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Insurance as an Instrument of War in the 18th Century

by Geoffrey Clark*

In his famous essay on London's Royal Exchange, Joseph Addison marveled at the international concord produced when commercial men freely pursued their economic interests: "Factors in the trading world are what ambassadors are in the politic world; they negotiate affairs, conclude treaties, and maintain a good correspondence between those wealthy societies of men that are divided from one another by seas and oceans, or live on the different extremities of a continent."[1] But men with more than Addison's armchair experience of mercantile affairs had a less irenic view of international trade. Nicholas Magens, a merchant and insurer with a distinguished career and great authority among his fellows, argued that "the great object of a maritime nation should be, to take advantage of any rupture with another trading state, to destroy and distress their [*sic*] shipping, and commerce, and to cut off all resources for naval armaments."[2] Nowhere in 18th-century economic policy was the clash between the promotion of international trade and the beggaring of commercial rivals so keenly felt as in the British debate over the wisdom of insuring enemy ships in wartime. The controversy and the resulting parliamentary acts of 1746 and 1748 reveal a complicated and vacillating strategy by which the British sought to exploit their dominance of the international marine insurance industry for wartime advantage.

1. Insurance and war

Insurance contracts and war had been bedfellows as far back as the 15th century. From 1467, for example, Genoese law repeatedly prohibited insurance policies being made on the outcomes of battles or the falls of besieged cities.[3] These policies might well be taken out *bona fide* by merchants with goods vulnerable to seizure in war-torn lands. But the attraction of wagering on dramatic wartime contingencies was irresistible to gamblers, whose activities led by the early 17th century to legal suppression throughout Europe of both insurance and wagers on all such events.[4] Exceptionally, insurance and wagers on the outcomes of war remained unregulated in England until the early 18th century.[5] In this freewheeling environment, no less than £200,000 was wagered at London insurance offices on the outcome of the second siege of Limerick in 1691, and numerous policies were also made during the siege of Namur, 30 per cent premiums being charged on the town's falling by the end of September 1694.[6] During the ensuing War of the Spanish Succession, Parliament finally outlawed insurance upon "contingencies relating to the present war and other matters directly

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[1] Joseph Addison, *Essays of Joseph Addison*, ed. John Richard Green (London and New York, 1965), p. 103.

[2] Nicholas Magens, *An Essay on Insurances* , 2 vols. (London, 1755), Vol. 1, p. viii.

[3] Enrico Bensa, *Histoire du contrat d'assurance en moyen âge* (Paris, 1897), p. 87; Johann Huizinga, *Homo Ludens* (London, 1949), p. 53n.; Magens, *Essay*, Vol. 2, p. 67.

[4] Geoffrey Clark, *Betting On Lives* (Manchester, 1999), pp. 13–16.

[5] John Millar, *Elements of the Law Relating to Insurances* (Edinburgh, 1787), p. 210.

[6] Daniel Defoe, *An Essay Upon Projects* (London, 1697), p. 171.

relating to the government", and redoubled its efforts to curtail illegal commerce by prohibiting insurance on smuggled goods and on cargoes destined for embargoed countries.[7]

During the entrepreneurial boom preceding the South Sea Bubble (1720), insurance and war were brought together affirmatively through the designs of several companies which planned to sell insurance and reversionary annuities (financial instruments that functioned something like life insurance) and then use the accumulated capital to finance fisheries in North America. One such projector named Baker estimated that his new fishery would make available to the Royal Navy during wartime an additional 1,000 seamen together with 40 to 50 new ships. Baker perceived that a vigorous fishing industry underlay Dutch power and worried "that since France has applied her self to the Newfoundland Fishery, her Naval Power is increased so much that she has been able to Face the Dutch and Us both at Sea with her Fleets."[8] A properly designed insurance business could help meet these foreign challenges by neatly protecting family fortunes at home, increasing prosperity and employment of the merchant marine, while at the same time fortifying Britain's wooden walls.

A third way insurance and war were closely related had to do simply with the far greater propensity of merchants to take out marine insurance in time of war. A considerable body of evidence indicates that while the insurance habit was steadily spreading in the 18th century, this secular growth was punctuated by sudden, sharp increases in shipowners' demand for insurance upon the outbreak of war, followed by precipitous drops in coverage with the onset of peace.[9] The increasing resort to insurance in wartime is all the more striking in view of the exorbitant premium rates charged after the outbreak of hostilities.[10] One index of the increased costs of insurance during wartime is provided by Malachy Postlethwayt's *Universal Dictionary of Trade and Commerce*, in which wartime premiums charged on ships sailing with a Royal Navy convoy are compared to those charged on ships sailing individually, and thus fully exposed to the predations of privateers and enemy ships of the line. Postlethwayt's figures show that ships sailing either the Middle Passage from Africa to America or the home leg from America to Britain without the protection of convoy were charged premiums nearly

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[7] Insurance on the events of warfare was banned by 7 Anne c. 16: Great Britain, *Statutes of the Realm*, Vol. 9 (1822), p. 85. Insurance on illicit trade or smuggled goods was outlawed by 4 & 5 William and Mary c. 15, later confirmed by 8 & 9 William and Mary and 12 Geo. 2 c. 21.

