Smugglers and Patriots

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Ensconced in their homes in the newly fashionable wards southeast of Boston Common, where spacious gardens and small orchards were more characteristic than in the densely crowded housing of the North End, Boston merchants Melatiah Bourn and Solomon Davis could enjoy in middle age the comforts that years of profitable trade had brought them. Tax assessments on their property mark Bourn and Davis as significantly wealthier than the average Boston merchant of the time, even if they failed to match the opulence of some of the town’s more well-known figures like John Hancock. Each owned a warehouse, and between them they commanded 214 tons of shipping, which would rank them thirteenth among Boston shipowners. Their stock in trade amounted to over £1,500; only fourteen other merchants maintained inventories as large.\(^1\)

Bourn and Davis enjoyed not only wealth but status too. The son of the Honorable Sylvanus Bourn, a member of the Governor’s Council, Melatiah was the scion of a politically powerful Barnstable County family. Tax assessors in his ward deferentially affixed the title “esquire” after his name. A more rough-hewn figure, Davis had been
a sea captain and was well known for his blunt words and stormy personality. Both owned pews in the Reverend Samuel Cooper's stylish Brattle Street Church, where they heard liberal Congregationalist preaching not likely to trouble a busy merchant's conscience. In nearly all respects, Bourn and Davis appear to have led respectable, genteel lives, the very image of Boston merchants—an image preserved in portraits by John Singleton Copley. And yet they were smugglers. Customs records for Boston at the time are fragmentary, but the insurance policies of Ezekiel Price, who underwrote most of Bourn and Davis's ventures, reveal a consistent pattern of illicit trade with some of the most notorious ports: Amsterdam; St. Eustatius, a Dutch island in the West Indies; New Providence, a haven for smugglers in the Bahamas; and the Spanish port of Monte Cristi on the island of Hispaniola, through which North American produce supplied the enemy French islands during the closing years of the Seven Years’ War. In all likelihood, Bourn and Davis did not regard themselves as “criminal” or “disloyal,” but rather as reputable businessmen willing to take higher risks for increased profit. Had their actions been revealed, they would have faced censure from some and received embarrassed, if unspoken, sympathy from others. They were hardly alone. The same commercial pressures that had prompted Bourn and Davis to experiment first with trade to southern Europe and then with the smuggling of European manufactures had driven at least seventeen other Boston merchants to do the same. Years of lax enforcement of customs regulations had also habituated many of the town's residents to illicit trade. Smuggling was a violation of law but nothing out of the ordinary.

As Bourn and Davis scanned the weekly papers at a waterfront coffeehouse in January 1760, they would find cause for both rejoicing and alarm in the news of the progress of the Seven Year's War. On the one hand, the conquest earlier that fall of the great French fortresses of Louisbourg and Quebec had opened for Boston merchants the possibility of a vast new market in Canada. On the other hand, reports had begun to filter back from the West Indies of seizures of New England vessels by the Royal Navy at the bustling, neutral port of Monte Cristi, thus threatening to cut off one of the most profitable sources of foreign molasses. Even more unsettling still was the news, reported without explanation or comment, that the surveyor general of customs had suspended Benjamin Barons, Boston's
congenial and tractable collector of customs, and forced him to take ship for England in an effort to regain his post.4

Barons's efforts to win reinstatement would become a focal point of Massachusetts politics during the next two years. Because of Barons, Francis Bernard, the new governor of Massachusetts, would be embroiled in his first sustained conflict with the General Court, a controversy in which lawyer James Otis's famous condemnation of the writs of assistance is only one small episode. In their efforts to assist their beleaguered friend, a small group of smugglers would first initiate their merchant colleagues in the tactics of willful misrepresentation and violent intimidation that patriot merchants later employed with such success against their government party enemies in the late 1760s. Part of the widening conflict with Great Britain, the Barons incident saw the emergence of a core group of merchant smugglers who subsequently became leaders of the patriot opposition.

Barons's First Suspension, January–May 1760

It is difficult to imagine a more improbable figure as customs collector than Benjamin Barons. Charged with the chief responsibility for the enforcement of His Majesty's customs at Boston, Barons was a former London merchant who had once had a vessel of his own seized in Massachusetts waters for lack of a register proving British ownership. Although the Massachusetts Court of Vice-Admiralty had perfunctorily condemned the ship on this more or less technical charge, Treasury officials in London later received so much testimony from Barons's fellow merchants and other "distinguished people" that they remitted the king's one-third share of the seizure to Barons as a settlement. Throughout his stormy career, Barons was greatly aided by his powerful friends at Whitehall, the most influential of whom, Admiral Sir Charles Hardy, Barons had served as secretary when he was governor of New York. Through Hardy's connections at the Admiralty and Board of Trade, Barons obtained the recommendation of Lord Halifax, secretary of state for the Southern Department, whose influence triumphed over that of other candidates for the vacant collectorship at Boston. Typifying the worst sort of placeman in the eighteenth-century colonial bureaucracy, Barons had successfully parlayed friendship and influence to gain a post rumored to be worth £3,000 a year in bribes and perquisites. After a
few years' service, he could be a rich man. The commissioners of customs formally appointed Barons collector on May 11, 1759. On December 15, however, Thomas Lechmere, the aged surveyor general of the Northern Customs District, suspended the new collector within three months of his mid-September arrival in Boston.  

From his first arrival, Barons had exhibited a general eagerness to cultivate the friendship of Boston merchants. To the smugglers' delight, he soon let it be known that he "Scorned to make Seizures." Such a policy did not endear him to his colleagues in the customs service when they found themselves beset by angry merchants demanding to know why they should "persist in making Seizures when Mr. Barons had declared he would not make any." What Barons may well have been doing was allowing the merchants, when caught red-handed in violation of the Navigation Acts, to make what they preferred to call a "post entry" of the cargo by paying the legitimate duty on smuggled goods rather than suffer the full legal penalty of confiscation.

Whether it was for this reason alone that Lechmere suspended Barons is uncertain. A letter from smuggler John Rowe, one of Boston's principal merchants and later one of Barons's fiercest partisans, hints darkly that Barons may also have involved himself in entering and clearing vessels plying the dubiously legal trade with Monte Cristi. Although Monte Cristi was itself a neutral Spanish port, because of its location within a mile of the border between Spanish Hispaniola and French Saint Domingue, it became a principal entrepôt through which the French enemy received much-needed North American lumber and provisions. Writing in the spring of 1760—several months after Barons's suspension—Rowe touched on the customs commissioners' ambiguity "about Clearing Sugar from the Mount [Monte Cristi]" and observed to his correspondent that he had "good Reason to think the Surveyor General had wrote to the Commissioners on that very Subject, at the Departure of Mr. Barrons which was Like to have made some puzzle at home [England]." Thus Lechmere may also have suspended Barons for imparting legality to the Monte Cristi trade by entering and clearing at Boston vessels trading with the Spanish port.

A variety of factors combined to make the continuance of the Monte Cristi trade crucially important to New England merchants. Because planters in the British West Indies habitually refined their
own molasses into rum themselves, the supply of that commodity in the British islands was always insufficient to satisfy North American demand. The protected status of the French brandy industry, however, discouraged French planters' copying the example of the British islanders; thus, French planters regularly offered large supplies of the article at cheap prices. Because Saint Domingue was the largest of all the colonies in the French West Indies, New England merchants could expect to find more of the article there than in all the British West Indian islands combined. The insurance records of Ezekiel Price, who kept one of the four insurance offices in Boston at that time, indicate that of the 120 Boston merchants who did business with Price (about half the merchants active in the town in the early 1760s), 37 insured ventures to Monte Cristi or other ports actually located within Saint Domingue. Of this group, approximately three-fifths later proved to be active supporters of Barons in his contest with the Boston customs establishment.

Melatiah Bourn's sloop Betty was among the first five vessels seized by the Royal Navy at Monte Cristi on August 3, 1759, and taken into Jamaica for condemnation. Two fellow Bostonians, Henry Bromfield and John Avery (the latter familiar as the father of the future secretary of the Loyal Nine, an organization that helped orchestrate the town's Stamp Act riots in 1765), were the owners of a sloop seized at the same time. Immediately upon receiving the news, the Boston merchants joined with Isaac and Naphthali Hart of Newport, Rhode Island, the owners of yet another of the vessels, to share the cost of appealing the condemnation of their ships to the High Court of Admiralty in London. Their efforts at appeal ran parallel to Benjamin Barons's attempt at reinstatement and carried the Boston merchants' grievances to the very center of London politics. Indeed, their ultimate success through judicious bribery and the threat of blackmail helped shape the attitudes of the Boston merchant leadership concerning the most effective means of combating attempts to constrict their trade.

The seizures at Monte Cristi and the tightening pattern of customs enforcement at Boston, foretold by Barons's suspension, intervened at a darkening period in the economic history of the port. As recent research has made strikingly clear, the Seven Years' War had decimated Boston's labor force, and owing to the large number of widows and orphans, one-seventh of the town's adult population was
then receiving poor relief. The dislocation of trade with the West Indies was particularly bad news for the lower classes because of the large opportunities for ancillary employment which that business offered in shipbuilding, fishing, and lumbering. The shift of military operations from Canada to the West Indies only worsened the situation because of the loss of specie that the withdrawal of the army and navy inevitably entailed. Fate and nature conspired to accentuate Boston’s grim dilemma when on March 23, 1760, a great fire swept over the western part of the town, burning out 225 families and destroying 176 warehouses.

