend to show, that this Colony, or any Members of it, submit to, or acquiesce in, the Authority of that Court." [35]

'W.B.' must have been scandalized when John Cole, a member of the Rhode Island committee, appeared as a deponent before the commission of inquiry. Cole had strongly resisted making an appearance until Chief Justice Hopkins urged him to compose a courteous reply to a summons. When called again during the spring meeting, Cole did testify in June 1773. His recent appointment to the committee left him open to a minimal charge of conflict of interest, and a more serious accusation of renouncing the very principles upon which the committee stood. By appearing before the commissioners was he not granting some measure of legality to their hearings? Was he not abetting the ministry in its attempt to establish precedence for future commissions of inquiry? [36]

No one was more definitive upon the subject of precedence than Samuel Adams. "You will allow me to observe that this is a Matter in which the whole American Continent is deeply concerned and a Submission of the Colony of Rhode Island to this enormous Claim of power would be made a Precedent for all the rest. . . ." [37] Connecticut's committee agreed. It remarked that a moral victory had been achieved by the crown in June 1773, when the commission adjourned. For although it had "closed without effecting anything" the commission had originally "been Projected with [no] other serious view than to establish by Precedent the unconstitutional Measure." [38]

On another occasion Adams had cautioned General Assembly members to offer "no Concessions . . . which shall have the remotest tendency to fix a precedent: for if it is once established, a thousand Commissioners of the like arbitrary kind may be introduced to the utter ruin of your free Constitution." [39] In February 1774, 'A Countryman' condemned the ministry's effort to establish new and arbitrary legal procedures in the colonies: "And, forever to deter us from attempting to resist, these cruel violations of all the laws of God — of nature, and of the English constitution, a court of INQUISITION hath been arbitrarily created in a free government, *for a precedent to all the rest of the colonies* [italics mine], in violation of its charter rights, and laws. ..." [40]

Precedent was but one of several grievances. That the commission was composed of royal appointees in lieu of a jury was another objection. 'W .B.' considered jury trial "the grand Bulwark" of English liberties. Because the accused was entitled by law to two hearings by his peers — one to determine whether sufficient evidence existed for indictment, the other to determine his innocence or guilt — any interference with this traditional and established legal procedure would remove the "twofold Barrier

between the *Liberties of the People and the Prerogatives of the Crown.*" 'W.B.' stated that the commission not only threatened the tradition of jury trial, it also enhanced the royal prerogative at the expense of "the admirable *Balance* of our Constitution. ..." Therefore, he considered increased royal prerogative as a third threat: "... this Power might be dangerous and destructive to our Constitution, if exerted without Check or Control, by Justices of Oyer and Terminer, occasionally named by the Crown, who might then, as in France or Turkey imprison, dispatch or exile any Man, that was obnoxious to the Government, by an instant Declaration, *that such is their Will and Pleasure.*"

'W.B.' spoke of a fourth and final objection in his declamation to Mr. Carter of the *Gazette*. It was not sufficient that the accused merely be given a trial by jury. He was also entitled to a trial in the vicinage "by a unanimous Suffrage of twelve of his *Equals* and *Neighbors*, indifferently chosen, and superior to all Suspicion."^[41]

This colonial fear of trials out of the vicinage became manifest after 1763, when colonial vice-admiralty courts were reorganized. A 'super-court' had been erected in Halifax, enjoying concurrent jurisdiction with the provincial vice-admiralty courts. Such an arrangement would permit customs officials to take causes to Halifax where they would be heard before a vice-admiralty judge who might be impartial, rather than before provincial vice-admiralty judges predisposed toward favoring local merchants.

Distance was one of the disadvantages which colonial merchants mentioned. Unfamiliarity with the region meant that merchants who were not acquainted with local lawyers there, could not avail themselves of suitable legal counsel. Expensive court costs was another inconvenience created by the remote location of the Halifax tribunal. Petitioning the House of Commons, the Massachusetts General Court stated that "many persons, however legally their goods may have been imported . . . [would] lose their property, merely from an inability of following after it, and making that defense which they might do if the trial had been in the Colony where the goods were seized." Implicit in this grievance was the idea that such trials, removed from the locale where the violation had occurred, ran counter to the revered tradition of trials in the vicinage.