[8] *A Letter to Member of Parliament, for Incouraging Offices of Insurance for Ships, Merchandice, Houses and Goods, Annuitys for Life, and upon Survivorship, and particularly for Encouraging the British Fishery in America, more especially the cod Fishing of Nova Scotia* (1720). See also Baker's Annuity Company, *Reasons humbly offered to the Honourable Committee of the House of Commons for approving the Scheme to erect an Annuity-Company, otherwise called Baker's* (1720); and Daniel Cholmondeley, *A Proposal for Granting Annuities to Raise a Stock for Improving the Fishery of Great-Britain* (London, 1713).

[9] A.H. John, "The London Assurance Company and the Marine Insurance Market of the Eighteenth Century," *Economica*, n.s., 20 (1953), pp. 127, 131–132, 137–138; Richard Pares, *War and Trade in the West Indies, 1739–1763* (London, 1963), pp. 329, 495–500; Frank Spooner, *Risks at Sea: Amsterdam Insurance and Maritime Europe, 1766–1780* (Cambridge, 1983), pp. 31, 47, 58; J. S. Kepler, "The Operating Potential of London Marine Insurance in the 1570s", *Business History,* 17:1 (1975), pp. 49–50; John G. Clark, "Marine Insurance in La Rochelle", *French Historical Studies*, X, 4 (Fall 1978), p. 586. Gibb tentatively concludes that marine insurance may not have been taken out routinely by English merchants, especially during peacetime, until the mid-eighteenth century. D.E.W. Gibb, *Lloyd's of London: A Study in Individualism* (London, 1957), p. 37.

[10] An extreme case of this phenomenon occurred during the War of 1812 when North American shipping was subject to extraordinarily high rates of premium, sometimes reaching 80 per cent. Under these conditions demand for insurance cover evaporated, shipowners and captains preferring to risk their voyages without insurance coverage. Faye M. Kent, "The Fortunes of War: Commercial Warfare and Maritime Risk in the War of 1812", *The Northern Mariner*, VIII, 4 (Oct. 1998), pp. 10–11.

four times higher than ships sailing with convoy.[11] This schedule of charges demonstrates that the peculiar perils to shipping during wartime (sovereign confiscation, confinement to port, capture, sinking) far exceeded the natural hazards to which all shipping was routinely exposed, and therefore made the insurance of ships and cargo during periods of war an urgent matter for shipowners.[12]

The oscillations between war and peace also affected the suppliers of marine insurance. Dramatically increased wartime premium rates more than made up for the heightened risks to shipping, and as underwriting profits rose, more merchants gravitated to the insurance business. But with the end of war, premium rates and profitability collapsed, prompting some hard-pressed insurers to maintain their underwriting volume by expanding their gambling insurance business. In fact, it was the pervasive insurance on speculative contingencies at Lloyd's in the years following the Seven Years War that led to a defection of some insurers who objected to gaming policies and who set themselves up as the new Lloyd's, from which the modern organization is descended.[13]

The use of insurance as a vehicle for gambling aroused such public indignation that shortly after, in 1774, Parliament passed the Gambling Act, which forbade insurance policies to be made on lives or on any other event in which the purchaser could not demonstrate an "insurable interest", that is, a legitimate financial stake in the insured outcome which would distinguish the policy from a mere wager.[14] The Gambling Act completed a process of insurance regulation begun some 30 years earlier with the landmark passage in 1746 of 19 Geo. 2 c. 37, an Act that likewise prohibited marine insurance policies being sold to those who lacked a demonstrated financial interest in the ship to be insured.