In the midst of the atmosphere of economic dislocation caused by the great fire and the reorientation of the war effort, Boston’s trade received yet another shock on April 26, 1760, when Massachusetts customs officers seized John Erving’s brigantine Sarah. Despite his membership on the Governor’s Council, Erving was an active entrepreneur of trade with the Dutch republic. During the 1750s, he had devised a scheme whereby his vessels would first load cargoes of tea, paper, and other European manufactures in Holland and then touch at Scotland’s remote Orkney Islands (Erving’s birthplace) to give the appearance of compliance with the Navigation Acts.

Even though in 1756 (the low ebb of England’s fortunes in the Seven Years’ War) a number of the town’s principal merchants had signed an agreement to inform on smugglers in the Dutch trade, Erving was by no means the only prominent Bostonian engaged in illicit trade. Smugglers besides Erving, Bourn, and Davis included royal councillor and war contractor Thomas Hancock, town clerk William Cooper (the brother of the Reverend Dr. Samuel Cooper), future patriot William Molineux, the experienced intriguer John Rowe, and the irascible Thomas Boylston. Their affairs in Holland were usually handled by Thomas and Adrian Hope or John Hodshon, who ran the Amsterdam branch of the family business in partnership with his brother William Hodshon, a leading London merchant. Before the seizure of the Sarah, Bostonians carried on this highly dangerous, but enormously profitable, trade with seeming impunity.

That era ended, however, with the seizure of Erving’s vessel. In examining the brigantine’s cargo, William Sheaffe, a minor figure in the Boston customs establishment, discovered Dutch manufactures that had not been properly cleared in Great Britain. Erving inquired if he could rectify the situation either by paying duties on the
goods or by sending them on elsewhere. Sheaffe, however, after con­sulting with one of the Crown's chief legal officers, seized the entire ship and cargo in the name of George Craddock, the temporary collector of the port appointed during Barons's suspension. After an unsuccessful visit with Craddock, Erving refused to allow the unlading. He desperately hoped to base his defense on the grounds that even though Dutch goods were on board, no breach of the Acts of Trade had been committed as long as he had not broken bulk. Craddock persisted, claiming that he knew "there was something of value hid clandestinely on board and that he [Craddock] was very poor and expected to get Two Thousand pounds Sterling for his share." Erving retorted that Craddock would be very disappointed for "the whole vessell and Cargo would not amount to half the sum." Nevertheless, when the admiralty court heard the case, Erving made a tacit admission of guilt by agreeing to settle, or "compound," for a fine of £555 4s. 4d., half the value of the seizure.\(^\text{16}\)

The news of Erving's misfortune, as well as the progress of Benjamin Barons's efforts to win reinstatement to his post as customs collector, must certainly have been among the topics discussed at the meeting of the Boston Society for Encouraging Trade and Commerce (BSETC) held only two days after the seizure of the Sarah.\(^\text{17}\) At any rate, the news of Barons's formal vindication before the Commissioners of Customs in London was known shortly after the BSETC meeting. On May 12, John Rowe informed a correspondent, "It gives me great pleasure to tell you, that Mr. Barrons was Restored his office without any Solicitation thro' his friends, &c.," adding that Barons would now be safe from the "ill nature" and "cruel treatment of Mr. L[echmere]." On May 19, within a week of Rowe's letter, the Boston newspapers trumpeted the news of Barons's reinstatement. The merchants would soon have their favorite restored to them.\(^\text{18}\)

The impending departure of Massachusetts governor Thomas Pownall further complicated political configurations among the merchants at this time. The merchants, who regarded Pownall as a special friend and protector, presented him with an especially effusive farewell address prior to his departure for England on June 3. The address noted Pownall's care for commerce and thanked him particularly for his efforts in saving them from the burden of naval impressments, concluding that nothing in his "Excellancy's power had been wanting that might prevent, soften and alleviate the Inconveniencies
and hardships to which Trade is exposed in time of war.” Nor were the merchants beyond inserting an editorial mention of their conflict with the customs service, adding that they hoped Pownall would use his influence on their behalf in England since he was sensible of “the peculiar disadvantage and Pressure that now lie upon Trade.”

With the departure of Pownall and the arrival of Francis Bernard as their next governor, the merchants found themselves victims of a disadvantageous exchange. In Pownall they had had an understanding friend, easily disposed to overlook breaches of the Acts of Trade. Bernard, however, burdened by the necessity of providing for a large family, would vigorously pursue customs violations not only as a duty of his office but also as a means of augmenting his income: the governor received a one-third share of any seizures made within the province.

Throughout the years of Governor Bernard's administration, the Boston merchants looked wistfully to Pownall as a potential ally and someone who might paint a more favorable picture of them to the London authorities. Certainly, soon after his departure, they were eager to poison Pownall's mind against Charles Paxton, the surveyor and searcher of customs at Boston and Barons's chief enemy within the customs service. In his eight-year career as surveyor of customs, Paxton had won an unenviable reputation as the most active of all the customs officers in making seizures. Much of his success came from the large sums he promised private informers, the cost of which was deducted from the proceeds of the seizure, as were the general expenses of the admiralty court trial and condemnation. According to the provisions of the Molasses Act, the gross proceeds of a seizure were divided one-third to the province (on behalf of the king), one-third to the customs officers filing the libel, and one-third to the governor. Because the Massachusetts vice-admiralty court habitually deducted all expenses from the province's share, Paxton did not lose anything by offering such large amounts to secret informers. He also gained additional profits in any admiralty court condemnation through his offices as the court's marshal, storekeeper, and vendue master (auctioneer).

Paxton took the two major actions in 1760 that stung the merchants. In mid-May, just prior to Pownall's departure, he seized twenty-six hogsheads of rum (worth £544). Then, in mid-August, he and Nathaniel Hatch seized the schooner *Success*, and Paxton claimed
as his share the right to bring a suit against its cargo for four chests of tea worth £240. In each instance, charges ate up a large part of the value of the seizure: £146 in the former case (£90 of which was allotted for private information) and £105 in the latter. Suitably inflamed against Paxton, the merchants did not miss the opportunity to misrepresent his conduct to Pownall when the customs officer attempted to ingratiate himself with newly arrived Governor Bernard. Paxton tried to assist the impecunious new governor by furnishing him with a list of values for a number of items of household furniture Pownall had left behind to be auctioned, and for which Bernard was the most obvious potential buyer. Thomas Hancock, who acted as Pownall’s broker in the transaction, wrote the former governor that he “was very vexed & I dont thank Paxton for doing you this piece of service.”

Soon after Bernard’s arrival on August 2, Barons himself returned to Boston to resume his post as collector. Within a week, the Boston Society for Encouraging Trade and Commerce called a meeting to discuss problems affecting “the trade.” Among the likely topics of discussion, together with any special information that Barons might have brought back, were Paxton’s recent seizures and the news that the Royal Navy was again making seizures at Monte Cristi and elsewhere in the Caribbean. When the same news arrived on the other side of the Atlantic, secretary of state William Pitt became so incensed that he immediately dispatched a circular letter to the royal governors of British North America, urging them to greater vigilance in their efforts to cut off trade with the French, “particularly to the Rivers Mobile and Mississippi.” He commanded them that it was “his Majesty’s express will and pleasure they put the most speedy and effectual Stop to such flagitious Practices so utterly subversive of all Law and so highly repugnant to the Honor and Wellbeing of this Kingdom.” A number of influential historians have cited Pitt’s letter as the opening salvo in the British government’s campaign to bring the trade of the colonies back within the parameters of the navigation system after decades of “salutary neglect.”

Bernard, who had much to learn about his new government, replied to Pitt’s letter by saying that he knew of no illegal trade between Massachusetts and French Louisiana, nor did the Governor’s Council, to whom he had referred the issue. Although Bernard might have been misled by artful men in the Council, such as Erving and Hancock, both of whom sat on the committee that considered the secretary of state’s letter, the merchants themselves recognized the
economic necessity of keeping open trade with the French West Indies. 24

At this very moment, a number of Boston’s principal victims of the British crackdown on illicit trade were at work plotting the course of their legal appeal to the High Court of Admiralty in London, an appeal that eventually would bring them restitution for the seizure of their vessels. On September 20, 1760, Newport merchants Isaac and Napthali Hart wrote to Melatiah Bourn, enclosing a letter from their brother in London, who was handling the appeal of their sloop *Penguin* and the four other Massachusetts vessels seized along with it at Monte Cristi the year before. Abraham Hart urged them to send more money, warning that if he was not well supplied with an ample amount of cash “at the time the suits are ready for trial Admiral Cotes [who was prosecuting the seizures] will take advantage of it and the appeals [will] be dismissed.” “The truth of it is . . . ,” concluded Hart, “these cases are Determined by the Resolution of the Council of State or Privy Council.” Nevertheless, he would “be glad if you and others will get all the Attestations properly authenticated proving Admiral Cotes’s trade with the French particularly the loading of his Majesty’s ship *Lively* at Port au Prince . . . Such Attestations will be of great use & we shall want to exhibit them to their Lordships.” 25 Thus the Boston merchants chose a judicious mix of bribery and justifiable extortion in their efforts to combat the Royal Navy’s attempt to restrict their trade in the West Indies with the hostile French.

