

The Uses of Law and the Gaspee Affair

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The Gaspee affair has become a familiar marker along the path that led to the War of American Independence. Burned to the waterline before dawn on 10 June 1772, apparently by unidentified boarders who also manhandled the crew and reputedly shot its commander, the *Gaspee* took on a symbolic importance that extended far beyond the events of the moment. The HMS *Gaspee*, after all, was a Royal Navy schooner stationed in Rhode Island waters to catch smugglers; an attack on it was an assault on the flag and therefore treason against the king.

Although the Gaspee affair is still overshadowed in popular memory by the Boston Tea Party, most historians of the American Revolution give it a prominent place in their narratives. True, the Tea Party led to the much-resented "Coercive Acts," which in turn led to the First Continental Congress and, more indirectly, to the bloodletting at Lexington and Concord. But the *Gaspee*'s destruction had already brought a royal commission of inquiry that prompted the forming of intercolonial committees of correspondence. Even more important, the fate of the *Gaspee*, perhaps better than the Tea Party, reflected basic, intractable problems of empire, especially confusion over the extent of local autonomy and limits to imperial authority.[1]

The Gaspee affair pitted local "whig" law against an expanding conception of imperial purview: future revolutionaries against future loyalists and their British allies.[2] It showed that law alone cannot retie broken social bonds. Law, or at least law as it was interpreted by local and imperial authorities, confused rather than clarified issues in the Gaspee affair. Furthermore, lacunae in the surviving record should warn us against using old narrative forms to explain what happened.[3] Quite frankly, given the fragmentary and inconclusive evidence, we still do not know what transpired on the *Gaspee* before fire consumed it.

For those who believe in destiny, the fate of the *Gaspee* was sealed from the moment it arrived in Narragansett Bay. Rhode Island had a long-standing reputation as a smugglers' den, and the bay, with its islands, inlets, and passageways, was a natural haven for illicit trade. The colony's sixty thousand or so inhabitants were scattered along the mainland shores of the bay as well as on its islands. Providence had just over four thousand residents, while Newport boasted a population twice as large.[4] Both towns were dominated, socially and politically, by merchants, and a fair number of them—including the wealthy Browns of Providence—were not above smuggling. Rhode Island in general was under the sway of men like the Browns and their associates; they amassed the largest fortunes and either held the highest offices or were allied by kinship and interest to those who did.[5]

Beginning in the middle 1760s, imperial authorities endeavored to reduce smuggling in Rhode Island and elsewhere in the colonies. Smuggling had become embarrassingly widespread during the French and Indian War, even between colonial Americans and their ostensible French enemies in Canada and the West Indies. Vice-admiralty courts had been operating in British North America for three-quarters of a century; new parliamentary legislation in 1767 expanded their range of authority.[6] The extended reach of these courts further threatened the dominion of local common-law courts, which used juries to decide cases — unlike the vice-admiralty courts, whose royally appointed judges decided cases themselves. The Royal Navy, with more ships in American waters than in former years, was expected to assist the vice-admiralty judges and customs inspectors who patrolled on shore. As an incentive to diligence, all could profit from any resulting confiscations: it quite literally paid to catch smugglers. By the time that the *Gaspee* arrived in 1772, Royal Navy vessels and cutters licensed by customs had been plying Narragansett Bay regularly for some eight years.

The factions that dominated Rhode Island politics closed ranks in opposing tighter enforcement of the navigation system. Local authorities did not help imperial officials do their jobs; even John Andrews, a Rhode Islander who had been appointed the first resident vice-admiralty judge for his colony in 1758, did not let a royal appointment get in the way of his provincial allegiance: few convictions came from his bench. Rhode Islanders had lost their fight to keep vice-admiralty courts out of the colony when it was brought within the jurisdiction of the Boston court in 1704. They could take solace that Andrews, at least, was one of their own. Paradoxically enough, Andrews may have reinforced the tendency of

Rhode Islanders to see themselves as beyond the reach of imperial law because, with his appointment, imperial law had been localized.

There were numerous confrontations between local residents and imperial authorities before the *Gaspee* arrived in Rhode Island. In 1771 customs collector Charles Dudley was beaten as he boarded a vessel in Newport, and he subsequently complained to the British secretary of state for American affairs, the Earl of Hillsborough. Looking for an excuse to vent his own frustrations, Hillsborough notified Governor Joseph Wanton that he had received many criticisms about "the neglect of the governors and civil magistrates, in giving their assistance and protection" to members of customs. He added, pointedly, "that some of the most violent of these outrages have been committed at Newport, Rhode Island." Scarcely disguising his wish to stand Rhode Island on its figurative head, he declared that "any further exhortation" on the subject would be useless; Wanton and other leaders of the colony should worry what the "consequences" would be if the "laws of the kingdom are suffered to be trampled upon." [7]

Wanton's response marked the chasm separating him from Hillsborough and anticipated by a year the rift between the governor and Admiral John Montagu over the status of the *Gaspee*. Acting with the permission — even at the direction — of the powerful General Assembly, Wanton disputed Dudley's charge. He countered that Dudley may have been exceeding his authority and that if he was attacked, it was by drunken sailors, not by the good citizens of Newport. Wanton had been a customs collector in Newport earlier in his career and had been set upon at least once by a crowd for trying to seize a cargo, but he had left those years behind. Well into his sixties when he became Governor in 1769, he was a prominent merchant and probably a smuggler to boot. His father had sat as Governor; so had an uncle and a cousin. Hardly intimidated by Hillsborough and uninterested in courting his favor, Wanton registered a complaint of his own:

And now My Lord, permit me, in turn, to complain of the officers of His Majesty's customs in America, for the abusing and misrepresenting the colony of Rhode Island and its officers; for how unkind and ungentlemanly-like, is it for officers, sent abroad by the crown, to reside in the colonies, by every means in their power, to traduce and even falsely accuse His Majesty's faithful subjects in the colony, to their sovereign and his ministers of state. [8]

Hillsborough and Wanton were nibbling at the edges of a jurisdictional dispute. As far as Rhode Island's leaders were concerned, anything that occurred within the borders of the colony — an area that included the waters of Narragansett Bay — was a provincial matter under the jurisdiction of local law. The Rhode Island General Assembly had said as much in the midst of the Stamp Act crisis when, imitating the Virginia House of Burgesses, it resolved

THAT HIS Majesty's liege People in this Colony have enjoyed the Right of being governed by their own Assembly in the Article of Taxes, and internal Police, and that the same hath never been forfeited, or any other way yielded up, but hath been constantly recognized by the King and People of Britain."

Rhode Island officials enjoyed virtual autonomy in local matters, but neither Crown nor Parliament had intended to exclude imperial authority. By charter, Rhode Island was expected to uphold English law, including the Navigation Acts. In practice, except for the years under the Dominion of New England, Rhode Islanders before the 1760s had by and large been left alone to enforce local legislation as well as acts passed by the British Parliament and applied to them.

The language of the 1663 charter was vague. Under it the General Assembly was enjoined from passing legislation inimical to the laws of England. Yet the charter stated ambiguously that Rhode Island's laws should "be not contrary and repugnant unto, but, as *near as may be*, agreeable to the laws of this our Realm of *England*." Did that mean the stipulation was not binding? Rhode Island did not routinely send its laws to London for review, so the matter was never clarified. [10] Moreover, Rhode Islanders elected all of their own officials, from the Governor on down, and through the General Assembly they were empowered to set up their own courts. Those courts had authority over "all Actions, Cases, Matters, and Things, happening within the said Colony and Plantation." [11] A rather extensive grant of autonomy, this, a concession to the unavoidable need for local law enforcement. And as legal scholars have shown, colonial Americans in general—not just Rhode Islanders—came to see the custom of local enforcement as a constitutional right, unalterable except with their consent. [12]

The *Gaspee* had been built as a sloop. By the time Lieutenant William Dudingston assumed command in 1768, a second mast had been added and the vessel had been re-rigged as a schooner. Just under fifty feet long, the *Gaspee* carried eight small guns and a crew of twenty or so men. Before Dudingston

took up his station in Rhode Island, he had patrolled the Delaware River and, after that, the waters in the vicinity of Martha's Vineyard. He managed to offend local residents both in Pennsylvania and on the Vineyard through his aggressive acts and bombastic talk. Assigned to Narragansett Bay in March 1772, he wasted no time in alienating Rhode Islanders as well by stopping, searching, and occasionally seizing vessels.