2. The issue of interest in marine insurance

Looking back from the year 1787, the distinguished barrister and judge James Alan Park pronounced the regulations imposed by 19 Geo. 2 c. 37 to be "the most important and most extensive in the whole code of statute law, with regard to insurances".[15] No doubt Park had in mind the centerpiece of the legislation that banned insurance from being taken out on any British ship or cargo laden thereon "Interest or no Interest, or without further Proof of Interest than the Policy, or by way of Gaming or Wagering". Such policies made "interest or no interest" freed policyholders of the requirement to document their ownership of freight or of a ship's hull, and so opened the door to speculators betting on the success or failure of voyages by means of marine insurance. "Interest or no interest" policies were introduced to England shortly after the Glorious Revolution and achieved considerable popularity in the following half-century.[16] Although they did furnish a means for gaming, they also answered a legitimate

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[11] Premiums (per cent) on the Middle Passage were 7 *l.* 6 *d.* with convoy, 26 *l.* 11 *s.* 4 *d.* without; on the home leg premiums were 13 *l.* 8 *d.* with convoy, 49 *l.* 10 *s.* 8 *d.* without. Malachy Postlethwayt, *The Universal Dictionary of Trade and Commerce*, 2 vols. (London, 1751, 1774), Vol. 1, p. 142.

[12] Clark, "Marine Insurance", p. 583.

[13] Harold Raynes, *A History of British Insurance* (London, 1964), pp. 112–13; Gibb, *Lloyd's*, p. 46.

[14] 14 Geo. 3 c.48.

[15] James Alan Park, *A System of the Law of Marine Insurances, with Three Chapters on Bottomry; on Insurances on Lives; and on Insurances against Fire* (Philadelphia, 1789), p. 199. The first edition was published in 1787.

[16] Millar, *Elements*, p. 214; Park seems to have assumed that prior to about 1690 all such wager policies were void: Park, *System*, pp. 296, 302.

need felt by merchants for flexibility in assigning values to the cargoes they sought to cover. The fact that the prices of goods varied from port to port confused the issue of their "real" value to be insured; and in any case overseas merchants and brokers acted on imperfect advice transmitted over long distances by factors and clients, making it even harder to tailor insurance coverage to the value of a ship's cargo.[17]

Acknowledging the benefits to trade provided by "interest or no interest" policies did not prevent contemporary commentators from discouraging their use. Magens warned: "When an Insurance on Interest or no Interest is proposed, the Insurers ought carefully to examine into the Motives that the Persons insured may have for thus Insuring; for it is extremely delicate and dangerous to underwrite to Persons who have any Management in the Voyage, since they may be tempted by Lucre in some Shape or other to destroy the Ship."[18] Temptations to fraud or barratry in the overseas shipping of goods were of course nothing new.[19] It was not unheard of for sea captains to sail away with a hold full of goods and never return. Other times ship Masters or unscrupulous part-owners of ships conspired to offload the cargo clandestinely and then scuttle the vessel within easy reach of shore, claiming a total loss but secretly conveying the goods to market. The growing currency of marine insurance added another angle to these frauds.[20] Now, besides stealing their fellow ship-owners' goods, swindlers also insured the doomed ships, and if possible deceitfully over-insured the same vessel in several different policies. One such fraudulent merchant, John McDougall of Glasgow, arranged to have the *Friends*, in which he shipped some £1,000 worth of goods, deliberately shipwrecked off the coast of Jutland, but not before insuring his own stake in the voyage in five separate policies for £3,745, and insuring the ship and other goods for £1,660 in a further three policies, for a total of eight policies involving underwriters in Glasgow, Dundee, Hull, and London.[21]

The crimes committed by McDougall and his ilk might represent the very worst abuses to which insurance could be put, but the renowned jurist John Millar worried more about the broader debilitating effects of gaming via "interest or no interest" policies on the commercial and moral health of the British nation. "The practice of gaming, by the agreeable exercise which it affords to the mind", he warned, "tends to engross the attention, and to withdraw the exertion of men from useful pursuits. Not only does it pervert the activity of the mind, but deprave the affections."[22] The prohibition of "interest or no interest" policies by 19 Geo. 2 c. 37 may therefore be seen as a first attempt by the British legal and political establishment to exorcise from the insurance industry a speculative spirit that threatened to derange the reasoned, sober, and prudential motives that were assumed to be integral to a contract of indemnification. In order to safeguard not only the vigor of British commerce but the virtue of the nation generally, it was argued, calculated economic interest must prevail over the passionate appetites of gamblers.

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[17] Millar, *Elements*, p. 211; Corbyn Morris, *An Essay Towards Deciding the Important Question, Whether it be a National Advantage to Britain to Insure the Ships of her Enemies?* (London, 1747), pp. 36–37; Postlethwayt, *Dictionary*, Vol. 1, p. 144.

[18] Magens, *Essay*, Vol. 1, p. 28.

[19] J.S. Kepler, "The Operating Potential of London Marine Insurance in the 1570s", *Business History*, 17, 1 (1975), pp. 46, 49–50.