Despite the unwillingness of William Hodshon and several other prominent London merchants to undertake the management of the Monte Cristi appeals, the initial hearings on related cases were favorable, and the *Boston Newsletter* on October 1, 1761, heralded the news that “the Trade to Monro Cristo is now so well established” that the High Court of Admiralty had ruled “that every British Subject had an undoubted Right of purchasing French produce in every Neutral Port in America, or Europe . . . [as long] as the Apellants swore they had not corresponded directly with the French.” By the time the cases involving the Harts and their Boston allies came to trial, the following winter, the precedent was so firmly established that restitution was almost automatic. 26

Barons’s efforts to curry favor with the Boston merchants won him the jealous animosity of Governor Bernard and senior members of the customs establishment. The merchants, however, rallied to
their friend's defense in the early months of 1760. Squeezed by hard times and a British crackdown on trade with the enemy in the Caribbean, the merchants clung to the hope that Barons might be restored—otherwise all the most profitable avenues of illicit trade would be cut off.

**Barons Seeks Revenge, August 1760—March 1761**

Since his return in early August 1760, Benjamin Barons had been careful to conform to an outward appearance of discretion, even to the extent of publishing notices warning the merchants against illicit trade. Inwardly, however, Barons was laying plans both to avenge himself on his enemies and to win popularity with the merchants by hamstringing the power of the vice-admiralty court and the local customs service. Insinuating himself with the disaffected councillor John Erving, Barons told him that he had been “greatly imposed upon” in the seizure of his brigantine *Sarah* and that Barons wondered that Erving should “submit to such ill treatment.” Before parting company, Barons added that he would be glad to give the councillor “any assistance to redress himself.” Not long after, on November 3, Barons appeared at the office of William Story, the register (or record-keeper) of the Massachusetts Court of Vice-Admiralty and demanded copies of all documents and bills of cost pertaining to three seizures: those of Erving’s brigantine *Sarah*, the schooner *Success*, which had brought the four chests of tea from Rhode Island confiscated by Paxton, and a sloop recently seized by Nathaniel Hatch on its outward voyage after landing a cargo of foreign rum at Casco Bay. Barons’s plan was now afoot to expose to public view the large sums the vice-admiralty court paid private informers. By publicizing such information, Barons would render Paxton’s name even more odious among the merchants than it was already and would make it nearly impossible for customs officials to continue to obtain the secret information that led to most seizures.

In the course of his conversation with Barons, Story mentioned that Nathaniel Hatch had only just made yet another seizure, this time thirteen hogsheads of brandy (worth £234). Incensed that he had not been informed about a seizure made by a subordinate official within his own port, Barons now at least knew the extent to which he had been isolated by the rest of the customs establishment.
Encountering the disgruntled collector five days later, George Craddock, who was deputy judge of the vice-admiralty court as well as a customs officer, told Barons that he hoped he would soon have the honor of condemning Hatch's seizure. Huffily, Barons retorted that he was not anxious to see the brandy condemned and stormed away from the perplexed Craddock. Governor Bernard tried privately at first to dissuade Barons from his opposition to Hatch's seizure. (Barons had now made his principal objection to the seizure the fact that the brandy was being libeled as "distilled spirits," which meant that under the provisions of the Molasses Act the province's share would have to bear all the costs.) When persuasion failed, Bernard, together with Surveyor General Lechmere and admiralty court judge Chambers Russell, confronted Barons sometime in mid-November and warned him against insubordination. But it was too late; Barons had already begun to break with the admiralty court and customs establishment—a break that would soon lead him into open antagonism with the entire government party.

As well as giving Erving the accounts of cost in the three seizures, Barons apparently gave a copy to Benjamin Hallowell, Sr., Boston's leading shipwright and an influential figure in the mercantile community. According to later testimony from Paxton, Hallowell had "for some years past . . . publicly professed himself an enemy to the court of Vice-Admiralty in this province, and hath declared the same to be a Nuisance! and ought to be laid aside!" Armed with the information from Barons, Hallowell told province treasurer Harrison Gray that he had seen amazing accounts of costs in the admiralty court proceedings. He admonished Gray that it was his duty to protect the provincial treasury from the deduction of unwarranted expenses, but suggested that Gray not do anything further until Nathaniel Hatch's most recent seizure was condemned—an event that eventually took place on November 17. Gray did not wait for the condemnation, however, he appeared almost immediately at the vice-admiralty court to demand the same records that Barons had requested earlier. Soon after this, Hallowell came to Gray again, saying he had been threatened not to involve himself further with the affairs of the vice-admiralty court and asking him as a friend to desist in the inquiry. Innuendo and intimidation were weapons that both sides would use with good effect before the affair was over.

At the same time that the breach between Barons and the
rest of the customs establishment was growing ever wider, Governor Bernard appointed Thomas Hutchinson as chief justice. This fateful action gained Bernard the undying enmity of James Otis, Jr. Otis, a rising member of the Massachusetts bar, had solicited the first vacancy on the Superior Court for his father, a prominent Barnstable County politician. Despite Otis's request, Bernard appointed Hutchinson on November 13, and sometime shortly thereafter the young lawyer, "vowing to set the province in a flame," resigned his commission as deputy advocate general. Although the office brought him nearly £200 a year, Otis abandoned the service of the admiralty court and joined Barons in the fight against his former employers. Although Otis and Barons had previously been "at such variance as not to speak to one another," their common enmity for Bernard soon made them close allies. Otis's defection from the government party at this time was a particularly severe blow, for he was in the midst of an investigation of illicit trade initiated in August 1760 by advocate general William Bollan on orders from the secretary of state. 32

If Otis were looking for a way to set the province aflame, he could not have picked a better place to begin intriguing than with Barons and his merchant confederates. Sometime in late November, John Rowe requested from William Story yet another copy of the admiralty court costs and asked that it be sent to Otis. Thus according to Tory historian Peter Oliver, "Otis engrafted his self into the Body of Smugglers and they embraced him so close as a Lawyer and useful Pledger that he soon incorporated with them." During the next few years Otis became the chief spokesman for the most radical elements of the merchant group. 33

While Otis was at work preparing the legal attack against the admiralty court, Benjamin Barons was busily intriguing his own. According to Paxton's later testimony, Barons approached him at this time in an effort to persuade him to resign his admiralty court functions: "My dear Paxton I would give five hundred pounds Sterling were you not an Officer of the Admiralty. I am sure you would join with me to demolish that . . . devilish court." 34 After being spurned by Paxton, Barons then moved to undercut him by bribing away Paxton's chief informant, the ever useful Ebenezer Richardson, since 1754 a veritable storehouse of information for the government party in matters of illicit trade and political intrigue.

Suspicious of a note from Barons asking Richardson to meet
him after dark on December 4 and wary that it might be a trap set by smugglers, Richardson armed himself with a hatchet hidden under his heavy cloak before he set out through the narrow streets to the collector’s house. Much to Richardson’s surprise, Barons greeted him warmly, saying that he heard that Richardson had been very useful to Paxton as an informer. Barons then observed that his money was as good as Mr. Paxton’s and offered him double whatever Paxton would pay. According to Richardson, Barons then issued a warning: “If I would leave Mr. Paxton and engage in his service and be true to him, he would make me, and if not he would ruin me Eternally.” Richardson demurred, asking for time to consult his friend and patron the attorney general, Edmund Trowbridge, in whose service Richardson had begun his career as an informant. Barons’s resentment flared at the mention of Trowbridge’s name. “That will not do,” Richardson quoted Barons as saying. “He is a Governor’s man, And the Governor, The Judge of the Admiralty and Paxton are all of a Club, but I will make the Governor know his driver and that I am his driver.”

Regaining composure, the collector then asked Richardson how much Paxton paid him. Richardson cautiously replied that he supposed he was paid what was in the bills of cost, but Barons was not satisfied with the answer, saying he thought the governor and the judge shared most of the money that was allowed for private information. “Finding Mr. Barons so free, and being desirous of knowing his real design,” Richardson ventured to say to him, “Sir, I have heard you are frequently in Company with some Merchants that are concerned in Illicit trade,” and mentioned John Rowe, Benjamin Hallowell, and Solomon Davis. Barons replied, “I know they are as well as you,” and laughingly added, “I tell them they must take care.”

Having led the collector into such an indiscretion and now clearly the master of the conversation, Richardson drew Barons along further by hinting at the promise of information. He asked if provisions bonds (required of the masters of vessels carrying grain lest food be shipped to the enemy) were not forfeit when masters landed a cargo of provisions in non-English ports. Barons responded that indeed they were and asked if Richardson knew of any such instances. Richardson then mentioned merchant Arnold Welles’s vessel, which had carried a cargo of provisions directly from Boston to a Dutch port and asked if Barons, as collector, did not still hold the bond. Barons said that he did but added, “It will not do to meddle with him, for his
father [Samuel Welles, an Inferior Court judge and member of the assembly] is a man that [has] great Influence here." Customs bonds when put to suit would have to be heard in common law court, where neither jury nor judge, in this particular case, was likely to be very sympathetic.37

In an effort to belittle the importance of the information Richardson had just given him, Barons commented that he had word of a number of illegal importations and that he had made no seizures because he didn’t want to "distress the people." Barons concluded the interview by admonishing Richardson again not to let Paxton know of their conversation. The informer departed, promising to give Barons an answer soon on the business arrangement the collector had proposed.38

Out of loyalty, Richardson consulted with Attorney General Trowbridge, outlining Barons’s proposition in vague terms. Trowbridge advised that it was a scheme of some of the merchants to prevent seizures. Richardson then returned to Barons, saying he was not interested in the deal. Barons, however, was quite “fierce” and adamantly refused to let him go. At this point Richardson became so frightened that he dared not tell Barons he had spoken to Trowbridge. The next day, however, he went to Trowbridge with a complete account of his conversations with Barons.39 Once the government party was in possession of such information, any compromise between the warring parties would be unlikely; Bernard and Trowbridge must have known that testimony like Richardson’s would be damning for the collector in England.