According to Deputy Governor Darius Sessions, many residents had been "disquieted" by the schooner's commander. Writing from Providence, Sessions informed Governor Wanton, in Newport, of the widespread distress caused by the *Gaspee's* presence. Sessions told Wanton that he had consulted with the chief justice for the province, Stephen Hopkins, who advised him "that no commander of any vessel has any right to use any authority in the body of the colony, without previously applying to the Governor, and showing his warrant for so doing." [13] After reading Sessions's letter, Wanton dispatched an informal summons, carried by a sheriff, to Dudingston. In it Wanton told Dudingston to wait on him "without delay" and bring along any authorization he might have from the customs commission empowering him to operate in Rhode Island waters. Dudingston penned a response and entrusted it to one of his men. He reminded Wanton that they had met, that the Governor had not asked to see his orders or authorization then, and that in any case as a Royal Navy officer he was not obliged to show Wanton anything. [14]

Not surprisingly, Wanton was offended by Dudingston's terse response. In a second note he told Dudingston that he was not satisfied and that he still expected to see the lieutenant's commission. Dudingston sent Wanton's summonses, along with his own explanation, on to his commander in chief, Admiral John Montagu, in Boston. He told Montagu that he had shown Wanton his "orders from the Admiralty and your first order to put myself under your command and a deputation from the Commissioners of Custom." but not any specific orders from Montagu. He had thus been conscientious and, he added, cautious, for he had heard that there were those in Newport who "talked of fitting and arming a vessel to prevent my carrying any seizure to Boston." He claimed that writs were being prepared against him, that he could not safely send a boat ashore, and that "every invention of infamous lies calculated to inflame the country is put in the newspapers." [15]

Dudingston no doubt phrased his letter very carefully in writing to Montagu, who would brook no interference by local authorities in naval affairs. Had the lieutenant shown Wanton his orders and had Wanton forgotten? Had he not but thought he did? Or did he lie to Montagu in order to get the admiral provoked at Wanton? We do not know.

As Dudingston probably hoped, Montagu fired off a very curt note to Wanton, telling him he was ashamed of the way Dudingston had been treated. "It is your duty, as a governor," lectured the admiral, "to give him your assistance, and not endeavor to distress the King's officers for strictly complying with my orders." Furthermore, he warned, if Dudingston or any other naval officers suffered "any molestation in the execution of their duty," those guilty of such acts should be sent to him in Boston. Dudingston had told him there were plans afoot in Newport to outfit a vessel to interfere with the *Gaspee*; if such a move were made, rumbled Montagu, he would take those involved and "hang them as pirates." [16] To this communication Wanton replied, icily, that Dudingston had not shown him "any orders from the admiralty or from you," and "as to your attempt to point out what was my duty as Governor, please to be informed, that I do not receive instructions for the administration of my government, from the King's admiral, stationed in America." [17]

In effect, neither man accepted the authority of the other, and each was convinced that the law was on his side. Montagu had nothing but disdain for Wanton's use of a sheriff to summon Dudingston. "I would advise you not to send your sheriff on board the King's ship again, on such ridiculous errands," chided the admiral; to which Wanton retorted, "I will send the sheriff of this colony at any time, and to any place, within the body of it, as I shall think fit." [18] Wanton undoubtedly felt personally affronted, but he also believed that his legal status as Governor — not just his personal honor — had been impugned. When he duly reported his dealings with Dudingston and Montagu to the Earl of Hillsborough, he emphasized the legal correctness of his stand. He had acted, he stressed, because "gentlemen of established character, and whose loyalty to their sovereign is not to be questioned," had complained that a schooner with no clear authority had been harassing merchant vessels "within the body of the colony." At their request he had pursued the matter "as was consistent with law." Wanton told Hillsborough he was still not convinced that Dudingston had any right to act "before he communicated to me, or some proper authority, his commission for so doing." [19] The Governor insisted on this point, knowing full well Montagu's differing opinion and that of the Secretary himself,

who had shown his concurrence with the admiral's view in his letter to Wanton in connection with the Dudley incident the preceding year.

Equally as important, Wanton hotly denied that the people of Newport were arming a schooner to attack the *Gaspee*: any claim that they were was "a malicious misrepresentation."^[20] It is most unlikely that Wanton was being coy here, although — true enough — when the *Gaspee* was later boarded, the incident took place twenty miles up the Bay from Newport and involved men not from Newport but from the Providence area. Yet, even if Wanton did not know of any plans or if, in fact, there were no plans at this date to take action against the *Gaspee*, Wanton's feelings were probably common knowledge. The Governor had assured Hillsborough that he would assist the "King's officers" in the "legal discharge of their trust"; apparently he distinguished acts by imperial agents that required his support from those that did not. As Wanton saw it, Dudingston was operating beyond the Navy's purview; not only was he outside the protection of Rhode Island law but he had actually violated it. That, and the knowledge that Wanton was supported by his Deputy Governor and by the province's chief justice, may have emboldened those who eventually did board the *Gaspee*. Indeed, without that knowledge they may not have made the attempt.

The *Gaspee* was not the only warship on patrol in Rhode Island waters; the frigate *Lizard* and the sloop *Beaver* also sailed Narragansett Bay. On the morning of 9 June 1772 all three vessels were in the south Bay, with the *Gaspee* anchored off Newport. The *Gaspee* set off alone to the north, headed toward Providence. Perhaps because there was no pilot on board and Dudingston was venturing into the unfamiliar Providence River, the vessel ran aground five miles below Providence on Namquit Point sometime around mid-afternoon. Dudingston decided there was nothing he could do until early the next morning, when the stranded schooner might be lifted off by high tide. That evening he posted a guard before he and the rest of the crew went below. Not long after midnight the sentry (or sentries) on deck heard and then saw in the darkness a number of approaching rowboats. He (or they) hailed the boats and urged Dudingston to come up. Once topside, Dudingston too called out, then advised whoever was coming near to stay clear and not attempt to board. The boats continued to close on the *Gaspee* as words were shouted back at Dudingston. Dudingston had ordered the crew to arm themselves, and shots were fired from the *Gaspee* at the boats; at least one shot was fired from the boats in reply. During this exchange Dudingston was wounded. Men from the boats clambered aboard the schooner and chased the *Gaspee*'s crew below; then, one by one, the crew was brought back on deck, bound, and rowed ashore near Pawtuxet. Just before dawn a few of the marooned sailors, now well over a mile away from Namquit Point, saw that the *Gaspee* was afire, and they watched as it continued burning to the waterline.^[21]

Word of the *Gaspee*'s destruction spread quickly. Later on the morning of 10 June, Deputy Governor Darius Sessions, accompanied by vice-admiralty judge John Andrews, turned up at the Pawtuxet house where Dudingston and some of his crew had been left. Sessions wanted to interview Dudingston. Wounded, embarrassed, not knowing which, if any, local officials to trust, and anticipating a court martial where he would have to explain himself, Dudingston demurred. With his grudging permission Sessions talked to others from the *Gaspee* assembled there. Sessions went so far as to take depositions from three of the crew. None of them could identify the boarders. Sessions reported what he had learned to Wanton in a letter the next day, and that was not much: the *Gaspee* had been boarded, its commander had been shot, he and his crew had been dumped on shore, the schooner had burned, and none of the boarders had been identified — no names, no physical descriptions.^[22]

The General Assembly was not in session at the moment, so Wanton, after consulting with members of his council, issued a proclamation on 12 June "strictly charging and commanding all His Majesty's officers" in the colony "to exert themselves with the utmost vigilance, to discover and apprehend the persons guilty" of this "atrocious crime, that they might be brought to condign punishment."^[23] He offered a reward of one hundred pounds for information leading to a conviction.

