

The Right to Sail: the Atlantic World and the Development of Maritime Policy, 1789-1812.

by

Ryan Thomas Gelesky

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Ryan Thomas Gelesky

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Signature:

Ryan Thomas Gelesky, Student

Date

Approvals:

Dr. Diane Barnes, Thesis Advisor

Date

Dr. Martha Pallante, Committee Member

Date

Dr. David Simonelli, Committee Member

Date

Dr. Salvatore A. Sanders, Associate Dean of Graduate Studies

Date

Abstract

For millennia, peoples and civilizations from around the world have taken to the seas in search of new lands and riches. European imperial expansion following the discovery of the New World is possibly the best example of how seafaring nations were able to expand their territories, both politically and economically. As the Atlantic World developed into a more complex and convoluted global system the interior conditions of the nations involved became intertwined. However, this transition to a more global economic system was not without its problems. In fact, the War of 1812 was the result of many of the intricacies regarding trade on the high seas. With a lack of any substantial and broadly accepted maritime law, great naval powers were able to prey on the trading vessels of weaker nations. The fledgling United States was often a prime target of the British Empire. Given this, the United States declared neutrality with regard to the ongoing wars of the French Revolution. American neutrality, however, was never really accepted by the premier power, which led to further attacks on American vessels based on their economic relations with enemies of the crown. This aggression against American ships clearly had its roots in the broader scope of international maritime policy and standards in the developing Atlantic World. Nearly a century of conflict in Europe between rival imperial powers and the development of lucrative trade opportunities in the new world turned the Atlantic into a tinderbox. When Great Britain refused to accept the position of the United States in this developing world system in the early nineteenth century, war erupted again on a scale of unprecedented proportions. The only true way to understand the War of 1812, the time period preceding it, and the development of maritime standards in the Atlantic World is through the use of a transnational perspective.

Table of Contents

Abstract.....	iii
Images.....	v
Introduction.....	1
Chapter 1: The Development of Maritime Law in the Atlantic Basin and its Effects on the New World.....	12
Chapter 2: The Reigning Atlantic Power: Great Britain and Atlantic Domination.....	33
Chapter 3: Chapter 3: Impressment, Neutrality, and the Road to War.....	45
Conclusion.....	59
Bibliography.....	67

Images

Figure 1: Immanuel Wallerstein’s World Systems Map.....	7
Figure 2: Early Atlantic World Map.....	13
Figure 3: Treaty of Tordesillas Map.....	22
Figure 4: Hugo Grotius Portrait.....	24
Figure 5: Example of an English Longship from the Bayeux Tapestry.....	34
Figure 6: <i>USS Pennsylvania</i> Ship-of-the-Line Painting.....	36
Figure 7: Example paintings of other nineteenth century military vessels.....	37
Figure 8: Nineteenth century depiction of impressed American sailors.....	46
Figure 9: Painting of an American and a French Frigate During the Quasi War.....	51
Figure 10: Map of the Areas Affected by the Berlin and Milan Decrees and Fox’s Blockade.....	54
Figure 11: Painting of the frigate <i>USS Chesapeake</i>	56

Introduction

The War of 1812, though brief, obscure, and often considered insignificant, served as an important symbol for the development of the fledgling United States. By accepting the terms of the Treaty of Ghent on Christmas Eve 1814, the United States proved to the empire of Great Britain, and to the world, that America remained true to their assertions of independence and was set to continue to grow as an economic power. The ambiguous origins of this war can be clearly seen in the global atmosphere of the late eighteenth and early nineteenth centuries. In fact, it was world conflict and economic warfare on a global scale that drove the United States and Great Britain into war in 1812. There is no doubt that a significant portion of North America owed its existence to the colonial power of France or Great Britain.

The French and British empires had developed the wilderness of North America and transformed it into an essential part of the trans-Atlantic trade network. In the years following American independence, economic expansion was an essential aspect of the development of the young republic. Therefore, the United States needed powerful trade partners to secure access to the lucrative trans-Atlantic trade. Following the outbreak of the French Revolution in 1789 and the overthrow of Louis XVI in 1791, the ancient French and English rivalry hit a fever pitch that erupted in conventional warfare, as well as economic warfare, that lasted from the late 1780s through the early 1800s. With much of the European continent under a blockade, there was no question that American trade would be affected. Since the American policy toward Europe was to preserve neutrality in regards to the conflict, while simultaneously maintaining trade with the belligerent

parties involved.

The major impact of these European wars on the United States manifested in a number of maritime encounters between the naval and merchant vessels of France, Great Britain, and the United States. Although the United States desired to stay neutral, the young nation's perception of neutrality was not necessarily concurrent with the interpretations of the world's premiere naval powers. The U.S. was accused of severe neutrality violations by the British and French in the decades preceding the War of 1812. Belligerent encounters with the British Navy and the age old British practice of impressment proved to be the catalyst that led the United States into the War of 1812. Although a number of works focus on the plight of American seamen during this time, few explore the issues from a transnational perspective.

The War of 1812 was a direct result of American assertions of neutrality on the high seas; however, the true essence of the era must be understood as a system of trans-Atlantic trade that was altered by the American commitment to their neutrality and trade proliferation during a time of brutal war in Europe. The neutral commitment of the United States led the young republic into direct competition and conflict with the belligerents of the wars of the French Revolution, because the belligerents viewed U.S. trade as directly aiding and abiding the enemy. Nevertheless, it is nearly impossible to address the War of 1812, as well as the period leading up to it, without first understanding the transnational crisis that was taking place in the late eighteenth and early nineteenth centuries.

Much of the historiography regarding this developmental period is contained within narratives of the War of 1812. Although many of the related events preceded the

War of 1812 by more than a decade, they are often thought of as a continuum that eventually led to hostilities between Great Britain and the United States. It should be acknowledged that for decades this war that is now considered the Second War for American Independence went unnamed. In fact, this conflict was referred to simply as “the late war” until the mid-nineteenth century. Nevertheless, the importance of the study of the War of 1812 is paramount to the subject discussed in this thesis. Although there are some minor discrepancies among the major works dealing with this period, many scholars cite maritime conflict as a major factor that directed policy and economics during the late eighteenth and early nineteenth centuries.¹

Earlier works, such as Reginald Horsman’s *The Causes of the War of 1812*, directly attribute the outbreak of war to European reactions to American neutrality. Horsman also cites a severe paucity of able sailors in Great Britain as the reason for the continuity of impressments.² In George R. Taylor’s edited collection *The War of 1812: Past Justifications and Present Interpretation*, a number of scholars argue that violations of American neutrality could only have been checked by asserting its right to conduct trade as a neutral nation.³ In *The War of 1812* Harry Cole also blames the outbreak of formal hostility on the United States’ inability to conduct legitimate foreign policy and secure itself a beneficial position during the wars following the French Revolution.⁴

¹ Donald Hickey, *The War of 1812: Writings from America's Second War of Independence* (New York: Literary Classics of the United States, Inc., 2012), xxi.

² Reginald Horsman, *The Causes of the War of 1812* (New York: Octagon Books, 1975).

³ George Rogers Taylor, *The War of 1812: Past Justifications and Present Interpretation* (Westport, CT: Greenwood Press, 1980).

⁴ Harry L. Cole, *The War of 1812* (Chicago: The University of Chicago Press, 1966).

Major James Ripley Jacobs and Glenn Tucker also indicated that maritime encounters with Great Britain led to the outbreak of war in 1812 in *The War of 1812: a Compact History*.⁵

Following the earlier works of scholars such as Horsman and Taylor, there was a serious paucity of scholarly works regarding the War of 1812 until the rise of more contemporary War of 1812 scholars, such as Donald Hickey and J.C.A. Stagg, who began to research and discuss the War of 1812 in the 1980s. Stagg's *Mr. Madison's War: Politics, Diplomacy, and Warfare in the Early American Republic 1783-1830* was one of the first books published by this new generation of War of 1812 scholars. *Mr. Madison's War* is more politically driven than other works, focusing on the goings on in Washington and the push for war in the capital, rather than maritime encounters on the Atlantic.⁶ While many of these more modern works tend to approach the topic with a broader perspective with regard to transnational affairs, many are still largely American-centric and focus more on the War of 1812 itself rather than the transnational crisis leading up to the war.

With the bicentennial of the outbreak of the War of 1812 occurring 2012-2014, a number of works appeared in recognition of this important anniversary. Donald Hickey's revisited work *The War of 1812: a Forgotten Conflict* argues that, although maritime conflict strained American and European relations, the true origin of war was with the development of nationalistic ideals and political pressure from Europe.⁷ In *The War of*

⁵ Major James Ripley Jacobs and Glenn Tucker, *The War of 1812: A Compact History* (New York: Hawthorn Books, 1969).

⁶ J. C. A. Stagg, *Mr. Madison's War: Politics, Diplomacy, and Warfare in the Early American Republic, 1783-1830* (Princeton, NJ: Princeton University Press, 1983).

⁷ Donald R Hickey, *The War of 1812: A Forgotten Conflict, Bicentennial Edition*

1812: Conflict for a Continent (2012), J.A.C. Stagg states clearly and succinctly that United States maritime policy went against that of the major European entities and eventually led to full armed conflict.⁸

Although these works are very well researched and include any number of imperative sources, many are very American-centric when it comes to the entirety of the work, meaning that they focus solely on the affects that these historical events had on the United States. In many instances border on American exceptionalism that absolves the United States of any negative characteristics and exemplifies the positive, with limited attention to the actions of foreign entities. This notion of American exceptionalism is nothing new to American historiography. In fact, Ian Tyrrell argues that until very recently American historians have largely cut out the transnational perspective.⁹

Tyrrell's idea of a transnational perspective is simply looking at a historical event from all sides and facets that may be important to that subject. For example, this thesis strives to explain the development of American neutrality and how European powers reacted to that stance. In a time of immense social and military struggle in Europe that threatened to destroy the establishment of trans-Atlantic trade and the budding world economy, the United States attempted to assert itself for the first time in the world of international trade. Therefore, there must be clear examination of all entities involved in order to determine how this period played out and how it eventually led to a declaration

(Urbana, IL: The Board of Trustees of the University of Illinois, 2012).

⁸ J. C. A. Stagg, *The War of 1812: Conflict for a Continent* (New York: Cambridge University Press, 2012).

⁹ Ian Tyrrell, "Making Nations/Making States: American Historians in the Context of Empire," *Journal of American History* 86 (1999): 1015.

of war by the United States.¹⁰

Tyrrell states that “the vast bulk of United States history is still written in terms that accept the primacy of the national focus.”¹¹ Through this condition, he suggests that American historians might obscure their objectivity and “truth” by narrowing their historical vision. However, Tyrrell argues that American historiography has not always ignored a transnational approach. In fact, the first two generation of American academic historians (1880-1918), such scholars as John Franklin Jameson, strove for a transnational agenda. After World War II and the rise of the United States as a world superpower, American historiography began to take a very nation-centered approach to writing history.¹²

This tendency to focus narrowly on very broad topics can be directly linked to the atmosphere of American exceptionalism that proliferated following the American victory and continued into the Cold War era. Tyrrell addresses this idea of American exceptionalism with a rather unique thought. America cannot be considered exceptional unless it is contrasted with other national histories that follow particular fixed patterns of historical development. Given this statement, it could be said that every national history is exceptional, because there are no fixed patterns of historical development, nor is there any possible way to compare histories to exactly determine their exceptional value.¹³

In more recent years, transnational historiography has to become an accepted form of historical inquiry. Still, Tyrrell argues that it is very difficult for an American

¹⁰ Ibid.

¹¹ Ian Tyrrell, “American Exceptionalism in an Age of International History,” *American Historical Review* 96 (1991): 1032.

¹² Tyrrell, “Making Nations/Making States,” 1017-1018.

¹³ Tyrrell, “American Exceptionalism,” 1035.

historian to divorce themselves from the idea of a nation-centric history. Immanuel Wallerstein's World-Systems Theory offers an example of how transnational thought can be applied to history. Wallerstein's theory recognized that there is one "world-economy" with a dominant nation-state as its "core," but also argues that the "core" cannot remain dominant indefinitely or it would create a world empire in which the political and economic systems are one in the same. This system also includes developing areas at the periphery of this core. Fluctuations within the economy may allow for the core influence to shift. This idea allows historians to look at the development of the country without encountering the issue of American exceptionalism, because even if the United States was currently at the "core," the nation did not begin there and it will likely not end there.¹⁴

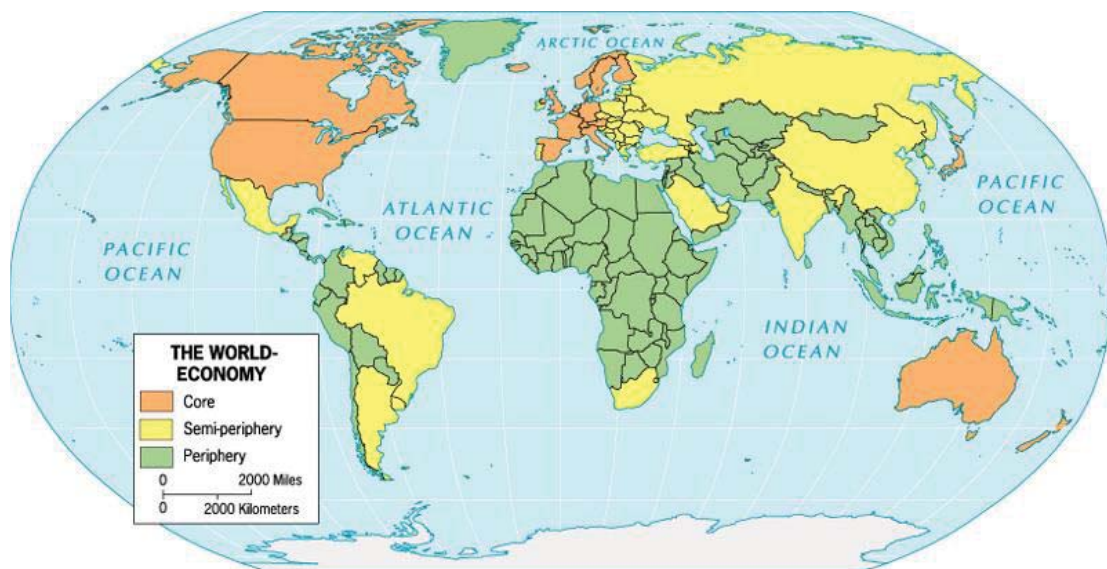


Figure 1: This is a visual example of Emmanual Wallerstein's World Systems theory as it may be applied to the world today. This transnational model clearly

¹⁴ Emmanual Wallerstein, *The Modern World System: Capitalist Agriculture and the Origins of the European World –Economy in the Sixteenth Century* (New York: Academic Press, 1976), 15-20.

shows the divisions of wealth based on the access to resources and global economic markets. However, it should be noted that the core nations often fluctuate based on the fluctuating degree of inclusion of nations to the global economic system.