The Boston Society for Encouraging Trade and Commerce met again on December 15, soon after the exchanges between Richardson and Barons. The merchants considered a resolution of thanks to Barons for discovering such frauds in the admiralty court, but Otis, who was now serving as legal counsel to the merchants, sent Barons a message telling him of the proposal. Barons was thus able to return a message asking that his name be kept out of the proceedings.

The principal order of business at the meeting, however, was framing a petition to the House of Representatives, requesting that the province treasurer, Harrison Gray, be authorized to sue those persons who had illegally siphoned away money due to the province on behalf of the king as His Majesty’s share of the proceeds of seizures for illicit trade. The fifty-nine petitioners to the House of Represen-
tatives included eleven known smugglers, among them John Rowe, John Erving, Jr., Arnold Welles, William Molineux, John Avery, Melatiah Bourn, and Solomon Davis. Suspicion of smuggling runs high about eight other petitioners because of their heavy involvement in trade with the French. The political connections of the petitioners are clear: two were current selectmen and six would be in the future; one was a sitting member of the Governor's Council and four were future members. Future patriots outnumbered future Loyalists by a two-to-one margin, although almost a quarter of the group died before the outbreak of hostilities with Britain.40

On December 19, the House voted to hear the merchants' petition through their counsel (Otis) and invited all interested persons from the vice-admiralty court to attend. On December 24, the hearing was duly convened, and a joint committee of the House and Governor's Council was appointed to investigate the matter further. Among the committee members were two of the Boston representatives, Royal Tyler and Samuel Welles, as well as councillor John Erving, Sr. Neither Erving nor Samuel Welles, who was both a judge of the Court of Common Pleas and the father of two of the petitioners, was a disinterested party. The committee reported that from August 4, 1753, to November 17, 1760 (the date of the condemnation of Nathaniel Hatch's last seizure), the admiralty court had billed £484 1s. 11d. in "illegal" charges to the province's share of the proceeds of customs seizures, and that over £282 of the amount had been spent for "private information." On January 13, 1761, after considering the report and making a few slight deductions from the total, the House passed a resolution empowering treasurer Harrison Gray to demand £475 9s. 11d. from the vice-admiralty court.41

In a message to the House of Representatives on January 16, Governor Bernard desperately attempted to block the suit by objecting that since the money was in fact the king's revenue, it ought to be sued for by His Majesty's attorney general and not by the provincial treasurer, an objection that even Thomas Hutchinson regarded as "really of no weight." On January 27, a new resolution was brought in, still designating Gray to appear as plaintiff on the province's behalf, but this time naming as defendant Charles Paxton, the admiralty court officer who allegedly held £345 of the province's money. When Bernard realized just how unpopular further opposition would be, he summoned the Council, who advised him to waive his objec-
tions “how well soever Founded.” Consequently, Bernard assented to the vote on January 31, just prior to proroguing the meeting of the General Court. 42

In the midst of his controversy with the legislature, Bernard found time to report home to John Pownall, the secretary of the Board of Trade and the brother of Massachusetts’ former governor. “Mr. Barons had plaid the Devil in this town,” Bernard fumed:

He has put himself at the head of a combination of Merchants all raised by him with the Assistance of two or three others to demolish the Court of Admiralty & other Customs house officers, especially one [Paxton] who has been active in making seizures.

Bernard reported to Pownall that although he was “naturally not concerned” in the business, he had endeavored to prevent Barons from causing a tumult and expressed his disapprobation of the proceedings of the General Court, for which Barons and his confederates had turned their fury against him. “There never existed,” concluded Bernard, “such mischievous folly in all my acquaintance of mankind as this gentleman.” 43

After the proroguing of the assembly, the controversy began to spill over into public print. On February 2, 1761, a formal printed notice appeared in the Boston papers announcing that Charles Paxton and Robert Temple had seized the ship Swallow with ten chests of tea on board. In an effort to expose as hypocritical the merchants’ recent remonstrations to the General Court, Paxton caused to be reprinted beneath the seizure notice a copy of the 1756 agreement to inform on smugglers in the Dutch trade. Although many of the signers had subsequently disavowed the agreement, a number of merchants were embarrassed by the advertisement, especially because it included the names of nine of the petitioners to the General Court and two such active participants in recent events as John Rowe and Benjamin Hallowell, Sr. 44

Two weeks later the merchants struck back in the pages of the Boston Gazette, printing an extended account of their version of the proceedings against the admiralty court. Concerning the petition to the General Court, the writers of the Gazette claimed,

No small pains have been taken to make it believed that this memorial was designed to encourage illicit trade: but nothing can be more groundless and base than such an insinuation. . . .
Everybody knows that there may be an illicit disposal of forfeited goods as well as an illicit trade; and must despise the man, whoever he may be, who while he would fain be thought in earnest, to discourage the latter, is not ashamed of the former.

The authors went on to accuse that "seized goods have been inventoried by false names in order that another disposition of them might be made than what the act of parliament expressly prescrib'd." (This was, of course, a direct reference to Nathaniel Hatch's labeling thirteen hogsheads of brandy as "distilled spirits" under the provisions of the Molasses Act.) The Gazette concluded that the petition of the merchants "discovered so strong and disinterested regard to publick justice that one cannot but wonder it should even be whispered that it proceeded from persons disaffected to the government." And yet such an accusation had indeed been made by persons whom, the Gazette was quick to note, were said to be those most deeply concerned in the illegal and unjust practices that the petition had attacked. The patriot writers called the accusations "a malicious slander . . . upon a number of the most respectable inhabitants of this province." By initiating a counterattack in the newspapers, Otis and the editors of the Boston Gazette hoped to turn back the charges against Barons and his merchant allies.45

On March 2, the editors of the Gazette struck again, this time in an ad hominem attack on Paxton. Under the transparent guise of a satirical history of "Charles Froth, Esq.," the editors flayed Paxton's character and laid open his relationships with leading members of the government party. Describing Froth as "the second son of a family of indifferent circumstances," the editors followed him through his early career as a vendue master of the admiralty court ("being well-versed in slight of hand, he could vibrate, and flourish a mallett, as dexterously as a German kettle drummer") to his assumed role as a gentleman and his efforts to ingratiate himself with "Sir Thomas Graspall" (Hutchinson), whose chief occupation was the accumulation of justiceships. "As to moral principles," remarked the Gazette, "twas believed [Froth] had none; his character was remarkable for insincerity, pride, haughtiness and deceit." The author of the satire then took direct aim at Bernard himself as "another of Charles's intimates" who had profited by the mysterious goings-on at the admiralty court. The article charged that Bernard, who had been impoverished by the purchase of his commission, wanted "to canvass
money [so] fast" that "he drove on like a fury; and in a short time
from nothing got about twenty thousand pounds sterling, which soon
made a whirligig of his head," so that now he thought of himself as "a
great man" and has assumed "monstrous airs." The satire struck such
a responsive chord that Otis was forced to publish a public denial of
authorship in the next issue of the Gazette. 46

In the fall of 1760, Barons first sought to strike back at his
customs house rivals by revealing to the public the large amounts of
money that the vice-admiralty court had habitually paid to profes­
sional informants. Such revelations caused predictable furor and
prompted the merchants to retaliate through their proxies in the
General Court by filing the case of Gray v. Paxton and challenging the
legality of the writs of assistance. At this time, Barons’s cause also
became fused with the Otis family’s private pique against Bernard
and Hutchinson. The younger Otis would prove invaluable to the
merchant-smugglers both as a courtroom advocate and as a news­
paper controversialist, supplying them with a deeper ideological basis
for their cause and a broader popular appeal.

Barons’s Second Suspension, April–December 1761

While the editors of the Boston Gazette were carrying on the counter­
attack with such success, Barons’s personal situation was deteriorat­
ing rapidly. In his capacity as collector, he had admitted the Swallow
to a legal entry (aboard which, it will be remembered, Paxton and
Temple later found ten chests of foreign tea). Barons had unfortu­
nately accepted at face value the master’s declaration that the Swal­
low was bound in from Tenerife in the Canary Islands with only a
small cargo of wine aboard. When the condemned sloop was sold at
auction, none of the Boston merchants would bid on it, and thus the
Swallow sold for only £40 sterling, a bitter disappointment to the cus­
toms officers. As Surveyor General Lechmere debated the advis­
ability of sending Barons back to England once again, this time to
explain his role in the recent proceedings, Paxton seized the oppor­
tunity to present Lechmere with a long list of charges against Barons.
The list included assertions that the wayward collector had endeav­
ored “to abolish and render inactive the Court of Admiralty” and “to
intimidate and prevent the Custom house Officers from doing their
duty.” Paxton further claimed that Barons had “stirred up and promoted the Merchants of Boston” so that they would no longer submit to the Acts of Trade and had “contrived and promoted a general Persecution against . . . Charles Paxton for no other Cause or Pretence but his extraordinary Diligence in preventing Illicit Trade.” The charges also mentioned that Barons had in the presence of Robert Temple said that “writs [of assistance] were against law” and publicly declared that “if the Governor did not give up Mr. Paxton . . . to the Resentment of the People, his government would be made uneasy to him.”