[20] Gordon Jackson, "Marine Insurance Frauds in Scotland 1751–1821", *The Mariner's Mirror*, 57, 3 (1971), pp. 307–308.

[21] Jackson, "Frauds", pp. 315–316.

[22] Millar, *Elements*, p. 212.

3. Wartime regulation of insurance

Parliament's 1746 ban on marine "interest or no interest" policies plainly sought to eliminate wager policies within the insurance industry's most important sector,[23] and thus attempted to curtail those "many pernicious practices, whereby great numbers of ships, with their cargoes, have been fraudulently lost or destroyed".[24] But the original form of the bill considered by Parliament several years earlier, as well as certain key exceptions to the ban on "interest or no interest" policies embodied in the final statute, suggest that political considerations went well beyond domestic commercial regulation to involve strategic calculations of the military advantage afforded by the making of "interest or no interest" policies.

After 25 years of peace, Britain in 1739 entered a prolonged period of war, initially against Spain in the War of Jenkins' Ear then, after several years of informal hostilities, officially against France in 1744.[25] Less embroiled in continental strategy, Britain's engagements during the War of the Austrian Succession consisted primarily of naval campaigns in the Americas, West Africa, and India. This "blue water" strategy concentrated on the interdiction of the enemies' trade and the blockade of their overseas colonies and entrepots.[26] At the inception of war in 1739, trade with the Spanish was prohibited, but remarkably the underwriting of Spanish ships by British insurers continued unabated. Parliament's reluctance to forbid the insurance of enemy vessels may be assigned to the prodigious growth, in the years since the War of the Spanish Succession, of British marine underwriting, whose low premium rates and high reliability had made the London insurance market a favorite of merchants throughout northern and western Europe, including the Spanish and the French.[27] The value of the insurance trade was considered by many to be too valuable to forfeit voluntarily, even if that business created a deliciously paradoxical situation in which British insurers compensated enemy merchants for shipping losses suffered at the hands of British privateers and squadrons of the Royal Navy.

The wisdom of insuring enemy ships, however, quickly became a subject of controversy among insurers and members of parliament. In 1741 Edward Southwell introduced a draft bill that proposed a number of restrictions on the marine insurance business.[28] All marine insurance policies made "interest or no interest" were to be prohibited, as well as all insurance "made directly or indirectly, on any of the ships or effects of the subjects of any prince or state, not in amity with the crown of Great-Britain".[29] In addition, the bill forbade insurance of foreign ships trading to the East Indies, a practice that allegedly infringed upon the exclusive rights of the members of the English East India Company to carry on trade there.

The comprehension of these different regulations within the same bill, as well as the attention given in the ensuing parliamentary debate to the international implications of unregulated marine insurance, indicates how closely related marine insurance was seen to be in the overall military and commercial strategy Britain was pursuing against its enemies.

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[23] Barry Supple, *The Royal Exchange Assurance, 1720–1970* (Cambridge, 1970), pp. 6–8.

[24] Postlethwayt, *Dictionary*, p. 143.

[25] Jeremy Black, *Natural and Necessary Enemies: Anglo-French Relations in the Eighteenth Century* (London, 1986), p. 36.

[26] Pares, *War and Trade*, passim; Geoffrey Holmes, *The Age of Oligarchy* (London, 1993), pp. 63–64.

[27] John, "London Assurance", pp. 127, 133–35.

[28] *The Gentleman's Magazine*, Vol. XII (Jan. 1742), p. 5; Romney Sedgwick, *The House of Commons, 1715–1754*, 2 vols (New York, 1970), Vol. II, pp. 431–432.

[29] Postlethwayt, *Dictionary*, p. 143.

Robert Walpole for one regarded the insurance of Spanish ships as a "stupid" practice whereby "our Ships of War have only plundered our Merchants, and . . . our Privateers may indeed have enriched themselves, but impoverished their Country".[30] William Guidott replied in opposition to the bill that the great volume of foreign shipping insured in London profited the nation and conferred a competitive advantage on British underwriters, since "the Cheapness of Insurance, and Eagerness of Foreigners to insure here, reciprocally contribute to each other; we are often applied to, because we insure at an easy Rate, and we can insure at an easy Rate, because we are often applied to."[31] The ban on insurance of enemy ships, he went on to say, would simply deny Britain the underwriting profit, drive the business to Holland or France, and thereby demote Britain from its position as Europe's leading insurer. Others responded by doubting whether the profit earned from underwriting foreign vessels was really large enough to merit special protection, and whether the profit accrued to the nation as a whole or only benefited marine insurers, whose special interests might be justifiably sacrificed for the general good. Likewise, the proposed ban on insuring foreign ships trading to the East Indies raised doubtful questions about exactly who, besides the members of the East India Company, was being helped.