(Source: Frank W. Elwell, "Wallerstein's World Systems Theory," *Rogers State University School of Liberal Arts*, last modified 2005, <http://www.faculty.rsu.edu/users/f/felwell/www/Theorists/Essays/Wallerstein1.htm>).

Beyond the use of the world-systems theory, Tyrrell argues that there are three main areas that illustrate potential for the development of transnational histories. These three areas are international economic systems; environmental history; and organizations, movements, and ideologies. Tyrrell suggests that these would be good starting points because the development of these three areas is often directly tied to some sort of international relationship.¹⁵ Given Tyrrell's argument, the study of American maritime development in the years leading up to the War of 1812 fits his model for transnational subjects. Although there are some military aspects to it, most of the major events and policies stemmed from the expansion of the trans-Atlantic trade network. The vast and lucrative Atlantic-trade network had been growing since the initial discovery of the New World. As more and more European nations tried to get their portion of those new found lands, they began to step on one another's toes. The enormous imperial growth in the Atlantic Basin led to unprecedented economic expansion, as well as unprecedented conflict at land and at sea. What began as a quest for expanded commercial activities often led to economic conflict between nations. Those economic conflicts almost always devolved into conventional warfare.

Given the fact that these issues arose from ongoing conflict on the European continent, such as the wars of the French Revolution, it is imperative to begin exploring this subject by looking at how American maritime policy affected the warring powers of

¹⁵ Tyrrell, "American Exceptionalism," 1044, 1048, 1050.

Europe. It is also necessary to look at how American seamen were affected by European perceptions of neutrality on the high seas. Issues such as perceived illegal searches and seizures of cargo, unauthorized boarding, and impressments stood as a challenge to the expansion of the United States maritime tradition, as well as a direct attack on the nation's position of neutrality.¹⁶

The American Revolution concluded in 1783 with the ousting of former British colonial masters and the independence of the United States of America. Following the cessation of hostilities, the United States spent little time securing valuable trade rights with major European entities. The first major trade partner of the United States was France. It was undeniable that France played an integral role in the formation of the United States. The French Navy was imperative in disrupting the British Royal Navy from replenishing and refreshing British troops in North America. In addition, French commanders like the Marquis de Lafayette, helped to equip, train, and lead American troops into battle.¹⁷

Even prior to the end of the war, France and the thirteen United States of North America had drawn out a Treaty of Amity and Commerce (1778) that established an alliance between the two nations and bound the U.S. to France as far as the trans-Atlantic trade was concerned.¹⁸ The Atlantic coast of the United States was a crucial point for ships traveling between Europe and the various colonial possessions in the Caribbean. France held a number of these colonial possessions, such as Martinique, Guadeloupe, and

¹⁶ Susan Dunn, *Sister Revolutions: French Lightning, American Light* (New York: Farrar, Straus, and Giroux, 1999), 1-5.

¹⁷ Ibid.

¹⁸ *Treaty of Amity and Commerce Between the Thirteen United States of North America and France, February 6, 1778* (New Haven, CT: Lillian Goldman Law Library, 2008).

other islands considered part of the French West Indies and needed to maintain a formidable trade network with this area.¹⁹

France's age old rivalry with Great Britain somewhat cooled by 1786, when the Eden Agreement was struck between France and Great Britain. This agreement ended nearly one hundred years of fierce commercial rivalry and opened up trade opportunities in the Atlantic region that promised to benefit all parties in the trans-Atlantic trade. At that moment it seemed the Atlantic World would flourish in unhindered prosperity of liberally defined trade rights. But unfortunately, the terms of the Eden Agreement were only to last for a short time. By the early 1790s the Eden Agreement was scrapped and England and France resumed their bitter feuding.²⁰

The French Revolution in 1789 caused quite the stir throughout Europe and especially irritated the monarchical powers that stood to lose the most in the event of a similar uprising in their territory. Nonetheless, the French Revolution spurred a unique and complex relationship between the recently independent United States and France. Both strove for enlightened ideas of a republican form of government, but the powers of Europe were much more reluctant to allow France to be "freed" than they were toward the United States.²¹ For the first few years of the revolt, the major powers of Europe managed to remain separated from France, at least until Louis XVI was executed in 1793. Following the execution of the king, the major monarchical powers of Europe, especially Great Britain, had had enough and war was their answer to the newly founded French

¹⁹ Tom Holmberg, "France Decrees on Trade 1793-1810," The Napoleon Series, March 2003, http://www.napoleon-series.org/research/government/france/decrees/c_decrees1.html.

²⁰ Ibid.

²¹ Dunn, *Sister Revolutions*, 1-7.

Republic.²²

Upon the outbreak of war, France quickly enacted legislation in May 1793 that authorized the arrest and seizure of laden vessels bound for enemy ports. Being the primary trading partner and technical ally of France, the United States was exempt from this decree.²³ But the young American nation found itself in a very precarious situation. Since Great Britain was at war with France, any trade with France would have been considered aid to their enemies and a violation of any supposed neutrality.²⁴ Although the United States maintained that they were a neutral power, with interests in only trade and not to aid in the wars of Europe, the American idea of Neutrality was questioned by both the British and the French.²⁵

²² Francios Furet, *The French Revolution* (Oxford: Blackwell Publishers LTD, 1998), 121-122.

²³ "French Decree 1793, May 9 and French Decree 1793, May 23," (Paris: JROF, 1793).

²⁴ Stagg, *The War of 1812*, 18-20.

²⁵ Mlada Bukovansky, "American Identity and Nuetral Rights from Independence to the War of 1812," *International Organizations* 51 (1997): 210.

Chapter 1: The Development of Maritime Law in the Atlantic Basin and its Effects on the New World

The late eighteenth century brought forth a number of changes to the Atlantic World. Many of these changes were directly linked to the revolutionary activity that blossomed during that period. For example, following the American Revolution an entirely new political entity was added into the fold. However, it was the wars of the French Revolution of the late 1790s and the Napoleonic Wars of the early 1800s that truly caused the Atlantic World to erupt into conflict. As trade and tensions increased, vessels became increasingly susceptible to potential searches and seizures based on their port of berth or their destination. American ships were a constant target for the British Royal Navy for a number of reasons. First, many American ships were headed for France, Britain's main European rival and the United States' main European ally. Second, Great Britain was trying to recover English sailors from foreign vessels, due to a severe lack of manpower. Finally, it would not be completely false to suggest that Royal ships terrorized American ships as a sort of retaliation for the American Revolution. Nevertheless, the Atlantic World became increasingly volatile and caused strain on both sides of the Atlantic Ocean.

The beginnings of what became the Atlantic World can be traced back to the discoveries of Christopher Columbus in the late fifteenth century. Although Columbus failed in his goal to establish a Western route to Asia, he succeeded in changing the world as it was known. The "discovery" of the American continents and the surrounding islands led to unparalleled economic and imperial expansion for the major powers in Europe.

The motives of trans-Atlantic travelers varied, some wanted to escape the old world, others wanted to build a new world, and many wanted to enhance their fortunes.¹

Although Europe was certainly a large part of this new Atlantic World, the focus of Atlantic World studies seems to be more on the New World rather than the old, because of the profound changes that the New World brought with it.



Figure 2: An early map of the Atlantic Basin used by sailors to sail to the New World. (Source: Sean Perrone, "History 381: Atlantic World," *Saint Anselm College*, last modified 2006, www.anselm.edu/academic/history/courses/Web/Hi381Web.htm.)

International conquest of the Americas followed soon after the initial European

¹ John H. Elliott, *Empires of the Atlantic World: Britain and Spain in America 1492-1830* (New Haven, CT: Yale University Press, 2006), xiv.

discovery of the late fifteenth century. The Spanish conquest, led by Hernán Cortéz began to claim territory in South America as early as 1519. The English founded their first lasting permanent settlement when Captain Christopher Newport of the Virginia Company settled Jamestown.² Spain, Portugal, England, Holland, and France began to carve up these new lands and exploit the bounties of the land. It could be argued that the Atlantic World in the seventeenth century was the beginning point for an international economy that grew to enormous proportions.

The geographical and virgin nature of the abundant natural resources made the Americas a prime target for cultivation and market expansion. As demand for tobacco, cotton, and sugar grew in Europe, more immigrants sought their fortunes in the New World. Several nations imported African slaves by the millions to provide labor that facilitated the rapid consumption of New World goods. The trade in slaves became a remarkable business venture in and of itself.³ The natural endowments of the New World, along with technological advancements stemming from the enlightenment, allowed Europeans to develop a lucrative economic network on an enormous scale.⁴ However, expansion was not without conflict. Numerous confrontations were common between peoples of different nations on the land, as well as on the seas. Where territories and laws on land were fairly well-defined during this period, the legal code of the sea was not well established. Throughout history societies have tried to address the notion of laws at sea, with limited success. With the culmination of this largely international

² Ibid., 3.

³ Robin Blackburn, *The Making of New World Slavery: From the Baroque to the Modern 1492-1800* (New York: Verso, 1997), 3.

⁴ Douglas North, *The Economic Growth of the United States 1790-1860* (New York: W.W. Norton and Company Inc, 1966), 4-5.

commercial society forming in the Atlantic Basin the laws of the sea became very complex and convoluted.

By the late eighteenth and early nineteenth centuries, maritime law finally became very widely accepted and was often very complex. Maritime law was integral to day-to-day functioning in the Atlantic World, due to the importance of the Atlantic trade network to both North America and Europe. The complexities of maritime law resulted largely from the fact that ships often operated in foreign waters and interacted with foreign entities. Given the fact that it was often difficult to implement laws within one's own country, the prospect of implementing laws that involved multiple political entities was daunting. Nevertheless, the need for maritime standards was a constant concern. In order to better understand its evolution, the history of maritime law can be broken down into three main periods; the ancient period, the medieval period, and the modern period.⁵

Many of the ancient forms of maritime laws are better described as a series of regulatory norms that sought to standardize human activities at sea. These early forms of maritime law regulated the relations of cargo owners with ship owners, offenses committed while aboard the ship, and commercial aspects of shipping, such as compensation and liability.⁶ An early example of such regulatory norms is briefly addressed in the *Code of Hammurabi* (ca. 1780 B.C.E.). The *Code of Hammurabi* included a number of laws pertaining to shipping and maritime affairs in ancient

⁵ Todd Kenyon, "Admiralty & Maritime Law Guide: Historical Documents," *Admiralty & Maritime Law Guide*, 2006, <http://www.admiraltylawguide.com/historical.html>.

⁶ Lester Antonio Ortega Lemus, "Brief Outline of the History and Development of the Law of the Sea," *Academia.edu* (2014): 1, http://academia.edu/1193093/Brief_Outline_of_the_History_and_Development_of_the_Law_of_the_Sea.

Babylonia. For example, Hammurabi set up standard prices for ship builders and renters, as well as prices to hire a ship to transport goods. Hammurabi also established laws to replace or repair damaged ships and cargo.⁷ Laws similar to those in the *Code of Hammurabi* were enacted in the *Sumerian Laws Handbook* (ca. 1700 B.C.E.).⁸ A set of maritime regulations can also be seen within the *Laws of Manusmriti* (ca. 1500 B.C.E.), which was the product of accrued "legal" wisdom on the Indian sub-continent. Like the *Code of Hammurabi* and the *Sumerian Laws Handbook*, the maritime laws in the *Laws of Manusmriti* were directly linked to commercial transactions and liability.⁹

Another ancient text regarding maritime transport is found within a set of laws that were commissioned by Emperor Justinian of the Roman Empire. *Justinian's Digest – Book XIV* (ca. 529-556 C.E.) enacted laws and standards that went far beyond any of the known preceding documents pertaining to maritime law. In this document, Justinian touched on the responsibilities incumbent upon the masters of the ship, sailors, and the people involved in shipping in general. *Justinian's Digest* even offered up a definition for the word ship, being any "vessels and even rafts, employed for navigating the sea, rivers or lakes."¹⁰

Although *Justinian's Digest* is far more expansive than earlier forms of maritime law, it still fails to compare to the maritime law of the medieval and modern periods. As

⁷ Hammurabi, *The Code of Hammurabi, c. 1780 BCE*, trans. L.W. King (1915), <http://www.fordham.edu/Halsall/ancient/hamcode.asp#horne>.

⁸ *Sumerian Laws Handbook*, ed. Martha T. Roth (1997), <http://www.admiraltylawguide.com/documents/sumerian.html>.

⁹ *The Laws of Manu*, trans. G. Buhler, last modified 1998, <http://www.fordham.edu/Halsall/india/manu-full.asp>.