Upon receiving the charges, Lechmere requested in writing that Bernard and admiralty court judge Chambers Russell help him make a full inquiry, and on February 18 they convened the first secret hearings on the matter. From February 18 to April 16, Bernard, Lechmere, and Russell heard a long series of witnesses, including customs house officers Paxton, Temple, and Hatch; admiralty court officials George Craddock and William Story; Attorney General Trowbridge; and the informant Ebenezer Richardson. At the conclusion of the hearings, Paxton’s charges, together with the witnesses’ depositions and the tribunal’s decision against Barons, were sent to the Board of Customs in London. The tribunal heard all the depositions in secret, and even though several Boston merchants (John Erving, Sr., John Rowe, Benjamin Hallowell, Sr., and Solomon Davis) were mentioned by name, neither they nor Barons were given any opportunity to speak in their own defense. Two of the participants in the hearings, admiralty court register William Story and Thomas Hutchinson (who in his capacity as chief justice had taken the deposition of deputy admiralty court judge George Craddock) would later suffer greatly because of their role in the proceedings.

Confident that the secret depositions would do their work when read in England, Francis Bernard believed by late April that the fury of the Barons affair had begun to subside and that the government party was once again firmly in control. In an effort to explain away the extraordinary events of the last few months, Bernard reported to John Pownall that “Barons was made a tool of by the Merchants, and they were made the tools of 2 or 3 designing men in the house.” He hastened to add, however, “I have the strongest assurance that the persons that have given me the most trouble intend to act a different part for the future.” Within days of writing the letter,
Bernard would find himself sadly mistaken, for a new incident had shattered the ostensible calm and prompted Bernard and Surveyor General Lechmere to suspend Barons again even before the Board of Customs had time to review the charges against him.

William Pitt’s circular letter to the North American governors commended their attention to choking off “the most pernicious Trade carried on by the King’s Subjects . . . to the French Settlements on the Continent of North America, particularly the Rivers Mobile and Mississippi.” Bernard had responded the previous November, after consulting with the Council, that he knew of no illegal trade between Massachusetts and French Louisiana; therefore he doubted that any of the citizens of his government were involved. Sometime on either April 29 or 30, however, Charles Paxton came to the governor with information that the sloop *Pursue*, laden with a rich cargo of indigo and animal skins from New Orleans, was anchored behind one of the islands in the outer harbor, awaiting an opportunity to run the French goods ashore. Acting quickly, Bernard dispatched Gideon Thayer, the deputy sheriff, together with a file of soldiers from Castle William (the fort guarding the entrance to the inner harbor), to help comptroller Robert Temple make the seizure. 50

Barons—who the day before had allowed the mate of the *Pursue* to enter the sloop as bound in from St. Thomas with a cargo of only three hogsheads of molasses and two of sugar—moved with equal speed. No sooner had Temple and Thayer seized the sloop than a boat came alongside. One man in it said he came from Mr. Barons with an order to seize the vessel and demanded possession of it. Denied permission to come aboard, Barons’s men attempted to clamber over the gunwales of the sloop until one of them received a slight prick from a soldier’s bayonet. At this point, Barons’s men desisted and went off, though not without “Many threats of Mr. Barons resentment.” 51

Desperate, Barons stormed into the house where Bernard was dining that afternoon, telling him “with great heat . . . that there was end of the Custom house, if the Governor was at liberty to employ soldiers of the Castle in preventing Custom house officers seizing contraband vessels & that he should send home a complaint of it.” Bernard defended his role and told Barons that if he had a claim on the vessel, he could make it in admiralty court when the case came to trial. Still smarting from his defeat the next day, when he en-
countered Gideon Thayer, Barons abused the sheriff “with very gross words,” swearing, “Damn you, you’re a pack of rascals, your Governor & all, and you may go and tell him so.” On May 28, Thayer filed a complaint against Barons before justice Richard Dana, who considered the case weighty enough to bind Barons over to appear before the next meeting of the Court of General Sessions. Not surprisingly, merchants John Rowe and Benjamin Hallowell, Sr., quickly volunteered to act as sureties for Barons’s £100 bond. Barons clearly blamed Bernard for Thayer’s suit and did not scruple in making his opinions common knowledge, even to the extent of vowing one day that he would have “satisfaction” of Bernard if he ever met him “out of his government.” Barons further declared that Bernard would not be the governor in Massachusetts two years longer and hazarded to predict who his successor would be.52

These latest excesses proved too much. On June 20, Surveyor General Lechmere informed Barons that he was once again suspended from office. “It is with regret,” wrote Lechmere, “that I am obliged to write you after this manner, but real necessity calls for it, your unbecoming behavior toward the Gov’ has been such that I cannot help taking some notice of it.” Barons initially refused to recognize the suspension until Lechmere sent more specific charges outlining Paxton’s accusations against him. Once his fate was certain, however, Barons turned on Lechmere, filing a civil suit against him for £10,000 lawful money (Massachusetts currency, not sterling) in damages as recompense for his loss of income and the expenses he had suffered in being twice suspended. At the same time, Barons also filed suits against George Craddock—who again was his replacement—and Paxton, his chief accuser. Lechmere would have languished in jail, if government party councillor and ex-merchant Thomas Flucker had not posted bond for him.53

Even though the three last-mentioned suits were never brought to trial, the docket of the Inferior Court during the spring and summer of 1761 was already crowded with litigation pertaining to Barons and the merchants. The justices heard not only Deputy Sheriff Thayer’s complaint against Barons and Gray v. Paxton (the province’s effort to regain the funds siphoned away by the extraordinary charges of the admiralty court), but also Erving v. Craddock, a suit for trespass filed by councillor John Erving with regard to the seizure of his ship Sarah in May 1760. “The pretence for this last
action was,” according to Bernard, “that the Seizure was illegal . . . & that the payment of Mr. Erving was not voluntary but extorted by violence and duress.” “Upon this shadow of reason,” reported the governor, the two judges of the Inferior Court (one was Samuel Welles) directed the jury to find a verdict in favor of Erving and to “give him for damages every farthing he was out of pocket.” Bernard was further incensed that in his instructions to the jury, Welles had declaimed that “they must put a stop to the proceedings of the customs house officers,” because “if they did not, there would be tumult and bloodshed for the people would bear with them no longer.” Prompted by such instructions, the jury awarded Erving £600 in damages.

The proceedings in Erving v. Craddock were particularly remarkable, observed Bernard, since “Mr. Erving, according to the usage of these Courts, spoke a great deal for himself,” admitting everything necessary to prove that he had incurred a forfeiture and declaring that he had only acquiesced “in expectation that a time would come when he should have his revenge! a word he used several times to express the purpose of his conduct.” Even after the verdict, Erving boasted that the principal merchants of London would support him against any representations the governor could make. “It is generally understood,” concluded the governor, “that Mr. Erving’s is only the leading action to a great many others; and that if he meets with success, Everyone who has goods condemned . . . will bring actions against the officer who seized them.” Bernard watched anxiously as Craddock appealed the lower court decision to the August sitting of the Superior Court, where he hoped for a more favorable hearing from chief justice Thomas Hutchinson.

Charles Paxton was also forced to appeal when the lower court ruled against him in his case. An alarmed Bernard wrote to the Lords of Trade, characterizing the merchants’ suits as a systematic attack on the customs house and the Court of Admiralty “by overhawling the Decrees of that Court before a Jury” through “frequent Actions at Common Law.” According to Bernard, “the chief subject of the harangues of the Council for the plaintiff (and some of the judges too) were on the expediency of discouraging a Court immediately subject to the King and independent of the province & which determined property without a jury.” The lawyers also argued for the necessity of putting a stop to the practices of the customs house officers, for the people would no longer bear having their trade kept
under restrictions that their neighbors (that is, Rhode Island) were entirely free from. “One gentleman who has had a considerable hand in promoting these disturbances,” added Bernard, “has been so candid as to own to me that it was necessary for the ministry to interpose & procure them justice (as they call it) in repealing or qualifying the Molasses Act.” Thus Bernard saw the legal attack on the admiralty court as only the entering wedge of a wholesale campaign to prevent the renewal of the Molasses Act and perhaps nullify the other Acts of Trade.57

Even while Otis and the merchants were pressing forward their legal attack, Bernard and other members of the government party were intensifying their vilification of Barons in letters to England. On July 8, Surveyor General Lechmere wrote to the Board of Customs justifying his second suspension of Barons. He forbore charging Barons with collusion in recording the false entries of the Swallow and Pursue but noted that it was surely negligent for the collector to allow the captains to enter such small cargoes without inquiring further. Bernard, however, was less timid in his characterization of Barons: “I never met with [any]one like that Gentleman, so wonderfully wrongheaded and so wantonly mischievous,” he marveled to John Pownall. “I can truly say that all the trouble I have had in this Government is owing to him & his confederacy.” Pownall, the secretary of the Board of Trade, concurred that “the indiscretion of Barrons has been amazing,” noting that even his friends in England “all condemn him.” But Pownall cautioned that many in London regarded the expenses of the colonial admiralty courts as “shamefully exorbitant” and that such conduct in one or two instances had been “pretty severely censured.”58