Wanton then notified Hillsborough of the "unwarrantable transaction," assuring the Secretary that "the conduct of those who committed this outrage" was "universally condemned" and that, quoting his own proclamation, the "utmost vigilance" would be used to bring the perpetrators to justice. Yet he also wrote — at even greater length — that the people of Rhode Island had been "insulted without any just cause" and that their trade had been interrupted in an "oppressive manner" before this incident. Wanton's message clearly implied that the incident would not have happened if "those officers who have been sent into this colony" had behaved with "prudence and discretion."^[24]

From the tone of Wanton's report Hillsborough may have concluded, quite rightly, that the Governor was not all that interested in uncovering what had happened to the *Gaspee*. Hillsborough, Lord North, and other members of the ministry were appalled, as was George III. Hillsborough soon after left office and the more moderate Earl of Dartmouth replaced him; but Dartmouth too was distressed, and he concurred in the appointment of a royal commission of inquiry to investigate the affair. The commissioners were instructed to gather evidence and see to it that those formally accused were sent to England, possibly to be tried there for committing "High Treason" by "levying war against His Majesty."^[25] Attorney General Alexander Wedderburn, who with Solicitor General Edward Thurlow had recommended that the assault be considered treasonous, thought the *Gaspee* business "five times the magnitude of the Stamp Act" disturbances.^[26] Accordingly, the King approved a much more substantial reward than that offered by Governor Wanton: five hundred pounds for anyone giving evidence leading to a conviction; one thousand pounds and a pardon to any participant who would identify the ringleaders (and who had not been the one to shoot Dudingston).

Rhode Islanders reacted hostilely to the appointment of a royal commission and the planned trial of the accused in England. Writing to the *Newport Mercury*, 'Americanus' scorned the commission as a "star chamber," a "court of inquisition" dangerously "vested with the most exorbitant and unconstitutional power."^[27] Dire warnings printed in the *Providence Gazette* and *Newport Mercury* turned up in other colonial newspapers as well. Belying the claim to objectivity printed on its masthead—"Open to ALL PARTIES but influenced by NONE"—William Rind's *Virginia Gazette* was notable for its pro-Rhode Island sympathies. Another Virginia paper reprinted a piece from the *Providence Gazette* that characterized the boarding of the *Gaspee* as merely an "unhappy Scheme"; Dudingston, the author complained, had previously treated Governor Wanton "with great indignity," and his behavior while on patrol "was so piratical and provoking that Englishmen could not patiently bear it" The commissioners were implored not "to make any Concession in Submission whereby a Precedent shall be introduced and established which may be fatal to the Freedom of their own Constitution and the Liberties of America."^[28] Virginia in fact became so agitated over the affair that leading Burgesses called for the forming of intercolonial committees of correspondence. By the end of the year ten colonies had such committees in place.

As it turned out, Rhode Islanders and Virginians need not have worried. The commissioners convened in Newport on 4 January 1773, adjourned after less than three weeks, then reconvened on 1 June and submitted a final report on 22 June, all without identifying a single soul that could be brought to trial. No one would be formally accused, much less sent to England. Whoever had been among the boarders of the *Gaspee* could breathe easier after 22 June. Thus ended the "time of terror."^[29]

The commissioners were probably foredoomed to fail. Part of the problem lay in the composition of the commission itself. The five men appointed were Robert Auchmuty, a vice-admiralty justice in Boston; Peter Oliver, chief justice of Massachusetts; Frederick Smyth, chief justice of New Jersey; Daniel Horsmanden, chief justice of New York; and Governor Wanton of Rhode Island.

No doubt the North ministry moved cautiously before making its choices, and yet the choices it made showed the impossibility of the situation. The first four commissioners could be trusted as faithful adherents of empire, but, especially in the case of the three chief justices, these men were also attached to the law. Officially they were directed to identify suspects and bring them to justice on the basis of legal evidence, not political retribution. If the ministry had other expectations, it did not say so. Wanton's inclusion may have been a political necessity, and yet the commission had been formed in the first place because Hillsborough and his colleagues did not trust the Governor to carry through with an investigation. They likewise probably did not trust the General Assembly, the courts, or the local grand juries. Nonetheless the commissioners were told to work closely with Rhode Islanders because "the civil magistrates and officers" were "entrusted with the power and authority to arrest and commit to custody" those who were accused."^[30] The commissioners could find suspects, and those suspects, once formally accused, could be put in the custody of Admiral Montagu in Boston for passage to England. Still it was up to local authorities to actually arrest the suspects, and they could do so only after indictments were handed down by a Rhode Island court or grand Jury. How likely were such indictments and arrests? In 1765 the Assembly had claimed the constitutional right to police Rhode Island; four years later it voted that all trials for crimes committed in the colony should be held there. In both instances it could contend that it only asserted rights first guaranteed by the 1663 charter and claimed by the General Assembly that same year. Therefore neither Wanton nor the General Assembly could be expected to accept a change in venue. Chief Justice Hopkins, when empowered by the Assembly to use his discretion in the matter, reportedly proclaimed that "for the

purpose of Transportation for Trial ... he would neither apprehend by his own Order nor suffer any executive Officer in the colony to do it." [31]

The commission's deliberations had been preceded by a court martial held in October 1772 on a warship in Portsmouth harbor, England. Testifying before a panel of nine captains, Dudingston and five of his crew gave their version of events. Although there were some differences in their accounts, they agreed that before the *Gaspee* ran aground it had been sailing to Providence to pick up crew members returning from Boston, where they had taken a prize ship; that the approaching boats had been warned off repeatedly, but the men on them boarded the *Gaspee* anyway; that under Dudingston's orders the sailors had armed themselves and fired at the boats, after which shots were returned; that Dudingston was wounded during the exchange of fire; that they had been put ashore and later saw the *Gaspee* aflame; and finally, according to Dudingston and his midshipman, William Dickinson, that one of the two leaders had been called the sheriff. During Dickinson's testimony, when the midshipman was asked if any of the boarders had been wounded, Dudingston "acquainted the Court that he was informed that one of the People in the Boats was privately buried ashore."

When asked, Dudingston defended the actions of his crew; for their part the crew concurred that Dudingston had done his "utmost." Captain Linzee of the *Beaver* appeared briefly to corroborate Dudingston's claim that he had no reason to suspect his ship would be attacked. All were found blameless and the court martial proceedings were closed. [32] Dudingston's career was not ruined by the *Gaspee* affair; on the contrary, Dudingston was soon after promoted to captain and ended his days as a rear admiral.

Dudingston was not required to return to Rhode Island and give evidence before the royal commission, despite the commission's having requested that he do so. The lords of the Admiralty determined that a personal appearance was unnecessary. Dudingston's testimony before the court martial had been substantially the same as his written report to Admiral Montagu on 12 June, a copy of which the commission possessed. Dickinson and one of the other four crewmen were sent to testify, but that is all. The Admiralty had not even assembled the full *Gaspee* crew for the court martial or made any effort to gather detailed information for the commissioners' use. Either the Admiralty preferred that this embarrassing matter be forgotten quickly or it underestimated how tenacious Rhode Islanders would be in obstructing the commission's way.

Dickinson and seaman Bartholomew Cheever appeared before the commissioners on 1 June 1773. They told basically the same story that they had related in Portsmouth, this time in more detail. Cheever again averred that he could not name any of the boarders, but that those "who acted as principals were called the head sheriff and the captain; and one of them was called constable." He claimed that he had seen two of the boarders in Pawtuxet sometime afterward. Dickinson provided a description of the "captain" and the "sheriff": the former "was a well set man, of swarthy complexion, full face, hoarse voice, and wore a white cap, and appeared rather above the common rank of mankind"; the latter "was a tall genteel man, dressed in blue clothes, his hair tied behind, and had on a ruffle shirt." [33]

Dudingston had noted in his 12 June report to Montagu that those he had seen most closely "appeared to be merchants and masters of vessels" and "were in every respect armed, and commanded with regularity, by one who personated the sheriff." [34] This had been a vague description at best; now, a year later, Dickinson was far more precise. Here was specific testimony the commission could use! Or could it? Dickinson, apparently separated from the rest of the crew after being put ashore from the *Gaspee*, had made his way to Boston and had actually recited his first description to Admiral Montagu on 11 June, the day after the incident. Dickinson's testimony that there had been a head sheriff and a captain involved was reflected in the royal proclamation of 26 August calling for witnesses to come forward and identify them. Montagu had also sent a copy of Dickinson's statement to Governor Wanton. Wanton had responded the next day by sending Montagu the depositions taken by Darius Sessions and by pointing out that "you will perceive that there is a material difference between them and the account" given by Dickinson. [35] Dickinson had been more vague in that first account, mentioning "two ring-leaders" and the presumed presence of a "head sheriff" and a "captain." He had given no physical descriptions. As a member of the commission before which Dickinson appeared the following June, Wanton could well have dismissed Dickinson's more elaborate version as confused or perhaps even tainted.

