

ENGLAND'S PRIVATEERS AND PIRATES

FROM HAWKINS TO KIDD:

BETWEEN THE LAW AND ILLEGALITY,

1500-1750

A THESIS

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For my parents,  
Who taught my brother and I to say  
“Argh, ye rat bastard!”  
Before we learned almost anything else.

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**TABLE OF CONTENTS**

<i>Acknowledgments</i>	3
Introduction	5
CHAPTER ONE: The Historiography of Atlantic Piracy	8
CHAPTER TWO: “Upon the Consideration of the good of His subjects, and for the security of Trade”: The Moral and Economic Implications of Piracy in the Seventeenth and Eighteenth Centuries	25
CHAPTER THREE: A Challenge to Spanish Sovereignty: Pirates and Privateers as Transnational Entrepreneurs in an Age of Empire	48
CHAPTER FOUR: The Imperfect Execution of Captain William Kidd	68
Conclusion	85
<i>Bibliography</i>	88

## INTRODUCTION

It cannot be argued that the sixteenth, seventeenth, and eighteenth centuries were not times of unprecedented change. From a European perspective, the world almost doubled in size to include continents previously undiscovered that possessed untold riches and opportunities to increase a nation's power, both politically and economically. Unfortunately for most of Europe, these new markets and resources were monopolized by one country in the 1500s and 1600s: Spain. Thus, the phenomenon of maritime predation—commonly known as piracy—developed alongside the enlargement of the Spanish Empire in the New World.<sup>1</sup> English, French, and Dutch pirates preyed upon Spanish ships and settlements (and, depending upon the political climate in Europe, sometimes upon each other) as a way to enter markets that were not free and open to anyone but the Spanish, motivated sometimes by greed and sometimes by need. However, the status quo changed as the 1600s transitioned into the 1700s. England's merchant empire replaced Spain's as the dominant world power, and with that shift in power also came a shift in attitudes towards and actions against pirates. Previously convenient for the British in the chaotic and violent free-for-all of the New World, pirates now became nuisances in the better-regulated and increasingly codified world of the British Empire. This thesis will explore this idea within its four chapters.

First, Chapter One presents an overview of the historiography of Atlantic piracy in the early modern period. Many scholars have argued that both piracy and the simultaneous development of privateering were closely connected with crime, warfare, and commerce on

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<sup>1</sup> Kris E. Lane, *Pillaging the Empire: Piracy in the Americas, 1500-1750* (Armonk, New York: M. E. Sharpe, Inc., 1998), 12.

an economic level; indeed, many essays explore this idea in both *Pirates? The Politics of Plunder* and *Bandits at Sea: A Pirate's Reader*.<sup>2</sup> Similar scholars only consider economics as secondary to politics, as Kris E. Lane does in *Pillaging the Empire: Piracy in the Americas, 1500-1750* (1998). Several more have argued that the treatment of piracy in literature, both official and fictional, was directly tied to conceptions of morality in the early modern era. Most prolific among this particular brand of piratical scholar is Marcus Rediker, who has contributed several definitive volumes (including one co-authored by Peter Linebaugh) dedicated to piracy and the maritime Atlantic world since 1981, using a cultural Marxist methodology generally not found in other works. This chapter traces the various trends within the historiography of this topic and situates this thesis among the major works within the history of piracy.

The following chapters investigate the transitory status of pirates in a variety of related themes. Chapter Two focuses on the categorization of the pirate as *hostis humani generis*, “the common enemy against all mankind,” in both law and in moralistic rhetoric, exploring the connections that made pirates (and sometimes privateers) both economic criminals and moral ones. Chapter Three brings the Spanish perspective into consideration and contends Spain’s ineffective policies against pirates contributed to the rise of an English empire in the Americas. Finally, Chapter Four looks at the imperfect execution of Captain William Kidd (1645-1701) as a case study that encapsulates the ideas set forth in the previous chapters. All together, this thesis will show that British prioritization of economic prosperity made the useful disorderliness of piracy obsolete in the New World,

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<sup>2</sup> Christopher Harding, “‘*Hostis Humani Generis*’ – The Pirate as Outlaw in the Early Modern Law of the Sea,” In *Pirates? The Politics of Plunder, 1550-1650*, edited by Claire Jowitt (New York: Palgrave Macmillan, 2007), 26.

eventually leading to its eradication in the 1730s. Thus, the elimination of piracy paralleled the transitions in political economy from the early modern world to a more modern one, where piracy was no longer tolerated.

## CHAPTER ONE

### The Historiography of Atlantic Piracy

Piracy has always been a subject of fascination, both historically and in popular culture. Since the eighteenth century, the Atlantic's most notorious pirates—Kidd, Blackbeard, and many more—have become larger-than-life figures, their images a romanticized mixture of history and myth. Because of this, historians interested in this topic are met with the redoubtable task of separating fact from fiction in order to discover some semblance of truth. Leaving behind the centuries' long trend of popular history, historians have approached this challenge in several different ways. With the exception of Marcus Rediker's significant contribution using cultural Marxism to re-evaluate Atlantic piracy, no one trend dominates the historiography of this topic. Instead, most scholars have incorporated myriad approaches into their work—from biographical to political to cultural and beyond—as a way to fill the gaps left unaddressed by Marxism. Each approach has its own merits, and each rebels against the romantic image of pirates in its own way. Taken together, these various approaches in the historiography of piracy offer historians a wide range of interpretations that help to solidify the truth of pirates without perpetuating the myths.

Even so, the historiography of pirates has been plagued by popular history since the days of pirates themselves. *A General History of the Robberies and Murders of the Most Notorious Pirates* was first published in 1724, at the tail end of the Golden Age of Piracy (roughly 1650-1730). This work has since become one of the major primary sources from

which most historians of pirates mine their information.<sup>3</sup> While a very detailed volume that presents its readers with biographies of the Atlantic's most notorious pirates, it provides little concrete information as to where the author obtained its facts. Indeed, even its author is subject to debate amongst scholars, who cannot quite agree whether *A General History* was written by the mysterious "Captain Charles Johnson," who appears nowhere in maritime archives, or Daniel Defoe, who was attributed authorship since the 1930s.<sup>4</sup> More recently, scholars of Defoe have all but rejected this authorship. Despite this, the book has been republished several times using both authors' names, and for simplicity's sake, historians of piracy tend to use Johnson's only because his is the name on the original 1724 edition.<sup>5</sup>

Still, whoever the author, there is no doubt that *A General History* is largely responsible for the romanticization of pirates in both fiction and history. This is partially because of its presentation as a work by a widely traveled sailor who has "taken more than ordinary Pains in collecting the Materials which compose the following History," through either personal experience with pirates or interviews with the individuals who knew them.<sup>6</sup> From a scholarly perspective, this makes *A General History* either an exaggerated firsthand account or fictionalized hearsay. At the same time, however, Johnson/Defoe makes use of the first-hand accounts of William Dampier (published 1697) and Woodes Rogers (published 1712) as well as interviews with captured pirates, court records, and

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<sup>3</sup> Marcus Rediker, *Villains of All Nations* (Boston: Beacon Press, 2004), 8.

<sup>4</sup> Richard West, "Introduction to the 1999 Edition," *A General History of the Robberies and Murders of the Most Notorious Pirates* (New York: Carroll & Graf Publishers, Inc., 1999 [1724]), vii-viii.

<sup>5</sup> I am using Defoe's name in my citations because his is on the edition that I have in my personal library.

<sup>6</sup> Defoe, *A General History*, 1.

trial testimony in sketching out the biographies and exploits of the most famous Caribbean pirates. These are the same documents that modern-day historians use themselves. In spite of its dubious provenance, *A General History* provides a touchstone for current historians in their investigations into piracy in the Atlantic that no one can afford to ignore.

Predictably, *A General History* captured the public's imagination and in the centuries that followed inspired many imitators. This unfortunate trend continued well into the twenty-first century. Popular history, inspired perhaps by Disney's money-making *Pirates of the Caribbean* franchise in the early 2000s, overwhelmed the "historiography" of pirates, and its proliferation continues even to this day. However, new scholarly trends have developed to combat the popular historical approach over the past three decades, beginning with Marcus Rediker's implementation of cultural Marxism in the 1980s.

Indeed, Rediker has all but dominated the historiography of piracy since publishing the foundational article he wrote as a graduate student. "Under the Banner of King Death': The Social World of Anglo-American Pirates, 1716 to 1726" (1981) interprets the social organization of pirates through a distinctly Marxian perspective, analyzing what "piracy looked like from the inside."<sup>7</sup> His main interest is in the social order of pirates as opposed to the traditional authority of their foes, which is a common Marxian theme that he incorporates into all of his future endeavors. This was perhaps the first article to look at pirates not as villains or antiheroes of the Atlantic, but rather as men who chose a different way of life out at sea in direct defiance of existing power structures. Rediker dedicates much of his article to raw data he has accumulated from archival records along both the east coast of the United States and in the Caribbean—how many pirates operated between

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<sup>7</sup> Rediker, "Under the Banner of King Death': The Social World of Anglo-American Pirates, 1716 to 1726," *The William and Mary Quarterly* 38, no. 2 (April 1981): 204.

1716 and 1726, where they came from before they turned pirate, what their ethnicity was, whether they were married or not, et cetera.<sup>8</sup> He argues that pirates constructed their world in “defiant contradistinction” to the world they left behind, which accounted for their democratic self-organization and the sense of community they perpetuated amongst themselves.<sup>9</sup> His straightforward yet very non-specific approach in this article does not make “Under the Banner of King Death” Rediker’s most important contribution to the historiography of piracy, yet it laid the groundwork for his future investigations.

Rediker’s first major work, *Between the Devil and the Deep Blue Sea: Merchant Seamen, Pirates, and the Anglo-American Maritime World, 1700-1750* (1987), is a significant expansion upon “Under the Banner of King Death.” Taking a clearly Marxian stance on the topic once again, Rediker attempts a “history from the bottom up” of the common seaman of the eighteenth century in order to help transform “labor history” into “working-class history.”<sup>10</sup> He also draws from social, economic, cultural, and political history and utilizes interdisciplinary methods to examine various aspects of the life of working seamen and what they did for themselves rather than what was done to them by their superiors.<sup>11</sup> While not exclusively about pirates, this book provides an insightful look at the societies, cultures, and organizations that made piracy possible in the 1700s. This overarching context, particularly regarding the plight of common seamen, the horrible conditions they were subjected to, and the frequency with which they mutinied, is not commonly seen in

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<sup>8</sup> Rediker, “Under the Banner of King Death,” 204-8.

<sup>9</sup> Ibid., 214.

<sup>10</sup> Marcus Rediker, *Between the Devil and the Deep Blue Sea Merchant Seamen, Pirates, and the Anglo-American Maritime World, 1700-1750* (New York: Cambridge University Press, 1987), 6.

<sup>11</sup> Ibid., 7.

other works on piracy.<sup>12</sup> Rediker's comprehensive analysis of the maritime world from the average sailor's perspective is one of the definitive works of maritime history and, like *A General History*, cannot be overlooked when considering the historiography of Atlantic piracy.

Rediker's next foray into the historiography of piracy, *The Many-Headed Hydra: Sailors, Slaves, Commoners, and the Hidden History of the Revolutionary Atlantic* (2000), came thirteen years later as a collaboration with Peter Linebaugh. This volume widens the scope of Rediker's studies even further than his last book to include the entire Atlantic proletariat—mainly slaves and revolutionaries, but also pirates, a group to which they dedicate one chapter out of nine. This chapter contains analysis that is complementary to Rediker's previous work: here Linebaugh and Rediker focus on both "the organization of the maritime state from above, and the self-organization of the sailors from below."<sup>13</sup> In this volume, they call this relationship "hydrarchy." While Linebaugh and Rediker discuss the political implications of the pirates' organization of themselves as "the world turned upside down," they actually spend more time discussing the cultural implications of such a world.<sup>14</sup> This is where *The Many-Headed Hydra* differs from "Under the Banner of King Death" and *Between the Devil and the Deep Blue Sea*. The former is more tightly focused on the cultural world created by class divisions that allowed pirates to flourish, while the latter two works mainly approach the topic from a broader social standpoint. Additionally, *The Many-Headed Hydra* is equally concerned with economics, as the authors are

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<sup>12</sup> Rediker, *Between the Devil*, 49.

<sup>13</sup> Peter Linebaugh and Marcus Rediker, *The Many-Headed Hydra: Sailors, Slaves, Commoners, and the Hidden History of the Revolutionary Atlantic* (Boston: Beacon Press, 2000), 144.

<sup>14</sup> *Ibid.*, 162.

attempting to “recover some of the lost history of the multiethnic classes that was essential to the rise of capitalism and the modern, global economy.”<sup>15</sup>

Finally, Rediker published his most recent contribution to the historiography of piracy: *Villains of All Nations: Atlantic Pirates in the Golden Age* (2004). This book continues the general oeuvre of his previous work while at the same time considerably narrowing its scope to pirates and the men in power who hunted them. Several chapters are revised reproductions from other works, but this in no way subtracts from Rediker’s predominant analysis in this particular book. If anything, it makes the scope manageable enough for him to identify trends in the interactions between pirates and authorities that complement his earlier work but also offers a new perspective into the world of pirates. By shifting his focus from the entirety of the maritime Atlantic proletariat to one small but vitally important part of it, Rediker is able to articulate a dichotomy of tactical terror between pirates in the Atlantic and the authorities who ultimately removed them from the seas.