During the August term of the Superior Court, Hutchinson and the other justices moved to support the beleaguered government party. Sitting without a jury in the case of Gray v. Paxton, they quashed the proceedings chiefly on technical grounds: that Gray did not have the right to sue ex officio for the province’s money. In Erving v. Craddock, Hutchinson forcefully summed up the case in favor of Craddock, but a Boston jury defied the chief justice’s instructions and awarded Erving £740 in Massachusetts currency in damages. Craddock, at Bernard’s encouragement, appealed the case to England, and Erving later discharged him from the judgment to avoid further legal expenses in the lengthy appeal process.59
The seizure of ten chests of foreign tea aboard the Swallow in early February 1761 enabled Charles Paxton to bring formal charges against Barons for continued neglect of duty. Governor Bernard and admiralty court judge Chambers Russell then made the fateful decision to take secret depositions against the collector, in which several Boston merchants were identified by name as smugglers without being allowed an opportunity to defend themselves. Before English authorities had time to act on Paxton’s charges, however, Barons was once again suspended for suspected complicity in the case of the Louisiana trader Pursue. Private animosities spilled over in a new round of court cases, which were decided in favor of Barons and his merchant confederates in the lower courts but later reversed by Chief Justice Hutchinson and the Superior Court.

Barons’s Last Offensive, December 1761–February 1762

Though defamed by representations sent to England by his superiors, Barons could at least soothe his hurt pride in the full sympathies of his merchant allies. “Poor B. Barrons the Collector is Suspended by that Old Fogrum Letchmere,” John Rowe wrote to a correspondent, adding that it was “the most Malicious thing that perhaps was ever done. The poor man is not only destitute £600 Sterlg. pr. annum but his peace of mind is Broke & his health much Impair’d.” On August 13, the Boston Society for Encouraging Trade and Commerce met to frame a petition on the collector’s behalf. The petition hailed Barons as “a Friend and Protector of the lawfull Trade of this Port” and charged that the circumstances surrounding his two suspensions gave reason to conclude that “private Pique” had gained “too great an ascendency” in the proceedings against him. Of the ninety-seven merchants who signed the document, thirty-eight had been among the petitioners to the General Court who initiated the attack on the admiralty court, and seventy-one were charter members of the BSETC. The list included principal merchants John Rowe, John Amory, John Erving, Jr., Thomas Greene, Nicholas and Thomas Boylston, Gilbert and Lewis Deblois, John Avery, and Benjamin Hallowell, Sr., as well as a number of prominent future patriots: Thomas Cushing, William Molineux, William Phillips, John Scollay, Royal Tyler, Henderson Inches, Joshua Henshaw, and Samuel Phillips Savage. A group that would be sharply divided later in the decade, they now exhibited
remarkable unanimity. Very few merchants, except those with close ties to the government, opposed the effort to reinstate the ill-starred collector.60

The merchants also appointed a separate committee to draft a covering letter for the petition addressed to Barons’s powerful friend, Admiral Sir Charles Hardy. “Nothing would have induced us to interest ourselves in a matter of disagreement between the King’s Officers,” the merchants professed to Hardy, “but a regard to the Reputation of a Gentleman whose behavior has afforded very general Satisfaction.” The petitioners hoped that they would “be looked upon as disinterested persons, not withstanding the pains that have been taken” to represent them in a different light. So far had they been from entering into combinations to elude the Acts of Trade that the merchants ventured to aver that in no part of the American colonies were illicit traders so proportionately few in number as in Massachusetts. Therefore they doubted that the commissioners of customs could believe that they had entered into a petition on Barons’s behalf so that they could carry on an illicit trade with greater ease. Barons, they concluded, is “an upright Officer neither disposed on the one hand to wink at the violations of the Acts of Trade to the prejudice of the Revenue, nor on the other to make a handle of them to injure & oppress the innocent Subject.”61

As the merchants’ letter suggests, much of their discontent at this time can be attributed to the sharp contrast between the punctilious way the Crown’s revenue laws were enforced in Massachusetts and the lax way they were administered in nearby ports. Seizure-hungry officers like Bernard and Paxton watched Boston Harbor carefully, while at nearby Newport, for the time being at least, the merchants and the customs officers appear to have reached an easy accommodation. In early September 1761, the Boston customs establishment advertised a £100 reward for information leading to the seizure of a ship reportedly laden with Dutch tea then hovering off the New England coast. When the ship in question, the Venus, was openly allowed to make a partial entry of its cargo at Newport before clearing for New York, the Boston merchants were outraged. Bernard saw the incident as symptomatic of a larger problem. “The Open & Barefaced disregard of the Laws of Trade, which is now carried on by the most dangerous practices in Rhode Island, has rendered the Merchants here no longer disposed to submit to the usual restraints,”
Bernard complained to Pitt (in a letter perhaps never sent). Summarizing the grievances of the Massachusetts trading community for the secretary of state, Bernard added,

The whole of the Merchants complaints may be reduced to this: That it is very hard that the Merchants of this Province, who desire at least as much favor as Any other of the Continent, should be restrained in their trade while their Neighbours are allowed to carry on an unbounded trade with any parts of the World they please. . . . It is a reasonable requisition That these distinctions be removed, either by letting the ports of this province be as open as those are, or by laying the latter under the same restraints that these are.

Bernard concluded by saying that he had assured the merchants of the reasonableness of their request and counseled them to be patient until the end of the war, at which time the ministry could turn its attention to administering Rhode Island more effectively.62

Even as the merchants were anxiously awaiting the results of their petition supporting Barons, some of the best informed among them had begun to lose hope. After a BSETG meeting on October 26, John Rowe wrote to his friend Thomas Saul, acquainting him with Barons's second suspension and hinting that Saul might use the information to his own advantage if he himself were interested in seeking the collectorship at Boston.63 One by one, the merchants began to desert their hapless confederate.

At the very moment Barons's American friends had begun to leave him, his fate was being decided in England. On December 12, 1761, Lord Barrington, the secretary of war, wrote Governor Bernard, his cousin by marriage, telling him that "Barons is turn'd out with the entire approbation of the Treasury, Board of Trade & Customs." According to Barrington, he was removed entirely on the basis of official representations against him.64

Although word of his dismissal could not have arrived before mid-February, Barons must have sensed that the tide was turning against him. In December 1761 he launched a hopeless, last effort to strike out against his enemies, involving private insinuation and public attacks in both the press and the General Court. He may have been assisted in his campaign by the newly arrived surveyor general, John Temple, who probably supplied the collector with the first de-
tailed account of the charges Paxton and Bernard had made against him. Certainly, Bernard later indicated that Temple had arrived in mid-November with “the most favorable intentions toward Mr. Barrons & had I believe predetermined (as much as he could without knowing the case) to restore him.” Once the savvy Temple learned the strength of the opposition against Barons, though, he quickly backed away from his dangerous new friend.

Throughout the fall, the courts continued to be a battleground between the merchants and their government party antagonists. On September 21 a new action was brought against Paxton for illegally withholding funds from the proceeds of seizures. Because the Superior Court had disallowed the earlier suit of Gray v. Paxton on the grounds that Harrison Gray could not sue in person for money rightfully belonging to the province, the new action against Paxton was brought in the name of the Province of Massachusetts Bay. By various means, Paxton was able to have the case continued until January, when the jury finally found for the plaintiff, and Paxton once again appealed to the next session of the Superior Court in hopes of a more favorable hearing.

On November 18, 1761, the famous case of the writs of assistance reopened before the Superior Court. The main elements of the case and James Otis’s role in it are too well known to need recounting here. Suffice it to say that the court had hesitated in granting a writ to James Cockle, the new collector at the port of Salem, when he applied in the fall of 1760. The information from England available at that time led a number of merchants to believe that both the form and usage of the Massachusetts writs were questionable; thus, a group of sixty-three merchants (a group almost identical to the petitioners to the General Court in Gray v. Paxton) requested the Superior Court for a full hearing on the legality of the writs. The hearing opened on the third Tuesday in February 1761 and ran for three days, during the course of which Otis delivered a speech so electrifying that John Adams later declared that it was on that day “the child Independence” was born. Chief Justice Hutchinson, fearing that Otis’s eloquence would carry the day, arranged to have the case continued long enough for him to obtain evidence from England that such general search warrants were routinely issued there by the Court of the Exchequer. Thus, when the court heard arguments again on the
case in November 1761, Hutchinson was able to produce a copy of the comparable writ used in England and to persuade his fellow justices to begin issuing the writs again to the customs officers.\textsuperscript{67}

In their next issue, the writers of the \textit{Boston Gazette} wailed with alarm. "Is it not notorious," asked a "Fair Trader," "that the Acts of Trade are nowhere executed with Rigor but in this Province?"

We are watched with the utmost Severity—Private Informers, the Disgrace of Civil Society, are multiplied and well paid at Our Own Cost. Uncustomed Goods are seized to the utmost farthing. . . . Writs of Assistance are now established and granted to officers of the customs who were not to have enough power over us before. . . . We ask no favor—[but] we complain of inequality and we have a right to complain. . . . Let us be on an equal footing with our Neighbours. . . . We want nothing but to be as free as they are, or that others should be restrained as well as we. This is reasonable . . . [and] WE HAVE A RIGHT TO CLAIM IT.\textsuperscript{68}

The Boston merchants were clearly seething with indignation at the seeming inequity of their predicament.