Indeed, both sides may have been guilty of trying to manipulate the evidence. This was especially so in the case of Aaron Briggs, a runaway indentured servant. Within a month of the *Gaspee's*

destruction Briggs turned up on board the *Beaver* and Captain Linzee, the commander, sent the transcript of a statement by Briggs on to Admiral Montagu in Boston. It was this deposition, even more than that of Dickinson, that excited the admiral because Briggs singled out people by name, "Although it comes from a negro man," Montagu wrote Wanton and Hillsborough, "it carries with it an appearance of truth."^[36] It agreed to Montagu's satisfaction with what he had gleaned from the reports of Dickinson and Dudingston, and Briggs's presence among the boarders had been confirmed in a separate statement by Patrick Earle, one of the *Gaspee's* seamen. As Briggs told it, he had been forced to join the group that boarded the schooner. He identified five participants: John and Joseph Brown of Providence, Simeon Potter of Bristol, a "Doctor Weeks" of Warwick, and a "Richmond" of Providence. "It appears to me," Montagu apprised Hillsborough, "that these people were the ringleaders of the piratical proceeding."^[37] In fact, according to Briggs, John Brown was in command and had fired a musket at the *Gaspee*, after which he saw Dudingston fall.

Briggs repeated all of this for the commission in more detail soon after it began meeting in January 1773. In a noteworthy change, he stated explicitly that John Brown had shot Dudingston. Briggs's claim that he was with the boarders was again corroborated by Earle two days later. Earle could not remember anything about the others involved, except that he had heard one referred to by name as Potter.^[38]

The runaway servant had been sequestered on board the *Beaver* much of this time — some seven months — to keep local authorities from getting to him. They were nevertheless prepared, because Montagu himself had sent a copy of Briggs's deposition to Governor Wanton in July. Within days of receiving it, Wanton had obtained refutations from Briggs's master, the master's father-in-law, and two indentured servants who swore that Briggs had been asleep between them in the same bed that night. These counterclaims were laid before the commission. Eventually added to them was a letter from Darius Sessions stating that "it is impossible think that there can be a word of truth" in Briggs's story, and that when he interviewed crew members the morning of the incident, none of them — including Patrick Earle — could identify anyone. It was, they had all agreed, too dark to see individuals clearly or even to tell if the boarders were Negroes or white men with blackened faces. If crew members were now saying something different, "their testimony is absolutely false."^[39]

What is more, Daniel Vaughan testified to the commission that Captain Linzee had tied Briggs to the mast of the *Beaver* and was prepared to whip him unless he named names.^[40] Vaughan came very close to claiming that Linzee had coerced Briggs into saying what lie wanted to hear, in effect fabricating evidence for Admiral Montagu. Vaughan also noted that he had told this to Sessions and that Sessions had met with him at the suggestion of John and Joseph Brown, and Barzillai Richmond (probably the Richmond whose first name Aaron Briggs had not known). Like Wanton before he joined the commission, Sessions only collected testimony that cast doubt on those who implicated individuals in the *Gaspee* raid.

With Briggs, the commissioners heard conflicting testimony. Had Sessions, Vaughan, the Browns, and Richmond connived and conspired? Had the others who spoke against Briggs? The commissioners could disregard the depositions of those who challenged Briggs, and ask the colony's Superior Court to hand down indictments against the Browns and the others named by the runaway, but they did not do this. Perhaps they did not believe that the indictments would be issued, or perhaps they too did not believe Briggs. Wanton had dismissed Briggs as a reputable witness before the commission was even formed; he had no reason to change his mind thereafter. Daniel Horsmanden confided to Dartmouth afterward that Briggs's testimony was useless because the servant showed himself to be a "prevaricator."^[41] The commissioners consequently did not pursue the lead Briggs gave them.

What transpired with Aaron Briggs echoed what had taken place before. On 12 January, Stephen Gullely, a Smithfield farmer, had appeared and testified to the commission that he had been told by a friend, who had heard from someone else, that "Browns" had been involved in the destruction of the *Gaspee*. His testimony of third-hand hearsay was followed in rapid succession by deponents contending that the conversation he recounted never took place and that he was an opportunist looking to cash in on the reward being offered by the Crown.^[42] The commission did not act on Gullely's assertion or on the other shreds of evidence offered to it in January or at the second session in June.^[43]

Even without the evidence given to discredit those who came forward, obtaining a conviction in an English court for a capital offense may well have been impossible. The discrepancies turned up by the commission would most likely have turned up again in court. Furthermore, there is no guarantee that

the commission's task would have been simpler or that indictments, trials, and convictions would have followed if Dudingston or members of his crew had identified suspects. The effect might have been just the opposite; the task of Wanton, Sessions, Hopkins, and their obstructionist colleagues could have been made easier.

According to long tradition and a few later accounts, John Brown led the boarders. What if Brown had led the raid and Dudingston or someone else identified him? If Dudingston or any of his crew had disclosed this information to Sessions when he looked in on them the morning of 10 June, events could have taken a markedly different course. Remember that Sessions did not report to Wanton until 11 June what had happened the day before. I think we can safely assume that in the interim Sessions had talked with most of the leading men of Providence, including, perhaps, the men who boarded the *Gaspee* — John Brown probably among them. They might have agreed to take a calculated risk and deny any involvement, hoping that no eyewitnesses would turn up, that none of their number would betray them, and that provincial officials, from the governor on down, would use local law to shield them. Had they been identified from the outset, the law could have been employed quite effectively. Sessions's 11 June 1772 letter to Wanton would have been phrased differently, justifying rather than condemning that "very disagreeable affair." Instead of lamenting the incident in his correspondence to Montagu and Hillsborough, Wanton could have backed Brown and the rest, with the law — local law — behind him.

Justification could have started with the question of the right to board. John Brown was sheriff of Bristol County and had been since 1771. The *Gaspee* had run aground in neighboring Kent County, but close enough to the county line bisecting the Providence River to justify his rowing out to inspect the scene. Of the others identified by Aaron Briggs, Simeon Potter sat for Bristol in the General Assembly; Joseph Brown sat for Cumberland.[44] Given the propensity of Rhode Islanders to use local law as their most basic defense, Potter and Brown, if brought under suspicion, might have made some argument about their "right" of inspection because they were public officials. For that matter, all those who accompanied John Brown might have claimed that they were his deputies on official colony business, understandably concerned about what Dudingston was doing. The General Assembly would presumably have backed them.

Even if Brown had acted on his own, he would have been endorsed afterward by Governor Wanton and Chief Justice Hopkins. Beyond the matter of jurisdiction, there was also the factor of kinship and community. Brown was married to Hopkins's niece; his family had strong business ties with Wanton. Corroborated by Dudingston's own testimony or that of his crew, Brown could have established that he had identified himself as sheriff, that Dudingston had refused to allow him on board, and that the crew of the *Gaspee* had fired first; he and his party had fired only in response, in self-defense. He could have either accepted responsibility for shooting Dudingston or, just as easily — citing the account in Dickinson's deposition — contended that Dudingston's own men had shot him in the confusion. Since neither Dudingston nor any of his crew had actually seen how the blaze had started on the schooner, Brown could also have testified that it had started accidentally and that he and his companions had left only after trying to extinguish it. Or he could have contended that as he understood it, the *Gaspee* had been operating in Rhode Island without authorization and was destroyed as any other pirate vessel might have been. Either way, Dudingston could have ended up looking worse, Rhode Islanders would have been even more confident that they were in the right, and imperial authorities would have appeared impotent.

Unidentified and therefore not given the explicit sanction of local law, the *Gaspee* boarders were nevertheless protected by local authorities, even as those authorities claimed to be appalled and even as they disingenuously promised London their assistance. As John Phillip Reid has noted, the *Gaspee* affair can be viewed as another example of the kind of "competing legal cultures" that he found in Massachusetts at the time of the *Liberty* riots in 1768. If the people of Massachusetts "accepted the constitutional premises that underlay opposition to British rule, they could also accept the constitutional premise justifying manipulation of the legal process to oppose that rule"[45] So too, Reid concluded, with the people of Rhode Island: a mob like that assembled in the *Gaspee* affair could be seen as an agent of higher law as well as of local prerogative, a *posse comitatus* acting to protect the liberties of the people.[46] Had any members of that posse gone to trial, they may well have lied even when offering sworn testimony. With fundamental freedoms at stake, they could, with clear consciences, deceive those they believed had made an illegal, unconstitutional application of the law.