In order to contextualize this dichotomy, Rediker first embarks on an investigative analysis to establish exactly what kinds of men (and women) became pirates, why they did so, and how they organized themselves. Here his typical cultural Marxian methodology comes into play, though in this volume he notably, and noticeably, alters it to suit a more comparative purpose. While discussing his Atlantic pirates, he also dedicates a significant portion of the book to the authorities, the men against whom the pirates fought.<sup>16</sup> This is wisely done, considering that most of his primary sources come from those authorities via trial transcripts or first-person accounts of encounters with pirates. Stylistically, he blends small amounts of narrative at the beginning of each chapter with hefty doses of analysis to

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<sup>15</sup> Linebaugh and Rediker, *The Many-Headed Hydra*, 6-7.

<sup>16</sup> Rediker, *Villains*, 127.

support his argument about terror. The strength of this volume lies in its comparative structure, pitting the pirates' chaotic and impulsive brand of terror against the British government's more deliberate and propagandized brand. This works particularly well in his discussion of image. Government propaganda cast pirates as sub-human for their crimes against property, while pirates like Blackbeard responded by actively cultivating Satanic images of themselves.<sup>17</sup> Thus, the dichotomous cultures he describes most thoroughly in *Villains of All Nations* makes this Rediker's most accessible work. The narrowed scope allows him analyze the culture of pirates more finitely, and with the aid of natural binary opposites in the narrative—even if the lines between them are sometimes blurred.

Unfortunately, the inclusion of binary opposites invites bias and romanticism, which Rediker tries to avoid but ultimately cannot. In spite of the terrorism employed by both parties, Rediker's pirates end up sounding like underdogs and antiheroes, simply because theirs seems like a natural response to the institutionalized cruelty of British maritime life. This is a common flaw in Rediker's work. More often than not, the members of his Atlantic proletariat sound like unsung heroes who miraculously managed to survive and create an identity for themselves in spite of all the odds. Additionally, Rediker's consistent Marxian analysis leaves little room for other interpretations of pirates in the Atlantic—or at least it does on the surface. While Rediker was steadily putting out his seminal works on the maritime world, other historians developed differing methodologies to tease the truth out of piracy, contributing to the bigger picture that Rediker started to illustrate but never quite finished.

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<sup>17</sup> Rediker, *Villains*, 130, 152-3.

One of the major works to come out of the 1980s alongside Rediker's *Between the Devil and the Deep Blue Sea*, Robert C. Ritchie's *Captain Kidd and the War Against the Pirates* (1986) is widely regarded as one of the best scholarly works on piracy ever written. Taking a more biographical approach, Ritchie positions Captain William Kidd (1645-1701) as both a representational figure and a transitional one, styling Kidd's life as the turning point "in the history of empire as well as in the history of piracy."<sup>18</sup> Although this is a risky move, considering the dangers of using one man's life as a typified case of sailor-turned-pirate, Ritchie makes it work because Kidd's life was *not* typical. He analyzes the differences between pirates and privateers and places Kidd's role as both in a much wider political context, one that extends all the way to the British Parliament and the clashes between the Whigs and Tories in the late seventeenth century.<sup>19</sup> Kidd was a rare example of a pirate/privateer whose actions had major political implications, as Ritchie discovers through his use of state papers, original correspondence, and Admiralty records. Most historians of pirates have to read against the grain of such documents to uncover some unbiased truth about their subjects, but here Ritchie is in a unique position where, for the most part, this sort of methodology is not necessary. The records showing Kidd's connections to the Whig party offer a complementary contrast to the records of the Tories who branded him as a pirate rather than a privateer, so between the two of them he is able to form a picture of man whose life reflected the political climate in which was produced. This man also just happened to be a pirate—not to mention a pirate who was decidedly *not* one of Rediker's "common seamen."

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<sup>18</sup> Robert C. Ritchie, *Captain Kidd and the War Against the Pirates* (Cambridge: Harvard University Press, 1986), 2.

<sup>19</sup> *Ibid.*, 186.

Published the same year as Linebaugh and Redikers *The Many-Headed Hydra*, Lindley S. Butler's *Pirates, Privateers, and Raiders of the Carolina Coast* (2000) is remarkably similar to Johnson/Defoe's *A General History*, at least in organization. Like *A General History*, Butler's book compiles biographical sketches of eight men who have common ties to North Carolina and her waters over a span of 150 years, from the Golden Age of Piracy to the American Civil War. As a maritime historian, Butler connects these historical figures geographically and occupationally to prove that they shared similar personalities and experiences. This is similar to the tactic Rediker takes in "Under the Banner of King Death" and *Between the Devil and the Deep Blue Sea*, but Butler is more interested in assuming a naval perspective to demonstrate the importance of American privateering during this period. Butler's primary concern is the nature of maritime warfare as performed by "masters of organized theft at sea," which is a considerably different approach compared to Ritchie.<sup>20</sup> It is also interesting to note that in his very thorough bibliography, Butler cites *A General History* twice as a secondary source—first under Johnson's name for the original publication, and second under Defoe's for a reprint.<sup>21</sup> He wisely takes *A General History* with a grain of salt when he incorporates it into his analysis, using phrases like "Captain Johnson would have us believe" and "from Johnson's sketchy portrayal."<sup>22</sup> Like most historians, Butler uses *A General History* as a stepping-stone and corroborates whatever information he can from outside, reliable sources to help craft his analysis of eighteenth- and nineteenth-century pirates who majorly affected Carolina waters.

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<sup>20</sup> Lindley S. Butler, *Pirates, Privateers, & Rebel Raiders of the Carolina Coast* (Chapel Hill: The University of North Carolina Press, 2000), xiii.

<sup>21</sup> *Ibid.*, 261.

<sup>22</sup> *Ibid.*, 41, 53.

Keeping these works in mind, the biographical approach has been more popular with historians who wish to look beyond the social and cultural importance of pirates in contrast to the authorities who tried to suppress them. This allows historians to find connections that Rediker tends to overlook, especially when it comes to the close relationships some pirates had with governments who had a significant stake in the economy and territory of the Atlantic world. Investigating the men who stood out during this time period and de-mythologizing them in the process adds just as much to our understanding of piracy in the Atlantic as does investigating the nameless ones.

While Marxist and biographical approaches are in many ways the most common methodologies found in the historiography of piracy, many others have appeared since scholarly interest in piracy surged in the 1980s. Though largely cultural in interest, no dominant methodology categorizes these works as a trend. Instead, what unites them is their variety in scope and content, and thus what they provide in comparison to other works in this field.

David E. Williams' fascinating article, "Puritans and Pirates: A Confrontation between Cotton Mather and William Fly in 1726" (1987), depicts a cultural clash between the two groups in the title through one specific example: the execution of William Fly in Boston in July 1726. At first glance, Williams' comparison seems to lend itself to Rediker's Marxist approach, but Williams keeps his analysis firmly planted in the world of culture rather than culture produced by class. Using *The Vial poured out upon the Sea* (1726), Mather's treatise published shortly after Fly's execution that preserves the encounters between the two men as well as Mather's sermons, Williams adds an extra dimension to the historiography of piracy: that pirates were not just economic threats but religious ones as

well, especially in colonial New England.<sup>23</sup> Rediker touches on this briefly in *Villains of All Nations* in his discussion of crafted images of pirates versus their self-propagated images, but he does not go as deep as Williams in analyzing what religion meant to each respective group. In fact, compared to Williams, Rediker's interpretation of pirates as a religious threat seems rather abstract, while Williams makes the threat more immediate and potentially disruptive when he compares Fly's ultimate defiance to Mather's nearly obsessive desire to reform him. Because the execution was public, a Christian audience witnessed William Fly defy God by refusing forgiveness and defending his crimes. Williams emphasizes that Fly was "more dangerous as a prisoner than a pirate" in Puritan Boston, and that after his execution Cotton Mather struggled to control the public's perception of the pirate rather than let Fly's insolence win out.<sup>24</sup> In *The Vial poured out upon the Sea*, Mather portrays Fly's stubborn pride and refusal to confess to his crimes as stupid and depraved, undermining his rebellious irreligion before it could cause any harm.<sup>25</sup> This differs greatly from Rediker's interpretation of the propaganda against pirates, which tended to make them inhuman, not simple or ignorant.

One sharp departure from the usual approaches to the historiography of piracy comes from William R. Casto in his article, "The Origins of Federal Admiralty Jurisdiction in an Age of Privateers, Smugglers, and Pirates" (1993). As a professor of law, he approaches maritime history of the late eighteenth century from a legal perspective and analyzes the Admiralty clause in the Constitution within the context that created it. Edmund Randolph, the first American Attorney General under George Washington, advocated making

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<sup>23</sup> David E. Williams, "Puritans and Pirates: A Confrontation between Cotton Mather and William Fly in 1726," *Early American Literature* 22, no. 3 (1987): 234.

<sup>24</sup> *Ibid.*, 234, 238.

<sup>25</sup> *Ibid.*, 240.

maritime crimes—including piracy—a federal offense, because the “government only... can protect the citizens of the United States from hostilities, in their daily intercourse with rival adventurers on [‘the open sea’].”<sup>26</sup> Focusing only on the laws and the lawmakers, Casto shows that piracy was still considered a threat on a national level even after the Golden Age, so much so that the admiralty clause of the Constitution had to be clarified to apply to pirates and other maritime criminals but not to privateers.<sup>27</sup> Such an article is probably not considered very often as a worthwhile contribution to the historiography of piracy considering its legal tone and format, yet it does help provide some background for the second half of Butler’s book and for other works that focus on piracy in the 1800s. Piracy did not disappear after the Golden Age, and an explanation of the origins and language of the Admiralty clause helps historians understand why men such as Jean Lafitte and Butler’s coastal raiders of the Civil War were allowed to exist within the context of American federal law.

Meanwhile, Jon Latimer’s *Buccaneers of the Caribbean: How Piracy Forged an Empire* (2009) considers piracy in a much broader context than almost any of its counterparts and takes an approach that is not often found in the scholarship of piracy. Chiefly through official governmental letters and records (both English and Spanish), Latimer argues that the rise of the buccaneers in the sixteenth- and seventeenth-century Atlantic world was an essential part of the rise of Britain as both a dominant economic power and an empire.<sup>28</sup>

Few scholars have made as much of the buccaneers (whom Latimer defines as something of

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<sup>26</sup> William R. Casto, “The Origins of Federal Admiralty Jurisdiction in an Age of Privateers, Smugglers, and Pirates,” *The American Journal of Legal History* 37, no. 2 (April 1993): 121.

<sup>27</sup> *Ibid.*, 124.

<sup>28</sup> Jon Latimer, *Buccaneers of the Caribbean: How Piracy Forged an Empire* (Cambridge, MA: Harvard University Press, 2009), 5.

a mix between privateers and pirates) as critical agents of change in this period, when change was constant and chaotic. However, by contextualizing European conflicts along with important developments in the Caribbean, Latimer is able to show a direct link between the two regions. In most scholarship of the topic, this link is often overlooked, with European conflicts mentioned only tangentially. Latimer's methodology effectively demonstrates the cyclical nature of the relationship between Europe and the Caribbean: what happened in one region affected the other, and vice versa.

Furthermore, by focusing on certain paradigm shifts in the Atlantic world as they concerned buccaneers, Latimer aptly demonstrates that the system that created the buccaneers also facilitated their obsolescence as England became the dominant power in the Atlantic through planting and trade as opposed to Spain's purely "bullionist" economy, which was not self-sufficient.<sup>29</sup> Interestingly, he presents the buccaneers as a sort of Frankenstein's monster—at first a useful tool meant to infringe upon Spanish monopolies which then grew into a powerful entity that seriously threatened its creator. The influence of buccaneers on the demise of the Spanish Empire tends to be overstated in historiography, yet Latimer's work shows that their responsibility for the rise of the British Empire has been surprisingly *understated*. Thus, Latimer's *Buccaneers of the Caribbean* is a worthy contribution to the scholarship of Atlantic piracy, shedding light on a facet of history that tends to be overshadowed by popular depictions and romanticized accounts.

Despite this, Latimer is one of many scholars who tend to focus exclusively on the British side of piracy in the Atlantic at the expense of the Spanish one. Thankfully, Kris E. Lane, author of *Pillaging the Empire: Piracy in the Americas, 1500-1750* (1998), provides a

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<sup>29</sup> Latimer, *Buccaneers*, 24.

fresh perspective oriented around Spain. More often than not, the Spanish are portrayed either as villains or victims in the grand narrative of piracy—in both popular *and* scholarly history. Conscious of this trend, Lane notes that the omission of the Spanish side of the story “distorts history,” and so he seeks to rectify that distortion in his book.<sup>30</sup> His chronological analysis, using the ever-popular “voyage around the world” accounts along with official archival records from Spain and South America, mixes social and economic approaches to history to identify the true effects pirates had on the Spanish Empire, from the early days of European exploration and global trade up to the Golden Age. As Lane takes his readers through his periodization of piracy, Lane debunks a common misconception regarding Spain that appears all too frequently in modern historiography: that Atlantic and American piracy, particularly during the late seventeenth and early eighteenth century, was partially responsible for the decline of the Spanish Empire.<sup>31</sup> Instead, he concludes that pirates have been both “over- and underrated as agents of change.”<sup>32</sup> Their rise in prominence happened to coincide with the financial and economic decline of the Spanish Empire, but their contribution to this decline was tangential at best. Lane’s analysis argues that pirates were nothing but a particularly vexing nuisance to the Spanish, and that the empire’s preoccupation with them was not as diabolical as the romanticizers of pirates would have us believe. Such an approach is extremely beneficial to historians of piracy simply because of the misconceptions associated with piracy and Spain. Indeed, this is the only book in this corpus that addresses the relationship between the two to any degree of satisfaction.