In 1767, as a result of these complaints, four district courts were established to replace the 'super-court.' Their creation did correct the problem, for colonials no longer cited distance as a significant grievance. Yet, in a limited sense, trials in one of the district courts still posed the same problems which trials in Halifax had. The possibility remained that a cause might not be tried in the region where the offense had occurred.^[42]

When in March 1772 William Dudingston carried the seized *Fortune* to the district vice-admiralty court at Boston for condemnation —thereby circumventing Rhode Island vice-admiralty judge John Andrews — Rhode Islanders were in effect protesting a violation of trials in the vicinage. Thus at a time when colonials were giving great attention to the powers of the commission of inquiry at Rhode Island, allusions to vice-

admiralty courts were an understandable occurrence, for these courts were doubly offensive to Americans. They dispensed with trial by jury and they ignored the tradition of trials in the vicinage.

Opposition to trials out of the vicinage remained a vital colonial grievance, sustained by the ministry on two other occasions. In 1768 overseas trials were broached as a possible solution to insure the prosecution of Massachusetts malcontents. The crown feared they might otherwise escape a just trial. But nothing had come of the plan. Appointment of a commission of inquiry in 1772 — with the same provision for overseas trials — had indeed given new vitality to the argument opposing such trials. Undoubtedly, it was the primary objection to the commission of inquiry.

Colonials expressed themselves freely upon this subject. The Reverend Mr. Stiles maintained that Rhode Islanders "will bear Any Thing but an actual Seizure of Persons." [43] Henry Marchant, Rhode Island's attorney general, summarized the attendant evils: ". . . it is resolved that an American is liable upon any Accusation & carried from the Country where the Fact was committed, from a Trial by his Peers, to a Country where he is an utter Stranger. . . ." [44] Hannah Winthrop, wife of Harvard's president John Winthrop, viewed overseas trials as "one of the most extraordinary Political Maneuvers this Century has produced. . . ." [45] Richard Henry Lee spoke for a number of fellow Virginians when he remarked: "This is so unreasonable and so unconstitutional a stretch of power, that I hope it will never be permitted to take place while a spark of virtue or one manly sentiment remains in America..." [46]

Long after the burning of the *Gaspee* and the commission of inquiry had ceased to be topics of current discussion, the issue of trials out of the vicinage — beyond the seas — remained a vital force in the constitutional argument which was creating deeper divisions between many Americans and the British government. In February 1774, 'A Countryman' enumerated many grievances which Americans could lay at the feet of the British government — injustices of inept customs officials — the British navy's harassment of coasting vessels engaged in transporting firewood from one local port to another — firing upon passenger boats thus endangering lives — standing armies in time of peace in certain provinces. But he found most objectionable "a Court of INQUISITION" empowered to inquire into charges, and to transport indicted suspects to England for trial.

In May of that year 'Hampden' reminded his readers that a precedent for royal commissions of inquiry had already been established, and that the threat of overseas trials was therefore more real than ever before. "A court of inquisition," he wrote, "may be again appointed:"

The judges may be severe, and determined to take up, and send to Europe, a number of persons, upon the slightest suspicions; and if the justices of our courts should be disposed to sacrifice the rights and privileges of their countrymen to their own private interest, or ambition; they would undoubtedly, grant warrants to

apprehend any persons, pointed out by the Inquisitors; and a sheriff, from the same vile motives, might execute the detestable precepts, and the inhabitants of this colony be thus torn from their families, their friends, and their country, and hurried to a foreign realm, to certain destruction.

In addition to those individuals who spoke out in public presses, town governments of Westerly and South Kingstown recorded their opposition to increased jurisdiction of vice-admiralty courts and to the principle of trials beyond the seas. On June 10 a Connecticut newspaper printed the recently passed resolutions of the Connecticut House of Representatives, declaring unconstitutional "the apprehending and carrying persons beyond the sea, to be tried for any crime alleged to be committed within the colony. . . ." South Carolina's legislature registered a similar protest.