¹⁰ *Justinian's Digest-Book XIV (Title I-II) (529-565 A.D.)*, last modified 2006, <http://www.admiraltylawguide.com/documents/digestxiv.html>.

time went on and the maritime experience widened, more expansive and complex laws were needed, including the prospect of maritime neutrality in times of intense conflict. Europe experienced a number of brutal conflicts that often spilled into the sea, where upon the trade vessels of enemy nations were considered valuable prizes. By the time the idea of maritime neutrality was suggested in seventeenth century Europe, international maritime law, or at least a standard understanding of legality, already encompassed most of the Atlantic trade network.

The medieval period, which spanned the period from about 1000 C.E. to the late fifteenth century, was a time of great change for the idea of maritime law in Europe. Much of the early admiralty law that was widely accepted throughout the European continent was based on the ancient *Consolato del Mare* (*Consultant of the Sea*). There are some arguments as to the origin of this document. Many scholars insist that it was commissioned and put into law by the King of Aragon. Others argue that it possibly originated in Piza or Barcelona. Furthermore, there is also some argument as to when it was written and implemented. Some legal scholars date the implementation of this document to sometime in the fourteenth or fifteenth century.¹¹ In fact, in Stanley S. Jados' translation of the *Consolato del Mare*, the document is dated to the late fifteenth century or early sixteenth century, which is rather late when compared to the estimates of many other scholars.¹² However, historian Tom Holmberg argues in his analysis of the British *Orders in Council* that the origin of the *Consolato del Mare* may date back to the

¹¹ "What is Consolato del Mare?," *The Law Dictionary*, accessed July 23, 2014, <http://thelawdictionary.org/consolato-del-mare/>.

¹² Stanley S. Jados, ed. and trans., *Consulate of the Sea and Related Documents* (Tuscaloosa, AL: University of Alabama Press, 1975), <http://libro.uca.edu/consulate/consulate.htm>.

late eleventh or early twelfth century.¹³

The *Consolato del Mare* was a very interesting legal exercise for its time given the broad nature of the document. For example, inspiration for the document was drawn from a number of the great maritime powers of Europe. The maritime ordinances of the Byzantine Empire, Spain, France, and the Great Italian commercial centers were at the core of the *Consolato del Mare*. Furthermore, the document was implemented across the continent, effectively creating a standard of regulation among maritime powers in Europe.¹⁴ In many ways the *Consolato del Mare* was in essence a transnational document, which fits well with the historical perspectives of many modern scholars. Although all of the complexities and intricacies of this document are not exact, this document was able to address international maritime conflicts with detailed and diverse language with regard to shipping and war to which all European maritime powers subscribed and adhered. Unfortunately, the code itself seems to have devoted very little notation regarding trade during time of war, and just as little to the idea of maritime neutrality.¹⁵

For many years the *Consolato del Mare* stood as the only widely accepted form of maritime regulation throughout the European continent, as well as the British Isles. As European trade networks grew to involve trans-Atlantic trade with the Americas, rival colonial factions began to find their trade vessels at odds with one another over any potential goals gained through their expansive colonial influence. Domination of trade

¹³ Tom Holmberg, "The Acts and Orders in Council of Great Britain [on Trade], 1793-1812," *The Napoleon Series*, April 2003, http://www.napoleonseries.org/research/government/british/decrees/c_britdecrees1.html#decrees.

¹⁴ "What is Consolato del Mare?," *The Law Dictionary*.

¹⁵ Holmberg, "The Acts' and Orders in Council."

routes became of paramount importance; therefore, navies became essential to the protection of trade interests. Those political entities that were able to field excessive firepower on the high seas were able to control the flow of trade from Europe to the new world.¹⁶

As the early modern period dawned, the great empires of Europe began to expand beyond the borders of the continent. This rapid expansion demanded the further evolution of maritime laws based on the evolving political landscape and claims that political entities made on certain waterways. For example, Venice claimed to have dominion over the Adriatic Sea, and Genoa claimed dominion over the Ligurian Sea. Such was the case for the Baltic Sea, Northern Sea, and Irish Sea, which were claimed by Sweden, Denmark, and England respectively.¹⁷

As the great empires of Europe began to spread, so too did the strength and complexity of these claims on important waterways. Claims on these bodies of water were sustained by the ruling entities' naval powers and their ability to levee tolls and taxes upon third parties wishing to utilize those waterways for any reason. With such convoluted and complexity regarding territorial boundaries on the mainland, increasing national claims on formally international waterways only served to increase conflicts at sea.¹⁸

A good example of maritime territorial expansion can be seen within the numerous disputes between the two premier maritime powers of the fifteenth century, Spain and Portugal. Both kingdoms had amassed powerful naval forces to conduct trade

¹⁶ Ibid.

¹⁷ Lemus, "Brief Outline of the History and Development of the Law of the Sea," 2.

¹⁸ Ibid.

and military operations among their expansive colonial possessions in the Atlantic Ocean and elsewhere. The rivalry between these two kingdoms hit a fever-pitch during the War of Castilian Succession. When King Henry IV of Castile died in 1475, his throne was in contest and war quickly broke out between the kingdoms of Spain and Portugal. On one side of this confrontation was Henry's daughter, Joanna, who was betrothed to King Afonso V of Portugal. On the other side was Henry's half-sister Isabella, who was married to King Ferdinand of Aragon. After the forces of Isabella fought the Portuguese to a stalemate at the Battle of Toro and the decisive Portuguese naval victory at the Battle of Guinea, the belligerents ended hostilities in 1479 with the signing of the *Treaty of Alcáçovas*.¹⁹

The *Treaty of Alcáçovas* was very important and restrictive to Europe and its maritime tradition because it served to monopolize seaborne trade for one kingdom. At its very core, this treaty had two major consequences: Isabella was crowned Queen of Castile, and Portugal was granted hegemony over the entirety of the Atlantic Basin, except for the areas adjacent to the Spanish Canary Islands. This boundary became known as the lines of demarcation.²⁰ In effect, the *Treaty of Alcáçovas* allowed for Portugal to monopolize colonization in West Africa and it also allowed for Portugal to gain early access to what became the lucrative Atlantic slave trade network.²¹

Upon Christopher Columbus' discovery of supposed Asiatic lands in the west,

¹⁹ Barbara F. Weissberger, *Queen Isabel I of Castile: Power, Patronage, Persona* (Rochester, NY: Boydell and Brewer, 2008), 22-23.

²⁰ "Treaty Between Spain and Portugal, Concluded at Alcáçovas, September 4, 1479," *The Avalon Project* (New Haven, CT: Lillian Goldman Law Library, 2008).

²¹ Pope Alexander II, "The Papal Bull Inter Cætera (May 4, 1493)," *Indigenous Peoples-Global Issues Presented by NativeWeb*, <http://www.nativeweb.org/pages/legal/indig-inter-caetera.html>

Ferdinand demanded that the restrictive aspects of the *Treaty of Alcáçovas* be revised in a new Papal Bull. The Pope at the time was Alexander VI, who was born in Aragon and was rather close with King Ferdinand of Aragon and Isabella of Castile-Leon. Given the Pope's close association with the reigning royal family of the major Spanish states, the *Treaty of Alcáçovas* was modified in 1493 by Pope Alexander VI's Bull *Inter Cætera II*. In this Papal Bull, Spain gained exclusive rights from Pope Alexander VI to claim territory and trade in any lands situated west of the meridian located one hundred leagues west of the Azores and Cape Verde Islands.²²

The treaty was once again modified by a document that bypassed the papacy and included only Portugal and Castile, which by 1494 was speaking for the entirety of Spain including Castile, Leon, Aragon, and Catalonia. This 1494 *Treaty of Tordesillas* divided the known world in two. As the precedents to this document had stated, the oceans and navigation routes were no exception. The *Treaty of Tordesillas* again utilized the position of the Cape Verde Islands, which were already under Portuguese control, as a general point of reference. All areas from the meridian situated approximately 370 leagues west of the Cape Verde Islands were open territory for Spanish expansion, while all those areas to the East of the same meridian were open to Portuguese expansion. This final *Treaty of Tordesillas* stood to solidify the unprecedented expansion of the Spanish Empire. With the new parameters of the *Treaty of Toresillas*, nearly all of the New World fell under the dominion of Spain. However, their hegemony in the New World only really lasted until the British and French were able to break ground in North America.²³

²² Pope Alexander II, "The Papal Bull Inter Cætera."

²³ "Treaty Between Spain and Portugal concluded at Tordesillas, June 7, 1494," *The Avalon Project* (New Haven, CT: Lillian Goldman Law Library, 2008).

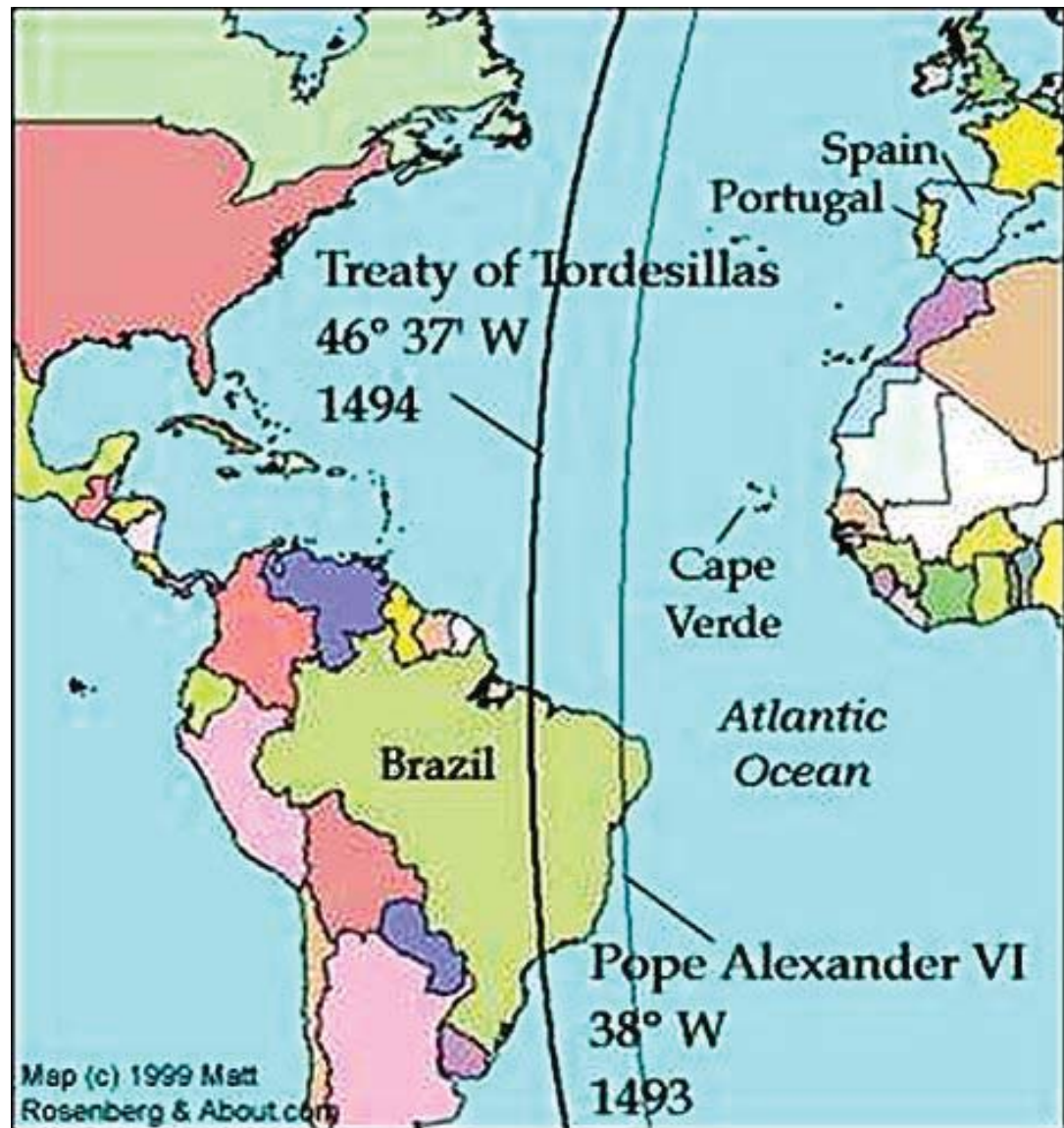


Figure 3: Map showing the lines of demarcation created by Pope Alexander VI's 1493 Bull Inter Cætera II and the 1494 Treaty of Tordesillas. These lines allowed for Spain to conquer much of the new world, while Portugal was only granted a small portion of Brazil. The Pope gave no Papal authority to colonize lands in the New World to any other European nation. Note that the map is not drawn to scale, but is a rough depiction of the boundaries set up in 1493 and 1494. (Source: William Little, "Seventeenth Century Latin America," *Santa Fe College Department of Humanities*, last modified 2012, <http://dept.sfcollege.edu/HFL/human2461/maps/tordesillasmap.htm>.)

This move to monopolize the expanded Atlantic Basin clearly aggravated other European entities that wished to be included in the colonization and commercialization of

the new western lands. Many nations began to support such activities as piracy and even issued letters of marque to pirate captains, which effectively turned private and commercial vessels into privateers in service of that nation, to counter the daunting power of Spain and Portugal. Furthermore, European legal theorists from of the period began to seek new laws for seafaring vessels. The promotion of international laws governing travel on the high seas by sixteenth century theorists was aimed at breaking up the hegemony of Spain and Portugal and opening the unprecedented opportunity that laid on the western side of the Atlantic ocean.²⁴ With this expansion of legitimate legal thought with regard to maritime practices, new ideas began to surface; which eventually included the idea of maritime neutrality.