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<sup>30</sup> Kris E. Lane, *Pillaging the Empire: Piracy in the Americas, 1500-1750*, (Armonk, NY: M. E. Sharpe, Inc., 1998), 3.

<sup>31</sup> *Ibid.*, 129.

<sup>32</sup> *Ibid.*, 201.

Yet another departure from the norm in the historiography of piracy comes from Hans Turley's *Rum, Sodomy, and the Lash: Piracy, Sexuality, and Masculine Identity* (1999). Turley has much to prove with such a provocative title, and he does quite skillfully, addressing a very specific aspect of pirates that most historians tend to dodge. In the most general sense, Turley seeks to re-examine the periodical press, pamphlets, trial records, the confessions of pirates, and other commonly used primary sources used in the historiography of the topic to uncover how and why pirates were portrayed as "*hostis humanis generis*, the common enemy against all mankind."<sup>33</sup> Ambitiously, he compares historical records to fictional portrayals of pirates to identify how and why pirates have been mythologized, sexualized, and romanticized since the eighteenth century. Most historians do acknowledge that such a trend exists, sometimes to disprove the romantic image of piracy that dominates popular culture. More often than not, however, in attempting to disprove the trend, they romanticize pirates themselves. Indeed, this is a major flaw in most of Rediker's work, but especially in *Villains of All Nations*. Turley is able to avoid this by treating *A General History* and other works by Daniel Defoe as "fictional reality." By discussing history and fiction as "interpenetrating discourse" that inform one another, Turley finds the identity of the pirate through a gendered perspective rather than something more general that only regurgitates what was present originally in *A General History*.<sup>34</sup>

Finally, the historiography of piracy has become diversified less in monographs than in edited volumes of collected essays. Most significantly among these is *Bandits at Sea: A*

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<sup>33</sup> Hans Turley, *Rum, Sodomy, and the Lash: Piracy, Sexuality, and Masculine Identity* (New York: New York University Press, 1999), 1-2.

<sup>34</sup> *Ibid.*, 73.

*Pirates Reader* (2001), edited by C.R. Pennell and featuring contributions from a number of notable maritime scholars, including Marcus Rediker, David J. Starkey, and B.R. Burg. The goal of Pennell's volume is the goal of all pirate histories: to separate truth from myth, to establish how pirates are to be identified and described, and to include perspectives that are often either omitted from academic consideration or sensationalized for public consumption.<sup>35</sup> For essays on identification, Pennell smartly includes chapters focusing on economic (David J. Starkey and John L. Anderson) and imperial (Anne Pérotin-Dumon and Gonçal López Nadal) definitions of piracy. Meanwhile, essays on social (Rediker and Bromley), racial (Kenneth J. Kinkor), and sexual (B.R. Burg and Dian Murray) diversity found in pirate communities elaborate on topics touched upon but never fully developed in previous studies within the field. Also noteworthy are the handful of chapters on women in piracy by Rediker, Murray, Wendy Bracewell, and John C. Appleby—all of whom focus on different women in different parts of the world. Therein lies this volume's definitive strength: it is global in nature and in theory as a way to show the incredible range that the study of piracy includes.<sup>36</sup> More than any other, this volume reconciles the romantic image of piracy with the academic facts of piracy, accomplishing through collaboration what many authors in this field fail to do on their own.

The romanticized and popular image of the pirate is not something easily overcome, even in academic history. What is most difficult for historians to reconcile is that this image is not entirely untrue. Historians have been able to verify some of the biographical information presented in *A General History* with archival evidence, effectively compounding

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<sup>35</sup> C.R. Pennell, "Introduction: Brought to Book: Reading about Pirates," in *Bandits at Sea: A Pirates Reader*, edited by C.R. Pennell (New York: New York University Press, 2001), 17-8.

<sup>36</sup> *Ibid.*, 19.

the myth, while others have successfully disproven the liberty-filled life of the pirate as one of criminality that was only marginally preferable to the cruelty-ridden but legal one of the common sailor. Nevertheless, the historiography of piracy has developed far beyond its beginnings in popular history. The wide range of perspectives found in this field, from Marxian to biographical and everything in between, has helped shed some light on one of the most ambiguous and challenging groups of people in the seventeenth, eighteenth, and nineteenth centuries. Interestingly, the majority of pirate histories, including the studies considered here, all agree on one simple truth. Even without moralistic judgments attached to it, piracy has been seen as a challenge to the hierarchy of the early modern era, threatening chaos in the face of order. Not all questions regarding this truth have been answered, particularly concerning the connections between economy and social morality in the repression of piracy. Still, this is one of the major benefits of a small field within which many interpretations are possible. Each definitive work begets more questions, which will be answered by other approaches to history, which will produce new trends in the historiography of piracy for decades to come.

## CHAPTER TWO

### **“Upon the Consideration of the good of His subjects, and for the security of Trade”: The Moral and Economic Implications of Piracy in the Seventeenth and Eighteenth Centuries**

Few scholars have fully investigated the reasons why pirates were categorized as *hostis humani generis*, “the common enemy against all mankind,” above all other criminals in the early modern era. Essentially economic criminals, pirates in the seventeenth and eighteenth centuries outranked both murderers and traitors as the worst of all humanity in the eyes of newly minted international law—a fact that both puzzles and intrigues historians to this day. Interestingly, the answer to this peculiar categorization lies in the gray area between the early modern economy and the era’s conceptions of morality. These two areas are not often studied alongside one another, especially in this context. In fact, the existence of privateering, legal vagaries in definition and in process, and execution literature all contribute to the image of the pirate as both a moral problem *and* an economic one. Consideration of pirates and privateers helps to reconcile these two areas to find the foundations of their precarious place in the maritime Atlantic world, a region that often acted as battlefield for contested empires. Further, the compounding of morality and economy reveals a thought-provoking connection in the legal and rhetorical discourse concerning early modern piracy. In the fluid political climates between the sixteenth and the early eighteenth centuries, the useful disorderliness of piracy—once a weapon of great power against Spanish monopolies—ultimately declined as British imperial hegemony grew.

While popular history and fiction tend to exaggerate the image of the pirate, pirates had nonetheless solidified their criminal reputation by the eighteenth century. Officials of all nationalities often recorded their impressions of pirates when they encountered them, and did not bother to restrain themselves in their descriptions. For instance, Jesuit historian Fr. Pierre François Xavier de Charlevoix described French *flibustiers* in 1697 as “a troop of *banditti*... idle Spectators of a great Action... this Rabble... that Base kind of Life,” gifted only with “a particular Talent at discovering hidden Treasures.”<sup>37</sup> Such strong, derogatory language was not uncommon during the Golden Age of Piracy (approximately 1650 to 1730, the period during which pirates were most active in the Atlantic and Caribbean), when most acts of piracy were described as being committed by “lewd and ill-disposed persons, accustomed and habituated to spoil and rapine, insensible and desperate of the peril they draw upon themselves.”<sup>38</sup> Unfortunately, pirates, buccaneers, freebooters—all words for the same kind of criminal, yet used in varying degrees of condemnation—are unknowable in and of themselves. Early piracy and armed trade in the Americas was locally based, and records for this time and region are scarce in general, leaving historians to read between the lines in order to discern the reality of pirates.<sup>39</sup>

Truthfully, pirate identity was less stable at the time compared to later images.<sup>40</sup>

Both J.S. Bromley and Marcus Rediker have observed that pirates were not quite the

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<sup>37</sup> J.S. Bromley, “Outlaws at Sea, 1660-1720: Liberty, Equality, and Fraternity among the Caribbean Freebooters,” in *Bandits at Sea: A Pirate’s Reader*, edited by C.R. Pennell (New York: New York University Press, 2001), 170.

<sup>38</sup> Claire Jowitt, “Scaffold Performances: The Politics of Pirate Execution,” in *Pirates? The Politics of Plunder, 1550-1650*, edited by Claire Jowitt, (New York: Palgrave Macmillan, 2007), 163.

<sup>39</sup> Bromley, “Outlaws at Sea,” 176.

<sup>40</sup> Christopher Harding, “*Hostis Humani Generis*’ – The Pirate as Outlaw in the Early Modern Law of the Sea,” in *Pirates? The Politics of Plunder, 1550-1650*, edited by Claire Jowitt (New York: Palgrave Macmillan, 2007), 38.

barbarians the authorities made them out to be. Pirates tended to operate using calculated terrorism—which was usually aimed at opposing nationalities to their own “home” nation—rather than gratuitous cruelty in their banditry.<sup>41</sup> Indeed, in a trend similar to contemporary criminals on land, it was only genuine psychopaths such as François l’Olonnais (1635-1668) who committed the worst acts of piratical torture, while the majority of pirates avoided such extreme measures in favor of preserving their own lives and goods. The frequency and intensity of buccaneer brutality was simply a symptom of the age, somewhat comparable to the severe discipline imposed upon naval vessels.<sup>42</sup> These were all violent men living in a violent time.

Additionally, constant debauchery, the chief moral complaint against pirates, was also not as common as popular images depict. According to B.R. Burg, pirate drunkenness was possibly less frequent than drunkenness on the part of the British as a whole because fresh meat was much more precious to them and would have taken priority over alcohol when they resupplied their ships.<sup>43</sup> While initially based in fact, the outlandish and hostile image of the pirate grew until he was depicted as the worst kind of criminal—*hostis humani generis*, a common enemy that all nations could agree upon.

On a very basic level, this was because pirates existed in a world that was constantly in flux, both politically and economically. The political will and policies that created merchant European empires in the Caribbean simultaneously produced the piracy of that age, simply because it was fueled by Old World rivalries.<sup>44</sup> While the Spanish dominated

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<sup>41</sup> Bromley, “Outlaws at Sea,” 188.

<sup>42</sup> B.R. Burg, “The Buccaneer Community,” in *Bandits at Sea: A Pirate’s Reader*, edited by C.R. Pennell (New York: New York University Press, 2001), 229-30.

<sup>43</sup> *Ibid.*, 226-7.

<sup>44</sup> Anne Pérotin-Dumon, “The Pirate and the Emperor: Power and the Law on the Seas,

the Atlantic in the first half of the seventeenth century, they refused to open trade with foreign interlopers in their waters—even after those so-called interlopers established profitable colonies of their own. Monopolies, however, were generally weak at the local level, and under Spain’s nose grew a mutually beneficial system of piracy and smuggling that flourished between *all* nationalities in the Caribbean—Spanish, British, Dutch, French, and Portuguese alike.<sup>45</sup> Local officials even found it both expedient and lucrative to either ignore or covertly sponsor acts of piracy, sometimes because it was the only way to obtain necessities for colonists on the Caribbean islands or to defend against attacks from other nations or less cooperative pirates.<sup>46</sup> Furthermore, it was often the disruption of trade (both legal and illegal) due to European wars that led to the unemployment of seamen and ships, who turned to smuggling and piracy as viable alternatives.<sup>47</sup> The seafaring labor market fluctuated according to war and peacetime, and it was this disequilibrium that was the chief cause of piracy in the seventeenth-century Atlantic world.<sup>48</sup> If trade through shipping was symbiotic, then piracy was parasitic—a nuisance for everyone with an economic stake in the Caribbean, but also a potential weapon as European wars became more global in nature.<sup>49</sup>

Complicating the issue of piracy was the existence of privateers. From the sixteenth to the nineteenth centuries, piracy and privateering were identical acts on practically every

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1450-1850,” in *Bandits at Sea: A Pirate’s Reader*, edited by C.R. Pennell (New York: New York University Press, 2001), 26; John L. Anderson, “Piracy and World History: An Economic Perspective on Maritime Predation,” in *Bandits at Sea: A Pirate’s Reader*, edited by C.R. Pennell (New York: New York University Press, 2001), 82.

<sup>45</sup> Pérotin-Dumon, “The Pirate and the Emperor,” 45.

<sup>46</sup> Anderson, “Piracy and World History,” 83.

<sup>47</sup> *Ibid.*, 94.

<sup>48</sup> David J. Starkey, “Pirates and Markets,” In *Bandits at Sea: A Pirate’s Reader*, edited by C. R. Pennell (New York: New York University Press, 2001), 118, 120.