The First Continental Congress drafted a petition to the King. Among other objections it deplored an old treason statute from the reign of Henry VIII providing for trials out of the vicinage and its application to the colonies. But mostly the petition condemned "attempts [which] have been made to enforce that statute."^[47] The following spring, 1775, the New York General Assembly drafted a petition to the King, a memorial to the House of Lords, and a representation and remonstrance to the House of Commons. Much of the assembly's denunciation was leveled at vice-admiralty courts and the commission of inquiry. The protestations set forth a defense of the central and sacred component of English common law: "That a Trial by a Jury of the Vicinage in all Capital Cases, is the Grand Security of Freedom and the Birthright of Englishmen, and therefore that the seizing any Person or Persons residing in this Colony suspected of Treasons, misprisons of Treason, or any other Offences and sending such Persons out of the same to be tried, is Dangerous to the Lives and Liberties of his Majesty's American Subjects."^[48]

The issues were numerous: precedent, extension of royal prerogative at the expense of American liberties, replacement of a jury by royal commissioners, and overseas trials. The commission was condemned for still other reasons. Treason charges, leveled at opponents of parliamentary policies, were first given serious consideration in the summer of 1768, when the Massachusetts legislature issued a circular letter urging other colonies to resist bills recently enacted by Parliament.

At that time the treason statute of Henry VIII was resurrected as legal justification for carrying Americans to England to stand trial. While the attempt to transport Massachusetts dissidents to England for trial never went beyond the stage of parliamentary discussion, it culminated in the appointment of a commission of inquiry in 1772. If anyone had possessed the slightest doubt in 1768 that the crown was resolute when it spoke of charges of treason for dissenting Americans, such misunderstandings were surely removed when the King's five commissioners arrived at Newport in January 1773 to begin their hearings. A charge of treason indicated to many that the crown was acting vindictively. Exceedingly dismayed by the opinion of the crown lawyers, the

Reverend Mr. Stiles had commented: "No one justifies the burning of the Gaspee. But no one ever thought of such a Thing as being Treason." [49]

Henry Marchant shared the cleric's consternation. He questioned the justification for the charge, and laid the blame at the feet of those informers in America who supplied the ministry with its information regarding colonial affairs:

That the *Gaspee* is burnt is a Truth & that the Fault was committed by a set of foolhardy desperate Fellows is also a Fact — all good peaceable & quiet men wish they were not Facts. But also good men look with Abhorrence upon the Vile Manner in which some of the first Characters in the Colony, certainly Men of the first Fortunes, have been trifled with, & Their Necks openly threatened with Halters, charging Them with being the Ring Leaders in perpetrating the Crime of Treason & Rebellion ; and yet too upon such Evidence as would not hang a Cat. [50]

Stephen Hopkins had proposed a long adjournment for the commissioners in January 1773, so that "this Injured Colony [will have] an Opportunity of Showing the Error & Falsehood of many Malicious Charges made against it by Admiral Montague & many other Crown Officers..." [51]

The use of troops was a final grievance pointed to continually as the commission prepared to convene. There was precedence for the use of the military in America. The decision had been made to introduce troops into Boston in 1767. The massacre of March 1770 was the capstone of that policy. Despite fear among residents that regiments might be called into Rhode Island, the commissioners never requested military support. Ezra Stiles noted: "The Commissioners soon found there was no Necessity for assembling Troops upon us, to protect their inquiry and therefore sent for none." Henry Marchant concurred that the denizens of Newport had not frustrated the commission's proceedings in any disruptive manner, much to the amazement of the commissioners themselves. [52]

References to use of troops appear conspicuously absent after January 1773. Belief that the military would be used had been greatest prior to convening of the commission. [53] Samuel Adams had remarked that deployment of a regiment or two for Newport would cast the commissioners in a bad light. He did not believe that they would be quick to risk their reputations by calling upon General Gage and his soldiers to protect them. [54] As events unfolded, military assistance was not necessary to maintain civil order in the colony. Nevertheless, provision for the use of troops at Newport was proof to many colonials that the ministry's motivation was malevolent.