As for the demerits of "interest or no interest" policies, parliamentary debate focused on their incitement to fraud. A spectacular instance cited by Richard Lockwood concerned the South Sea Company ship, the *Royal George*. A week out from port on her return voyage from Vera Cruz, the officers of the *Royal George* agreed among themselves that the ship's insured value of £60,000 far outweighed the financial incentives of concluding the sailing as planned. Accordingly, they turned the ship back to Antigua where they scuttled it offshore, returning later to England in triumph to claim the insurance.[32] Such examples led Walpole among others to conclude that "interest or no interest" policies were "nothing more than a particular Game, a mere solemn Species of Hazard, and ought therefore to be prohibited, for every Reason that can be urg'd against Games of Chance".[33] In reply, John Barnard, M.P. for the City of London and himself a prominent marine insurer, responded incredibly that he was ignorant of "interest or no interest" policies ever having prompted fraud.[34] But even those who acknowledged that policies purportedly taken out on estimated or imaginary values did sometimes lead to fraud or worse nevertheless pointed out that fraud could never be entirely removed from any line of business whatever regulations were imposed on it, and that the abuses of marine insurance did not in and of themselves warrant legislative action.[35]

Critics of these potentially speculative policies worried, though, that they might debilitate Britain's commerce, especially during wartime. Peter Burrel, a merchant deeply involved in Portuguese trade, conjectured that the success of Spanish privateers at intercepting British ships partly resulted from captains of overvalued ships willfully sailing into enemy hands, or of forsaking the security of naval convoy, or of resisting capture less strenuously than they otherwise might do, in view of the windfall they and their confederates would reap through the failure of the voyage.[36] Indeed, the injury to Britain allegedly went further than the value of any given prize lost to Spain, for the manifestly greater risk posed to

[30] *Gentleman's Magazine*, Vol. XII, p. 10.
[31] *Ibid.*, p. 12.
[32] *Ibid.,* p. 6; Postlethwayt, *Dictionary*, p. 144.
[33] *Gentleman's Magazine*, Vol. XII, p. 11.
[34] Sedgwick, *House of Commons*, Vol. I, pp. 508–509.
[35] *Gentleman's Magazine*, Vol. XII, pp. 8, 11–12.
[36] *Ibid.*, p. 8.

British shipping could be expected to raise the cost of insurance, increase commercial insecurity, and correspondingly diminish business confidence.

Despite the strongly expressed views on the various provisions contained in the 1741 bill, the consensus that it contained serious flaws led to its being referred to a committee for further study and revision, and the bill thereafter fell into abeyance.

4. The 1746 Act

In the years that followed the failure of the 1741 bill, France replaced Spain as Britain's primary enemy, and the threats posed by this more powerful foe amplified concerns over the unregulated state of the marine insurance business.[37] The preamble to the reintroduced bill against "interest or no interest" policies reflected this heightened anxiety by adding to its litany of "pernicious practices" the fraudulent capture of ships by the enemy.[38] Now shorn of its provisions against insurance of enemy shipping and against insurance on foreign ships trading to the East Indies, the bill also included several revisions to the earlier bill that made it sufficiently acceptable to be passed, as 19 Geo. 2 c. 37, in 1746. For purposes of the present discussion, the most important modifications to the earlier draft bill consisted of three exceptions to the prohibition on marine insurance policies made "interest or no interest". First, "interest or no interest" policies continued to be allowed on merchandise into or out of ports controlled by the crowns of Spain or Portugal. This exception represented parliament's connivance in a routine fiction (or fraud from the Spanish or Portuguese perspective) maintained by British merchants that enabled them to ship contraband goods through Iberian third parties of record so as to evade proscriptions on illicit foreign trade into Spanish America and Brazil.[39] Second, British privateering vessels were also permitted to be insured "interest or no interest" so as to encourage and promote private warfare by reducing its risks, and also because privateers sailed out with no cargo aboard whose value could be insured, the purpose of the voyage being wholly speculative and made in the hopes of acquiring prizes whose value could not be known beforehand.[40] Third, the Act implicitly excluded foreign ships from the ban on "interest or no interest" policies since the statute spoke only of "Ships belonging to his Majesty, or any of his Subjects".[41]

Just why 19 Geo. 2 continued to allow "interest or no interest" policies on foreign shipping puzzled even contemporaries, but it was shortly to be confirmed by the legal decision in *Thelluson v Fletcher*. In that case, three French ships (two of which were captured, one lost) were insured "interest or no interest" for £300 by a man who in fact had no financial stake in the ships. The court found that speculative insurance on foreign ships was valid, "on account of the difficulty of bringing witnesses from abroad to prove the interest".[42] This rationale for permitting "interest or no interest" policies on foreign vessels struck a number of commentators as odd. Magens saw the reasons for prohibiting "interest or no interest" policies on foreign as well as British ships as "equally strong", and the arguments reportedly

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[37] Pares, *War and Trade*, p. 179.