To understand the importance of the development of the American idea of neutrality, it is necessary to first look at how the idea of neutrality developed throughout the history of more modern forms of European maritime laws. Most of the writers in the period spanning the fifteenth through the early eighteenth centuries who discussed the legal status of the oceans and waterways assumed that those waters were *res nullius*, which essentially meant that they viewed the sea as belonging to no particular entity. Therefore, a number of legal and political scholars came out of the woodwork either calling for more restrictive standards of nation's territorial boundaries or for looser restrictions on waterways.²⁵ With expanding trade in the Atlantic Basin, the burden of piracy, and conflicting territorial claims, the nations of Europe were thrown into conflict.

²⁴ Lemus, "Brief Outline of the History and Development of the Law of the Sea," 2.

²⁵ Bernard Heinzen, "The Three Mile Limit: Preserving the Freedom of the Seas," *Stanford Law Review* 11 (1959): 598.

In response to growing confrontation on the high seas, many legal scholars and analysts of the period began to suggest different methods to maintain prosperous trade, while also protecting shipping and trade goods from any perceived enemies. The first of such suggestions came from Hugo Grotius (1583-1645) from chapter ten of his 1609 anonymously published pamphlet *De Rebus Indicis* (*On the Affairs of the Indies*) called *Mare liberum* (*Free*



Figure 5: Hugo Grotius. (Source: William Uzgalis, "Hugo Grotius 1583-1645," Oregon State University Philosophy Department, last modified 2003, <http://oregonstate.edu/instruct/phl302/Philosophers/grotius.html>.)

Sea).²⁶ Grotius was a Dutch nobleman who was an immense figure in the fields of philosophy, political theory, and especially law. Grotius is often cited as one of the main contributors to the theory of Natural Law.²⁷ Natural Law is often described as an ambiguous idea that is both a moral theory, as well as a legal theory. Basically Natural Law states that the moral and legal standards that govern human behavior are derived

²⁶ Lemus, "Brief Outline of the History and Development of the Law of the Sea," 3.

²⁷ "Hugo Grotius," *Stanford Encyclopedia of Philosophy*, last modified July 28, 2011, <http://plato.stanford.edu/entries/grotius/#NatLaw>

from the nature of the world.²⁸ Grotius included his ideas on Natural Law with regard to maritime practices in *Mare liberum*. When *Mare liberum* was published it became immensely popular in many political circles because it pushed for greater freedom on the high seas.²⁹

Mare liberum became the basis of the modern Law of the Sea, and it was written and published in direct opposition to the Spanish and Portuguese monopolization of the Atlantic Basin. In fact, Dutch sailors who coalesced into the powerful Dutch East India Company in 1602 eventually began to target Portuguese ships using piratical tactics in the Atlantic. In 1604, when Dutch Captain Jakob van Heemskerck captured the Portuguese Galleon *Santa Catarina*, he took the prize back to Holland where he won the right to claim the plunder as his own. Grotius saw this act against the Portuguese hegemony as long awaited retribution. Stifled trade and restrictions on travel finally met their match with the Dutch East India Company, which was able to effectively wage war against belligerent Portuguese ships in the Atlantic. In fact, the capture of the prized galleon *Santa Catarina* led Grotius to write *De Rebus Indicis* and effectively change the course of maritime law.³⁰

As the basis for Dutch maritime law, *Mare liberum* endorsed the notion that the sea was an open domain for all countries to use freely.³¹ This freedom of the sea was based on two principles. The first was that there existed a perfect equality and entire

²⁸ Kenneth Einar Himma, "Natural Law," *Internet Encyclopedia of Philosophy*, accessed July 23, 2014, <http://www.iep.utm.edu/natlaw/>

²⁹ "Hugo Grotius," *Stanford Encyclopedia of Philosophy*.

³⁰ Alison Reppy, "The Grotian Doctrine of the Freedom of the Sea Reappraised," *Fordham Law Review* 19 (1950): 257-58.

³¹ John Selden, *Mare clausum: seu de dominio maris, libri duo* (London: Excudebat Will, 1635), 1-5.

independence existed among all distinct states. The second principle was that all nations, being equal, had an equal right to the uninterrupted use of the oceans for their navigation.³² Therefore, belligerents and neutrals alike had rightful access to the sea despite any assertions of territorial claims on areas of the open ocean.

Mare liberum also touched on the plight of neutral nations, which brought the idea of the protection of neutrals into the fold for the first time. Grotius suggested that neutrals should have the right to enter a blockaded port so long as a ship's payload did not include contraband of war. Contraband included anything that could aid enemy combatants in their belligerent operations. In essence, contraband could be anything from arms and ammunition to food and clothing bound for enemy ports. In the beginning, the accepted meaning of contraband suggested such items as arms and munitions, but later it expanded to encompass anything that aided an enemy's war effort.³³ In a 1625 publication titled *De Iure Belli Ac Pacis (The Rights of War and Peace)*, Grotius acknowledged the omnipresence of neutral powers and suggested that to remain completely neutral those powers needed to either refrain from trading and aiding belligerent parties, or trade and aid belligerent parties equally. These Grotian principles became integral to the United States in the late eighteenth and early nineteenth centuries when the nation strove to implement maritime standards on the high seas.³⁴

Although Grotius described the seas as being free to all nations, he also suggested that some territorial integrity was to be upheld. Territorial integrity referred to the areas

³² Reppy, "The Grotian Doctrine," 244.

³³ Holmberg, "The Acts and Orders in Council."

³⁴ Hugo Grotius, *The Rights of War and Peace*, 1625, trans A.C. Campbell (New York: M. Walter Dunne, 1901), 377.

over which a nation exerted direct control. However, this territorial integrity was far more precise than that granted by such documents as the *Treaty of Alcáçovas* or the *Treaty of Tordesillas*. The limited exceptions that Grotius mentioned were such seaways as inlets, gulfs, inner seas, and straits. According to Grotius, anything that was visible from shore was considered to be part of a nation's territory.³⁵ Grotius reiterated the idea of territorial seas and rivers in *De Iure Belli Ac Pacis*, suggesting that Rivers and Seas enclosed by or near the coast of nations appeared capable of being made into national property.³⁶ This idea of territorial seas had one of the most profound and lasting effects on the further development of maritime law in the Atlantic World, once the idea was fleshed out in the coming years

Although some European nations prized the works of Grotius, the publication of *Mare liberum* was not without protest and dissent, especially from the more prominent European maritime powers. In fact, shortly after Grotius published his pamphlet, an Englishman named John Selden wrote *Mare clausum (Enclosed Sea)* in 1635. Selden was born in Sussex in 1584 to a moderately wealthy, landed family. After attending Oxford University, Selden went to London to study law, where he became a prominent lawyer and legal theorist.³⁷ Selden's pamphlet promoted ideas directly opposed to Grotius' *Mare liberum*. Selden argued that the sea was subject to a country's private dominion. Selden clearly indicated that once a country established dominance over any particular sea route, that sea route became the property of that country and therefore

³⁵ Lemus, "Brief Outline of the History and Development of the Law of the Sea," 3.

³⁶ Grotius, *The Rights of War and Peace*, 104.

³⁷ Kasia Cristobal, "The Works of John Selden," *University of Texas School of Law Tarlton Law Library Jamail Center for Legal Research*, (2012) <http://tarlton.law.utexas.edu/exhibits/selden/index.html>.

subject to that country's rule. As *Mare liberum* was the basis for much of Dutch maritime law, *Mare clausum* was the basis for over a century of British maritime law, although not without controversy.³⁸

Selden first attempted to publish this pamphlet in 1618, but King James I revoked Selden's right to publish for fear of the possible repercussions from rival countries.³⁹ The Dutch were the most apparent rival to the English at that point because of a long standing fishing rivalry between the two nations. Therefore the dichotomy between maritime legal philosophy and the conflict that often arose over fishing disputes drove a wedge between the English and the Dutch. Although Great Britain, like Holland, subscribed to the idea of *res communis*, free to all nations, with regard to the seas prior to the seventeenth century, upon the publication of *Mare clausum* the British attitude changed.⁴⁰ The ideas in *Mare clausum* allowed Great Britain to claim dominance over a vast portion of the trans-Atlantic trade network, as well as a great portion of North America.

In the early eighteenth century a rather elusive individual advanced another important component of maritime law. Dutch legal theorist Cornelius Van Bynkershoek believed that neutrality should be accepted as a legitimate circumstance. In fact, Bynkershoek argued that that the Dutch could and should maintain intercourse with friendly nations, even when nations were at war with one another so as to not disrupt the larger economy. Bynkershoek also argued that parties should “rigidly abstain” from supplying contraband to any nation at war. Unfortunately, the English continued to ignore any idea of legitimate and acceptable forms of neutrality that came from the

³⁸ Selden, *Mare clausum*, 1-5.

³⁹ Cristobal, "The Works of John Selden."

⁴⁰ Heinzen, "The Three Mile Rule," 599-602.

European continent. This idea was very similar to those of Grotius and served to add legitimacy to the Dutch perception of maritime law.⁴¹

In fact, it was Bynkershoek who resurrected Grotius' idea of territorial seas and standardized it.⁴² In 1703, Bynkershoek asserted that a nation could establish territorial sovereignty over oceanic waters that extended past where the power of that nation's arms ended, which he estimated to be about three-miles. This became known as the "Cannon-Shot Rule," and later the "Three-mile Rule." There is some evidence that shows that many states had utilized such territorial jurisdiction in the past, but Bynkershoek was the first to publish this maxim within his works about maritime law. However, it should be noted that Bynkershoek severely over-estimated the range of a contemporary cannon. Most modern estimates put the distance of the average cannon shot from a standard cannon on a sea fort to be little more than a mile. Mortars could shoot a bit further, but still significantly less than three miles. Nevertheless, the three-mile rule became the widely understood and standardized practice to determine territorial waters for many years to follow.⁴³

In the 1758 book *The Law of Nations*, Emmerich de Vattel also touched on the idea of maritime law and even on the idea of maritime neutrality. Vattel was a Swiss-Prussian legal expert who was considered to be the premiere authority on international law at that time.⁴⁴ Like *Mare colausum*, Vattel endorsed the idea of domination of trade routes and heavy naval protection of those routes. In terms of neutrality, Vattel claimed that although some countries may proclaim neutrality, dominating entities should have

⁴¹ Holmberg, "The Acts, Orders in Council."

⁴² Lemus, "Brief Outline of the History and Development of the Law of the Sea," 5.

⁴³ Heinzen, "The Three-Mile Limit," 602-604.

⁴⁴ Edward Said, *Orientalism* (New York: Random House, Inc., 1978), 216.

the right to restrict access to those nations. These dominating entities were any naval force that could gain access and essentially overtake trade routes for their individual benefactors.⁴⁵

Vattel also proclaimed that dominant entities should have the right to impress neutral sailors into duty, forcibly search cargoes on neutral vessels, and seize any perceived contraband from those vessels. It is very important to understand that Vattel applied the term "contraband" very liberally. For example, if a British ship caught an American ship carrying French goods, the British ship should not only seize the French goods but the entire cargo, as well as the ship. During the next sixty years, the British Royal Navy implemented all of these practices in order to dominate the trans-Atlantic trade network.⁴⁶

It is clear to see that there was a particular ideology to which the British Navy was accustomed. Anything that was outside of the British realm of influence was considered illegitimate and vulnerable to search and seizure by any vessel in the Royal Navy. Essentially, the British Navy did not recognize neutrality on the high seas, or at least they refused to accept the United States as a neutral entity. Their recognition, or lack thereof, could be completely validated by the fact that American ships were trading in French ports at a time that Great Britain was at war with France. But the Americans held fast to their own ideas of neutrality, which differed greatly from the domineering commercial and military attitudes of Great Britain.

To the early United States government maritime neutrality meant the right to

⁴⁵ Emmerich de Vattel, *The Law of Nations* (Philadelphia: T & J.W. Johnson and Co., 1883), 119-128.

⁴⁶ Vattel, *The Law of Nations*, 119-128.

engage in neutral shipping during times of war.⁴⁷ Though the young republic was divided along Federalist and Republican lines regarding any number of issues facing the young nation; the ideal of American neutrality concerning the wars on the European continent and at sea were largely not contentious. Though the United States remained technically a neutral power, the state was also determined to maintain a presence in trans-Atlantic trade, especially with ports that fell under the control of France and its allies. The location of the United States made its ports integral to trade for both Great Britain and France in regard to their colonial possessions in the West Indies. If the United States remained neutral, the nation stood to reap benefits from Great Britain and France if both countries were willing to legally recognize American neutrality.⁴⁸

Following the Revolutionary War, the United States decided to capitalize on the idea of maritime neutrality with regard to any affairs in Europe. Economic development and full-fledged inclusion in the trans-Atlantic trade became the main commercial and international concern for the infant nation. The ideology of American neutrality was effectively an assertion of the older Dutch idea that “free ships carry free goods.” Essentially this idea was the maritime maxim that rose from *Mare liberum* and the other works of Hugo Grotius. When hostilities between France and Great Britain erupted again in 1793 in response to the French Revolution and the execution of Louis XVI, the idea that “free ships carry free goods” essentially translated into “American ships aid the French cause.” Therefore, from the British perspective the idea of American neutrality was nothing more than a hypocritical stance that the United States was using to benefit

⁴⁷ Mlada Bukovansky, "American Identity and Neutral Rights from Independence to the War of 1812," *International Organizations* 51 (1997): 210-211.