Two weeks later a heavily satirical article appeared in the \textit{Gazette}, arguing that trade under these circumstances was a great injury to Massachusetts and therefore ought to be stopped. But since trade was so beneficial to the mother country, the \textit{Gazette} concluded, England would never allow it to perish; therefore, the writers suggested putting all existing laws into "the most rigorous execution," which would surely stop trade more effectually than any other method. For such a purpose, the device of the admiralty court would serve nicely. "The merchants," the writers admitted, "will soon cry out . . . but what of it? Their clamours, I'll warrant ye, won't last till they can get themselves united in any one measure of opposition and until they are united \textbf{THEY WILL BE ABLE TO DO NOTHING TO EFFECT.}" \textsuperscript{69}

It was in this inflamed state of public opinion that Barons launched his last campaign to save his office. By this time, private reports had begun to filter back to Barons that his case was not going well in England. In a confidential letter to Melatiah Bourn, one of his chief allies, Barons pointed out some of the reasons for this lack of success. He had heard a rumor that the merchants' letter to the customs commissioners protesting his dismissal might actually do him a
disservice, since the British tended to view the Boston merchants as “turbulent” and suspected that they were “greatly concerned in illicit trade.” Barons hinted that such a characterization of the merchants probably came from Governor Bernard himself, but he suggested that Bourn take the matter up with the ship captain from whom he had heard the rumor. Barons requested only that no mention be made of his name in any subsequent discussion of the way the merchants were viewed in England. Still smarting from reports of the secret testimony taken against him, Barons remarked bitterly that Bourn might even want to take the sea captain’s affidavit, since the government seemed “so fond of depositions.” In one final parting shot, Barons mentioned another report that Lieutenant Governor Hutchinson had taken depositions against the collector “in a most private manner,” and he warned Bourn that “an equal caution on the part of the merchants may not be improper to be observed.” In his letter, Barons artfully poisoned the minds of the merchants against Bernard and Hutchinson in a way that would subsequently cause each official great pain.

Other sources soon confirmed the rough outline of Barons’s report. New Hampshire’s Theodore Atkinson received a report from a correspondent in England stating that Governor Bernard in his letters to the board had called all the merchant petitioners “rascals and smugglers” and that this had prompted the board to inquire of various London merchants about the truth of that assertion. According to Atkinson’s correspondent, when the board held hearings on the matter, they had “had scenes of iniquity opened to their view.” Thus the merchants now needed to defend not only Barons but themselves as well.

Throughout the trading community, word spread quickly of the interpretation that was being given in England to the merchants’ championing of Barons. In the midst of their most virulent attack to date on the writs of assistance, the writers of the Boston Gazette paused to assert that it “has been represented by these persons [the customs officers] and their patrons, as if we had combined to break thro’ all just restraints of the laws of trade and to force a free port.” And again in the Boston Gazette on February 1, James Otis, writing pseudonymously in one of his favorite poses as a rube from Salem, noted that he had heard that “the whole body of merchants is traduced, by scandalous narratives, and malicious misrepresenta-
tions, sent home by the very men who oppress them.” The merchants were now fully aware of just how deeply they had been implicated in Barons’s case and were ready to fight back with all the resources at their command.

Bernard quickly sensed the sinister change in tone of the newspaper articles and wrote nervously to Lord Barrington of an effort to libel the governor and inflame the public assembly. On February 2, 1762, the speaker of the house read a letter from Barons, which stated that one of the charges against him (information he could have had only from John Temple) claimed he had endeavored, by misrepresenting the governor’s conduct, to make a disagreement between the governor and the two houses of assembly. Barons’s letter asked the House to inquire into the matter and send its finding to England so that the charge would not be given any credence there. “I beg permission to conclude,” Barons added, “that ever since my being in this province I have endeavoured to demean myself with a becoming propriety to the laws and customs thereof.” He asserted that he had been “most falsely and maliciously represented as an encourager of illicit trade” and an instigator of “an unwarrantable clamor.”

Perhaps the House sensed Barons’s impending downfall; at any rate, it tabled the letter, never to raise it again for discussion.

Having failed in the General Court, the merchants announced in the pages of the Boston Gazette a special meeting of the BSETC on the subject of representations necessary to send home to England. The society met twice in the next two weeks, and on February 18 a committee of nine merchants, including John Rowe, John Avery, and Melatiah Bourn, drafted a second memorial on the Barons controversy. The committee noted that the society’s previous memorial was not intended “to serve or please any Party” but solely to do justice to one whom they regarded as “an upright tho’ much injured Gentleman.” The merchants added that they were “greatly surprized to find that they are now obliged to vindicate, not Mr. Barons only, but themselves too, from the unjust Aspersions” that had been cast upon them.

In the main body of their memorial, the merchants leveled specific charges against Charles Paxton: that he had acquired a large fortune in his capacity as a customs officer and functionary of the admiralty court, and that he had libeled parcels of brandy as “distilled spirits” in order to prosecute under the more remunerative
(for him) provisions of the Molasses Act. The merchants defended Barons's role in the writs of assistance case and even claimed that he was the only member of the customs service to advance money to support the Crown's side in the case. "We therefore look upon Mr. Barons," the committee concluded, "as very much abused, when he is complained of . . . as being principal in a confederacy with us to act in opposition to the Court of Admiralty." Barons had never attended their meetings, they asserted, nor was he ever, to their knowledge, made privy to any of their intentions.

No officer of his rank ever made so few connections with the Trade . . . [and] he is personally known to very few, otherwise than as Collector of his Majesty's Customs.

Moreover, we look upon ourselves as greatly injured by the Representation which Mr. Paxton has made of us. . . . We [only] complained of some unjust Attempt on our Rights [and] we obtained redress.

Further, the merchants claimed that the writs of assistance were "an unwarrantable stretch of Power and attack upon our Liberty." They presumed that "a legal Enquiry will never be charged to us as a Crime, which is the distinguishing and darling Virtue of English People: From them we sprang and like them we hate Tyranny." 75

The merchants, however, reserved their choicest words to describe Governor Bernard. They were indeed sorry they found it necessary to vindicate their own conduct because of the way he had represented their character; he was a gentleman from whom they had "a right to expect kinder treatment." They professed that their behavior toward Bernard had always been "very respectful" and that they were at a loss to account for his conduct, except to assume charitably "that a particular friendship for, and close connection with Mr. Paxton led him into it." The merchants concluded by requesting that should Bernard's letters contain any further accusations other than those that had appeared in Paxton's charges against Barons, they be allowed an opportunity to respond. 76 Hence, the focus of the merchants' concern had now shifted from attempts to restore Barons to an effort to clear themselves from the charge of their implication in illicit trade.

Leading merchants followed up the committee's memorial with correspondence of their own. In particular, John Rowe wrote to
Messrs. Lane & Booth, one of the leading London merchant houses in the North American trade, noting, “It gives great uneasiness to most of us to see the usage and art which has been made use of to destroy . . . an honest man.” He added, “We find the merchants have been pretty roughly handled in a representation from our governor,” and requested that Lane & Booth “do what’s necessary to support our reputation,” and by all means “to get a copy of the Governor’s representation.” Ever the artful intriguer, Rowe was constantly scheming for the merchants’ advantage.

Meanwhile, as the merchants were venting their frustration in letters and memorials home to England, the Superior Court was sitting for the last time in the appeal of *Province of Massachusetts Bay v. Paxton*. At the conclusion of the oral arguments, in which the attorneys for the province had argued that the Court of Admiralty was “not congenial with the spirit of the English constitution,” Hutchinson “summed up the cause to the jury, so as to shew that the action had not been supported.” The chief justice instructed the jury in terms that admitted no misunderstanding that “money paid under a decree of a Court of Vice Admiralty cannot be recovered by an action at common law,” and cautioned them against departing from the rules of law, and consequently from their oaths, in order to comply with the popular prejudices of the day. The jury then held for Paxton. Thus, the legal effort initiated by Barons and his confederates ended in failure and frustration. In every instance except *Erving v. Craddock* (which had died of its own accord), Thomas Hutchinson had successfully intervened to check the merchants’ legal attack.

Historians searching for an explanation of the Boston radicals’ dislike of the Superior Court need look no farther. Within the month, the General Court had reduced the judges’ salaries and established a committee to consider a new proposal for changing their terms of tenure from the present arrangement, where they served at the king’s pleasure, to service “during good behavior.” The General Court also began at this time a campaign to prevent Superior Court justices from sitting in either the Assembly or the Governor’s Council, an effort that did not meet with complete success until Thomas Hutchinson was finally driven from his seat on the Council in 1768. The depth of feeling against Hutchinson can be gauged by John Adams’s fulminations in his diary almost four years later.
Who is it that has always given his opinion in favor of prerogative and revenue . . . ? Who is it that has endeavored to bias simple juries, by an argument as warm and as vehement as those of the bar, in a case where the province was contending against a customs-house officer? 79

It is clear that the memory of Hutchinson's actions in blocking Barons and Otis lingered long in the minds of the most ardent patriots.