[38] Magens, *Essay*, Vol. 2, p. 341.

[39] Millar, *Elements*, p. 217.

[40] Magens, *Essay*, Vol. 1, p. 29; Raynes, *British Insurance*, pp. 167–168. Millar notes that "in these wager privateer insurances, the cruise was the adventure", and that they were therefore made to cover a period of time rather than a specified voyage: Millar, *Elements*, pp. 319–320.

[41] Magens, *Essay*, Vol. 2, p. 342.

[42] Millar, *Elements*, p. 218; Park, *System*, p. 303.

made by some merchants that certifications of loss in foreign ships were difficult or impossible to acquire, as "wholly groundless".[43]

One of the severest critics of the insuring of foreign shipping, Corbyn Morris, added that the exception of foreign shipping from the ban on "interest or no interest" policies seemed "to prevent our being defrauded by each other, but that our being defrauded by Foreigners, was not to be interrupted".[44] Of course, Morris was willfully misconstruing the motives behind the exemption of foreign ships from the statute's ban, but he adverted to a recent court case, *Benjamin Mendes Da Costa v Pouchon*, that gave a patina of plausibility to his allegation.[45] In 1746 or early 1747 Da Costa took out an "interest or no interest" policy with a London underwriter on the ship, *L'Heureux*, on a voyage from Bayonne to Martinique. Two days out, the ship was taken by the British, brought to London and condemned. The underwriter refused to honor the policy in view of revelations brought to light at the instigation of the Count de Maurepas, Director of the Marine in France. He had caught wind of large-scale insurance frauds committed by French merchants, particularly at Bordeaux and Bayonne, who were utilizing London brokers to make "interest or no interest" policies on their vessels. Having insured their ships to the full value in France, these merchants then grossly over-insured the same ships in London, taking advantage of the loophole left in 19 Geo. 2. Upon investigation in London by a specially formed committee of underwriters, it was determined that some £100,000 of coverage for French ships sailing from France to the West Indies had been arranged by London brokers using "interest or no interest" policies on behalf of their clients in Bordeaux and Bayonne. The *L'Heureux* itself was sold for as a prize for £400 and its cargo for another £389, but was insured in London for no less than £2,790 and at Marseilles for a further £550, totaling about four times the actual value of ship and cargo.[46] The merchants certainly hoped that their vessels, nominally headed for the West Indies, would instead be captured by the British, making them much greater gainers than the fulfillment of the voyages could possibly promise. In the suppression of this wartime fraud the interests of the French government and London underwriters coincided: the French were horrified that supplies to their colonies were being jeopardized by merchants designing to sail their ships into the hands of the British, while the London insurers rightfully saw such abuses as portending financial disaster in the insurance market.

That French merchants so easily conducted their business through a bevy of London insurance brokers (who were not implicated in the frauds) drives home the skepticism of those like Magens who saw no greater obstacles to foreign merchants in transacting insurance policies in London than were faced by, say, John McDougall of Glasgow. The fraudulent use by French merchants of "interest or no interest" policies might have been an unintended consequence of the exemption of foreign ships contained in 19 Geo. 2, but only insofar as it entailed over-insurance. It seems likely that the real motive behind the exemption allowing insurance "interest or no interest" on enemy vessels was to put them in special danger of barratry or capture, and so to weaken the enemy's commerce. This surreptitious strategy is betrayed by John Millar's otherwise cryptic comment that "the prohibition [of interest or no interest policies] is not understood to extend to insurances on foreign ships . . . [which are]

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[43] Magens, *Essay*, Vol. 1, pp. xi, 29.

[44] Corbyn Morris, *An Essay Towards Deciding the Important Question, Whether it be a National Advantage to Britain to Insure the Ships of her Enemies?* (London, 1747), p. 37.

[45] *Ibid.*, p. 36; William Beawes, *Lex Mercatoria Rediviva* (Dublin, 1754), p. 231.