Of the five *Gaspee* commissioners, Wanton was the only one fully satisfied with the results of their inquiry. All three of the chief justices who sat on the commission believed that Rhode Island's virtual

autonomy and the uncooperativeness of its officials made their task impossible. "As to the Government (if it deserves that name), it is a downright democracy," Daniel Horsmanden complained to Dartmouth soon after the January 1773 adjournment. Rhode Island, he worried, was in a "state of anarchy" because all provincial officials were at the mercy of the people: "The Governor is a mere nominal one, and therefore a cipher, without power or authority; entirely controlled by the populace, elected annually, as all other magistrates and officers whatsoever." [47]

In his own dispatch to Dartmouth, written during the same period, Frederick Smyth lamented that Rhode Islanders smuggled in "egregious excess" and that Dudingston, a good officer, had been maligned. The assault on the *Gaspee*, "though perpetrated at a place and in such a manner as without all doubt the actors must be known to some hundreds of the inhabitants of the colony, is hitherto kept so profoundly secret that all our enquiry has been ineffectual to fix with certainty upon any particular person concerned in the outrage, and to keep this matter a secret is now become a common cause." [48] In his history of the rebellion, penned some years later while in a London exile, Peter Oliver echoed Horsmanden and Smyth and added that the outcome of their inquiry had only encouraged the "colonists to play the same Game again, upon the first Opportunity." [49]

Smyth and Oliver probably would have agreed with Horsmanden's suggestion that Rhode Island's charter be revoked so that the colony could be brought under more effective imperial control. Horsmanden urged that Rhode Island be joined with Connecticut to form a single colony under a royally appointed governor. The better sort in both colonies, he believed, would welcome the change, because they had long groaned under a "motley administration." [50] Nonetheless, Horsmanden was not as harsh as Smyth and Oliver in criticizing the proceedings of the commission. He was convinced that Dudingston had provoked the people, and he believed that Wanton was a fair man, not part of any conspiracy. Unlike Smyth, who was willing to give credence to Aaron Briggs's testimony, Horsmanden thought it unreliable if plausible. Indeed, he may have detected in it the attempt of Captain Linzee to make sure that indictments were handed down against those he had decided were guilty. Possibly it was Horsmanden, working with Wanton and Auchmuty, who composed the final report to the Crown. If so, Smyth and Oliver went along with them. Although Oliver returned to Massachusetts before the report was signed and officially submitted, Smyth stayed to the last and had reputedly let it be known that "he was come to judge according to Law and Right, and not to be the Executioner of Ministerial vengeance." [51] Even Oliver, whatever his personal feelings, eventually concurred with his onetime colleagues. [52]

Hence the wording of the commission's findings, dated 22 June 1773. Stating that they had used "the utmost assiduity" to discover the truth, the commissioners readily conceded that their efforts were "not attended with the success ardently wished for by all." They did not know who planned or executed the attack and could only conclude that it was done on the spur of the moment, very "suddenly and secretly." As best they could determine, the *Gaspee* had been boarded by "a number of armed people, many of whom, by their dress, appeared much above the rank of common people, and were accompanied by several negroes and others." These boarders wounded Lieutenant Dudingston, treated his crew with "great barbarity," and plundered and then burned the vessel. Beyond that, they could say nothing about the events of 10 June. [53]

They went on — possibly at Wanton's insistence, though with at least the acquiescence of two others — to write some fairly sharp words about Dudingston and Linzee. They observed that Dudingston would not talk to Darius Sessions and had refused, initially, to allow his men to be interviewed; more importantly, Dudingston was much at fault for what had happened because he had failed to report to Governor Wanton and because, "in some instances," he had shown an "intemperate, if not reprehensible zeal to aid the revenue service," a zeal that pushed him to "exceed the bounds of his duty" Linzee they castigated for his "contemptuous," "unjustifiable" treatment of civil authority and (in reference to Aaron Briggs) for his overzealousness in extracting "from a weak, or wicked mind, declarations not strictly true." [54] The commissioners also noted that they had passed their findings on to the Rhode Island Superior Court, which handed down no indictments. In making this last observation they intended no criticism of the court; on the contrary, the tone of their report indirectly supported the court's inaction.

It is hard to imagine any other outcome. If the King and his ministers had wanted above all else to obtain convictions and make an example of those who boarded the *Gaspee*, then the commission was ill-suited for that task. The North ministry could have explored other options, as Lawrence DeVaru noted in his study of this affair. [55] It might, for instance, have empowered the commission to issue indictments itself; or it might have formed a second commission to act as a special court of oyer and

terminer, thereby avoiding a jury trial in Rhode Island or England. With one commission reinforcing the other and local authorities left out, perhaps more leads would have been followed, more depositions taken, more summonses issued. With Wanton not named to the first commission and the second composed of British jurists, there may have been indictments, then trials and possibly even convictions.

Vaguely worded imperial laws could have been interpreted to the advantage of Dudingston; conflicting local laws could have been set aside as irrelevant because subordinate, or invalid because in contravention. Dudingston had confessed to Montagu in May 1772 that he feared he himself was breaking imperial law by taking prizes to Boston instead of before John Andrews, the vice-admiralty justice in Rhode Island. Dudingston took prizes to Boston because he had been warned by customs collectors not to expect convictions in any Rhode Island court. The 1767 law that he thought he might have violated stated that

all Forfeitures and Penalties inflicted by any Act or Acts of Parliament relating to the Trade or Revenues in the British Colonies or Plantations in America may be prosecuted, sued for, and recovered in, any Court of Vice-Admiralty appointed, or to be appointed, and which shall have jurisdiction within the Colony, Plantation. in Place, where the Cause of such Prosecution, or Suit shall have arisen.[56]

A sympathetic judge could have ruled that the Boston vice-admiralty court had jurisdiction over prizes seized in Rhode Island. The vague wording — "may" and "to be appointed" — would have made it simple for him. Or if he chose not to use that clause, he could have turned to the next one, which allowed a customs official to appeal any case not decided to his satisfaction to the vice-admiralty court of his choosing, "any Law, Custom or Usage, to the contrary notwithstanding." Such a reading would not have helped Dudingston, who had not gone to Andrews's court first, but it could have helped others in the future who appealed immediately to the Boston court after losing a case before Andrews or one of the Rhode Island common-law courts. This 1767 statute could have been used in a trial on the particulars of the *Gaspee* incident to make a sweeping statement of broadened imperial power, even for formally setting aside the 1673 statute that allowed prize cases to be prosecuted in any "court of record" in the colonies. Given the confusion over jurisdiction and conflicting testimony, however, conviction for treason and a sentence of death would still have been almost unthinkable. There were just too many mitigating circumstances and complicated questions of law.

It is quite possible that by 1773, as Admiral Montagu reportedly lamented, "British Acts of Parliament will never go down in America unless forced by the point of a sword." [57] Even so, Whitehall and Westminster were reluctant to use the full force of imperial law and did not talk of using the sword, despite the gravity of the *Gaspee* affair. To that extent London's reaction to the destruction of the *Gaspee* was more a matter of old habits than any indication of a new policy to come. That new approach was not taken until after the Boston Tea Party, and in Massachusetts, not Rhode Island. The charge of treason, the offering of huge rewards, and the appointment of a special commission notwithstanding, the North ministry did not pull not all the stops to punish Rhode Island and put someone on trial.

Although Hillsborough and Dartmouth did not think that Rhode Island authorities could be trusted to investigate the *Gaspee* incident, they gave no plenary powers to their special commission, they named Joseph Wanton to it despite Hillsborough's distrust of the Governor, and they made the commission dependent on Rhode Island law officers and politicians to get anything done. Before expressing amazement at all of this, we should remember that when another ministry had sent troops to Boston to quell civil disturbances four years earlier, those troops did not have a mandate to patrol the town; they had to rely on provincial officials to define their responsibilities. In 1772, as in 1768, the boundaries of imperial law and local law were still being drawn.

If Wedderburn and Thurlow had been clear in their August 1772 opinion that the attack on the *Gaspee* had been high treason, they were ambiguous on the question of jurisdiction. The offenders, these law officers determined, could be indicted "either here or in Rhode Island taking that Assertion of the Governor to be true that the Ship was stationed within the Body of some County in that Province." [58] In strictly legal terms there is nothing muddled about such reasoning, but law does not exist in a vacuum. Politically their opinion was too imprecise; if pressed, Rhode Islanders could have seized on it to challenge the validity of any trial held outside the colony.