Of all the grievances which colonials enumerated, what appeared to be the central source of their protest? What appeared to be endangered by these proposed or implemented policies from Whitehall? Many Americans perceived a common theme — ministerial tyranny upon American liberties and the British constitution. Three Providence attorneys — penning their objections to the commissioners in January 1773

— had resisted the opportunity to participate in the establishment of precedence, which they believed "would entail an eternal Infamy on those, who, ought to be acquainted with the Principles of the Constitution." 'A Countryman' perceived an assault upon Rhode Island's charter rights; and too, Samuel Adams had warned that a precedent, once established, would be used to the detriment of other colonies, and that it would terminate in the corruption of Rhode Island's "Free Constitution." [55]

'W.B.' considered extension of the royal prerogative an attack upon the "Liberties of the People" and "destructive to our Constitution." Likewise a commission of inquiry, supplanting the grand jury, was injurious to "our once happy Constitution." To others it was a violation of "British laws." And the primary target of colonial attacks, the continuing threat to trials in the vicinage — fear of transportation to England for trial — was viewed as the undermining of ancient British legal traditions. 'Americanus' considered overseas trials as a danger to "our free Constitution." The Connecticut legislature also detected an attack upon liberties: ... subjecting [persons] to be tried by commissioners, or any court constituted by act of parliament, or other ways within this colony in a summary way, without a jury, is unconstitutional and subversive of the liberties and rights of the free subjects of this colony." [56]

An attack upon American liberties, an abridgement of the British constitution, why? This question was mulled over by Richard Henry Lee of Virginia in February 1773. soon after the commission had adjourned. "The primary end of government seems to be the security of life and property; but this ministerial law [commission of inquiry] would, if acquiesced in. totally defeat every idea of social security and happiness." [57]

Why should men of Whitehall want to disturb the constitutional well-being of Americans? Henry Marchant, writing to his London friend David Jennings. expressed his fears of the ministry's motive. He was especially suspicious of the King's proclamation and reward of £1,000 for anyone offering information leading to arrest and conviction of the *Gaspee's* attackers. Marchant believed that such a great reward might encourage persons "to give their evidence from the motive of making a Fortune by it." Envisioning insidious effects of the royal commission, he pondered: "Is it not as well that some Crimes should go unpunished, as that by attempting to punish one we bring on the Persecution of many men!" [58]

As disgruntled Americans cogitated the ramifications of the commission of inquiry, they arrived at the conclusion that something foul was afoot —a master plan whose roots antedated the commission by several years, and whose ultimate goal was still in the process of unfolding, One writer from Massachusetts observed: "We ought to consider the measure as levelled not at Rhode Island merely but as a flagrant attack upon American liberty in general." Samuel Adams perceived evidences of a deliberate design to whittle away American liberties under the slightest pretext. In arguing his point, he referred to the courteous reception which the commissioners had received during their winter stay in Newport. He wrote: "The promoters of ministerial measures in this Town [Boston] are pleased to hear from one of the Commissioners that they are

treated with great respect: Even common Civility will be thus coloured to serve the great purpose. "[59]

'W.B.' urged Americans to safeguard their liberties by protecting them from a vengeful ministry, for "the Liberties of English Subjects cannot but subsist, so long as this Palladium [trial by jury in the vicinage] remains sacred and inviolate, not only from All open Attacks, but also from all secret *Machinations*, which may sap and undermine it." Harkening back to fears raised by revisions in the structure of colonial vice-admiralty courts, and by new threats offered in the commission of inquiry, 'Hampden' identified what "appears to be a plan concerted and established for enslaving us, and all our posterity. . ." The conspiracy to which he alluded was the crown's "attempt to deprive us of that great bulwark of English liberty, trials by juries in the vicinage." and at the "discretion of an arbitrary minister to undergo a mock trial, and inevitable execution." [60]

'Constitution' was reminded of conspiratorial designs of royal officials when he witnessed a happening in New York not unlike the *Gaspee* incident. Some of the officers and crew of *Lively Frigate*, a man-of-war stationed in the area, approached *Mary*, a brig, to search for undeclared goods. *Mary* tried to answer a command to heave to promptly, but before she could adjust her sails her crew was tired upon. 'Constitution' warned: "It must be teared by every loyal Subject, that such daring cruel and unprovoked Insults, are in Consequence of some dreadful Schemes hatched by the enemies of our King and Constitution. to throw this Country into Confusion, in order to reap Advantages, by accusing us of high Treason, when we are forced highly to resent such flagrant Breaches, not only of our invaluable Constitution, but even of the Laws of Nature." [61]