[46] Beawes, *Lex Mercatoria*, p. 232.

scarcely within the evils to be guarded against."[47] With respect to foreign, especially enemy, ships, then, the stated objections to "interest or no interest" policies as inciting a deleterious spirit of gaming simply did not apply. Wager policies on British ships injured the nation's commerce, but for precisely that reason wager policies on the ships of enemies or of foreign trading rivals were economically and militarily advantageous and ought therefore to be encouraged, despite the fact that they inflamed the same vicious speculation that the Act tried to suppress with respect to insurance on domestic shipping.

5. The ban on insuring enemy ships

Even as 19 Geo. 2 passed into law, renewed debate over the advisability of insuring enemy ships under any circumstances during formal hostilities was again prompting parliamentary examination. In the years since 1741 when the issue had first come up for debate in the draft bill, arguments against the practice had been developed considerably. A number of these arguments were laid out in two books by Corbyn Morris dedicated to Lord Hardwicke, one of the advocates of a new bill "to prohibit Assurance on ships belonging to France, and on Merchandizes or Effects laden thereon, during the present war with France".[48] With sometimes compelling logic, Morris demonstrated that the economic benefit to Britain of insuring French shipping was exiguous, and in any case limited to a small nest of London underwriters and brokers. This private advantage was of no account when weighed against the public's financial burden in prosecuting a war that was only prolonged by compensating the enemy for the losses it suffered from Britain's privateers and the Royal Navy. "Thus", Morris argued, "if at present by refusing to insure the French, we should force them into a Distress, which might oblige them to sue for Peace only three Months sooner, than they would do otherwise; our Advantage from thence, in the saving of Expence only, would be greater than the present Value of our Profit by insuring them *in infinitum*. – Not to mention our Advantage otherwise, in the Increase of our own, by the Ruin of their Commerce."[49] Indeed, Morris even contemplated the punitive denial of insurance services to the French in peacetime on the grounds of reducing their security and volume of trade by increasing the potentially ruinous risks faced by their merchants. He decided in the end to countenance the insurance of commercial rivals in peacetime only because the business profited Britain and because it encouraged continued French dependency on British insurance, which could then be withdrawn during times of war to maximum economic and psychological effect.[50]

In other respects, too, Morris's analysis proceeded from the mercantilist assumption that trade was a zero-sum game. The eagerness of the French to insure their ships in London due to the low rates and high reliability of British underwriters was taken by him to be evidence of its injury to the nation at large: the insurance trade could not be advantageous to Britain and France at the same time because "their advantage is our loss and vice versa".[51] From Morris's bullionist perspective, the £18,000 paid in 1746 by the London Assurance Corporation to Spanish and French merchants in compensation for ships taken by the British was a devastating critique of the business.[52] Moreover, with the financial collapse of French

[47] Millar, *Elements*, p. 217.
[48] 21 Geo.2 c.4; Corbyn Morris, *An Essay Towards Illustrating the Science of Insurance* (London 1747).
[49] Morris, *Ibid.,* p. 30.
[50] *Ibid.*, pp. 32–33.
[51] *Ibid.*, p. 8.
[52] John, "Marine Insurance Market", p. 136.

underwriters in 1744, French dependence on the London insurance market grew even heavier. But rather than capitalize on that dependence, Morris advised that, until the French succeeded in developing their domestic underwriting as they should, their dread of the removal of British insurance services should prompt exactly that which they most feared.[53]

Morris was on firmer ground in identifying the military and political evils arising from the insurance of enemy ships. The British underwriter of a French ship would have every reason to rejoice in its safe arrival in port and bewail its capture or sinking by privateers or naval squadrons. Insurers would therefore root for the enemy and against British arms, rendering them bad subjects to their country and sapping British patriotism and morale.[54] Worse still, in order to safeguard the vessels upon which they had underwritten policies, insurers might feel pressure to divulge intelligence about the disposition of privateers or the deployment of Royal Navy squadrons so as to aid the French in eluding capture. Of course, the exact position of the squadrons was rarely known because Navy ships sailed to their stations only after opening their sealed orders at sea. But even when such intelligence was not explicitly communicated, the wartime perils of certain routes could be inferred from the premium differentials charged by the underwriters. To Morris, this commercial pre-emption of political affairs "entirely subverted ... the just and accustomed Seat of Power and Authority in the State ... The Superiority of the State", he sneered, is "not to be settled, by Brokers, as the Balance of a Mercantile Account."[55]

Despite the manifest conflict between the military objectives of the British state and the financial incentives of insurers of French ships, opponents of the bill outlawing insurance on enemy shipping denied that the patriotic sentiments of insurers would be thus compromised. The Solicitor-General, William Murray (later Lord Mansfield) argued, on the contrary, that insurers would be motivated out of patriotic zeal to communicate their knowledge of French shipping to the Admiralty, and claimed to know of instances when that had happened.[56] That might have been true, but the prospect of insurers betraying their customers to their own financial prejudice could hardly have been counted upon. However illogical Murray's argument might have been, he and Dudley Ryder, the Attorney-General, stressed the long-term advantages of Britain maintaining its profitable dominance of the insurance market under almost any circumstances, up to and including the underwriting of enemy ships.