<sup>49</sup> *Ibid.*, 108-9.

level, except for one very important one detail. Privateering was piracy that was legally sanctioned by the government. Kings issued letters of marque to private individuals that allowed them to take as prizes the ships and goods belonging to other countries. This was a particularly useful weapon in the seventeenth century, when up-and-coming European powers—namely England, France, and the Netherlands—turned to privateering as a way to breach Spain’s monopoly in the New World.<sup>50</sup> Additionally, frequent wars in Europe had repercussions in the Americas, most often in the form of privateering. At a time when most navies were underdeveloped, employing men outside of the military to engage in warfare on behalf of the state essentially privatized war, making the privateer a kind of maritime mercenary.<sup>51</sup> As described in *Lex Mercatoria: or, The Merchant’s Companion*, a 1718 legal manual by Giles Jacob, privateering of this nature seems almost as natural as war itself:

That *Privateers* are lawful there is no room to question. If a War be enter’d into on a just Foundation, these cannot be unjust; and certainly Goods of an Enemy are liable to Seizure or Spoliation, as well as his person to the Fate of Arms.<sup>52</sup>

Characterizing privateering as one of the obvious consequences of war went a very long way in legitimizing it as “legal” piracy. Indeed, to help further the distinction, privateering became a very closely regulated joint venture between the state and the private entrepreneur. Technically, this was the opposite of piracy, which tended to be impulsive and chaotic.<sup>53</sup>

Although such wartime tactics also served the economic interests of the state, strict

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<sup>50</sup> Starkey, “Pirates and Markets,” 108-9.

<sup>51</sup> Harding, “*Hostis Humani Generis*,” 25.

<sup>52</sup> Giles Jacobs, *Lex Mercatoria: or, The Merchant’s Companion. Containing all the laws and statutes relating to merchandize* (London: E. and R. Nutt, and R. Gosling, for B. Motte, J. Clarke, & J. Lacy, 1718), 177.

<sup>53</sup> Harding, “*Hostis Humani Generis*,” 24-5.

regulation generally prevented financial gain from being the primary objective of privateering expeditions. Laws concerning privateering dictated that plunder taken from prizes had to be divided between interested parties, not equally but rather according to a fixed hierarchy, starting with the monarch. In England, the High Court of Admiralty took duties from reported prizes for the Crown, while most of the goods were distributed thusly:

The King's Duties being deducted, the neat Proceed, in Case such Prize were taken by a private Man of War, shall be divided into five parts; four Parts to be Answer'd to the Persons interested in the Privateer, and the fifth to their Majesties; and the Ship, with its Furniture, to be enjoy'd by the Persons interested in the Privateer. And if the Prize be taken by any of the King's Ships, the neat Produce shall be divided into three Parts, one third to be answer'd to the Commander (one third whereof is to be distributed amongst the Ship's Crew) one third to be paid to the Treasurer of the Ship's Navy, for the Relief of the sick and wounded Mariners, &c. and the other third Part to their Majesties. And if Prizes are taken by any Merchant-Ship in the Service of the Crown, the Proceed is to be divided in like Manner as Ships taken by Men of War.<sup>54</sup>

While the Crown always required a complete share for itself, sums still tended to be small for a variety of reasons. Chief among them, of course, was cheating the owner(s) of privateering vessels by excessive, secretive pillaging on the part of the captain and crew.<sup>55</sup> Such practices were inherent in the business of privateering, and any persons who embezzled, concealed, or put on shore "Goods or Merchandise in any other Place than the King's Warehouse" were to forfeit their share of the goods—if they were caught.<sup>56</sup> Considering that the King's Warehouse was in London while privateers operated all over the globe, this caveat was much harder to enforce on the seas than it was on paper. Thus, privateering served the interests of the state on the whole by preying on commercial and

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<sup>54</sup> Jacobs, *Lex Mercatoria*, 180.

<sup>55</sup> Bromley, "Outlaws at Sea," 172.

<sup>56</sup> Jacobs, *Lex Mercatoria*, 180.

political rivals, crippling *their* trade and earning a small financial bonus in the process.<sup>57</sup>

Still, piracy and privateering differed in formalities only, not in conduct.<sup>58</sup> From 1588 until her death in 1603, a time when Anglo-Spanish relations were at their worst, Queen Elizabeth I commissioned seventy-six privateering expeditions to the Caribbean, including the voyages of Sir Francis Drake.<sup>59</sup> Meanwhile, the Dutch East and West India Companies engaged in privateering against Spain during the Eighty Years War (1568-1648) as a way to open new trade avenues when most had been cut off by their Iberian enemies.<sup>60</sup> Both countries considered these voyages as a series of legitimate business ventures, either formally or informally sanctioned by the government. Spanish responses included naval patrols, increased armament of merchants, and massive fortifications of major ports such as Cartagena, Havana, and San Juan de Puerto Rico. However, such measures were too expensive to protect the entirety of their empire, and privateers from all over Europe flourished in the Atlantic.<sup>61</sup> Unsurprisingly, the English and the Dutch celebrated their privateers as national heroes. In contrast, the Spanish castigated them as mere pirates, even though they ostensibly performed the same function as Spain's own national heroes in the New World, the *adelantados* and *conquistadores*. Nevertheless, prize decisions based on privateering were internationally recognized, and therefore internationally legitimate. Despite Spain's complaints of piracy, nothing it could do or say changed the decisions made in foreign Admiralty courts.<sup>62</sup>

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<sup>57</sup> Starkey, "Pirates and Markets," 110.

<sup>58</sup> Harding, "*Hostis Humani Generis*," 24.

<sup>59</sup> Kris E. Lane, *Pillaging the Empire: Piracy in the Americas, 1500-1750* (Armonk, NY: M. E. Sharpe, Inc., 1998), 49.

<sup>60</sup> *Ibid.*, 62-4.

<sup>61</sup> *Ibid.*, 51.

<sup>62</sup> Harding, "*Hostis Humani Generis*," 25.

While the perception of privateers by the countries who sponsored them *should* have been relatively straightforward, it hardly ever was. In the early modern period, and especially in the Golden Age of Piracy, the classification of privateers and pirates was purposefully subjective. As Anne Pérotin-Dumon succinctly stated, “who is called a pirate depends on who has the power.”<sup>63</sup> Privateers and pirates could be viewed as national heroes and despised criminals in equal measure, particularly among the English, who tended to use the terms interchangeably.<sup>64</sup> As agents of warfare in sixteenth-century anti-Spanish campaigns, privateers like Sir Francis Drake and Sir Walter Raleigh also became agents of exploration and national identity.<sup>65</sup> Both Drake and Raleigh were knighted for their service to the Crown of Elizabeth I, but Raleigh was executed in 1618 under her successor, James I, for an act of “piracy” he had committed against the Spanish fifteen years before.<sup>66</sup> Raleigh’s execution was extremely controversial and politically motivated on the king’s part. Nevertheless, James was able to spin what was originally an act of privateering into an act of piracy to better suit his needs. Nearly a century later, William Kidd (1645-1701) was executed as a pirate because he could not prove that he was a legally sanctioned privateer when he captured several French ships in the Indian Ocean.<sup>67</sup> The characterization of privateers and pirates was completely relative to those who had the power to execute them, aided by the vagaries of the law and the will of the empire.

Proclamations concerning the eradication of pirates abounded in the late seventeenth century, particularly in the British North American colonies where piracy was

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<sup>63</sup> Pérotin-Dumon, “The Pirate and the Emperor,” 31.

<sup>64</sup> Harding, “*Hostis Humani Generis*,” 26.

<sup>65</sup> *Ibid.*, 27.

<sup>66</sup> Jowitt, “Scaffold Performances,” 164.

<sup>67</sup> Robert C. Ritchie, *Captain Kidd and the War Against the Pirates* (Cambridge: Harvard University Press, 1986), 220.

problematic. One of the earliest surviving proclamations concerning pirates in New York, dated 1693, actually prohibited privateers from operating in American waters, declaring that “it shall now be Felony [sic] for any Person which now doth or hereafter shall inhabit in or belong to this Province, to serve in *America* in any Hostile manner under any Forreign [sic] Prince, State or Potentate in Amity with their Majesties.”<sup>68</sup> English privateers commissioned by other European monarchs were thus considered by law to be pirates and executed as such, even though privateering was a recognized career throughout Europe and its various colonies during periods of wartime.

Going into the eighteenth century, piracy and privateering compounded and became much less favorable, at least on an official level, and especially from an English perspective. In 1698, Richard, Earl of Bellomont (1636-1701), was made the governor of New York with the express directive of eliminating piracy. Shortly after arriving, he issued a proclamation against pirates, stating the following:

And where as his most Excellent Majesty, upon the Consideration of the good of His subjects, and for the security of Trade, hath though fit to signify unto me his Royal Will and Pleasure... That all Pyrates and Sea Rovers that shall come within the Jurisdiction of this Province, should be Suppressed, and that Effectual care might be taken to Arrest, Seize, and secure the Ships, Persons, and Effects of all such Pyrates, in order to the bringing of them to due punishment, as the Laws in such Cases do direct.<sup>69</sup>

At this time, “Pyrates and Sea Rovers” were loosely defined terms, and perhaps purposefully so. Governors like Bellomont knew this. He was one of the many investors in William Kidd’s 1696 privateering expedition who turned on him when he returned to New York in 1699. Bellomont confiscated Kidd’s letter of marque and, under the pressure of the

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<sup>68</sup> “Province of New-York, ss. Anno regni Gulielmi & Mariae, Regis & Reginae, Angliae, Scotiae, Franciae & Hiberniae, quinto. An act for restraining and punishing privateers and pyrates” (New York: William Bradford, 1693), 1.

<sup>69</sup> “By His Excellency” (New York: William Bradford, 1698), 1.

British East India Trading Company, arrested him as a pirate.<sup>70</sup> This confiscation of the letter led to Kidd's execution in London two years later. As Spain's power declined and England's merchant empire grew, the line between pirate and privateer became less and less distinct, until all maritime raiders were considered pirates and had to be eliminated accordingly.

Still, even as the authorities demonized pirates, their status as criminals was murkier than their contemporaries would have liked. More recent legal arguments about the seriousness of piracy tend to project backward through time, over-emphasizing the classification of pirates as the world's first *international* criminals—again, as *hostis humani generis*, “the common enemies of all mankind”—when in fact, international law regarding piracy has never truly existed. On the contrary, the conventional view of pirates as a “notorious and egregious” category of criminal emerged in the late seventeenth century more in rhetoric than it did in law, simply because laws established in Europe were often tried *only* in Europe.<sup>71</sup> Trying and punishing peripheral crimes in symbolic centers of empire left colonial officials virtually powerless to eradicate them, and thus piracy became a more of a social problem rather than a legal one. Even so, written condemnations of piracy within legal texts were great in number and vehement in tone, particularly in the eighteenth century when the sting of their crimes was still sharp and pirates as a group had yet to be romanticized:

Lastly, the crime of *piracy*, or robbery and depredation upon the high seas, is an offence against the universal law of society; a pirate being, according to sir [sic] Edward Coke, *hostis humani generis*. As therefore he has renounced all the benefits of society and government, and has reduced himself afresh to the same state of nature, by declaring war against all mankind, all mankind must

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<sup>70</sup> Ritchie, *Captain Kidd*, 184.

<sup>71</sup> Harding, “*Hostis Humani Generis*,” 23, 21.

declare war against him: so that every community hath a right, by the rule of self-defense, to inflict that punishment upon him, which every individual would in a state of nature have been otherwise entitled to do, for any invasion of his person or personal property.<sup>72</sup>

As purportedly “international” criminals, pirates and their behavior were subject to “universal” condemnation, and much of the rhetoric of the time directed all states to take action against banditry outside their territories.<sup>73</sup>

Perhaps overcompensating for the difficulties in successfully apprehending pirates and trying them, the language of these late legal texts and the rhetoric used in trials gave the added impression of serious criminality far beyond the norm. Somehow, maritime criminals were even more odious and dangerous than criminals on land. For example, when John Valentine prosecuted thirty-six pirates in Rhode Island in 1723, he declared that “[this] sort of Criminals are engag’d in a perpetual War with every Individual,” even though they were only charged with theft of property as opposed to assault or murder.<sup>74</sup> There are many reasons for the creation of this overwhelmingly threatening image of the pirate, among them the violence associated with piracy and the sheer number of pirates who operated with little restraint throughout the seventeenth and early eighteenth centuries. However, one of the most prominent factors was tied to the space they occupied. The sea was “a distant place full of dangers, a site of frequent disaster, a potential path of invasion to England and the colonies, and finally a natural space that was difficult if not impossible to control.”<sup>75</sup>

The problem that pirates operated predominantly on the high seas was a complex

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<sup>72</sup> William Blackstone, *Blackstone’s Commentaries*, 1769 (London: Callaghan, 1899 [Reprint]), 443.

<sup>73</sup> Harding, “*Hostis Humani Generis*,” 20-1.

<sup>74</sup> *Trial of Thirty-Six Persons for Piracy* (Boston: Kneeland, 1723), 3.