'Constitution' did not ponder the ultimate objective of the conspirators. But 'W. B.' did proffer an answer. He saw the appointment of a commission of inquiry as part of a larger albeit uncompleted mosaic of British tyranny with a decidedly malicious design. He wrote: "Every new Tribunal, erected for the Decision of Facts, without the Intervention of a Jury (whether composed of Commissioners of the Revenue, or any other standing Magistrate) is a step towards establishing *Aristocracy* . . . the most oppressive of absolute Governments."

This seeming misrepresentation of facts by enemies of America climaxed in the ministry's assertion that Rhode Islanders had engaged in open and treasonous rebellion against their king, an action which necessitated stern measures — appointment of a commission of inquiry. To those people who had consistently opposed acts of Parliament and policies of the king's ministers since 1763, the commission was simply one more attempt to deprive Americans of their constitutional birthright, under the guise of some other objective. 'W.B.' had warned that "new and arbitrary Methods of Trial . . . under a Variety of plausible Pretences, may in Time imperceptibly undermine [trial by jury] this best Preservative of English liberty." Undoubtedly, many colonials shared his

view that the charge of treason in the destruction of the *Gaspee* was one of those pretexts which the ministry had invented from time to time to further its sinister ends.[62]

Viewed as one event in a continuum of conspiratorial policies, the impact of the *Gaspee* affair upon imperial politics was soon engulfed by another controversy. Belief that Parliament intended to pass a bill which would extend preferential economic advantages to the East India Company — at the expense of other tea merchants — precipitated a new crisis. It appeared as though Americans were being coerced into acknowledging the principle of parliamentary taxation through a duty on tea. To opponents of Parliament "the plan was a conspiracy between the Ministry and the Company to force American recognition of Parliamentary taxation." Confrontation came on the evening of December 16, 1773 when a group of men, disguised as Indians, boarded three ships, opened the chests on board, and pitched the tea into the harbor."

As in the case of the burning of the *Gaspee*, the ministry reacted to the Boston Tea Party by proposing seizure of the ringleaders for transportation to England for trial. The Attorney and Solicitor General at first opined that such trials in England would be legal. However, after further consideration, they reversed themselves on the basis of insufficient evidence for a charge of treason. The ministry did not choose to risk the blame for reprisal. Nor were crown lawyers eager for that stigma. The dilemma was passed on to Parliament. It responded with several bills which came to be known collectively as Coercive or Intolerable Acts. One of these, the Administration of Justice Act, stipulated that any British officer charged with a capital crime — allegedly committed in the colonies — might take his trial in another colony or in England. The law accented the ministry's dogged persistence to make use of the unpopular principle of trials beyond the seas."[64]

During summer 1774. Thomas Jefferson — addressing himself to the many laws which Parliament had passed, the many policies which the ministry had implemented — devoted space to this continuing American fear of trials out of the vicinage. He quoted from the Administration of Justice Act, knowing full well that it had been intended for protection of British officials and loyal subjects of the crown, rather than as punishment for American opponents of British policies. In his discourse he was reminded of Rhode Island's earlier experience: "A clause for a similar purpose had been introduced into an act, passed in the 12th year of his Majesty's reign, entitled 'An act for the better securing and preserving his majesty's dockyards, magazines, ships, ammunition, and stores; against which, as meriting the same censures, the several colonies have already protested," Again, during summer 1776, Jefferson made implicit reference in the Declaration of Independence to the commission of inquiry and the Administration of Justice Act when he chastised George III "For transporting us beyond the Seas to be tried for pretended offences. . . ."