⁴⁸ J. C. A. Stagg, *The War of 1812: Conflict for a Continent* (New York: Cambridge University Press, 2012), 24-25.

itself and the enemies of the crown.⁴⁹

Although the British perspective saw this American idea that “free ships carry free goods” as direct military aid to their enemy France, the United States had already codified this policy of free seas through a number of treaties with multiple nations. These treaties included those with the Netherlands (1782), Sweden (1783), Prussia (1785), Morocco (1787), Tripoli (1796) and Tunis (1797). However, the American ideas of neutrality and “free ships carry free goods” differed greatly from the policies of many other European powers, especially those of Great Britain.⁵⁰

In 1780, as members of the League of Armed Neutrality Russia, Sweden, Denmark, and the Netherlands coalesced in attempt to protect their ships from British belligerence. These treaties between the United States and those nations exemplify their commitment to neutrality and to attempt to curtail the seemingly inexhaustible growth of the British Empire.⁵¹ However, the expansive imperial giant that was the British Empire continued to gain influence and exert power over the Atlantic Basin, allowing it to effectively control the world economy. The United States was especially vulnerable to such control because of the state of the government's ability to protect its borders, its interests, and its ships.

⁴⁹ Tom Holmberg, “France Decrees on Trade 1793-1810,” *The Napoleon Series*, March 2003, http://www.napoleon-series.org/research/government/france/decrees/c_decrees1.html.

⁵⁰ Holmberg, “France: Decrees on Trade.”

⁵¹ Ibid.

Chapter 2: The Reigning Atlantic Power: Great Britain and Atlantic Domination

At the dawn of the eighteenth century, Great Britain's presence in the Atlantic increased enormously. With an expansive, modern navy, Great Britain was able to claim an overall dominance over the major waterways and the essential trade networks leading in and out of North America. Following the American Revolution, the fledgling United States had hoped to reap the benefits of the bountiful and lucrative Atlantic network of trade. However, the United States met stiff opposition from their formal imperial masters, that was exacerbated by the nation's close relationship with England's age old rival France. By the 1790s, numerous legal actions by the British government allowed Royal ships to stop any suspicious ship on the high seas and seize the ship's cargo if it they deemed it contraband. Restrictions on American shipping got even tighter at the turn of the nineteenth century when the French Revolution and the Directory brought widespread conflict to continental Europe. It did not take long for the tension to spill into the Atlantic World.

Although it was not always the behemoth of the seas, the British Navy was an ancient entity with its roots in the very early years of the English monarchy. The first mention of a naval fleet was in 882, when King Alfred engaged Danish ships, which probably were more reminiscent of the longboats pictured in *Figure 5* than true ships, in the Stour estuary on the eastern coast of England, near Cambridge. More than a decade later Alfred's English fleet was further expanded to curtail another enemy incursion from Denmark. In 895, Alfred ordered more longships built and armed for service in his

fledgling navy. These longships were launched and successfully fought off Danish fleets in Essex and the Thames Estuary later that same year.¹

There is also evidence of fleets during the reigns of Edward the Confessor (1004-1066) and Richard the Lionheart (1157-1199), but the true beginnings of the organized unit that could be called the English Navy formed during the Tudor Dynasty from 1485 thru 1603. Due to the age of exploration and seafaring challenges, such as those presented by the Kingdom of Spain, the Tudor monarchs deemed the construction of a formidable fleet a priority. In fact, Henry VIII began his reign in 1491 with only seven royal ships, but he more than tripled the number of vessels to twenty-four during his time as king. For this reason, Henry VII is often referred to as the father of the British Navy.²



Figure 6: The Bayeux Tapestry depicts the life of King Harold Godwinson of England (1066) and the Battle of Hastings (1066). The ships depicted in the Tapestry serve as an example of early Anglo-Saxon longboats that would have served as England's first naval defenses (Source: "The Bayeux Tapestry," *Reading Museum and Town Hall Website*, accessed July 25, 2014, <http://www.bayeuxtapestry.org.uk/>).

¹ "A Brief History of the Royal Navy: Eleven Centuries of Naval Developments," *The National Museum of the Royal Navy*, last modified 2004, http://www.royalnavalmuseum.org/info_sheets_naval_history.htm.

² "A Brief History of the Royal Navy," *The National Museum of the Royal Navy*.

The English Navy became the Royal Navy in 1660 during the reign of Charles I.³ Under this more formal arrangement, the Royal Navy was tasked by the crown with certain responsibilities in service of the expanding and protecting British Empire. The roles of the Royal Navy were essentially two fold. The first role was the defense of the crown.⁴ The British Isles were the first priority, which was protected by the enormous Channel Fleet; which was arguably the most important fleet in the realm. The Irish Squadron and the North Sea Fleet also guarded the British Isles during the late eighteenth and early nineteenth centuries.⁵ Furthermore, Great Britain had fleets and squadrons spread across its vast empire to protect colonial possessions, as well as their unarmed merchant vessels. The second role of the Royal Navy was to simply maintaining a permanent presence at sea. This allowed Royal ships to deter enemies from taking advantage of British assets, and it also allowed them to pursue and harass their enemy's merchant vessels.⁶

It is also important to notice that in the years leading up to the turn of nineteenth century quite an impressive build up had occurred in the Royal Navy. By the end of the eighteenth century the Royal Navy employed the use of huge warships, which were essentially floating fortresses, known as ships-of-the-line. These were the first ships that one might refer to as a dreadnaught. These three-masted wooden behemoths stretched from 120 to 200 feet in length and had a beam (width) of 30 to 60 feet. Ships-of-the-line often had two or three lower decks that could house an arsenal of 40 to 130 iron or brass

³ Ibid.

⁴ Gregory Fremont-Barnes, *The Royal Navy, 1793-1815* (New York: Osprey Publishing Inc., 2007), 7.

⁵ Ibid., 15.

⁶ Ibid., 7.

cannons.⁷ Other ships in the Royal Navy included cruisers. These vessels were smaller, but were much faster and less cumbersome than the ship-of-the-line. These included vessels such as frigates, sloops, and brigs. The Royal Navy also included a number of gunboats. These very small, very fast vessels were used for hit and run tactics.⁸

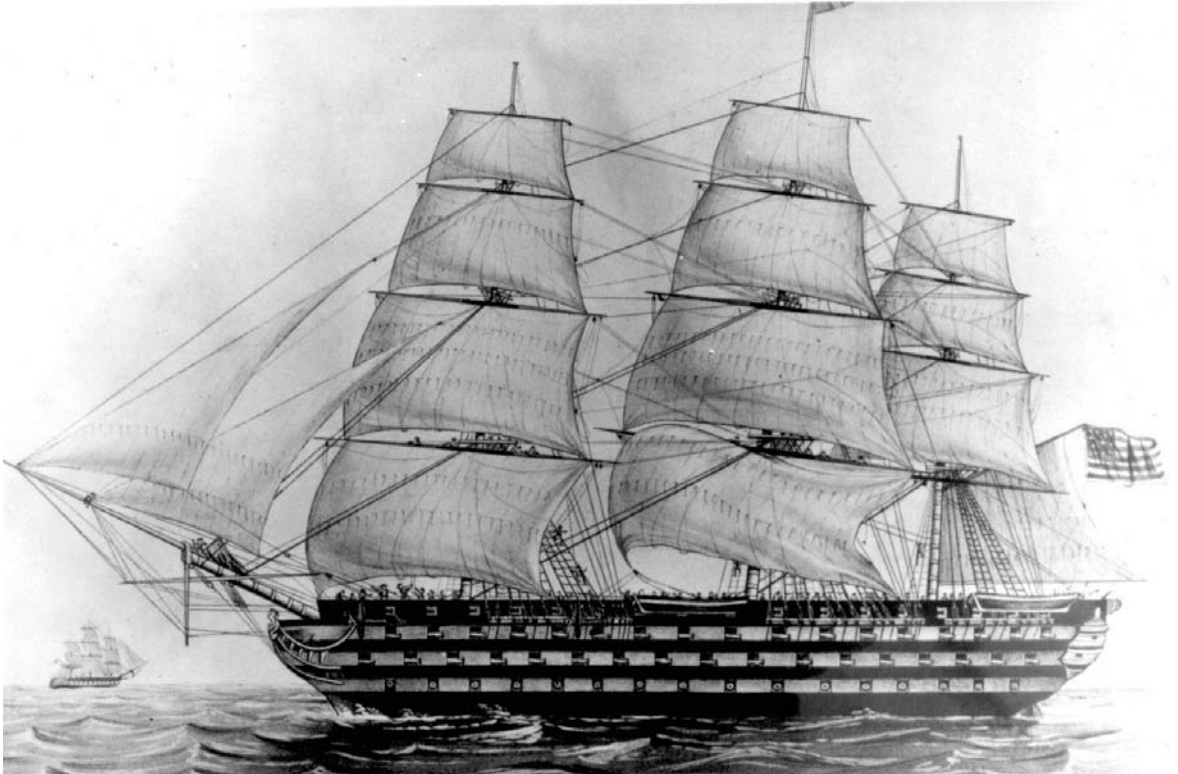


Figure 7: This is an example of a massive first-rate ship-of-the-line. The *USS Pennsylvania* was an American 3241-ton, 120-gun ship-of-the-line commissioned in 1837. The *USS Pennsylvania* was a formidable vessel that was on par with the largest British ships of the time. (Source: "*USS Pennsylvania (1837-1861)*," *Department of the Navy*, last modified 2003, <http://history.navy.mil/photos/sh-usn/usnsh-p/penna.htm>.)

⁷ Jonathan R. Dull, *The Age of the Ship of the Line: The British and French Navies* (Lincoln, NE: University of Nebraska Press, 2009), vii, 1.

⁸ James Joseph Colledge, *Ships of the Royal Navy* (Harvertown, PA: Casemate Publishers, 2010), xi-xvi.

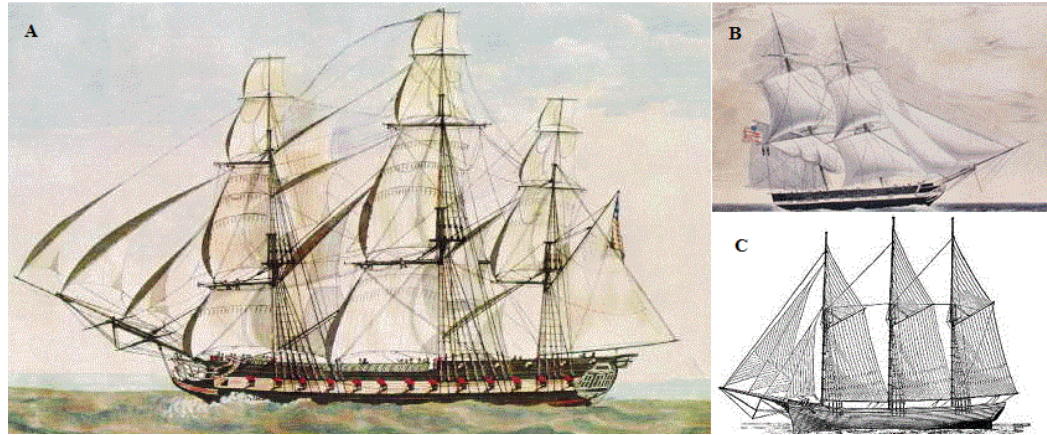


Figure 8: The vessels in *Figure 5* are all smaller warships that would have been more prevalent in the Royal Navy. The Vessel in picture A is a heavily armed frigate (Source: "Humans in the Galapagos," University of Maryland Department of Geology, accessed July 25, 2014, <http://geol.umd.edu/sgc/GEOL388/lectures/09.html>); the vessels in picture B is the smaller, two masted, less armed brig (Source: "Brig: Somers," United States Naval Academy, last accessed July 15, 2014, <http://www.usna.edu/LibExhibits/digcol/collections/somers>); and the vessel in picture C is the sleek, quick, lightly armed schooner (Source: "The War of 1812-Era Shipwrecks of Lake Champlain," *Texas A&M University New World Laboratory*, last modified 2011, <http://nautarch.tamu.edu/newworld/pastprojects/LCwarof1812.htm>).

By 1700, the Royal navy consisted of about 176 ships; 127 ships of the line and 49 mid-sized ships respectively. Throughout the first half of the eighteenth century, the number of ships in the Royal Navy varied, depending on the loss of ships at sea through war or piracy, but there seemed to be a fairly steady increase of vessels in general in the Royal Navy. In 1750, the Royal Navy possessed approximately 200 warships, but by 1775 there were 340. By 1800 there were 757 vessels and by 1810 there were 1,048 vessels, including 152 ships-of-the-line and 183 cruisers.⁹ In a little over a century the Royal Navy grew five times its size; and there was good reason for Great Britain to put so many assets into its navy, as the British Empire experienced unprecedented expansion,

⁹ Gregory Kent Weimer, "Forced Labor and the Land of Liberty: Naval Impressment, the Atlantic Slave Trade, and the British Empire in the Eighteenth Century" (M. A. Thesis, Youngstown State University, 2007), 84-86.

it required a daunting naval presence. The industrial revolution also allowed for Britain to secure raw materials and optimize its production of needed refined materials to build the ships.

The colonial aspirations of Britain had manifested themselves since the founding of Jamestown in the early seventeenth century. The decline of the Spanish, Portuguese, and Dutch empires allowed for England and France to claim many of the valuable colonial possessions around the world. By the mid-eighteenth century the British Empire included colonial possessions in Asia, Africa, and North America that allowed the Empire to accumulate enormous wealth.¹⁰ After their victory over France and Spain in the Seven Years War from 1754 to 1763, the Peace of Paris (1763) doubled the geographic size to the British Empire.¹¹

With an unprecedented access to natural resources, prime lands, and lucrative trade routes around the globe, much of the developing global economy began to fluctuate on the successes of the Empire. These successes allowed for an industrial revolution to take off and further expand the power and economy of the British Empire on a global scale.¹² The industrial revolution in Great Britain manifested itself in advances in producing textiles, advanced metal working techniques, and eventually even steam engines. Innovations such as those that were present in the textile and metal working fields allowed for Great Britain to build and maintain the most modern navy in the world at that time. Therefore, the powerhouse that was the British Royal Navy in the late 1700

¹⁰ Peter A. Ward, *British Naval Power in the East, 1794-1805: The Command of Admiral Peter Rainier* (Rochester, NY: Boydell and Brewer Ltd, 2013), 7.