Convinced that they were legally beyond the reach of the commissioners anyway, three Rhode Island lawyers had considered refusing to appear before them. "We know them not as a Court vested with any legal Power," they wrote to Stephen Hopkins. "The least Notice therefore taken of their Summons would be a partial Acknowledgment of their Jurisdiction," and to "acquiesce" in that "would entail an

eternal Infamy on those, who ought to be acquainted with the Principles of the Constitution." Their ringing condemnation of the commission disturbed and worried Hopkins. His fierce words to the General Assembly notwithstanding, Hopkins preferred a flanking movement to a frontal assault. He urged the three to muffle their objections."[60] The lawyers went through the motions of cooperating and wrote notes to the commissioners, but they did not go to Newport in January 1773. John Andrews, the vice-admiralty justice, gave a similar response. As a Rhode Islander first, a royal appointee second, he stayed home in Providence."[61]

No imperial official ever pieced together what happened on the *Gaspee*, nor has any historian since. There are many unreconciled differences and large gaps in the record. Had the *Gaspee* simply run aground while pursuing the packet *Hannah*, as was claimed by the *Providence Gazette* at the time, and by two of the self-professed boarders many years later? Dudingston said he had heard that one of the boarders was killed; no one else said anything of the kind. Who was right? Of even greater interest, did someone call out to Dudingston and say he had a warrant for the lieutenant's arrest? Did he in fact have one and then tear it up the next day after talking with Darius Sessions? Or did the boarders, with no warrant, blacken their faces and row with muffled oars, intent on destroying the schooner regardless of the consequences? Who were the boarders, and how many local officials were involved in the subsequent cover-up? Would Rhode Islanders, led by their Governor, have taken up arms to prevent anyone from being transferred to England for trial? These and many other questions are left unanswered. Until they are, we will not know what the men who boarded the *Gaspee* intended to do and, therefore, how daring they actually were or what role their understanding of law played in their decisions.

Even so, we can use the *Gaspee* affair to illustrate the vagaries of the past as well as the underlying problems of empire."[62] And regardless of the indefinite information that was gathered after the affair, the destruction of the *Gaspee* and the appointment of a royal commission to investigate it had a most definite impact on the Revolutionary movement. What happened on the *Gaspee* was a mystery to four members of the commission that investigated the matter; it remains a mystery to us now, albeit for rather different reasons. It is, perhaps, a mystery that will never be solved.

Notes:

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1. Much has been written on the *Gaspee* affair, but nothing, really, to match such works as Benjamin Woods Labaree's *The Boston Tea Party* (London: Oxford University Press, 1964) and Hiller Zobel's *The Boston Massacre* (New York: W. W. Norton, 1970). The best articles on the *Gaspee* are William Leslie's "The *Gaspee* Affair: A Study of Its Constitutional Significance," *Mississippi Valley Historical Review* 39 (1952-53) 233-56; Eugene Wulsin's "The Political Consequences of the Burning of the *Gaspee*," *Rhode Island History* 3 (1944), 1-11, 55-64, Neil R Stout's "The *Gaspee* Affair," *Mankind* I (May-June 1967), 88-92; and Lawrence DeVaro, Jr.'s "The *Gaspee* Affair as Conspiracy," *Rhode Island History*, 32 (1973) 107-21, which highlights the arguments made in DeVaro's "The Impact of the *Gaspee* Affair on the Coming of the American Revolution (PhD. dissertation, Case Western Reserve University, 1973) Samuel Bryant singled out two parts of the affair in his "HMS *Gaspee*--The Court Martial," *Rhode Island History* 25 (1966), 65-72, and "Rhode Island Justice-1772 Vintage," *Rhode Island History* 26 (1967) 65-71. Bryant offered his overall opinion in "The *Gaspee* Syndrome A Tory View" (M.A. thesis, Brown University, 1967)., Bennet Copplestone, "Dead Men's Tales XI- The Burning of the *Gaspee*," *Blackwood's Magazine* 219 (June 1926) 256-64, and W. E. May, "The *Gaspee* Affair," *Mariner's Mirror* 63 (1977) 129-35, are much less reliable.

2. See the discussion of "whig" law in John Phillip Reid, *In a Defiant Stance* (University Park: Pennsylvania State University Press, 1977), 69-70 and *passim*. Also see Reid's *In Defiance of the Law* (Chapel Hill: University of North Carolina Press, 1981) and *The Concept of Liberty in the Age of the American Revolution* (Chicago: University of Chicago Press, 1988).

3. John Phillip Reid's *In a Rebellious Spirit* (University Park. Pennsylvania State University Press, 1979), 100-130, discusses the danger of using "forensic evidence" as "facts."

4. The census figures were printed in the *Providence Gazette and Country Journal*. 2 July 1774. For Rhode Islanders as smugglers, see Lawrence Henry Gipson, *The British Empire before the American Revolution*, 15 vols. (New York: Alfred A. Knopf, 1936-70), 10:242-44, 12:22.
5. For background, see David S. Lovejoy. *Rhode Island Politics and the American Revolution. 1760-1776* (Providence: Brown University Press, 1958); Elaine Forman Crane's study of Newport, *A Dependent People* (New York: Fordham University Press, 1985); and Neil R. Stout, *The Royal Navy in America, 1760- 1775* (Annapolis, Md: Naval Institute Press, 1973).
6. See the discussion in Carl Ubbelohde. *The Vice-Admiralty Courts and the American Revolution* (Chapel Hill: University of North Carolina Press. 1960), and Charles M. Andrews, *The Colonial Period of American History*, 4 vols. (New Haven. Yale University Press, 1934-38), 4:222-71.
7. Hillsborough to Wanton, 19 July 1771. in John Russell Bartlett, ed, *Records of the Colony of Rhode Island and Providence Plantations in New England*. 10 vols. (Providence: A. Crawford Greene, 1856-65), 7:34-35. Also see Hillsborough's letters to Wanton's predecessor of 14 May 1768, 11 July 1768, and 10 Dec. 1768 in *Letters to the Governors of Rhode Island*, 7 (1763-75) 73, 76, 81, Rhode Island State Archives. If Hillsborough had thought problems with compliance had been eliminated by the end of 1768, he was soon proved wrong. His displeasure with Wanton is reflected in his letter to the Governor of 7 Aug. 1772, in which he directs Wanton and other Rhode Island officials to be energetic in discovering who attacked the *Gaspee*. See Historical Manuscripts Commission, *The Manuscripts of the Earl of Dartmouth*. 3 vols. (London: Eyre and Spottiswoode. 1887-96), 2:86.
8. Wanton to Hillsborough, 2 Nov. 1771, in Bartlett, ed., *Records of Rhode Island* 7:42-43. For Wanton's career, see John Russell Bartlett, *History of the Wanton Family of Newport. Rhode Island* (Providence: S. S. Rider, 1878).
9. *Acts and Laws of the English Colony of Rhode Island and Providence Plantations, in New-England, in America* (Newport: Samuel Hall, 1767), 227. Also see *Acts and Laws of the English Colony of Rhode Island and Providence Plantations, in New England, in America: Made and passed since the revision in June, 1767* (Newport: Solomon Southwick, 1772).
10. See Bartlett. *Records of Rhode Island* 7:10, for Hillsborough's directive to Wanton of 17 Feb. 1770 that copies of Rhode Island's laws be sent in London. The General Assembly voted to do so the following October. *Ibid.*, 22- 13.
11. The charter is printed (with altered spelling and capitalization) in *The Charter Granted by His Majesty King Charles II to the Governor and Company of The English Colony of Rhode Island and Providence Plantations in New England in America* (Newport: Samuel Hall, 1767); quotes from p. 7, emphasis added. In any future dispute Rhode Islanders could have argued that the provision granting them liberty of conscience, regardless of whatever laws bound those living in England, was indicative of their general legal autonomy. London authorities could have countered that the charter provided for imperial interposition, since the King appointed the first set of provincial officials before the freemen voted to choose their own; in any case. they could have added, was not the colony the King's to do with as he saw fit (remembering, of course, his paternal obligations);
12. Leslie. "Gaspee Affair," 235, but more especially Barbara A. Black, "The Constitution of Empire: The Case for the Colonists," *University of Pennsylvania Law Review* 124 (1976) 1157-1211, Thomas C. Grey, "Origins of the Unwritten Constitution: Fundamental Law to American Revolutionary Thought," *Stanford Law Review* 30 (1978): 843-93; and Jack P. Greene, *Peripheries and Center* (Athens: University of Georgia Press, 1986).
13. John Russell Bartlett, *A History of the Destruction of His Britannic Majesty's Schooner Gaspee, in Narragansett Bay, on the 10th of June 1772* (Providence: A. Crawford Greene, 1861), 8-9. The text of this documentary history is virtually identical to pp. 57.192 in the *Records of Rhode Island*. vol. 7 'see note 7 above), also edited by Bartlett. Bartlett claimed in the Records that the "documentary portion of this history, is more complete than any before published." p.iii. True, he did include more documents than the earlier collection assembled by William R. Staples, *The Documentary History of the Destruction of the Gaspee* (Providence: Knowles, Voss, and Anthony, 1845; reprint, Providence: Rhode Island Publications Society, 1990), but Bartlett's work is not exhaustive. Moreover, as Lawrence DeVaro warned in his dissertation on the Gaspee affair (see note 1 above), both compilations have to be used cautiously. Staples and Bartlett often exercised editorial license. For