This issue of trials beyond the seas had first found expression in opposition to the vice-admiralty courts' jurisdiction and later in provisions of the commission of inquiry. It remained a perennial grievance to American revolutionaries, long after the

commission of inquiry and the event which had led to it — the burning of the *Gaspee* — were vivid memories only in the minds of Rhode Islanders. Tea had preempted the commission of inquiry: the Intolerable Acts had preempted tea. Jefferson explained it well: "Single acts of tyranny may be ascribed to the accidental opinion of a day: but a series of oppressions, begun at a distinguished period, and pursued unalterably through every change of ministers, too plainly prove a deliberate and systematical plan of reducing us to slavery.[65] With such a wide range of injustices to choose from, why dwell upon the *Gaspee* affair or the commission of inquiry?"

For the most part American revolutionaries did not dwell upon either. They found new justification after 1773 to substantiate their conviction that a vindictive ministry and parliament, handily assisted by American informers who misrepresented the true state of affairs to the crown, had together joined forces toward a common cause — deliberate subversion of the British constitution in the colonies. They sincerely believed that the commission of inquiry — Great Britain's answer to the burning of the *Gaspee* — provided a vital link in a chain of tyranny which led them to declare their independence.

Notes:

Mr. DeVaro received his Ph.D. from Case Western Reserve University in January 1973.

1. *Newport Mercury* Nov. 9, 1772, July 17, 1769.

2. *An Act for the more easy and effectual recovery of the penalties and forfeitures inflicted by the acts of parliament relating to the trade or revenues of the British colonies and plantations in America.* 8 Geo. III. c. 22, Danby Pickering, ed. *Statutes at Large*, 28: 70-71.

3. Traditionally the Massachusetts vice-admiralty court had jurisdiction in Rhode Island. The situation changed in 1758 with creation of a local court at Newport, presided over by John Andrews, a Rhode Islander. When a "Supercourt" was created at Halifax in 1764, it renewed controversy over local jurisdiction. The problem would be compounded in 1767 with creation of the Boston court, which encompassed Rhode Island. Charles M. Andrews, 'Introduction' to *Records of Vice-Admiralty Court at Rhode Island, 1716-1762*. Dorothy S. Towle, ed. (Washington: American Historical Association, 1936) 82. David S. Lovejoy. *Rhode Island Politics and the American Revolution, 1760-1776*. (Providence: Brown University Press, 1958) 92.

4. Account of Events Pertaining to Destruction of Schooner *Gaspee*, anon. MS. c. 1772, John Hay Library, Brown University.

5. For a detailed account of events prior to the burning and its aftermath, see *Gaspee Commission Papers*. R. I. State Archives. The bulk of these are printed in either John R. Bartlett, ed. *Records of the Colony of Rhode Island and Providence Plantations in New England*, 10v. (Providence. 1856-1865) 7, or William R. Staples. *Documentary History of the Destruction of the Gaspee* (Providence. 1845).

6. Eugene Wulsin. "Political Consequences of the Burning of the Gaspee". *Rhode Island History*, 3:1 & 2 (Jan. and April 1944).
7. Bernard Bailyn, *Ideological Origins of the American Revolution* (Cambridge, Mass.: Belknap Press, 1967) 98-116.
8. Documents relating to attacks upon *St. John* and *Liberty* are in Bartlett. 6: 428-430, 596.
9. July 23, 1772, Public Record Office 1:484. Admirals' Dispatches. Papers Relating to the *Gaspee*, comp. by Walter A. Edwards, MSS., RIHS Library.
10. Account of Events...
11. James Willard Hurst. "Treason down to the Constitution," in *Law of Treason in the United States: Collected Essays* (Westport, Conn.: Greenwood, 1971) 77.
12. Feb. 16. 1773, to Rev. Elihu Spencer at Trenton. N. J. Franklin B. Dexter. ed. *Literary Diary of Ezra Stiles* (New York: Scribners, 1901) 1:350.
13. In the midst of the ministry's deliberation upon the Gaspee affair, the Earl of Dartmouth replaced Hillsborough as secretary on Aug. 14, 1772.
14. *Newport Mercury*. Sept 28, 1772. Hutchinson, *History of Colony and Province of Massachusetts-Bay*. Lawrence S. Mayo. ed. (Cambridge: Harvard Univ. Press, 1936) 3:262, n.
15. *Providence Gazette*, May 8. 1773. Not one of the commissioners, Montagu attended the inquiry in his capacity as commander-in-chief of the British navy in North America.
16. *Newport Mercury*. June 7, Sept. 27. 1773.
17. Hillsborough to the Gov. of R. I. Aug. 7, 1772, Colonial Office 5:1301, fol. 452. Papers Relating to *Gaspee*. Dartmouth to Joseph Wanton, Sept. 4, 1772, *Gaspee Commission Records*, John Carter Brown Library.
18. Any challenge to royal authority by the people to redress their grievances was considered constructive levying of war and defined as treason. On the other hand, conspiracy to levy war included compassing, plotting or planning to commit treason. even though the plan might not come to fruition. Charles Dudley argued that a conspiracy existed to overthrow royal authority by destroying the *Gaspee*. He drew a connection between the alleged conspiracy in March and the vessel's destruction in June 1772. Two ideas of treason —conspiracy to levy war and constructive levying of war — were put forth by Dudley and the anonymous writer. Hurst, 77-79.
19. Account of Events . . .
20. "Royal Commission to the Commissioners of Inquiry," Bartlett. 7:109. Although the governor resided in Newport. Providence was the residence of Deputy Governor Darius Sessions and Chief Justice Stephen Hopkins.