Governor Bernard was less apt to credit Hutchinson as the principal upholder of the admiralty court's jurisdiction. In lamenting that he was no longer on good terms with the merchants, Bernard commented to Barrington that the merchants were "preparing papers to be sent home, which, I believe will answer no other purpose than to keep up the remembrance of things which they should desire be forgotten." A few of them, according to Bernard, "labour hard to get some clauses reflecting on me included: but I can't blame them; if it had not been for me, there would have been now neither Court of Admiralty nor Customs House here." Bernard added that he was not unsympathetic with some of the merchants' cries for redress; he only objected that "they don't use proper means nor take the proper time. I tell 'em again & again that they must wait for the conclusion of the peace . . . and assure them that at such time I will assist them to the utmost of my power." 80

"The last Effort of the confederacy against the Custom house & Laws of Trade" was made, as Bernard observed, on February 22, 1762, when James Otis introduced a bill that would substitute a provincial warrant for a writ of assistance. This warrant would require customs officers to swear before the Superior Court the name of the person informing on the customs violation and the place informed against. Such a warrant, Bernard noted, "would have been wholly inefficacious. This was covered with all the art the thing was capable of." Nevertheless, he boasted, "I was too well acquainted with the subject to be deceived in it. I had not the least doubt upon the first reading of it of rejecting the bill. Nevertheless it was very popular; & I knew negativing it would occasion a clamour." Therefore, rather than assent to the bill, Bernard prorogued the General Court. In commenting on Bernard's handling of the merchant agitation, Thomas Hutchinson observed, "A troublesome session of the General Court is at an end. The governor for the sake of peace complied, I think,
further than he would otherwise have inclined to have done with the opposers of the government and found by experience the truth of [Robert] Walpole’s saying that one expedient makes necessary a great many more.”

The high-water mark of support for Barons’s cause was reached in August 1761, when ninety-seven members of the Boston Society for Encouraging Trade and Commerce petitioned the Treasury on his behalf; soon thereafter his fortunes ebbed and one by one his friends began to drop away. Even Barons’s hints that the merchants themselves were implicated in the charges against him procured only a temporary revival of his cause. By February 1762, the confederacy of merchants to suppress the laws of trade and the vice-admiralty court had expired, as Thomas Hutchinson once again intervened in his capacity as chief justice to blunt their legal arguments.

The Collector’s Legacy, 1763–1770

Little is known of Barons’s career beyond this point. He evidently returned to England, for in March 1763 he presented a memorial to Lord Bute that reiterated the events of his own turbulent career. Barons blamed his woes on his enemies’ “Ill will and Malignity” and on his taking note of “some Irregular Proceedings of the Court of Vice-Admiralty . . . by which . . . his Majesty’s Revenues were greatly Lessened and Impaired.” Barons termed Bernard’s investigation of his conduct “a most unconstitutional and unprecedented Examination” and blamed it for his second suspension and “the utter ruin of [his] private fortune.” Barons was still in England late in the year, when Thomas Cushing, the new speaker of the Massachusetts House, recommended Barons to colony agent Jasper Mauduit as one “well acquainted with the nature of our Trade” and fit to be consulted on the colony’s campaign to prevent the renewal of the Molasses Act. By 1765, however, Barons was back in the colonies again, this time in South Carolina, where as deputy postmaster general he was meddling in public affairs in the aftermath of the Stamp Act furor.

Although Barons himself may have faded from the Massachusetts scene, his merchant allies continued to nurse grudges against their government party enemies. Hutchinson and the other justices
of the Superior Court were harried from their seats on the Council. In June 1768, Charles Paxton, then one of the newly appointed American commissioners of customs, was forced to take refuge at Castle William in the wake of a riot following the seizure of John Hancock's sloop Liberty. In 1769, Francis Bernard was hounded out of the colony, with a number of the formal articles of complaint sent home against him pertaining directly to his conduct in the Barons affair. Even the lowly Ebenezer Richardson met his due when he was nearly lynched in 1770, at the height of the nonimportation controversy, for discharging a gun into a crowd gathered outside the shop of one of the key importers and killing eleven-year-old Christopher Sneider.

Thomas Hutchinson, however, paid by far the greatest price when his house was destroyed by a Boston mob during the second Stamp Act riot on the night of August 26, 1765. At the time of the riots, Governor Bernard noted, “Everything that for years past had been the cause of any popular discontent was revived; & private resentments against persons in office work’d themselves in & endeavoured to execute themselves under the mask of public cause.” Chief among these old sources of discontent was “the affair of the attack upon the Admiralty and Customs House,” which, although it was at this time four years old, “was brought up again, & made as fresh as if it had been a business of yesterday.”

The reason for the revival of the incident, Bernard observed, was that Briggs Hallowell, the son of Benjamin Hallowell, Sr., had been in London two years before and had contrived to gain sight of the depositions that had been sent home against Barons. “Upon his return to Boston,” according to Bernard, Hallowell took it upon himself to report the substance of the depositions “with additions of his own & concluded with an assertion that the whole body of merchants had been represented as smugglers.” Hallowell gave a certain permanence to the report by reducing his story to writing rather than just recounting it orally. The paper soon made the rounds of all the merchants, causing great alarm because, according to Bernard, Hallowell had asserted “without the least foundation in truth, that they were represented at home by name.” Following Bernard’s version of events, “the Clamour as usual descended from top to the bottom of the town, and several persons’ houses began to be threatened.” In the governor’s opinion, “This was truly the Principal if not the Sole Cause of the second insurrection which has had such shocking Effects.” The
riot of August 26 began with a visit to Charles Paxton's, where a wise landlord bought off the mob with a barrel of punch. The crowd then moved on to the home of William Story, the register of the Admiralty, where they "took out all the Books & papers among which were all the Records of the Court of Admiralty, & carried them to the Bonfire & there burnt them." The evening reached its frenzied culmination when the mob broke into Thomas Hutchinson's house, destroying its elegant contents and scattering them into the street. 84

Hutchinson himself concurred in this interpretation of events. Concerning the depositions, the lieutenant governor later commented, they had all been seen at the Plantation Office by Briggs Hallowell, "who reported that complaint was made in them of John Rowe, Solomon Davy [Davis], and other merchants as illicit traders." According to Hallowell's version of the depositions, all the testimony had been sworn before Hutchinson, when in fact he had taken the affidavit only of deputy admiralty court judge George Craddock. Since Craddock's deposition contained no explicit references to any merchants except John Erving and since Hutchinson may well have never seen Paxton's and Richardson's damning evidence (which specifically named Hallowell, Rowe, and Davis), perhaps the lieutenant governor could honestly say that "he had not any knowledge of their names being mentioned." Such handy distinctions could do little to save him when, in the midst of the Stamp Act furor, the people "were easily induced to violence against any crown officers," and particularly Hutchinson, whom they suspected of having favored the hated new legislation. One source places John Rowe and Solomon Davis at the head of the crowd that night, and Hutchinson himself claimed that Rowe later acknowledged stirring "up the mob to attack the houses of the Custom House officers, . . . and the Chief Justice." 85

With the leveling of Hutchinson's stately mansion, the Barons episode came to a suitably indecorous close, but the luckless collector's shadow lingered over Boston politics. During the two-year battle to reinstate Barons, his smuggler allies had risen to important positions of leadership within the Boston Society for Encouraging Trade and Commerce and the town government, thus fulfilling advocate general William Bollan's prophecy of two decades before: "Unless effectual measures are Speedily taken to Stop this Growing Evil [smuggling]; the Illicit Traders will by their Numbers, Wealth and Wiles have got such power in these parts that Laws and Orders may
come too late.” Bollan had early warned that some smugglers might begin to justify their practices, “having persuaded themselves that their trade ought not to be bound by the Laws of Great Britain.” 86

The turbulent events of the early 1760s pushed smugglers like Melatiah Bourn and Solomon Davis to new prominence within the merchant community. It was they who first took up Benjamin Barons’s cause and gradually persuaded other more circumspect merchants that they were acting for the good of all. In forming the BSETC, they helped found an institution that would remain the mouthpiece of the Boston merchant community for the remainder of the decade, and they seized a leading role on its committees. The effort to reinstate Barons, though ultimately unsuccessful, taught Bourn and Davis important lessons about both town affairs and transatlantic politics. Driven by hard times to defend the economic necessity of smuggling and the West Indies trade, the patriots sometimes found recourse to bribery, insinuation, intimidation, and blackmail. To teach Hutchinson a lesson, they even resorted to violence. But their government party adversaries behaved little better, conniving to make the most profitable distribution of the proceeds of seizures and cavalierly disregarding the right of those they accused to see what was said against them before the charges were dispatched to England.

The Barons affair also enhanced the status of smugglers like Bourn and Davis in the eyes of their merchant colleagues. It brought them out from their unobtrusive seats beneath the balcony to center stage. Throughout the remaining years before the Revolution, they were repeatedly called upon to serve both the town and the patriot cause. Neither the smugglers nor their merchant colleagues ever forgot the lessons they learned in this the opening campaign of their struggle against British efforts to restrict their trade within the confines of the Navigation Acts. Petitioning became the constant business of the merchants during the long crusade against the anticommercial legislation of the Grenville administration, and the rough tactics of blackmail and intimidation later proved handy in the battle with some of their own countrymen to keep alive the nonimportation agreements. The Barons controversy was a formative event for Boston merchant patriots, consolidating their leadership and imparting shape and style to the movement that would blossom into maturity before the decade was out.