¹¹ Gordon S Wood, *The American Revolution: A History* (New York: Random House Inc., 2002), 2.

¹² *Ibid.*, 1-2.

and early 1800s was a direct product of the colonial and industrial successes of the British Empire during the eighteenth century.¹³

The British North American colonies witnessed the formidable power of the Royal Navy as an enemy and maritime combatant for the first time when they rebelled against the crown. The ill equipped Continental Navy was unable to muster any real threat to the Royal Navy. In fact, the maritime forces and harbors of the American colonies stood little chance against the might of Great Britain prior to Frances treaty with the United States in 1778. Upon the 1778 Treaty of Alliance and the Treaty of Amity and Commerce, France official recognized the United States and effectively served to deter the British maritime machine.¹⁴ Following the American Revolution and the release from the yoke of the British Empire, the United States attempted to solidify its position on the idea of maritime law. A number of official decrees were adopted regarding maritime law, including certain language in the constitution.

American legal scholars took a very early interest in the idea of maritime laws. The *Articles of Confederation* left little room for any codified forms of maritime law, but when the *Federalist Papers* began to push for the elimination of the *Articles of Confederation* and the adoption of a constitution, maritime law and the expansion of commercial opportunities abroad became of paramount importance. In *Federalist Paper No. 11: The Utility of the Union in Respect to Commercial Relations and a Navy*, Alexander Hamilton asserts that the adoption of the *Constitution* would allow for the

¹³ Robert A. Allen, *The British Industrial Revolution in Global Perspective* (New York: Cambridge University Press, 2009), 23.

¹⁴ *Treaty of Amity and Commerce Between the Thirteen United States of North America and France, February 6, 1778* (New Haven, CT: Lillian Goldman Law Library, 2008).

United States to adopt a more active commercial policy, which promised to increase the bounty from goods that were already present in the trans-Atlantic trade. Hamilton argued that the powers of Europe were undercutting the states under the *Articles of Confederation* and positioning the United States as a minor passive commercial entity, which could only trade through the maritime might of another nation. Hamilton argued that by uniting under the *Constitution*, adopting active commercial tactics, and developing a navy the United States could monopolize the trade of its own resources.¹⁵ In *Federalist Paper No. 80: The Powers of the Judiciary*, Hamilton argued that under the *Constitution*, the nation could institute laws with regard to admiralty and maritime jurisdiction with specific regard to controlling commerce.¹⁶

Upon the ratification of the *United States Constitution* on June 21, 1788, some official maritime policy was included. Article I, Section 8 of the *Constitution* grants the Congress the power to define and punish piracies and crimes at sea. Section 8 also states that the Congress has the powers to declare war and issue letters of marque and reprisal, which legalized the use of American privateers. Lastly, Section 8 grants the Congress the power to provide and maintain a navy for the protection of the United States and its assets at sea. Article III, Section 2 of the *Constitution* extended to the Supreme Court the power to try all cases with regard to admiralty and maritime issues.¹⁷ However, the United States did not exactly adopt a formal maritime policy right away, except for its commitment to neutrality.

¹⁵ Alexander Hamilton, "Federalist No. 11," *The Avalon Project* (New Haven, CT: Lillian Goldman Law Library, 2008).

¹⁶ Alexander Hamilton, "Federalist Paper No. 80," *The Avalon Project* (New Haven, CT: Lillian Goldman Law Library, 2008).

¹⁷ *The United States Constitution* (Washington: GPO, 1789).

Given the United States position in the Atlantic trade network and the lack of an efficient naval force to protect their merchant vessels, the U.S. continually pushed for “liberal neutrality” (which meant broader rights for neutral parties and narrower rights for belligerent parties). This idea of liberal neutrality was not well received with their former colonial overlords in Great Britain, who claimed dominion over vast proportions of the Atlantic. This was especially apparent when Britain and France went to war again in 1793.¹⁸ Great Britain issued *Orders in Council* on June 8, 1793. In theory *Orders in Council* were directly issued by the sovereign after consultation by the Privy Council which was comprised of close, experienced ministers and were issued regardless of the position of Parliament. However, by this time the power of the British Parliament and its ministers could easily force the hand of the king. In fact, the only reason that monarchical approval was necessary was because it involved the Royal Navy and other military forces. This specific set of orders allowed for the seizure of goods bound for French ports, distributed letters of marque against France, and allowed for blockades of any enemy ports.¹⁹ This was followed shortly by another set of *Orders in Council* in November 1793 that specifically targeted French colonial trade.²⁰

The American idea of “liberal neutrality” was at odds with the British war effort. In order for the United States to remain neutral, the powers of Europe had to understand

¹⁸ Tom Holmberg, “France Decrees on Trade 1793-1810,” *The Napoleon Series*, March 2003, http://www.napoleon-series.org/research/government/france/decrees/c_decrees1.html.

¹⁹ Tom Holmberg, “The Acts and Orders in Council of Great Britain [on Trade], 1793-1812,” *The Napoleon Series*, April 2003, http://www.napoleonseries.org/research/government/british/decrees/c_britdecrees1.html#decrees.

²⁰ *The Acts, Orders in Council: 1793, November 6* (London: PRO, 1793).

and accept the U.S. position as a neutral party to the ongoing European conflicts. This was a notion that Great Britain was not willing to accept, especially given the fact that U.S. traders were acting as a proxy for France to trade with its Caribbean possessions.²¹ Through the use of American merchantmen, which were large, non-naval and often unarmed cargo ships, the British thought that the connection between France and its colonial possessions would allow France to hold out against any British attempt to cut off France with a blockade.²² Therefore, the British devoted their attention to the so called “Rule of 1756,” which held to the notion that trade closed to a neutral party in a time of peace could not be opened in a time of war.²³

This “Rule of 1756” was created by the British Admiralty during the Seven Years War (1756-1763) to attempt to control the flow of contraband to enemy colonies in the western hemisphere, most notably those colonies belonging to France. This rule proved to be a useful tool against the allegedly neutral American vessels that could have been carrying French contraband during the wars of the French Revolution from 1789 thru 1799.²⁴ This application of the "Rule of 1756" was directly aimed at trade between the United States and French colonies in the West Indies. This trade network had become very lucrative to American traders; in fact it was viewed as a vital supply line to France by all parties involved.

Following the implementation of the “Rule of 1765,” the British Royal Navy

²¹ Mlada Bukovansky, "American Identity and Neutral Rights from Independence to the War of 1812," *International Organizations* 51 (1997): 215.

²² Holmberg, “France: Decrees on Trade.”

²³ Donald R Hickey, *The War of 1812: A Forgotten Conflict, Bicentennial Edition* (Urbana, IL: The Board of Trustees of the University of Illinois, 2012), 9-11.

²⁴ *Papers Relating to the British Seizure of American Ships, 1793-1801* (Washington: GPO, 1793-1801).

began to exercise their purported “boarding rights.” These boarding rights, as they were enforced by the Royal Navy, allowed British war ships to routinely stop and search the ships of any neutral party bound for enemy territory. This practice was to ensure that the neutral parties were not acting against their neutral statuses in accordance with the enemies of the crown. The neutral ships were thoroughly searched by British boarding parties for any contraband of war that could aid the enemies of Great Britain.²⁵

Beginning in late 1793, the Royal Navy began seizing ships in the Caribbean. In what many Americans considered an act of war, the British seized at least three hundred American ships and their cargo. Contrary to the “Rule of 1756,” the British admiralty courts in the Caribbean seized any and all cargoes bound for enemy ports, claiming that any trade goods were contraband of war during the time of war.²⁶

The British Royal Navy’s actions against American vessels were illegal in terms of the “Law of 1756,” because American trade with those French colonies had been established prior to the outbreak of hostilities.²⁷ Nevertheless, many American ships were seized by the Royal Navy. A number of ships logs detail British attacks during this period of conflict in the Caribbean. For example, on August 27, 1793 an American vessel near Kingston, Jamaica was captured by a British warship carrying French goods (coffee). On February 22, 1795 another American vessel was seized by the British for violating the “Rule of 1756.” This goes to show the measure of the British resolve in regards to this conflict and how determined they were to stop the trade of what the British

²⁵ Bukovansky, “American Identity,” 215.

²⁶ J. C. A. Stagg, *The War of 1812: Conflict for a Continent* (New York: Cambridge University Press, 2012), 25.

²⁷ *Papers Relating to the British Seizure of American Ships.*

Navy considered ‘contraband.’²⁸ The seaman aboard those American merchantmen did not fare much better than their cargo. Royal Navy officers often treated them very harshly after a seizure. In fact, many of those seamen were forced into service of the Royal Navy, a practice that was known as impressment.²⁹

²⁸ Ibid.

²⁹ Stagg, *The War of 1812*, 25.

Chapter 3: Impressment, Neutrality, and the Road to War

To understand the full scope of this issue of neutrality that developed in the late eighteenth and early nineteenth century it is imperative to look at the international nature of the Napoleonic conflicts and the trans-Atlantic situation. The United States wanted to stay neutral, but maintain trade with two belligerent parties that had been in an almost constant state of war for centuries. Great Britain's past practices, such as the "Rule of 1756," did not allow for such actions as neutral powers trading with their enemies. These restrictive actions were more-or-less seen as normal as far as European maritime law was concerned. With the growth of such ideas as "free ships carry free goods," less restrictive measures began to be more acceptable as time went on. However, the practice of impressment served to curtail the development of the idea that "free ships carry free goods," and even served to ignite hostilities between the United States and Great Britain with the War of 1812.

The practice of impressment was not new to the British Royal Navy. In fact, there is documentation that the British Navy was impressing sailors as early as the mid-1700s.¹ During the century and a half that preceded the fall of Napoleon, Great Britain was almost constantly at war with rival states or rebelling colonies. This constant call for able bodies and the increasing number of naval vessels led to a shortage of seamen in the Royal Navy. To counter this debilitating issue, the British government promoted the

¹ Marcus Rediker, *Between the Devil and the Deep Blue Sea: Merchant Seaman, Pirates, and the Anglo-American Maritime World, 1700-1750* (New York: Cambridge University Press, 1993), 251.

practice of impressment, by which a seaman was forced, or “pressed,” into service in the Royal Navy. The practice of “pressing” people into service was not limited to the high seas; in fact the tradition of “press ganging” actually targeted people on the mainland. Some tactics included getting men blackout drunk and placing them upon naval vessels as they slept and just out right kidnapping people. This practice was largely unpopular among those “pressing” as well as those being “pressed.” The practice itself often met tough resistance, which led brawls, riots, and the occasional death.²

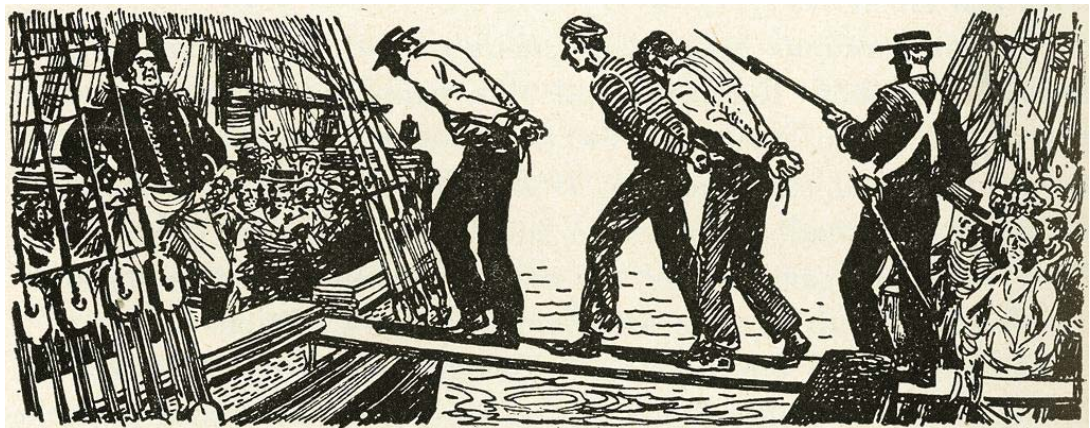


Figure 8: This is a depiction of American sailors walking across a plank after they were impressed into the Royal Navy (Source: Heather Calvert, “The War of 1812,” *University of Montevallo Carmichael Library Website*, accessed July 25, 2014, <http://libguides.montevallo.edu/content.php?pid=243679&sid=4830492>).

Lack of seamen was the main reason that the British began impressing sailors during the European wars following the French Revolution. However, the real reason for targeting American ships for impressing sailors could have been more calculated, such as showing the United States their place in the international order. Nevertheless, the

² Daniel James Ennis, *Enter the Press Gang: Naval Impressment in Eighteenth Century British Literature* (Newark, DE: University of Delaware Press, 2002), 15-16.

practice itself was supposed to target sailors on foreign ships that were British nationals. These British sailors may have intentionally run away from service for Great Britain, or just simply looked for steady work that may have been more prevalent on American ships. However, British captains tended to not care what nationality the sailor claimed to represent. In *Jack Tar's Story: the Autobiographies and Memoirs of Sailors in Antebellum America*, Myra C. Glenn provides the reader with personal accounts of many American sailors who were impressed into the Royal Navy. For example, James M'Lean was born in Hartford County, Connecticut. At the ripe old age of ten, M'Lean was sent off to sea. In December 1797, while sailing off of the coast of Grenada M'Lean's vessel was boarded by sailors from the British man-of-war *HMS Madras*. Although M'Lean insisted that he was born an American citizen, the British captain called M'Lean a "Scotch rascal" and forced him into service.³

Although life on the high seas was already a very difficult one, those sailors who were impressed had a much more difficult time. According to the depositions presented in Glenn's book, impressed sailors were more like slaves than seaman. They were often humiliated and emasculated. Impressed sailors were often punished more harshly and more frequently, and were paid little or nothing. It is no wonder that the recidivism for abandoning British ships at port was so high among these sailors.⁴ In fact, mass resistance to impressment was not an uncommon occurrence. In *Between the Devil and the Deep Blue Sea*, Marcus Rediker described the Knowles Riots that shook Boston in 1747. When Commander Charles Knowles attempted to press men into service on the

³ Myra C Glenn, *Jack Tar's Story: The Autobiographies and Memoirs of Sailors in Antebellum America* (New York: Cambridge University Press, 2010), 50-51.