21. "Report of the Commissioners to the King," June 22, 1773, Gaspee Commission Papers. Bartlett. 7:179.
22. Henry Marchant to David Jennings. Newport, Jan. 25, 1773. Henry Marchant Letter Book, Newport Historical Society. *Newport Mercury*, Jan. 18, 1773.
23. *Newport Mercury* Oct. 26, 1772. *Massachusetts Gazette and Boston News Letter* Oct. 29, 1772,
24. For a discussion of the confusion created by an earlier decision to use the Dockyards Act for prosecution of Gaspee suspects. See William R. Leslie, "Gaspee Affair: A Study of Its Constitutional Significance." *Mississippi Valley Historical Review* 39:2 (Sept. 1952), 242. Thomas Hutchinson, for one, realized that the act had nothing to do with the schooner's destruction. *Newport Mercury* Dec. 21, 28, 1772. *Massachusetts Gazette and Boston News Letter* Dec. 31, 1772.
25. *Newport Mercury* Dec. 21. 1772. The membership of the commission was also a topic for speculation. Among possible commissioners mentioned were governors William Tryon of New York, Jonathan Trumbull of Connecticut, Thomas Hutchinson of Massachusetts: three chief justices. Daniel Horsmanden of New York, Frederick Smyth of New Jersey, Peter Oliver of Massachusetts; and Admiral Montagu. While all received correspondence from the State Department, not all were appointed to the commission.
26. Darius Sessions to Samuel Adams Dec. 25, 1772. William V. Wells. *Life and Public Services of Samuel Adams* (Boston, 1865) 2:14.
27. Darius Sessions, Stephen Hopkins. Moses Brown and John Cole to John Dickinson, Providence, Jan. 1773, Dickinson Family Papers, Library Company of Philadelphia.
28. Samuel Adams to Richard Henry Lee, Boston, April 10. 1773, Harry A. Cushing, ed. *Writings of Samuel Adams* (New York: Putnam's, 1906) 3:28.
29. John P. Kennedy. ed. *Journal of the House of Burgesses of Virginia. 1773-1776. Including Records of the Committee of Correspondence* (Richmond, Va., 1905) 28.
30. To John Dickinson, Chantilly. April 4, 1773. James C. Ballough, ed. *Letters of Richard Henry Lee* (New York: Macmillan, 1911) 1:83.
31. Jefferson, "Autobiography." *Works of Thomas Jefferson* ed. Paul Leicester Ford (New York: Putnam's, 19041) 1:10.
32. Committee of Correspondence to John Norton, Va., April 6, 1773. Kennedy, 42. Benjamin W. Laborer. *Boston Tea Party* (New York: Oxford Univ. Press. 1964) 170.
33. *Newport Mercury* May 10, 1773.
34. Kennedy, 49-62.
35. *Providence Gazette* April 24, 1773.