In the end, though, the two jurists could not sway their parliamentary colleagues. The bill banning the insurance of enemy ships received its second reading on 18 January 1748, and was enacted as 21 Geo. 2 c. 4 shortly afterwards, to remain in force for the duration of the war with France, which, as it happened, concluded just six months later.[57] Although arguments to reimpose the ban flared up with the outbreak of the Seven Years War in 1756 and the American War 20 years after that, similar legislation was not reenacted until the struggle against revolutionary France in 1793.[58] Up to that time, apart from the six-month proscription in

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[53] Morris, *Essay Towards Deciding*, p. 29. An attempt was made by French underwriters to establish an insurance company in December 1746 in order to lessen the reliance of French merchants on the London and Amsterdam markets: Spooner, *Risks at Sea*, p. 45.

[54] Morris, *Essay Towards Deciding*, pp. 33–34. Rodney's seizure of St Eustatius in 1781 led to the British confiscation of some £3,000,000 worth of Dutch goods, much to the distress of British insurers who had to answer the claims of their Dutch clients: John, "Marine Insurance Market", p. 136.

[55] Morris, *Essay Towards Deciding*, pp. 45–46.

[56] Park, *System*, pp. 274–277.

[57] *House of Commons Journal*, Vol. 25, p. 478.

[58] John, "Marine Insurance Market", p. 136; Corbyn Morris, *Further Considerations on our Insurance of the French Commerce, in the Present Juncture* (London, 1758).

1748, British marine insurance enjoyed a remarkable freedom to assume private risks without regard to the military or political interests of the British state. To be sure, there were still limits to what could be insured. It was forbidden, for example, to insure goods on vessels sailing to relieve a British siege of enemy forts or garrisons.[59] Nonetheless, in comparison with his continental counterpart, the British underwriter exercised virtually complete discretion in the business he conducted, especially with respect to foreign ships, which after 1748 were again all eligible for insurance "interest or no interest".

6. Conclusion

The third major insurance regulation broached in the original 1741 bill, the prohibition on insuring foreign ships trading to the East Indies, was finally enacted in 1752 in order to frustrate the business of the Dutch East India Company "that thereby the British Nation might enjoy the full Fruits and Advantages of so beneficial a Trade".[60] But the Act was repealed just six years later in accord with the *laissez-faire* spirit then guiding British marine insurance.[61] Wager policies on British ships remained illegal, but jurists and merchants alike increasingly saw this prohibition as a necessary restriction that demarcated a moral sphere of enlightened economic interest from an illicit sphere of unbridled speculation.[62] Yet the curious exception to the ban with respect to foreign ships, which manifestly gave vent to those disruptive passions, suggests an inclination to keep an eye open to the martial possibilities of ostensibly peaceful commerce. Belligerence did not begin with an outbreak of war and did not terminate with an arrival of peace. Malachy Postlethwayt anxiously observed in the run-up to the Seven Years War, "As the affairs of our trade and finances are at present circumstanced, a peace is far more dangerous than a war."[63] But how precisely to arrange the nation's economic institutions so as to advance trade and fortify civil society as much as possible while also distressing rivals and enemies was inevitably a matter for experiment. In the aftermath of the War of the Austrian Succession the British state seems to have concluded that the commercial engagement of an enemy through the command of its insurance business was a most effective tool of war, and that even in peacetime "interest or no interest" policies could be used as financial letters of marque in order to weaken commercial rivals through a kind of surreptitious privateering.

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[59] Park, *System*, p. 277.

[60] 25 Geo. 2. Quoted in Magens, *Essay*, Vol. 2, p. 345.

[61] John, "Marine Insurance Market", p. 136.

[62] Geoffrey Clark, "Embracing Fatality through Life Insurance in Eighteenth-Century England", in Tom Baker and Jonathan Simon (eds.), *Embracing Risk: The Changing Culture of Insurance and Responsibility* (Chicago, 2002), pp. 88–94; Albert O. Hirschmann, *The Passions and the Interests: Political Arguments for Capitalism before its Triumph* (Princeton, 1977). The ban on "interest or no interest" policies remained on the books until 1906 and was re-enacted by subsequent statutes passed in 1906 and 1909: Raynes, *British Insurance*, p. 167.

[63] Quoted in Pares, *War and Trade*, p. 63.