<sup>75</sup> Marcus Rediker, *Villains of All Nations* (Boston: Beacon Press, 2004), 134.

but not an insurmountable one. German legal scholar Lassa Oppenheim categorized pirates as international criminals the following way in 1948:

According to the Law of Nations the act of piracy makes the pirate lose the protection of his home state, and thereby his national character; and his vessel, although she may formerly have possessed a claim under a certain State's flag, loses such claim. Piracy is a so-called 'international crime;' the pirate is considered the enemy of every State, and can be brought to justice anywhere.<sup>76</sup>

While theoretically sound, this treatise is one example of modern legal attitudes concerning piracy intruding upon those of the early modern period. English courts tended to prosecute English pirates, Spanish courts Spanish pirates, and so on; and in most instances of one nation dealing with pirates of another nationality, trials were generally set aside in favor of swift executions. The Spanish elimination of the French Huguenot colony in Florida within a month of its plantation in 1563 is an excellent example of this. Although not accused of piracy, the location of the Huguenot colony was an ideal base for potential raids on Spanish treasure fleets. Rather than risk their silver, the Spanish quickly eliminated this early French threat, setting aside treaties and international law for the protection of their imperial interests.<sup>77</sup>

Questions of jurisdiction also complicated matters, as the "territories" referred to in most proclamations against pirates typically implied the lands occupied by that country as opposed to the sea, which was virtually unclaimable due to its vast and undelineated nature. In one of the first treatises to establish modern international law, the Dutch jurist and philosopher Hugo Grotius (1583-1645) argued this fact in his foundational *Mare Liberum* ("The Freedom of the Seas," 1609) to refute the unjustified claims of Spain and

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<sup>76</sup> Lassa Oppenheim, *International Law: A Treatise, Volume 1* (London: Longmans, Green & Company, 1920), 434.

<sup>77</sup> Lane, *Pillaging*, 28.

Portugal to the Indian Ocean and to exclude foreigners therefrom.<sup>78</sup> Using a combination of natural law and the Law of Nations, Grotius established that the sea is indifferently called the property of no one (*res nullius*), a common possession (*res communis*), or public property (*res publica*).<sup>79</sup> Further, the sea cannot be built upon or claimed for a sovereign as remote lands were commonly claimed for European monarchs. Thus, he concludes, that which cannot be occupied, or which has never been occupied, cannot be property,” and the Dutch could not be legally excluded from East Indian seas or trade.<sup>80</sup> Furthermore, the capture and trial of pirates by a certain country also does not signify ownership over the seas:

We recognize... that certain peoples have agreed that pirates captured in this or in that part of the sea should come under the jurisdiction of this state or of that, and further that certain convenient limits of distinct jurisdiction have been apportioned on the sea. Now, this agreement does not bind those who are parties to it, but it has no binding force on other nations, nor does it make the delimited area of the sea the private property of any one. It merely constitutes a personal right between contracting parties.<sup>81</sup>

International law did not simplify questions of jurisdiction, but at the very least, it did nullify Spanish and Portuguese claims of ownership of the seas and of global trade.

Although Grotius intended for this treatise to benefit and justify Dutch trade in the East, *The freedom of the seas* went far beyond Dutch interests. What was true for the Indian Ocean and the Dutch was also true for the Atlantic Ocean and the British, and would help them challenge Spanish hegemony in the New World throughout the seventeenth century.

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<sup>78</sup> James Scott Brown, “Introductory Note,” in *The freedom of the seas; or, The right which belongs to the Dutch to take part in the East Indian Trade* (New York: Oxford University Press, 1916), viii.

<sup>79</sup> Hugo Grotius, *The freedom of the seas; or, The right which belongs to the Dutch to take part in the East Indian Trade* (New York: Oxford University Press, 1916), 23.

<sup>80</sup> *Ibid.*, 27.

<sup>81</sup> *Ibid.*, 35.

Further complicating the issue of curtailing piracy was the fact that territories and islands in the New World changed hands, rendering jurisdiction moot.<sup>82</sup> Nevertheless, European nations seemed to agree that all states were equally able and obliged to exercise jurisdiction both to apprehend pirates and bring them to trial, even if that jurisdiction was unclear. This transnational strategy to regulate a common problem was largely ineffective until the 1720s and 1730s, when England vigorously pursued the elimination of piracy in Atlantic and Caribbean waters. By then, it was a well-known fact that pirates flourished because they were able to commit their crimes in places that were distant from centers of authority, something that also troubled the state to a great extent.<sup>83</sup> Thus, proclamations used all-encompassing language in an attempt to impose order over a place that was inherently disordered:

And for the better and more speedy Execution of Justice upon such who having committed Pyracies, Fellonies, and other Offences upon the Sea, shall be apprehended in or brought prisoners to this province, Be it further enacted by the Authority aforesaid, That all Fellonyes, pyracies, Robberies, Murders, or Confederacies committed, that hereafter shall be committed on the Sea, or in any Haven, Creek, or Bay, within the Jurisdiction of the Admiralty, shall be enquired, tryed, heard, determined and judged in such form as if such Offence had been committed in and upon the Land.<sup>84</sup>

In attempting to equate land and sea, the colonial authorities imposed special jurisdiction over the sea as a matter of optimized law enforcement, not because of any “special heinousness” of the crime itself.<sup>85</sup> Nevertheless, maintaining the image of the pirate as an especially heinous criminal was a priority for the state when it came to actually prosecuting

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<sup>82</sup> The Dutch claimed various Portuguese possessions in Brazil in the mid-1600s, most significantly Pernambuco in 1630, but they were ousted by 1654. Similarly, the Spanish lost Jamaica to the British in 1655 amid Britain’s efforts to colonize various islands in the Caribbean.

<sup>83</sup> Rediker, *Villains*, 135.

<sup>84</sup> “Province of New-York,” 1.

<sup>85</sup> Harding, “*Hostis Humani Generis*,” 23.

and executing them.

In early modern England, jurisdiction over pirates was given to the Admiralty Court rather than the civil courts. This distinction helped to separate pirates from “common” criminals, to the point where the Admiralty’s condemned maritime offenders were executed at a completely different spot in London than the civilian criminals—Execution Dock in Wapping on the Thames, as opposed to the gallows at Tyburn.<sup>86</sup> Still, this separation proved to be rather challenging on a logistical level. Between 1536 and 1700, captured pirates had to be tried in London before the Court of Admiralty, which meant that the accused, the evidence, *and* the witnesses had to be transported back to England from the colonies or the Caribbean at the expense of the Crown for a trial to occur.<sup>87</sup> Although considerably inconvenient, this policy was upheld because officials in England believed it would reduce the amount of bribery in the colonies and Caribbean, therefore increasing the number of pirates convicted and eliminated.<sup>88</sup> This did not change until the passing of the *English Act of Piracy in 1699*, which allowed pirates to be executed in the colonies where they were caught rather than exclusively in London.<sup>89</sup> Parliamentary acts such as this one combined with pardon schemes implemented by incoming governors such as former privateer Woodes Rogers (1679-1732) to the English colony of the Bahamas drastically improved England’s campaign against piracy, effectively eliminating it within thirty years.

However, even while hundreds of men were convicted of piracy in the seventeenth and eighteenth centuries, thousands more either went free or were never caught because

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<sup>86</sup> Peter Linebaugh, *The London Hanged: Crime and Civil Society in the Eighteenth Century* (Cambridge: Cambridge University Press, 1992), 16.

<sup>87</sup> Harding, “*Hostis Humani Generis*,” 33.

<sup>88</sup> Hans Turley, *Rum, Sodomy, and the Lash: Piracy, Sexuality, and Masculine Identity* (New York: New York University Press, 1999), 46.

<sup>89</sup> Lane, *Pillaging*, 180.

the problem was simply unmanageable.<sup>90</sup> Upon going “on the account”—the contemporary colloquialism for taking up piracy—pirates themselves knew that problems of legal definition and jurisdiction greatly reduced the “costs” they could expect as consequences of their actions.<sup>91</sup> Generally speaking, legal proceedings were not the warnings against piracy the state wanted them to be, even when mass trials and executions were mounted quite frequently—including one where over fifty men were executed at once for sailing with Bartholomew Roberts in 1722.<sup>92</sup> As a result, other measures had to be taken in order to present pirates as threats, both to morality and to the economy itself.

Throughout the late seventeenth and early eighteenth centuries, it became abundantly clear that the best method of portraying pirates unfavorably was via propaganda, through both popular publications and more specialized literature specifically designed to record and disseminate trials and executions. Trial transcripts tended to be published locally within days of the trial, while broadsides and pamphlets detailing the “last dying speeches” of pirates were usually published the morning after the execution itself. Not only did such documents establish the public’s impression of the pirate, but they were also a significant source of entertainment—a way for a wider audience to vicariously enjoy (and learn a lesson from) events that most people were not permitted to or could not attend.<sup>93</sup> Trial transcripts, last dying speeches, and execution sermons were popular on both sides of the Atlantic, and surviving documents tend to indicate which piratical figures captured the public’s imagination the most. Much scholarship has been dedicated to the documents detailing the trials and executions of William Kidd and William Fly, but even

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<sup>90</sup> Harding, “*Hostis Humani Generis*,” 34.

<sup>91</sup> Anderson, “Piracy and World History,” 84.

<sup>92</sup> Turley, *Rum, Sodomy, and the Lash*, 45.

<sup>93</sup> *Ibid.*

these followed the same format as the less notorious accounts. For instance, the 1718 transcripts of eight men indicted for piracy in Boston begins in the following manner:

Albeit the Crimes of Piracy and Robbery are most Odious and Detestable, being Repugnant to the Laws of Almighty God, Destructive of Government, and Directly Tending to Subvert and Extinguish the Natural and Civil Rights of Mankind, and therefore are strictly Prohibited and Provided against by divers Express Laws, Statutes, and Ordinances of our Sovereign Lord the King [...] Nevertheless so it is, That the said *Simon Van Vorst, John Brown, Thomas South, Thomas Baker, Hendrick Quintor, Peter Cornelius Hoof, and John Shuan,* To the high displeasure of Almighty God, in open Violation of the Rights of Nations and Mankind, and in Contempt and Defyance of His Majesty's good and wholesome Laws aforesaid, Willfully, Wickedly, and Feloniously, all and each of them, being Principal Actors and Contrivers, Associates, Confederates, and Accomplices, Did, Perpetrated and Committed on the high Sea sundry Facts of Piracy and Robbery, Distinctly Specified and Expressed, and Qualified with respect to time and place, and manner...<sup>94</sup>

Authoritative, didactic, and condemnatory language was the norm for published trial transcripts. Remarks introducing the charges, such as the previous excerpt, and remarks made by the prosecutors are always quoted verbatim, while the accused pirates themselves are quoted very rarely.<sup>95</sup> Occasionally transcripts included an appendix detailing the testimony or confessions of the pirates, though these were generally written in the third person and probably edited by the court's clerk. By minimizing or even removing the words spoken by pirates from the public record, the state was able to control the public's impression of the pirate, at least to a certain degree. This was an effective way of reinforcing the government and the Admiralty's authority at the expense of the pirates' autonomy, even if it is frustrating for historians who wish to hear pirates speak for themselves through the limited documents available for this nearly voiceless group.

Nevertheless, even the most apparently rebellious and openly criminal pirates were

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<sup>94</sup> *The Trials of Eight Persons Indited for Piracy* (Boston: Green for Edwards, 1718), 2.

<sup>95</sup> Turley, *Rum, Sodomy, and the Lash*, 47.

“acutely aware” of the nuances of their legal standing, which occasionally shows in the transcripts and last dying speeches.<sup>96</sup> Privateers accused of piracy were usually able to use their letters of marque as a defense against their alleged acts, though the efficacy of such a defense depended on both geographical limits and the time when the “prize” was taken versus the time countries were at war. While letters of marque were generally documents of considerable legal and economic significance, they became worthless during peacetime, leading to many a former privateer’s execution for piracy.<sup>97</sup> Still, privateers also preserved a pretense of legality when conducting illegal raids and often presented rehearsed excuses at trial in the hopes of being acquitted. Other main defenses that occasionally engendered acquittal were mutiny and coercion, not easily proven but taken very seriously all the same.<sup>98</sup> All of the accused from the 1718 transcripts testified that Captain Bellamy captured and forced them into piracy, and his company “Swore they would kill him unless [they] would joyn with them in their Unlawful Designs.”<sup>99</sup> Only one man out of seven who employed this defense was acquitted, however, and most likely because he testified that Bellamy threatened to maroon him on a deserted island if he did not turn pirate with the rest of them. Acquittal was not uncommon, though it obviously favored those who could prove their innocence through documents and outside witnesses, which tended to be scarce considering the unofficial capacity under which pirate ships sailed and the unwillingness of most men to testify before the Admiralty, lest they be tried for piracy as well.

Interestingly, literature documenting pirate executions differed in tone to an

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<sup>96</sup> Benton quoted in Harding, “*Hostis Humani Generis*,” 31.

<sup>97</sup> Harding, “*Hostis Humani Generis*,” 25, 31

<sup>98</sup> *Ibid.*, 33, 31.