36. Deposition of John Cole, June 3. 1773. Gaspee Commission Papers.
37. Samuel Adams to Darius Sessions, Boston, Jan. 2, 1773. Cushing. 2:397.
38. Silliman to Va. Committee, Nov. 4. 1773, Kennedy, 59.
39. Samuel Adams to Sessions, Feb. 1773. Cushing, 2:427.
40. *Newport Mercury* Feb. 7, 1774.
41. *Providence Gazette* April 24, 1773.
42. Carl Ubbetohde. *Vice-Admiralty Courts and the American Revolution* (Chapel Hill: Univ. of North Carolina Press, 1960) 49, 55, 61, 130, 145.
43. Ezra Stiles to Rev. Elihu Spencer, at Trenton. N. J., Newport, Feb 16, 1773. Dexter, 1:350.
44. Marchant to Jennings, Jan. 25. 1773. Marchant Letter Book. Marchant was mistaken on one point. According to Lord Dartmouth prisoners would be sent to England along with witnesses for defense and prosecution. Dartmouth to Wanton, Sept. 4, 1772, Gaspee Commission Records.
45. Hannah Winthrop to Mercy Warren, Jan. 4, 1773. *Warren-Adams Letters* 1:16 (Massachusetts Historical Society Collections 72).
46. Lee to Samuel Adams, Feb. 4, 1773. Wells, 2:65.
47. *Newport Mercury* Feb. 7, May 2, Feb. 21, June 27, July 25, 1774. Jan. 30, 1775.
48. Collected Letters 3, 1763-1775, R. I. State Archives.
49. Stiles to Spencer, Feb. 16, 1773. Dexter, 1:349.
50. Marchant to Jennings, Jan. 25, 1773. Marchant Letter Book.
51. Stephen Hopkins to Col. Wanton, Providence, Jan. 20, 1773, American MSS., John Carter Brown Library.
52. Stiles to Spencer, Feb. 16, 1773, Dexter, 1:349. Marchant to Jennings, Jan. 25, 1773. Marchant Letter Book.
53. John Shy — *Toward Lexington: Role of British Army in the Coming of the American Revolution* (Princeton: Princeton Univ. Press. 1965) 401-402 — argues that the ministry's reaction to the Gaspee's destruction "was curiously weak," that no effective measures were taken" to assist the commissioners. cites Admiral Montagu's reluctance to send armed vessels to Newport during the inquiry. Actually Montagu had already dispatched warships to Rhode Island, consistent with his orders from the Lords of the Admiralty in September 1772. When the admiral expressed reluctance to send vessels in March 1773, his hesitancy was not indicative of weakness of will: rather it indicated

that the government thought troops would not be needed, because Rhode Islanders had not attempted to frustrate by force the activities of the commissioners.

54. Adams to Sessions. Jan. 2, 1773. Cushing. 2:390.

55. John Cole, George Brown and Daniel Hitchcock to Stephen Hopkins, East Greenwich, Jan, 19, 1773. Copy enclosed in Hopkins to Wanton, Jan. 20, 1773. American MSS. *Newport Mercury* Feb. 7, 1774. Adams to Sessions, Feb. 1773. Cushing, 2:427.

56. *Providence Gazette* April 24, 1773. *Newport Mercury* Feb.1, 1773; Dec. 21, 1772; June 24, 1774.

57. Lee to Samuel Adams, Feb. 4, 1773, Wells, 2:65.

58. Jan. 25, 1773, Marchant Letter Book_

59. *Newport Mercury* Feb. 1, 1773. Adams to Sessions, Feb. 1773. Cushing. 2:427,

60. *Providence Gazette* April 24. 1773. *Newport Mercury* May 2. 1774,

61. *Newport Mercury* July 26. 1773.

62. *Providence Gazette* April 24. 1773.

63. Labaree, 258.

64. Merrill Jensen, *Founding of a Nation: History of the American Revolution. 1763-1776* (New York: Oxford Univ. Press, 1968) 456-457.

65. Thomas Jefferson, *Summary View of the Rights of British America*, ed. Thomas P. Abernethy (New York: Scholars' Facsimiles & Reprints, 1943) 15-16, 11.