⁴ Ibid., 50-53; 64-65; 70-71.

HMS Lark, a mob of thousands of Bostonians resisted and eventually threw Commander Knowles into the town stocks.⁵ Glenn's book also mentions anti-British riots that took place in response to press-gangs combing American ports during implementation of the Stamp Act of 1765.⁶

Unfortunately, the issues and fear of impressments only escalated for American sailors. After the turn of the nineteenth century, Great Britain's nine hundred ship navy was in serious need of 130,000 to 140,000 able seamen to properly man the vessels. Therefore, the number of impressments skyrocketed.⁷ American ships seemed the preferred target, not only because of the United States status as a neutral nation, but also because it is estimated that more than a quarter of the 50,000 to 100,000 seamen employed on American ships were in fact British citizens.⁸

J.C.A. Stagg asserts that the American State Department estimated that between 1807 and 1812 alone, the British Royal Navy impressed at least 6,275 American born sailors into the service of the Empire. Stagg's own estimate is even higher; he argues that between 1803 and 1812 that nearer to 10,000 American seamen were impressed into the Royal Navy. Stagg also notes that the loss in ships, supplies, and cargo were also enormous.⁹ Myra Glenn similarly suggests that somewhere around 10,000 American sailors were impressed between 1800 and 1812.¹⁰ Many historians agree that it was easy

⁵ Rediker, *Between the Devil and the Deep Blue Sea*, 251-252.

⁶ Glenn, *Jack Tar's Story*, 54.

⁷ J. C. A. Stagg, *The War of 1812: Conflict for a Continent* (New York: Cambridge University Press, 2012), 28.

⁸ Donald R Hickey, *The War of 1812: A Forgotten Conflict, Bicentennial Edition* (Urbana, IL: The Board of Trustees of the University of Illinois, 2012), 10.

⁹ Stagg, *The War of 1812*, 28.

¹⁰ Glenn, *Jack Tar's Story*, 54.

for British commanders to play ignorance on the issue of national identity of a seaman. The commander could argue that the accent of Americans and Britons was almost identical or he could argue that the sailor was lying outright.¹¹

With few forces capable of protecting American merchantmen, by the late eighteenth century the United States government had little choice but to negotiate with Great Britain in order to secure peaceful trans-Atlantic trade. The United States was in a poor position to wage war with any state, let alone the military power that could be wielded by Great Britain. While promoting more military and naval preparedness, many Federalists took a stance that was decidedly pro-British in nature.¹²

The pinnacle of the new initiative toward better relations with Great Britain became known as *Jay's Treaty* of 1794. *This Treaty of Amity, Commerce and Navigation between the United States and Great Britain* was unprecedented and served to shake relations between the U.S. and France. While claiming to uphold the American right to neutrality during time of war, this agreement essentially solidified the American position in the Atlantic trade network by granting favored trading status to Great Britain.¹³ Democratic Republicans often criticized it, but the treaty served as a springboard for the fledgling American economy. In fact, in just seven years, the value of United States exports across the Atlantic nearly tripled from \$33,000,000 in 1794 to \$94,000,000 in 1801. However, *Jay's Treaty* did come with its fair share of problems, mainly in the form of the so-called "Quasi War," which was a limited Atlantic naval engagement that was

¹¹ Stagg, *The War of 1812*, 28.

¹² Hickey, *The War of 1812*, 6.

¹³ John Jay, *Treaty of Amity, Commerce and Navigation, between His Majesty and the United States of America* (Philadelphia: Neale and Kammerer, 1795).

mainly between the United States and France between 1798 and 1800.¹⁴

Following the ratification and implementation of *Jay's Treaty*, France began to take a more hostile approach to relations with the United States. Since the hard truth was that the U.S. had essentially aligned itself with the sworn enemy of France, the French felt that the U.S. had abandoned the treaties of alliance and of amity and commerce that were ratified in 1778. The French government wasted little time in enacting decrees that labeled the perceived neutrality of the United States as illegitimate. In November 1794¹⁵, in January 1795,¹⁶ and in July 1796¹⁷ the French government issued decrees that essentially nullified the *Treaty of 1778* by legalizing the seizure of neutral vessels and allowing France to participate in actions similar to those of Great Britain. In 1798, France decreed that any ship suspected of carrying British cargo was subject to search and seizure by the French Navy. If British cargo was found on board, that ship was subject to complete confiscation of vessel and cargo.¹⁸ The United State responded quickly by attempting without success to broker peace with the French Republic. An “energetic offensive” and strong defense was prepared in order to counter the French threat.¹⁹

Given the state of the United States Navy, which consisted of only six frigates that were planned out and commissioned between 1795 and 1800, the main body of naval

¹⁴ Hickey, *The War of 1812*, 6-7.

¹⁵ *Decree of 1794*, November 18 (Paris: JORF, 1794).

¹⁶ *Decree of 1795*, January 3 (Paris: JORF, 1795).

¹⁷ *Decree of 1796*, July 2 (Paris: JORF, 1796).

¹⁸ *Decree of 1798*, January 18 (Paris: JORF, 1798).

¹⁹ John Adams, *Foreign Relations: France, March 19, 1798* (Washington: GPO, 1798).

vessels was in the form of privateers.²⁰ With the French hostility toward American merchantmen, the prospect of United States neutrality was again questioned by a serious world power. Neutrality was next to abandoned during the undeclared “Quasi-War” (1789-1800) that broke out between France and the United States in regards to perceived violations of American neutrality. This short conflict was quickly extinguished with some substantial losses to the American and British trade. A formal cessation of hostilities was made between France and the United States at the *Convention of 1800* and their relationship returned to that of the *Treaty of 1778*.²¹ The end of conflict with France only served to reignite conflict between the United States and Great Britain.



Figure 9: An American frigate engages a French frigate at sea during the Quasi War in 1799 (Source: History Hub “The Federalist Era,” *Austin Community College*, accessed July 25, 2014, <http://www.austincc.edu/caddis/federalistera>.)

²⁰ Timothy Pickering, *Progress Made in Building Frigates* (Washington: GPO, 1797).

²¹ *Convention of 1800 – Text of the Treaty* (New Haven, CT: Lillian Goldman Law Library, 2008).

During the very early 1800s, the United States and Great Britain maintained somewhat peaceful trade relations and interactions on the high seas. In fact, a decision that was reached in a British Admiralty Court case regarding the United States merchant ship *Polly* in 1800 erased the invocation of the “Rule of 1756” and allowed the U.S. to enjoy a commercial explosion by allowing European powers to use American ports as a stopping point. This developed into a very lucrative re-export trade of many valuable goods and resources that boosted the American economy.²² It seemed as if neutrality and profitable trade would be secured when in June 1803, Great Britain issued additional *Orders in Council* that upheld the right for neutral nations to travel on the high sea uninterrupted.²³ But, the relationship between the United States and Great Britain soon soured again for a number reasons.

As continental tensions grew in the early nineteenth century, much of the progress regarding neutrality was erased. One reason that relationship between the United States and Great Britain disintegrated was the resumption of British impressment of American seamen. This practice had never really died out due to the paucity of English sailors and also because the British did not consider it a violation of neutrality. Another reason was the rise of Napoleon and further conflict on the European continent beginning in 1803. Donald Hickey also suggests that British jealousy of American commercial success and suspected fraud in the re-export trade played a powerful part in renewed hostility. Nevertheless, the British Navy returned to their restrictive policies after the capture of the American merchant vessel *Essex* in 1805. In the ensuing trial, the British Admiralty

²² Donald Hickey, “The Monroe-Pinkney Treaty of 1806: A Reappraisal,” *The William and Mary Quarterly* 44 (1987): 71.

²³ *The Acts, Orders in Council: 1803, June 24* (London: PRO, 1803).

Court ruled that the re-export trade was not a legitimate system for a neutral nation.

Following the *Essex* decision, the Royal Navy began seizing American ships at an alarming rate. Hickey estimated that between 1805 and 1806 over four hundred American ships were captured by the Royal Navy, as well as millions of dollars worth of valuable cargo.²⁴ It was clear that some kind of agreement had to be made with Great Britain in order to regain some sort of security on the high seas. A delegation headed by James Monroe and William Pinkney moved to reaffirm the terms of *Jay's Treaty* of 1794. Unfortunately, the parties were unable to agree on the terms of the *Monroe-Pinkney Treaty*, and the harassment of American merchant vessels continued.²⁵

The year 1806 saw a restoration and proliferation of the United States as a re-export power, but the trans-Atlantic network suffered a critical blow to its commercial and imperial system. In May 1806 Great Britain issued *Orders in Council* that utilized an enormous blockade to the European continent from the Elbe to Brest. This blockade, known as the “Fox Blockade,” effectively shut down the entire Northern coast of France and halted most North Sea imports into Europe.²⁶ The Fox Blockade was meant to stifle trade to Napoleonic France and effectively slow the French war machine. A secondary measure was to impede France from interacting with any colonial possession. Additionally, Great Britain enacted additional *Orders in Council* in November 1807 that limited trade opportunities for American shipping and further stifled European trade.²⁷

In response to the “Fox Blockade” and the *Orders in Council*, Napoleon invoked his Continental System. This system effectively shut down Napoleonic Europe from

²⁴ Hickey, “Monroe-Pinkney Treaty of 1806,” 71-72.

²⁵ *Ibid.*, 66

²⁶ *The Acts, Orders in Council: 1806, May 16* (London: PRO, 1806).

²⁷ *The Acts, Orders in Council: 1807, November 11* (London: PRO, 1807).

trade with any outside country. The idea of the Continental System was to trap the important European goods on the continent and keep them out of the hands of the British Empire. This system was enacted through a series of decrees; mainly the *Berlin Decree* in November 1806;²⁸ and the *Milan Decree* in December of 1807.²⁹ These decrees were the backbone of the Continental System, stating that continental entities could not interact in commerce with the British Empire or its allies. However, this system in the end was detrimental to the continent due to the fact that it stifled the importation of raw materials and natural resources.



Figure 4: This is a depiction of Europe during the Continental System that was

²⁸ *The Berlin Decree* (Paris: JORF, 1806).

²⁹ *The Milan Decree* (Paris: JORF, 1807).

instituted by Napoleon I of France in 1806. All areas within the dotted outline were barred from trading with Great Britain and its allies under the *Milan and Berlin Decrees*. In response to the Continental System, the British set up Fox's blockade to curtail the flow of trade into Northern France. (Source: "Introduction to Modern Europe: European Maps," Temple University, accessed July 25, 2014, <http://astro.temple.edu/~barbday/Europe66/resources/maps.html>).

By 1807, the trans-Atlantic trade network was suffering and many of the surrounding nations were experiencing a decline in exported goods. United States neutrality theories counted for little when both Great Britain and France preyed on its merchant vessels and shut out American traders. With limited naval power, President Thomas Jefferson decided to pursue a peaceful course that proved to be ineffective in the end. The *Embargo Act* of 1807 effectively shut down foreign trade. This *Embargo Act* was met with a great deal of hostility among American merchants, because the act placed much of the burden on them. If the merchants could not participate in the trans-Atlantic trade, they could not make any money on the resources that were in high demand.³⁰

Although it was a very drastic action and potentially devastating action by the United States, the *Embargo Act* of 1807 did little to change the policy of Europe. It only served to hurt American commerce.³¹ The *Embargo Act* was later replaced by the *Non-Intercourse Act* of 1809; which only barred trade with Great Britain and France, but reopened trade to any nation that would respect the United States position as a neutral nation.³² This move also proved to be more of a hindrance to American trade, than a way to sway European policy.

³⁰ *The Embargo Act* (Washington: GPO, 1807).

³¹ Tom Holmberg, "The Acts and Orders in Council of Great Britain [on Trade], 1793-1812," *The Napoleon Series*, April 2003, http://www.napoleonseries.org/research/government/british/decrees/c_britdecrees1.html#decrees.

³² *Non-intercourse Act* (Washington: GPO, 1809).

Increased tension abroad also brought conflict to the shores of North America. Unfortunately, the conflicts manifested in armed engagements on at least two occasions. On the first occasion, the *HMS Leander* sailed into New York Harbor and fired a broadside into an American merchant vessel, killing one American sailor.³³ The second incident is the better known attack on the *USS Chesapeake* in 1807. The *USS Chesapeake* was one of six frigates commissioned in the late eighteenth century. They were rather small in comparison to their British counterparts. The *USS Chesapeake* was a 36 gun, 1,300 ton vessel.³⁴ It was approached by the much more formidable *HMS Leopard* in American territorial waters off the coast of Virginia. When the captain of the *Chesapeake* refused to allow the British crew to search the vessel, the *Leopard* opened fire on the small frigate, killing four men on board.³⁵ The British tried to justify the attack by claiming that the vessel was sheltering British deserters. Nevertheless, the American public was outraged by the incident and many demanded action.³⁶



Figure 5: An artist's depiction of the Frigate *USS Chesapeake*. Following its

³³ Stagg, *The War of 1812*, 19-20.

³⁴ Pickering, *Progress Made in Building Frigates*.

³⁵ Stagg, *The War of 1812*, 19.