<sup>99</sup> *The Trials of Eight Persons*, 12.

extreme degree. Often written by religious figures, execution sermons and pamphlets publishing last dying speeches took on an overwhelmingly moral quality in portraying pirates. The most famous of these men was Paul Lorrain (d. 1719), the ordinary of Newgate, who made a small business out of writing and publishing pamphlets the day after executions occurred while simultaneously reinforcing state values. His most famous account of the execution of William Kidd is doubly notable if only because Lorrain omits Kidd's dying speech in its entirety, having deemed it too politically subversive for posterity.<sup>100</sup> Another prolific writer in this era was none other than Cotton Mather (1663-1728), a politically influential New England Puritan most often remembered today for his involvement in the Salem witch trials. Mather's accounts are of particular interest because they diverge from the norm and often include the confessions and dying speeches of condemned pirates in their own words, rather than the paraphrased versions utilized by most writers of the genre.<sup>101</sup>

Execution literature was of considerable importance during the early modern period because it helped publicize the more ritualized aspects of capital punishment. Whether of pirates or common criminals, executions were purposefully designed to enact a triumph of the state or monarch over the bodies of transgressors against the laws of society.<sup>102</sup> Part of this ritual was the expectation that the condemned would deliver a repentant dying speech, confessing to their sins and allowing themselves to be used as an

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<sup>100</sup> Turley, *Rum, Sodomy, and the Lash*, 54.

<sup>101</sup> Of course, it is difficult to know exactly how accurate Mather's recordings of Fly's words are. The fact that he quotes Fly at all is noteworthy.

<sup>102</sup> Jowitt, "Scaffold Performances," 152.

example to the public.<sup>103</sup> One of the earliest broadsides to survive from Boston, *An Account of the Behaviour and last Dying Speeches Of the Six Pirates, that were Executed on Charles River* (1704), offers a good example for the basic format of execution literature. At two pages total, over a page and a half is dedicated to the execution sermon of an unnamed minister, while the remainder is left to abridged versions of the six pirates' last words. The captain, John Quelch, has the longest "speech" at thirteen lines, and the other five pirates receive up to five lines. The least repentant pirate, Peter Roach, receives only one: "He seem'd little concerned, and said but little or nothing at all."<sup>104</sup> This is because lines were not wasted on men who did not publicly repent, or men who used their dying speech to challenge authority.

It is very strange, then, to see Cotton Mather twenty-two years later dedicating a third of his treatise, *The Vial poured out upon the Sea* (1726), to transcripts of his conferences with condemned and unrepentant pirate William Fly. More than the anonymous author of the 1704 broadside, and perhaps even Paul Lorrain, Mather was hugely concerned with the repentance of the many pirates he attended before their executions, but he seemed to meet his match in the stubborn refusals of William Fly. After one conference wherein Mather practically begs Fly to repent without success, Mather returns to renew his pleas, again without success. Mather asks Fly to forgive those who have condemned him; Fly refuses once more, and then the following exchange occurs:

*M.* And I pray what, have you to say of the Government?

*F.* *GOD* Reward them according to their Desserts.

*M.* You must not go on in this Impiety.

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<sup>103</sup> J. A. Sharpe, "Last Dying Speeches': Religion, Ideology and Public Execution in Seventeenth-Century England," *Past & Present*, no. 107 (May 1985): 163.

<sup>104</sup> *An Account of the Behaviour and Last Dying Speeches of the Six Pirates* (Boston: Boone, 1704), 2

F. *I can't help it!*<sup>105</sup>

Scholars argue that Mather's portrayal of Fly as stupid, brutish, and impious is intended to undermine his reasonable justifications for piracy (namely, "bad usury," or extreme maltreatment by a former captain) and eliminate sympathy for Fly.<sup>106</sup> If this were truly his goal, then perhaps he should have left his discussion with Fly out entirely, as another minister did in his own account of Fly's execution.

Benjamin Colman, in his own treatise entitled, *It is a fearful thing to fall into the Hands of the Living God: A Sermon Preached to some miserable Pirates, July 10. 1726*, records the sermon only and makes no mention of Fly's unapologetic dying speech or behavior. Instead of considering Fly's position and advising captains not to use their crew badly lest they turn to piracy as Mather does, Colman takes the moral high ground and makes Fly and his comrades out to be the dregs of humanity, the worst of the worst:

YOU that have liv'd upon *rapine* and *robberies*, the spoil of your innocent and righteous Neighbours; how *fearful* should it be to you to think of falling into the hands of the living God? [...] YOU that had pass'd your lives in *drunkenness* and intemperance, in *unchastity* and uncleanness, in *lasciviousness*, *lusts* and *excess of wine*, in revellings and riots; how should you fear to fall into the hand of the living God? [...] ONCE more, You that are *Murderers*, & have the stain of your *Brothers blood* upon your guilty souls and hands; who *like Cain* have been of that *wicked one* (the devil) that *murderer from the beginning*, and have slain your *Brethren* because their deeds were righteous, and you knew they would not join with you in your impieties...<sup>107</sup>

Colman clearly chooses in his sermon to demonize the pirates before him, not only to frighten them into repentance before their deaths, but also to frighten the general public, who either watched the sermon or read it, into leading good, Christian lives and accepting

<sup>105</sup> Cotton Mather, *The Vial poured out upon the Sea* (Boston: Fleet for Belknap, 1726), 20.

<sup>106</sup> David E. Williams, "Puritans and Pirates: A Confrontation between Cotton Mather and William Fly in 1726," *Early American Literature* 22, no. 3 (1987): 234.

<sup>107</sup> Benjamin Colman, *It is a Fearful Thing to fall into the Hands of the Living God* (Boston, 1726), 27-8.

the social order. Such warnings tend to lose their potency when accompanied by pirates' speeches that made them sympathetic and piteous as opposed to the rogues they were consistently portrayed to be.

The campaign against pirates in public opinion, found in the works of Mather, Colman, and many more, continued until the end of the eighteenth century, by which time piracy had been all but eliminated. However, the appearance of such rhetoric depicting pirates as a "social plague" at the beginning of the century was not accidental. It coincided with the launch of England's new commercial and political policy against pirates—a policy of suppression, rather than toleration.<sup>108</sup> This shift in attitude first began in the seventeenth century when merchants laid down their weapons and accepted the protection of the state, usually in the form of naval escorts.<sup>109</sup> Simultaneously, trade became all-important both to the English economy and England's standard of living, which made piracy a much bigger threat to their empire than ever before.<sup>110</sup> National interests changed, and the nation that created the most prolific of pirates—though it called them privateers at the time—no longer had any use for them. The change in relationship between merchants and the state fostered the suppression of piracy, and subsequent Parliamentary acts, such as the *Jamaican Act of 1683*, were passed in order to make commerce safer and more profitable.<sup>111</sup>

Pirates had been concurrently criminals and agents of national interest when Spain controlled the Atlantic world in the sixteenth and early seventeenth centuries. However, once the status quo changed and by the eighteenth century when English imperial

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<sup>108</sup> Pérotin-Dumon, "The Pirate and the Emperor," 40.

<sup>109</sup> *Ibid.*, 41.

<sup>110</sup> Harding, "*Hostis Humani Generis*," 37.

<sup>111</sup> Pérotin-Dumon, "The Pirate and the Emperor," 42.

hegemony had been firmly entrenched throughout the Caribbean and North America, pirates were simply criminals once more.<sup>112</sup> A full reversal in policy was necessary to eliminate piracy, which was accomplished through extreme penalties for committing piracy and strong rhetoric from state officials, spiritual leaders, and other intellectual members of society. Contemporary sympathy and respect for pirates had still existed among colonists who remembered how pirates protected and supplied them with goods when the state did not, but by the mid-eighteenth century, such attitudes disappeared and public opinion turned against pirates for good.<sup>113</sup> The shift in prosecution of pirates also reveals the law of the sea was more of a reflection of the prevailing balance of power rather than an impartial interpretation of natural justice.<sup>114</sup> In the end, it was the British Empire that decided whether or not pirates were allowed to exist, and to eliminate them, it used a very potent combination of weapons, combining the overarching morality of the state with the power of its economic markets.

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<sup>112</sup> Harding, "*Hostis Humani Generis*," 36.

<sup>113</sup> *Ibid.*, 35.

<sup>114</sup> Starkey, "Pirates and Markets," 107.

## CHAPTER THREE

### **A Challenge to Spanish Sovereignty: Pirates and Privateers as Transnational Entrepreneurs in an Age of Empire**

Since the discovery of the New World, there has never been a time when Spain's policies in the Americas have not been under scrutiny. The cruelty and ruthlessness with which they dispatched entire civilizations all in the name of glory, God, and gold has seemingly given Spain a reputation as one of history's most despised villains, their actions unforgivable but their motives fascinatingly complex—and often overlooked. Such nationally driven condemnation and general disregard of the Spanish has pervaded the historiography of its empire, led by British scholars such as J.H. Parry and his dated monograph, *The Spanish Seaborne Empire* (1967). Echoing the dominant attitudes of the era, Parry and his editor, J.H. Plumb, treat the Spanish empire as a mystery than cannot possibly be solved because the fact that it existed at all is beyond belief. Compared to the rest of Europe, Spain was a “relatively backward, poor, and isolated country,” making the deciphering of its empire a worthwhile question but one that will nevertheless puzzle historians for years to come.<sup>115</sup> A product of its time, Parry's work and the positions it reinforced did not begin to dissipate in historiography until the latter half of the twentieth century, when new strides in scholarship began to dig deeper into the nature of the Spanish empire instead of simply exaggerating its faults. Monographs such as J.H. Elliott's truly masterful *Empires of the Atlantic World: Britain and Spain in America 1492-1830* (2006) have purposely forsaken narrative histories and their inherent regional biases to produce

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<sup>115</sup> J.H. Plumb, “Introduction,” in *The Spanish Seaborne Empire* (New York: Alfred A. Knopf, 1967), 22.

“a more coherent history than previous fragmented attempts.”<sup>116</sup> Unlike Parry and his predecessors, Elliott removes from his analysis the long-standing attitude in historiography that has made Britain’s colonies superior to Spain’s, enabling the historian to examine each empire’s strengths and weaknesses as they existed, and not as they have since been perceived.<sup>117</sup> In that manner, scholars such as Elliott emphasize the complexities of the Spanish empire over its flaws, illuminating the ways in which an imperial structure benefited its settler communities in the New World as much as it harmed them. For example, Elliott’s non-biased of Spain as the “first-comers” to the Americas, and thus the first to experience incredible challenges and also the first with the ability to be flexible in their solutions, is one of the many topics to reflect his major theme.<sup>118</sup> Such objectivity, which oftentimes reveals surprising facets of empire, is nowhere to be found in the black-and-white mentality of Parry’s generation.

Still, the powerful attitudes present in Parry’s work are difficult to completely overcome, particularly in overlapping areas of scholarship. Interestingly, this long entrenched view of Spain comes through very clearly in both the popular history and the historiography of Atlantic piracy, where the Spanish are more often portrayed as villains rather than victims of pirates of all European nationalities. From Spain’s perspective, it was always the victim, most often of English privateers. The goods stolen from Spanish ships were always legally and rightfully theirs. The difficulty in pinpointing the true victims of piracy is often one of objectivity, something that is lacking in both the historiography of Atlantic piracy and that of the Spanish empire. Still, Spain was not truly a victim of piracy as

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<sup>116</sup> J.H. Elliott, *Empires of the Atlantic World: Britain and Spain in America, 1492-1830* (New Haven: Yale University Press, 2006), xv.

<sup>117</sup> *Ibid.*, 405.

<sup>118</sup> *Ibid.*, 403-4.

much as it was a victim of its own faulty foreign and domestic policies in the New World. Establishing an economic and commercial system that fostered piracy, settling for a reactive defense system rather than a proactive one, and ignoring English colonization in favor of eliminating piracy all hindered the development of the Spanish empire and directly contributed to the rise of the English empire in the Americas. Such fatal mistakes combined with sheer ignorance of the world they created in the Atlantic ended up costing Spain almost everything, something that was perhaps unavoidable considering the manner in which they claimed an entire hemisphere for themselves.

Unsurprisingly, the accidental discovery of what Christopher Columbus called the West Indies in 1492 threw the entire western world out of balance. Advances in maritime navigation aided exploration throughout the fifteenth century, expanding the world southward and eastward for European countries like Portugal who were willing to risk the dangerous journeys in hopes of reaping fantastic rewards, but no land was formally claimed in Africa and Asia. Trade links were established, and native populations were forced into slavery and servitude, but there was no true European “empire” that rivaled the Roman one of old. Then, the discovery of the New World pushed relations between Spain and Portugal—two of Europe’s most enterprising countries—to the brink, a problem that threatened the unity of the Catholic world and was solved within two years of Columbus’s landing at the Bahamas.<sup>119</sup> Pope Alexander VI divided the world in two, first with his *Inter caetera* bull of May 1493 separating Spanish and Portuguese claims 300 miles west of the Cape Verde islands, and second with the Treaty of Tordesillas of June 1494 establishing the

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<sup>119</sup> Jon Latimer, *Buccaneers of the Caribbean: How Piracy Forged an Empire* (Cambridge, MA: Harvard University Press, 2009), 7.

“lines of amity” at approximately 45° west.<sup>120</sup> Thus, a Spanish empire was born. With the exception of Brazilian coast, which was on the eastern side of the line and therefore in Portugal’s possession, Spain had the blessing the Church to claim the New World, entirely and exclusively.