example, in William Dudingston's letter to Admiral Montagu of 12 June 1772, both editors corrected Dudingston's spelling of Pawtuxet, which Dudingston had written as "Pottucksett"; likewise, with sheriff, which Dudingston had written as "shireff". Staples and Bartlett changed the spelling and capitalization of other words as well as punctuation in this letter and most others. Nevertheless, none of the changes in Bartlett at least that I found were substantive, so I will refer whenever possible to Bartlett's work as the most comprehensive source. References to other sources will be for documents not included in Bartlett's collection. The documents that Bartlett used can be found in either the Rhode Island State Archives or the Rhode Island Historical Society (RIHS).

14. Bartlett, *Gaspee*, 9-10.

15. Dudingston to Montagu, 24 Mar. 1772, in K. G. Davies, ed., *Documents of the American Revolution, 1770-1783*, 21 vols. (Dublin: Irish University Press, 1972), 5 (Transcripts, 1772): 51. Davies drew from the Public Record Office, Colonial Office (PRO/CO), and produced two types of volumes in his series: "Calendars" that list correspondence, and "Transcripts" of the actual letters. Some of the more important Gaspee documents can be found here, including a few Bartlett had not seen.

16. Bartlett, *Gaspee*, 10-11.

17. *Ibid.*

18. *Ibid.*, 12.

19. *Ibid.*, 14-15

20. *Ibid.*, 15.

21. This is a bareboned account of the incident, but all that is warranted, I think, based on the surviving documents. John C. Miller, *Origins of the American Revolution* (Boston: Little, Brown, 1943), 325-29, has a colorful recounting that relies very heavily on Ephraim Bowen's 1839 reminiscence (in Bartlett, *Gaspee*, 16-21) and gives no hint that it might be much in error. Miller was perhaps the most enthusiastic historian to rely on Bowen, but most others have also followed Bowen's version of events. Even DeVaro, "Impact of the Gaspee," the most detailed study to date on the subject, retells the events of 9-10 June (pp. 69-94) basically as Bowen recalled them (with some minor changes). Bernhard Knollenberg, *Growth of the American Revolution, 1766-1775* (New York: Free Press, 1975), 82-87, was very cautious in his Gaspee narrative; see his letter to RIHS librarian Clarkson Collins, 8 June 1964 (vertical file, subject 6249, *Gaspee*, RIHS, for his doubts about Bowen's account. Knollenberg equivocated on the matter of Dudingston's pursuit of the packet *Hannah* as the cause of the *Gaspee's* running aground — a claim made by the *Providence Gazette*, 13 June 1772, repeated by Bowen in 1839, and accepted by most historians as true. As it stands, the only firsthand contemporaneous accounts of the boarding and burning of the *Gaspee* are from Dudingston and his crew, and they said nothing about the *Hannah*. We do not know the source for the information printed in the *Providence Gazette*. There is also an anonymous account of events by a nonparticipant dated Newport, 16 June 1772, enclosed in a letter from customs commissioner John Robinson to John Pownall, 5 Nov 1772 in PRO/CO 5/145, no. 131; transcript in the Gaspee Papers, RIHS, printed in Davies, *Documents* 5 (Transcripts): 127-28. It alluded to the *Hannah*, but it too was written after the *Providence Gazette* story. There is another anonymous account (which also mentioned the *Hannah*), apparently written between the burning of the *Gaspee* and the receipt of news that a commission had been appointed, in Rhode Island MSS ca.1772, John Hay Library, Brown University. We also have John Mawney's 1826 reminiscence in Bartlett, *Gaspee*, 22-24), comments written on the back of Ephraim Bowen's narrative by John Howland shortly after in Rhode Island Manuscripts, 10:124a, RIHS). and Howland's own 1840 "Recollections" (in the John Howland Papers, RIHS). These men differed on certain details, just as had the crew of the *Gaspee* back in 1772. Sidney Morse, *Freemasonry in the American Revolution* (Washington, D.C.: Masonic Services Association, 1924), 48, offered no proof for his claim that members of the Providence Freemason lodge were behind the *Gaspee* affair.

22. Bartlett, *Gaspee*, 25-26.

23. *Ibid.*, 29. The proclamation was published in the next issues of Rhode Island's two weekly newspapers — the *Providence Gazette*, 13 June 1772, and the *Newport Mercury*, 15 June 1772 —

following their accounts (a brief notice in the *Mercury*, actually) of what supposedly happened to the *Gaspee*.

24. Bartlett, *Gaspee*, 39.

25. See George III's proclamation of 26 Aug. 1772, the royal commission forming a board of inquiry of 2. Sept. 1771, and the royal instructions to the commissioners of 4 Sept. 1772, *ibid.*, 55-60. The advice that the attack should be considered as "High Treason" was offered by Attorney General Alexander Wedderburn and Solicitor General Edward Thurlow in their report to Hillsborough of 10 Aug. 1771. They based their opinion on papers sent to Hillsborough by Admiral Montagu. Their report can be found in PRO/CO 5/159, no. 93 (Library of Congress microfilm copy), a transcript of which is in the *Gaspee Papers*.

26. Or at least so claimed John Pownall in his letter to the Earl of Dartmouth of 29 Aug. 1772, calendared in Historical Manuscripts Commission, *Earl of Dartmouth*. 291. For Dartmouth's views, see B. Bargar, *Lord Dartmouth and the American Revolution* (Columbia. University of South Carolina Press, 1965), 74-81.

27. *Newport Mercury*. 21 Dec. 1772; reprinted in the *Providence Gazette*, 26 Dec. 1772, and the *Virginia Gazette* (Rind). 28 Jan. 1773. Stephen Hopkins is thought to have been the author of this piece. As can be seen with the "Amencanus" essay, some of the information printed in the Rhode Island newspapers was garbled; see also, for example, the report in the *Providence Gazette* of 24 Oct. 1772 characterizing the commission as a court of oyer and terminer. Leslie, "Gaspee Affair," concluded that the newspapers showed "little regard for truth" (p. 242) and were not above passing out misinformation to inflame the public. DeVaro, "Impact of the Gaspee" (p. 170n), contended that "there is no proof of any 'deliberate' effort by the press to create false impressions concerning the nature of the commission." I lean toward DeVaro here, although it is clear that Solomon Southwick, editor of the *Newport Mercury*, and John Carter, editor at the *Providence Gazette* — like other editors, for that matter — did not see it as their responsibility to give both sides of an issue or verify information before they printed it. Furthermore, while I agree with Arthur Schlesinger, *Prelude to Independence* (New York: Alfred A. Knopf, 1958), about the important role newspapers played in fostering revolutionary sentiments and activities, I would be careful not to exaggerate their efforts. Schlesinger wrote that the Gaspee commission "carried on its work in the first half of 1773 with the newspapers keeping sleepless watch" p. 155. That was hardly the case. The *Providence Gazette* printed more than the *Newport Mercury*, but it did not really include that much. The first two pages of these four-page sheets usually reprinted information gleaned from British source about continental European affairs, as well as tidbits from Britain and the other mainland American colonies. Judging by sheer volume of coverage, these papers seemed more interested in the peccadilloes of the Danish dowager queen than in the Gaspee affair.