³⁶ Glenn, *Jack Tar's Story*, 55.

encounter with the *HMS Leopard*, the *Chesapeake* was damaged, but it was repaired and employed in the War of 1812. However, the *Chesapeake* was captured in 1813 and put into service in the British Royal Navy (Source: Walter Sargent, "Politics of the Early Republic: The Law," University of Maine Farmington, accessed July 25, 2014, <http://faculty.umf.maine.edu/walter.sargent/public.www/web%20233/Unit%205%20politics%20in%20early%20republic.html>).

Although a direct attack on United States sovereignty was one of the driving factors toward a declaration of war, the events of the previous twenty years had been gearing the young nation toward conflict. Even though the United States sought only to trade freely and peacefully among the major naval powers of the time, constant conflict did not allow for neutrality. The American idea of maritime neutrality did leave its mark on the trans-Atlantic trade. European trade had suffered in the period between 1805 and 1812, due to the lack of the American participation. In fact, Great Britain had realized the importance of an American trade partnership.

On June 23, 1812, Great Britain issued *Orders in Council* that effectively revoked all previous *Orders in Council* that restricted trade with the United States.³⁷

Unfortunately, the damage had already been done. On June 1, 1812, James Madison delivered his *War Message to Congress* appeasing the multitude of "War Hawks" that believed that the United States could and should challenge Great Britain. Over the years, British *Orders in Council* led to negative commercial growth, stifled trade, war-like confrontation, and impressment of American seaman. Although war was not very popular among the general public, the United States prepared to enter war for the second time against the military and naval might of Great Britain.³⁸

³⁷ *The Acts, Orders in Council: 1812, June 23* (London: PRO, 1812).

³⁸ James Madison, *War Message to Congress: June 1, 1812* (New York: Literary Classics of the United States, 2013), 1-9.

It is odd to think that merchant vessels could be considered legal naval targets when proclaiming neutrality, but in accordance with the British maritime tradition it was expected to interrupt the trade of an enemy, even if it was being carried by a neutral party. It is also important to understand that the French Revolution and the rise of Napoleon also complicated matters. Very stern lines were drawn in Europe and those on the opposite side of that line were considered sworn enemies. Although the United States tried to distance themselves from the wars of Great Britain and France, they were adversely affected by the conflict because of the trade war that this European conflict sparked. But their commitment to neutrality proved, at least until 1812, that the young United States was adamant in its avoidance of war and unyielding in its desire to expand trade networks. The importance of the United States was vital to the survival of the trans-Atlantic trade network and no entities understood that fact better than Great Britain and France.

Conclusion

As the major powers of Europe sought to carve up the newly discovered, lands on the western shores of the Atlantic Ocean, conflict erupted time and time again. Imperial aspirations and untold numbers of valuable natural resources drove the rapidly expanding global economy and fueled bitter rivalries in the Atlantic World. As more nations were drawn into the fold, the situation gained complexity and convolution; until a series of conflicts erupted, involving all of the major Atlantic World entities, in the late eighteenth and early nineteenth centuries. Confrontations such as the Seven Years War were brutal, and at times brought trading to a halt for nations unable to provide protection for their merchant fleets. The inability of the United States to curtail seizures, impressments, and all out military attacks on vessels asserting the right to sail freely was a concern of monumental importance. In fact, this position of neutrality was one of the key political ideologies eventually the United States into the European conflicts that the nation was sternly avoiding. As this thesis has shown, the lack of any tangible international norms regarding Atlantic World vessels and trade inevitably led to conflict on the high seas and aided in the spread of war on an unprecedented, world scale.

European nations tried to develop-standardized set of widely accepted standards or laws for vessels on the high seas was seen by many European nations to be the answer since from the time the New World was first discovered in the fifteenth century. However the laws that were set up by such official documents as the *Treaty of Alcáçovas* in 1479, the Papal Bull *Inter Cætera II* in 1493, and the *Treaty of Tordesillas* in 1494 only

included nations within the scope of Papal influence, specifically Spain and Portugal.¹

This exclusion fostered attitudes of decent with regard to the great seafaring nations, which led many nations to pursue a path of maritime law that would be all inclusive and free up the seas for all.

Aggressive expansion of rival nations, as well as the boundless possibilities that existed throughout the New World led many European nations pushed for a more liberal approach to seafaring. Documents such as the *Consolato del Mare* attempted to set up an international standard of maritime operation in the period prior to the great imperial expansion that was a key aspect of the age of discovery, but the lack of clear law reduced this document to a suggestion rather than a true regulatory device.² Later scholars-such as the Dutch legal theorist Hugo Grotius strove to open up the seas to commerce and allow for the global economy to grow without the restrictive pressures of larger empires. The hegemony of such great empires as that of Spain served only to expand influence and restricted the potential of the Atlantic world economy. Spanish aggressions on the high seas serve to only expanding conflict and limiting trade. According to Grotius, merchant ships should be free to carry goods to any ports without the fear of being harassed by

¹ "Treaty Between Spain and Portugal concluded at Tordesillas, June 7, 1494," The Avalon Project (New Haven, CT: Lillian Goldman Law Library, 2008); "Treaty Between Spain and Portugal, Concluded at Alcáçovas, September 4, 1479," The Avalon Project (New Haven, CT: Lillian Goldman Law Library, 2008); Pope Alexander II, "The Papal Bull Inter Cætera (May 4, 1493)," Indigenous Peoples-Global Issues Presented by NativeWeb, <http://www.nativeweb.org/pages/legal/indig-inter-caetera.html>.

² Tom Holmberg, "The Acts and Orders in Council of Great Britain [on Trade], 1793-1812," *The Napoleon Series*, April 2003, http://www.napoleonseries.org/research/government/british/decrees/c_britdecrees1.html#decrees.

military vessels.³

On the other hand, legal theorists from larger empires, such as John Selden of England, argued the opposite. Selden believed that powerful empires not only had the right to regulate and police the high seas, but the duty to do so. According to Selden, waterways were property and a part of the imperial dominion and thus under the direct authority of the empire that claimed them.⁴ Emmerich de Vattel also agreed with the notion that more powerful nations should take direct dominion over sea routes and heavily police their waterways with powerful navies capable of securing the interests of the nation. Vattel also declared that policing nations had the right to demand tolls, board ships, seize cargoes and even impress foreign sailors.⁵ This ideological dichotomy between such theorists as Grotius and Vattel brought about numerous arguments as to whether waterways should be considered open or closed with regard to international trade.

Although the argument of maritime laws seemed black and white, other scholars pushed for standards that met in the middle. Dutch legal theorist Cornelius Van Bynkershoek believed in the rights of neutrals on the high seas, but he also believed that nations had the right to protect their territorial integrity. Many nations with minimal maritime interests might utilize standards such as Bynkershoek's cannon shot rule to protect their territorial possessions while still contributing to the growing global

³ "Hugo Grotius," *Stanford Encyclopedia of Philosophy*, last modified July 28, 2011, <http://plato.stanford.edu/entries/grotius/#NatLaw>.

⁴ Kasia Cristobal, "The Works of John Selden," *University of Texas School of Law Tarlton Law Library Jamail Center for Legal Research*, (2012) <http://tarlton.law.utexas.edu/exhibits/selden/index.html>.

⁵ Emmerich de Vattel, *The Law of Nations* (Philadelphia: T & J.W. Johnson and Co., 1883), 119-128.

economy.⁶ Still, with the lack of a standard international norm among the nations in the Atlantic World, larger regional powers, with the naval strength and expansive economic clout, pursued any standard of maritime law which they saw fit over foreign vessels through the seventeenth and eighteenth centuries.

At its foundation, the United States had no navy of which to speak other than a few modified privateer vessels. However, the young nation was eager to involve itself in the lucrative trans-Atlantic trade network. The problem was, there was no way for the United States to protect their trade vessels from British ships that viewed American merchant vessels as a target. The United States' commitment to France, which was codified in the *Treaty of Amity and Commerce of 1778*, essentially codified the United States as an enemy of Britain during the wars of the American Revolution and put the fledgling United States in a particularly precarious situation upon its independence in the 1780s and 1790s.⁷ The United States did not want to be drawn into further conflict with Britain, but its merchants wanted to continue to trade with France and its allies.

With the coming of the wars of the French Revolution, the United States proclaimed its neutrality with regards to the European conflict. However, the claim that "free ships carry free goods," did not save them from the wrath of Great Britain and the powerful Royal Navy when American ships sailed to France for purposes of trade.⁸ Successive United States presidential administrations had little choice but to try to court

⁶ Tom Holmberg, "The Acts and Orders in Council."

⁷ *Treaty of Amity and Commerce between the Thirteen United States of North America and France, February 6, 1778* (New Haven, CT: Lillian Goldman Law Library, 2008).

⁸ Tom Holmberg, "France Decrees on Trade 1793-1810," *The Napoleon Series*, March 2003, http://www.napoleon-series.org/research/government/france/decrees/c_decrees1.html.

Great Britain while continuing relations with France. The ratification of *Jay's Treaty* resulted in better commercial and political relations between the United States and Great Britain, but it soured relations with France.⁹ Following the limited Quasi War and the *Convention of 1800*, the relationship switched again, with the United States improving relations with France and souring with Great Britain.¹⁰ In essence, the United States entered an international situation where every time its principal trading partners changed, whether Britain or France, the other nation began to harass its ships at sea. Essentially, the United States' stance of neutrality was unacknowledged by the enemies of their trading partners.

Furthermore, it could be easily argued that Europe was playing power games with the United States. The British and French Empires had been at odds with one another over Atlantic World expansion for more than a hundred years by the turn of the nineteenth century. The global claims and economic control of these nations allowed for them to bully the United States into trading with one nation or the other exclusively. However, it does not seem that either nation was willing to allow the United States to have the true position of neutrality that it desired. The empires of Europe wanted to exploit the lucrative markets of North America; however they also wanted the United States to acknowledge its inferiority in the international order.

Following the brief, undeclared Quasi War, Great Britain resumed its practices of boarding, seizing cargo bound for foreign ports, impressing American sailors, and all-out attacks on American vessels. Where the United States again claimed neutrality with

⁹ John Jay, *Treaty of Amity, Commerce and Navigation, between His Majesty and the United States of America* (Philadelphia: Neale and Kammerer, 1795).

¹⁰ *Convention of 1800 – Text of the Treaty* (New Haven, CT: Lillian Goldman Law Library, 2008).

regard to European conflict, that declaration was all but ignored. Great Britain's official campaign against American vessels was codified in a number of official documents that were ratified by the British Parliaments called the *Orders in Council*. Between 1803 and 1812, Great Britain enacted a series of Orders in Council that effectively legalized their stoppages and seizures.¹¹ The Jefferson and Madison administrations could easily have perceived these *Orders in Council* as an act of war beyond merely stifling the United States' trans-Atlantic trade with Napoleonic France. Nevertheless, partisan bickering in the United States curtailed any useful measures that may have improved the nation's position.

By the early 1810s the damage had been done, and there was little that could keep the United States from entering into the wars on the European continent. Seizures of American cargoes and sailors and attacks on American vessels culminated in enough support to declare war on Great Britain in 1812. However, it is difficult to look at this conflict as being solely between the United States and Great Britain. The War of 1812 was the result of unprecedented imperial expansion and the expanding global economy. The world economy shifted as a result of the discovery of the American continents.

The vast, previously uncharted lands of the New World led to European exploration of the Americas and made the continents a commercial gold mine for the powers of Europe. When the American colonies gained their independence and became the United States of America, the new nation tried to capitalize on this booming cross-Atlantic trade while exciting as little conflict as possible. Yet the powers of Europe simultaneously sought to keep the former colonies as a mercantile trading post that they

¹¹ *The Acts, Orders in Council: 1803, June 24 (London: PRO, 1803); The Acts, Orders in Council: 1812, June 23 (London: PRO, 1812).*

could easily exploit. Both goals proved impossible; the large amounts of open land and availability of natural resources that the United States possessed signaled the core shift that Emmanuel Wallerstein pointed out in his book *The Modern World System*.¹²

Although many earlier scholars of the War of 1812, such as J.C.A. Stagg, regard the war as a continental conflict that had its deepest roots in the North American continent, it seems clear that the roots of the war were far deeper.¹³ It may also be true that the War of 1812 is rooted in the earlier age of discovery, but it is almost impossible to separate the War of 1812 from the turmoil of eighteenth century Europe. In a time of intense continental struggle, economic aspects and raw materials of the Americas were integral to the survival of the empires of France and Great Britain. Modern scholars, such as Ian Tyrrell, are now beginning to take a transnational approach to histories of all kinds. Tyrrell's approach is imperative to the study of the War of 1812 and the preceding period. Furthermore, in order to understand the development of the Atlantic World it is imperative to explore further beyond the notion of American exceptionalism. Mere acceptance of such nationalistic ideas only serves to skew the true scope of the international economic and diplomatic crisis and transform the United States into some sort of defiant epic hero.¹⁴ Understanding of the causes of the War of 1812 spans the

¹² Emmanuel Wallerstein, *The Modern World System: Capitalist Agriculture and the Origins of the European World –Economy in the Sixteenth Century* (New York: Academic Press, 1976), 15-20.

¹³ J. C. A. Stagg, *The War of 1812: Conflict for a Continent* (New York: Cambridge University Press, 2012); J. C. A. Stagg, *Mr. Madison's War: Politics, Diplomacy, and Warfare in the Early American Republic, 1783-1830* (Princeton, NJ: Princeton University Press, 1983).

¹⁴ Ian Tyrrell, "Making Nations/Making States: American Historians in the Context of Empire," *Journal of American History* 86 (1999); Ian Tyrrell, "American Exceptionalism in an Age of International History," *American Historical Review* 96 (1991).

Atlantic and it also spans a rather large period of time. The only way to truly see the entire scope is to look past the War of 1812 itself, and look at the situation that led up to it. Once the United States declared war, expansion and global prominence drove the Madison administration's political, military and diplomatic policies, but even those ambitions are seated in the realm of trans-Atlantic history.

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