The rest of the European world did not take very kindly to this development. As Spain’s chief rivals, England, France, and the Netherlands viewed this division of the earth’s spoils in Spain’s favor as “an act of contemptible arrogance” and immediately sought to encroach upon it in any way they could.<sup>121</sup> However, war was too direct and expensive an option, not to mention one that could easily backfire, and open trade unlikely. As a result, emerging seafaring nations took to a subtler course of action to express their frustrations: piracy. Fueled by envy and animosity, the phenomenon of maritime predation developed alongside the establishment of Spanish imperial hegemony in the New World, and from the beginning the role of pirates in the Atlantic was intimately connected to English and Spanish rivalries in particular.<sup>122</sup> Because this was not something they could prevent either diplomatically or militarily, the Spanish feared piracy to the point of paranoia and routinely overestimated the threat they faced from foreign enemies.<sup>123</sup> At the same time, however, this fear simplified a very complicated matter and veritably formed the basis of Spain’s foreign policy in the New World: to the Spanish, all foreign interlopers were simply *piratos*

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<sup>120</sup> Latimer, *Buccaneers*, 7.

<sup>121</sup> Kris E. Lane, *Pillaging the Empire: Piracy in the Americas, 1500-1750* (Armonk, NY: M. E. Sharpe, Inc., 1998), 12.

<sup>122</sup> Lane, *Pillaging*, 12; Christopher Harding, “*Hostis Humani Generis*’ – The Pirate as Outlaw in the Early Modern Law of the Sea,” in *Pirates? The Politics of Plunder, 1550-1650*, edited by Claire Jowitt (New York: Palgrave Macmillan, 2007), 27.

<sup>123</sup> Lane, *Pillaging*, 7.

and *corsarios luteranos*—pirates and Lutheran corsairs.<sup>124</sup>

Before English privateering and piracy became the foremost threats to the Spanish empire in the Atlantic, Spain developed its anti-pirate policies first through its experience with corsairs in the Mediterranean Sea and second through its initial clashes with French pirates in the Caribbean.<sup>125</sup> French marauders dominated the Caribbean in the first half of the sixteenth century, as Spanish power solidified in the region and more and more wealth was exported back to Europe. Indeed, the first act of piracy committed against the Spanish in the Americas occurred in 1523, when a Frenchman named Jean Florin managed to capture a portion of Moctezuma's treasure.<sup>126</sup> The immediacy of this attack and the treasure in question shows that the French followed the Spanish and the Portuguese to the New World with surprising alacrity and forethought, managing to acquire some of the bounties of conquest with none of the trouble or bloodshed. Another early example of French piracy against the Spanish occurs in Alvar Nuñez Cabeza de Vaca's *La Relación* (1542). While primarily an account of the failed 1527 Narváez expedition, of which Cabeza de Vaca was one of four survivors, *La Relación* includes an episode at the very end that clearly pinpoints the threat of French piracy against the Spanish—something quickly apparent to a man who had been separated from his fellow Spaniards for nearly ten years.

After being reunited with the Spanish in 1536, Cabeza de Vaca sailed back to Spain in May 1537. The voyage was not an easy one, and he and the rest of his crew “were afraid of falling in with French craft that only a few days before had captured three of ours.”<sup>127</sup>

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<sup>124</sup> Latimer, *Buccaners*, 3.

<sup>125</sup> Lane, *Pillaging*, 12.

<sup>126</sup> *Ibid.*, 17-18.

<sup>127</sup> Alvar Nuñez Cabeza de Vaca, *The Narrative of Alvar Nuñez Cabeza de Vaca*, trans. Fanny Bandelier ([1542], Barre, MA: The Imprint Society, 1972), 152.

Unfortunately, the French ship spotted them shortly after they sailed past Bermuda, and the two ships embarked upon a game of maritime cat-and-mouse. The tension felt on the Spanish side is palpable in Cabeza de Vaca's description of the episode:

... [The] next day we passed the island called *of the raven*, and met with a French vessel at noon. She began to follow us, having with her a caravel taken from the Portuguese, and gave us chase. That same evening we saw nine more sail, but at such a distance that we could not distinguish whether they were of the same nation as our pursuer, or Portuguese. At nightfall the Frenchman was but a cannon-shot from our ship, and as soon as it was dark we changed our course so as to get away from him. As he was close upon us he saw our manoeuvre and did the same, and this happened three or four times.<sup>128</sup>

Thankfully, both for Cabeza de Vaca and for the ship's cargo of 300,000 pesos' worth of silver and gold, the French ship waited until daylight to attempt a capture, at which point both ships discovered that they were surrounded by nine ships of the Portuguese navy.<sup>129</sup> Outmatched, the pirates fled, and Cabeza de Vaca thanked "Our Lord for having allowed me to escape peril on land and sea."<sup>130</sup>

Attacks like the one by Jean Florin and the aborted one against Cabeza de Vaca's ship lent truth to the fears of the Spanish, but there was little they could do to prevent them. This was partially because of the impracticality of defense in the New World, which was more challenging than the Spanish anticipated. Building forts, outfitting ships, and creating navies was extremely expensive for all European countries, including one whose coffers were filled with riches from the Americas. Even if Spain had poured all of its money into defense, the investment would not have been worth it. The New World was too large, and the Caribbean Sea had too many small, secret islands, and the population too thinly

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<sup>128</sup> Cabeza de Vaca, *The Narrative*, 152.

<sup>129</sup> Andrés Reséndez, *A Land So Strange: The Epic Journey of Cabeza de Vaca* (New York: Basic Books, 2007), 219.

<sup>130</sup> Cabeza de Vaca, *The Narrative*, 153.

spread out to justify such an enormous expense for threats that were so unpredictable.

Occasionally, Spain attempted to build an *armada de barlovento*—a “windward navy”—such as the one built in 1605, which consisted of eight galleons and four sloops to defend the entire Caribbean. The Spanish launched an aggressive campaign to eradicate pirates, but the 130,000 ducats needed to fund the *armada* was beyond Spain’s means, and the venture was abandoned in Havana by 1609.<sup>131</sup> Beyond difficulties in financing *armadas*, Spain also faced problems in manning them. Throughout the seventeenth century, most of Spain’s warships sailed without only about half the crew they required, even after the occasional implementation of unpopular impressment schemes.<sup>132</sup> Eventually, Spain would attempt to solve both problems by employing foreign sailors and privatizing the state navy beginning in the 1620s. Licensed privateers proved to be especially popular among the Basques, Spain’s pioneers of sea-faring, whose port of San Sebastián put to sea over four hundred privateering vessels between 1622 and 1697.<sup>133</sup> Nevertheless, even a privatized navy never quite sufficed. In 1630, only forty warships—ten belonging to the state and thirty under private contracts—were dispatched from Spain.<sup>134</sup> This was hardly enough to protect a worldwide trading empire, let alone defend the Caribbean from pirates.

Thus, a static approach to defense—i.e., building forts only at major ports and protecting only the most valuable of ships—was Spain’s only option both practically and financially.<sup>135</sup> Because of this, most colonists were left to defend their settlement themselves, and some utilized unusual defense strategies. Girolamo Benzoni, a Milanese

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<sup>131</sup> Latimer, *Buccaneers*, 30.

<sup>132</sup> Henry Kamen, *Empire: How Spain Became a World Power 1492-1763* (New York: Perennial, 2004), 393.

<sup>133</sup> *Ibid.*, 418.

<sup>134</sup> *Ibid.*, 417.

<sup>135</sup> Lane, *Pillaging*, 21.

traveler, described this peculiar incident at Cubagua Island in the late 1530s in his *Historia del Mundo Nuevo* (1565):

[O]ne of the [French corsair] ships arrived at Cubagua during the time when pearl fishing flourished; the Spaniards, on discovering them, took two vessels from the place and put fifty Indians in them with bows and arrows [and] sent them out to the ship after making them believe that the occupants were sodomites, and that if they did not try to kill them they would land, capturing many [Indians] and making them serve as women. Convinced, the Indians approached the ship, whose occupants contemplated these nude, new people... but, while they were close by, the Indians began to shoot their bows and arrows and wounded several... Without delay [the French] hoisted sail and left. And from I understand, not one more ship of theirs has come near that island; in this manner and with this ruse the Spaniards, formerly full of fear, liberated themselves from the French.<sup>136</sup>

While creative, the strategy used at Cubagua was understandably not used beyond the island. Few coastal settlements put up a fight against marauders, instead preferring to abandon the settlement until the invaders were done. This means of “defense,” such as it was, happened to be cheaper for the Crown than maintaining a defense system across the Atlantic, and the losses were acceptable, even if it left the many non-fortified towns along the coast vulnerable and open to frequent attacks.<sup>137</sup>

Additionally, Spain was unable to prevent pirate attacks because of the economic and commercial system it was creating in the New World—a system that directly fostered and in some ways relied on piracy. From the outset, Spain treated the New World as a source of income that required little beyond exploitation of available resources and diminishing populations, and within only a few decades European life was generally dependent on Spanish-American trade. Meanwhile, the bullionist commercial system

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<sup>136</sup> Quoted in Lane, *Pillaging*, 205.

<sup>137</sup> Lane, *Pillaging*, 26.

undermined Spain's monopoly in the New World and drastically hindered development.<sup>138</sup> Spain initially made no effort to make its colonies self-sufficient, and neither did it supply them with essentials. Inevitably, a mixture of opportunity and necessity allowed pirates and smugglers to fill the gap that Spain left open for them. When conducting illegal trade, Spanish forts often put on a display of hostility against the pirates in their waters, forcing them to retreat to a remote site nearby where exchanges could occur more safely. Such a façade allowed governors to “close [their] eyes” while the inhabitants of the forts traded with foreign pirates, permitting it to happen but not explicitly condoning it.<sup>139</sup> Elsewhere, Spanish colonists openly welcomed smugglers, but all risked being labeled as traitors when they exchanged goods and gold with anyone who was not Spanish or Portuguese. Still, the risk was low: an empire that could not afford to defend itself could also not afford to police itself.

As the sixteenth century progressed, piracy became an even more pressing problem for the Spanish because the English began to practice privateering. Although the term “privateer” was not coined until 1664, the practice of state-sanctioned piracy through commissions and letters of marque or reprisal had existed since at least the Middle Ages.<sup>140</sup> Legally, privateering commissions were only valid during wartime, and prize courts like England's High Court of Admiralty regulated and legitimated all prizes taken in the name of the monarch. Such prizes were recognized internationally, mainly to ensure that other

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<sup>138</sup> Latimer, *Buccaneers*, 24.

<sup>139</sup> Anne Pérotin-Dumon, “The Pirate and the Emperor: Power and the Law on the Seas, 1450-1850,” in *Bandits at Sea: A Pirate's Reader*, edited by C.R. Pennell (New York: New York University Press, 2001), 35.

<sup>140</sup> David J. Starkey, “The Origins and Regulation of Eighteenth-Century British Privateering,” in *Bandits at Sea: A Pirate's Reader*, edited by C. R. Pennell (New York: New York University Press, 2001), 70.

nations could engage in privateering, too. Elizabethan privateering was especially threatening to the Spanish because it was an expression of both the growing Anglo-Spanish hostilities and the “burning desire” of the English to get their hands on the riches of the West Indies.<sup>141</sup> As a result, privateering interests predominated over other merchant enterprises throughout Elizabeth I’s reign, progressing in three stages: contraband slave trading (1558-68), outright piracy (1568-85), and sanctioned privateering (1585-1603).<sup>142</sup>

Interestingly, the goal of each stage was the same, and on a national level it was not profit or plunder. Rather, the activities of Elizabethan privateering were designed to beat the Spanish at their own game and serve as weapons in breaking their New World monopoly.<sup>143</sup> Contraband slave trading was quickly abandoned because of its low profitability, although John Hawkins, one of the most prolific of these contraband traders, was persistent enough to become a serious thorn in Spain’s side.<sup>144</sup> One episode in particular demonstrates Spain’s enmity against Hawkins, who was the first of many English privateers to become famous (or perhaps infamous) for his chosen profession. When embarking upon his fourth and final voyage in 1567, Hawkins encountered a squadron of Spanish ships putting into Plymouth. When they failed to salute—which was the proper etiquette in friendly ports—he apparently sensed danger as well as insult and opened fire upon them. “I know they hate me,” Hawkins wrote to Sir William Cecil, the queen’s secretary, soon afterwards, and in subsequent letters he continued to claim to be the

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<sup>141</sup> Elliot, *Empires of the Atlantic World*, 24.

<sup>142</sup> Lane, *Pillaging*, 33.

<sup>143</sup> David J. Starkey, “Pirates and Markets,” in *Bandits at Sea: A Pirate’s Reader*, edited by C. R. Pennell (New York: New York University Press, 2001), 110.