28. *Virginia Gazette* (Purdie and Dixon), 18 Feb. 1773, from the *Providence Gazette*, 9 Jan. 1773; also in the *Newport Mercury*, 18 Jan. 1773.

29. So wrote John Howland in his unpublished "Recollections" (1840), now in the John Howland Papers.

30. From Article 3 of the royal instructions to the commissioners of 4 Sept. 1772, in Bartlett, *Gaspee*. 59.

31. This according to Ezra Stiles in his diary entry for 20 Jan 1773 and his letter to Elihu Spencer of 16 Feb 1773, in *The Literary Diary of Ezra Stiles*, ed. Franklin Bowditch Dexter, 3 vols. (New York: Charles Scribner's Sons. 1901), 1:337, 349.

32. A transcript of the court martial proceedings in PRO, Court Martials, no. 46, 14 Oct. 1772, is kept with the Gaspee Papers. The text was published in the *Rhode Island Historical Society Proceedings*. 1890-91, 85-90, along with other "Gaspee Documents." Bryant. "HMS *Gaspee*." 67-71, included the text of the proceedings taken from the PRO, Admiralty Papers; the depositions are the same, but the latter version [transcribed by Bryant] is missing the summary paragraph that appears in the *RIHS Proceedings*

33. From Dickinson's testimony before the commissioners on 1 June 1773 in Bartlett, *Gaspee*. 115-17, compare this statement with his deposition to Admiral Montagu of 11 June 1772, 30-32. Admiralty's

reasons for returning Dickinson and Cheever to testify were given to Dartmouth in a letter of 4 Mar. 1773, PRO/CO 5/119, no. 32; transcript in the Gaspee Papers.

34. Bartlett, *Gaspee*, 34.35.

35. *Ibid.*, 33. DeVaro, "Impact of the Gaspee." 127, n.13, concluded (like Montagu) that there "does not appear to be any fundamental difference between the depositions" of the *Gaspee* crew But there were differences in the depositions taken immediately after the event and the statements made at the court martial and, later, before the commissioners. Although the differences were minor, collectively they could have produced enough confusion and raised enough questions to make convictions of anyone difficult.

36. Montagu to Wanton, 8 July 1772, in Bartlett, *Gaspee*. 41, also see Montagu to Hillsborough, 11 July 1772, 42, 43.

37. *Ibid.*, 43.

38. Briggs's July 1772 deposition given to Captain Linzee, which Linzee sent to Montagu, and the admiral in turn sent to Wanton on 8 July, is in Bartlett, *Gaspee*, 41-42. Also see the somewhat different version dated 16 July 1772 and sent by Montagu to Hillsborough in Davies, *Documents* 5 (Transcripts): 146-47. Briggs's deposition before the commissioners of 14 Jan. 1773, Patrick Earle's of 16 Jan 1773, and Earle's original deposition of 16 July 1772 are in Bartlett, *Gaspee*. 84, 87, 89-90, 45.

39. Sessions to the commissioners, 18 Jan. 1773, in Bartlett. *Gaspee* 98, The depositions gathered by Governor Wanton on 10-11 July to refute Briggs's assertions are on pp. 43-45; testimony before the commissioners on 11 June 1773 by one other deponent is on pp. 121-22.

40. Vaughan's testimony of 16 Jan 1773 is in Bartlett, *Gaspee*, 96-97.

41. In a letter of 23 July 1773, *ibid.*, 134-35.

42. Gulley's 12 Jan. 1773 deposition is in Bartlett, *Gaspee*, 81-82; Joseph Borden's testimony the next day countering his is on pp. 83-84; a deposition given by William Thayer to Darius Sessions, which Sessions forwarded to the commission. is on p. 95, as is Sessions's summary of a statement made to him by Saul Ramsdale. Also see Ezra Stiles's criticism of Gulley's character in *Literary Diaries*, 1:332, 335.

43. Most notably, see *Gaspee* crew member Peter May's testimony before the commission on 19 Jan. 1773 in Bartlett, *Gaspee*. 99-100, that one of the boarders was named Greene. May described this man as tall and slender, with brown hair, and said that "he appeared to be the owner" of a sloop that the *Gaspee* had seized sometime before. The Rhode Island Superior Court ruled on 11 June 1773 that May's information was too vague to act on. Aaron Briggs's testimony it discounted entirely; see Bartlett, *Gaspee*. 123-24.

44. Rhode Island provincial officials elected in May 1772 are listed in Bartlett, ed., *Records of Rhode Island* 7:42-45; Providence town officers elected in June 1772 are listed in the *Providence Gazette*. 6 June 1772.

45. Reid, *In a Defiant Stance*, 69-70.

46. *Ibid.*, 85-89, 101. Also see Gordon S. Wood, "A Note on Mobs in the American Revolution," *William and Mary Quarterly*. 3rd Ser., 23 (1966), 635-42; Pauline Maier, "Popular Uprisings and Civil Authority in Eighteenth-Century America," *ibid.*, 3rd ser., 27 (1970): .3-35; and Richard Maxwell Brown, "Violence and the American Revolution," in *Essays on the American Revolution*. ed. Stephen G Kurtz and James H. Hutson (Chapel Hill: University of North Carolina Press, 1973), 81-120.

47. Horsmanden to Dartmouth, 20 Feb. 1773, in Bartlett, *Gaspee*, 130-33.

48. Smyth to Dartmouth, 8 Feb. 1773, in Davies, *Documents*, 6 (Transcripts): 82-85.

49. Peter Oliver's "*Origin and Progress of the American Rebellion*." ed. Douglass Adair and John A. Schutz (Stanford, Calif . Stanford University Press, 1961), 98.

50. Bartlett, *Gaspee*, 131.
51. So reported Ezra Stiles in his letter to Elihu Spencer of 16 Feb. 1773, in Dexter, ed., *Literary Diary*, 1:347.
52. See Oliver's letter to Dartmouth of 20 July 1773 in PRO/CO 5/762, no. 771, transcript in the *Gaspee Papers*.
53. The full report is reproduced in Bartlett, *Gaspee*, 126-30.
54. *Ibid.*, 128, for comments on Dudingston; 129 and 130 for Linzee.
55. DeVaro, "Impact of the Gaspee", 163-64.
56. *Statutes at Large*. 8 George III c. 22. The law took effect on 1 Sept. 1768.
57. Related to Dartmouth by the Reverend William Gordon in a letter of 16 June 1734, in Historical Manuscripts Commission, *Earl of Dartmouth*. 2:156.
58. Report of 10 Aug. 1772 in PRO/GO 5/159, no. 93, transcript in the *Gaspee Papers*.
59. MS Amer. 1773, Ja. 19, John Carter Brown Library, Brown University.
60. *Ibid.*, Ja. 20 (F).
61. The notes to the commissioners from Andrews and the three lawyers (George Brown, Daniel Hitchcock, and John Cole) are in Bartlett, *Gaspee*, 103-106, all dated 20 Jan 1773. Andrews, Brown, and Cole did appear before the commissioners in June, however. Samuel Adams would have preferred that these men and everyone else (even Governor Wanton) in Rhode Island not cooperate at all. See his letters to Darius Sessions, written in response to inquiries sent to him and others by Sessions, Stephen Hopkins, Moses Brown, and John Cole, in *The Writings of Samuel Adams*, ed. Harry Alonzo Cushing, 4 vols. (New York: G. P. Putnam's Sons, 1905-07), letters of 28 Dec. 1772 (2:389-92), 2 Jan. 1773 (2:395-401), and ___Feb. 1773 (2:427.28); also see Adams's letter to Richard Henry Lee of 10 Apr. 1773 (3:25-28).
62. And thereby offer an effective counter to the type of didactic history advocated in Horatio B. Knox, *The Destruction of the Gaspee* (1908), a pamphlet prepared for the Rhode Island Educational Curriculum, Historical Series 3, to be used by primary grade teachers (copy in the Rhode Island State Archives among the papers in "Gaspee Affair: Prelude to a Tea Party"). In his "Suggestions to Teachers," Knox urged that the story of the *Gaspee's* destruction "be treated as a local hero tale, in which a few brave men dared, for love of freedom, to incur the wrath of a great king. Avoid every suggestion of controversy, and assume as a matter of course that the action of our fathers was justified by the equities of the case." p. 3. A very patriotic narrative written by Knox followed as the teachers' guide to a story that "is to be an inspiration to patriotic devotion and self-sacrifice." *Ibid.*