<sup>144</sup> Lane, *Pillaging*, 34-5.

personal object of Spanish hatred.<sup>145</sup>

Hawkins' claim was not so far from the truth. With Elizabeth's 1563 proclamation allowing privateering, she all but handed the Spanish names and faces to hate and target as opposed to the relatively anonymous pirates they had dealt with before. John Hawkins was the first to experience this sort of international notoriety, and Sir Francis Drake—Hawkins' second cousin—was the second. Drake earned his reputation primarily during the period of Elizabethan privateering when it was piracy from both the English and the Spanish perspectives. From 1570 to 1577, thirteen English expeditions targeted silver convoys in the Caribbean without licenses, among them Drake's 1572 voyage which ended with the capture of Nombre de Dios.<sup>146</sup> Much to the frustration of the Spanish, expeditions such as these were considered to be business ventures excused, but not commanded, by the queen.<sup>147</sup> Drake's success earned him a commission from the queen to helm a joint-stake venture specifically meant to raid the Pacific coast of the Americas and steal whatever he could from the Spanish empire. This voyage resulted in his 1577-80 circumnavigation of the globe—a feat only achieved to escape the Spanish ships that followed him, and which garnered him both a knighthood and the eternal reputation as one of England's national heroes.<sup>148</sup>

To the Spanish, however, Drake was anything but a hero. Drake captured two Spanish ships during his circumnavigation: first one off the coast of Lima laden with 25,000 pesos of Peruvian gold, and second the humorously named *Cacafuego* which carried eighty

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<sup>145</sup> Kenneth Andrews, *The Spanish Caribbean: Trade and Plunder, 1530-1630* (New Haven, CT: Yale University Press, 1978), 123.

<sup>146</sup> Latimer, *Buccaneers*, 17.

<sup>147</sup> Lane, *Pillaging*, 51.

<sup>148</sup> *Ibid.*, 44-5.

pounds of gold, a golden crucifix, jewels, thirteen chests full of royals of plate, and twenty-six tons of silver.<sup>149</sup> Although the queen sanctioned him to take these treasures, his transgressions forever branded him as a pirate—nicknamed *El Draque*—from the Spanish perspective. The Spanish not only hated him, but feared him. Throughout his voyage, Drake cultivated rumors that an English fleet followed him, perpetuating a clever bit of misdirection that made the Spanish think that the assault they feared the most was finally coming.<sup>150</sup> Worse, Drake's exploits showed the English exactly how profitable privateering in both the Atlantic and the Pacific could be. As a result, Drake unintentionally fostered the dream of capturing an entire Spanish treasure fleet that remained a dominant theme in English naval strategy from the sixteenth to the eighteenth centuries.<sup>151</sup> Because of these various offenses against Spain, the Spanish rejoiced at Drake's death in 1596 with poems such as Lope de Vega's *La Dragontea*, publicizing tales of the appropriately named "Dragon" who had once preyed upon their empire. Unforgiven and unforgotten, Drake's reputation in Spain was as potent as ever, while in England other larger-than-life maritime heroes had long since eclipsed him.<sup>152</sup>

Nevertheless, Drake's exploits helped transform England's imperial psyche, as well as its merchant class and fleet. After his return and with the breakout of the Anglo-Spanish War (1585-1604), both the English Crown and numerous merchant companies sponsored seventy-six privateering expeditions to the Caribbean before Elizabeth's death in 1603.<sup>153</sup> Even simple merchant vessels armed themselves and received commissions from the

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<sup>149</sup> Latimer, *Buccaneers*, 18.

<sup>150</sup> Lane, *Pillaging*, 48.

<sup>151</sup> Latimer, *Buccaneers*, 13.

<sup>152</sup> Harding, "Hostis Humani Generis," 28.

<sup>153</sup> Lane, *Pillaging*, 76.

Crown during wartime should the opportunity arise for them to take any Spanish ship they happened to encounter.<sup>154</sup> This earned England an international reputation as “nothing less than a pirate nation.”<sup>155</sup> Nevertheless, England continued to nurture its veneer of legitimacy by maintaining that privateering was not designed to exploit the Spanish as such, but rather to merely take advantage of opportunities.<sup>156</sup>

Meanwhile, English ephemeral texts such as pamphlets, plays, and poems celebrated Drake’s “adventures” for what they really were—piracy—without bothering to make them more tasteful. For instance, “The History of Sir Francis Drake,” the second act in William Davenant’s opera *The Play-House to be Let* (1656), features a chorus of Drake’s men celebrating the joys of plunder, thus conceding openly the methods upon which the English “trading empire” was based.<sup>157</sup> Davenant’s opera and other popular texts were able to do this partially because other popular authors had already justified piracy against the Spanish thanks to the development of the “Black Legend.” The critical writings of Thomas Gage, Bartolomé de Las Casas, Thomas Campanella, and many more reinforced the perception of Spain as a “cruel and treacherous nation bent on world domination and the elimination of Protestantism.”<sup>158</sup> Because of this legend, piracies committed by Elizabethan privateers were completely vindicated, legally *and* morally. Thus, it was inevitable that the English would view their pirates as heroes, while the Spanish considered them to be straightforward criminals.

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<sup>154</sup> Starkey, “Origins,” 71.

<sup>155</sup> Latimer, *Buccaneers*, 22-3.

<sup>156</sup> *Ibid.*

<sup>157</sup> Mark Netzloff, “Sir Francis Drake’s Ghost: Piracy, Cultural Memory, and Spectral Nationhood,” in *Pirates? The Politics of Plunder, 1550-1650*, edited by Claire Jowitt, (New York: Palgrave Macmillan, 2007), 149.

<sup>158</sup> Latimer, *Buccaneers*, 102.

With the success of Drake's voyages, the Spanish were finally tipped off to the new scale of the English threat in the Caribbean. In the late sixteenth and early seventeenth centuries, Spain redoubled its efforts to protect its assets from pirates, responding with more naval patrols, increased armaments of merchants, massive fortification of major ports, and construction of new galleys.<sup>159</sup> The ascension of James I to the English throne in 1603 was accompanied by an official peace between England and Spain, as well as a diplomatic agreement that England could now trade anywhere in the world with Spain, except in the Americas, and that English lawbreakers would be punished by death.<sup>160</sup> Meanwhile, James I—a monarch who both fundamentally and philosophically despised piracy—attempted for several years to negotiate an anti-pirate league with Spain against the Barbary pirates in the Mediterranean. Although this was a foe both nations could agree upon, the league never materialized simply because Anglo-Spanish distrust ran too deep, particularly when it came to matters concerning British naval strength.<sup>161</sup>

While this tentative cooperation was theoretically a step in the right direction toward open trade between England and Spain, it still did nothing to eliminate piracy in the Americas. Instead, former privateers simply accepted their new careers as pirates and continued to do what they did best with very little fear of repercussions from Spain itself. Although the King of Spain reserved the right to hang any Englishman who committed piracy—a right James I, himself a great believer in executing pirates, was happy to condone—he rarely did so.<sup>162</sup> Instead, the job of maintaining order in the Spanish colonies

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<sup>159</sup> Lane, *Pillaging*, 51-2.

<sup>160</sup> Latimer, *Buccaneers*, 21.

<sup>161</sup> David D. Hebb, *Piracy and the English Government, 1616-1642* (Aldershot, UK: Ashgate, 1994) 9, 60.

<sup>162</sup> Latimer, *Buccaneers*, 98; Hebb, *Piracy and the English Government*, 9.

generally fell to local officials, who shifted frequently between policies of *laissez-faire* ambivalence and state-sponsored terror.<sup>163</sup> Early challenges to Spanish sovereignty made by the Dutch during the Eighty Years' War (1568-1648) seemed to trigger the most brutal of reactions from Spain, including one instance when the Spanish discovered the Dutch "stealing" from the salt pans of Punta de Araya. Luis Fajardo, the leader of the expedition, captured several Dutch ships and treated his captives as "pirates and corsairs" following a *cédula*, or royal edict, of July 1605 and beheaded or hanged most of them without trial.<sup>164</sup> Similar tales of Spanish brutality traveled back across Europe and reiterated the "Black Legend" and increased in number as Spain participated in a number of wars throughout the 1600s, including the Dutch-Portuguese War (1602-1663), the Thirty Years' War (1618-1648), the Franco-Spanish War (1635-1659), the Anglo-Spanish War (1654-1660), and the Nine Years' War (1688-1697).

With alliances shifting frequently and political turmoil dominating Europe, Spain's tacit foreign policy in the Americas was one of inflexibility and selective attention. Inching closer to their independence, the Dutch became bolder in the Americas and created the West India Trading Company, which was ostensibly a confederacy of pirates who were permitted by their sponsors to practice "belligerent commerce" and steal an enemy's most prized possessions in lieu of a forced sale.<sup>165</sup> The Dutch even attempted this by way of a siege of Lima in 1624, which Catalina de Erauso, the unusual "Lieutenant Nun" of Peru, described in her autobiography:

The Dutch were laying siege to Lima with eight warships that had been stationed off the coast, and the city was armed to the teeth. We went out to

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<sup>163</sup> Lane, *Pillaging*, 65-6.

<sup>164</sup> Andrews, *Spanish Caribbean*, 202.

<sup>165</sup> Lane, *Pillaging*, 67.

meet them from the port of Callao in five ships, and for a long time it went well for us, but then the Dutch began hammering away at our flagship and in the end she heaved us over and only three of us managed to escape—me, a barefoot Franciscan friar, and a soldier—paddling around until an enemy ship took us up. The Dutch treated us like dirt, jeering and scoffing. All the others who had been on our flagship had drowned. Four ships remained under General don Rodrigo de Mendoza, and when they got back to Callao the next morning at least nine hundred men were reckoned as missing, myself included, because I'd been on the flagship.<sup>166</sup>

De Erauso and her two companions remained captives on the Dutch ship for twenty-six days, until the Dutch finally decided to abandon the siege and seek easier bounty elsewhere. The major ports of the Americas were often subjected to such attacks from both the Dutch and the English during wartime. Interestingly, it was these attacks that the Spanish focused on and fought off the most vehemently as opposed to another, slower, and more deliberate sort of attack that they chose to completely ignore: English colonization of the Caribbean and North America.

While Spain busied itself defending against foreign interlopers along the Americas' coasts, in 1607 England founded Jamestown, a colony in North America that only indirectly threatened the Caribbean. The Spanish considered attacking the colony, but in the end decided to do nothing about it, believing that it would die on its own like previous English settlement attempts.<sup>167</sup> However, Jamestown's survival under the radar only further encouraged the English to attempt colonization elsewhere. Generally out of Spain's reach, North America remained the safest option for them, but the money was still in the Caribbean. England's initial attempts to colonize and cultivate various islands met with little success until 1625, when Captain John Powell claimed Barbados for the English and

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<sup>166</sup> Catalina de Erauso, *Lieutenant Nun: Memoir of a Basque Transvestite in the New World*, trans. Michele and Gabriel Stepto (Boston: Beacon Press, 1996), 52.

<sup>167</sup> Latimer, *Buccaneers*, 62.

developed it as a sugar colony and privateering haven.<sup>168</sup> Spain did recognize the threat of such colonies and repeatedly tried to squash them, as evinced by the 1629 assault on St. Christopher's and the 1639 expedition to Tortuga to wipe out English and French settlers. Despite this, most English colonies survived despite Spanish attacks simply because they had privateers and pirates to defend and retake them.<sup>169</sup> While the existence of these colonies could have afforded Spain a useful diplomatic weapon, they refused to recognize them out of fear of jeopardizing their trade monopoly—which also meant that they could not legitimately complain about the activities of the pirates who populated English Caribbean possessions.<sup>170</sup> In the end, this bewildering attitude of ignoring the problem until it went away would ultimately lead to Spain's decline as a political and economic superpower in the New World.

Although Spain suffered various encroachments of territory from England throughout the early 1600s (namely, the settlement of Barbados in 1627 and Nevis in 1628), the deathblow truly came for Spain with the loss of Jamaica in 1655. The English navy, assisted by privateers, successfully took the island with very little trouble from the Spanish, who were unable to retake it because they were fighting off a plague in Cuba until 1657.<sup>171</sup> The two-year lapse was long enough for England to establish an infrastructure at Port Royal that not only catered to privateers but also actively employed them. The loss of Jamaica was devastating to the Spanish. A prominent citizen of Mexico City, Don Gregorio Martín de Guijo, echoed the feelings of the entire empire when he wrote in his diary on

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<sup>168</sup> Latimer, *Buccaneers*, 66.

<sup>169</sup> Lane, *Pillaging*, 98.

<sup>170</sup> Latimer, *Buccaneers*, 141.

<sup>171</sup> Lane, *Pillaging*, 103-4.

September 8, 1655: “The English take Jamaica. Prayers are ordered in all the churches.”<sup>172</sup>

Both England and Spain knew that Jamaica was a key position for the English to develop their business in the Caribbean, and their possession of it determined their dominance of the mercantile system by the end of the century.<sup>173</sup>

The fall of Jamaica also created a crisis among the Spanish in the Caribbean, with officials worrying about their ability to defend key islands and seaports—worries that were inevitably justified. In 1667, Spain attempted to rectify the loss by dedicating five ships to pirate hunting, but the ships they chose were too large to chase smaller, more maneuverable vessels around the islands or through the shoals of the Caribbean Sea. Eventually, two of them were recalled back to Spain, one mistake among many that reflected the ineptitude of Charles II of Spain’s reign.<sup>174</sup> Simultaneously, Governor Thomas Modyford started an unofficial privateering war out of Jamaica by creating a fiction that Spain was going to attempt an invasion the island. He sent Sir Henry Morgan and his “Port Royal Volunteers” to three of Spain’s largest ports on the coast of South America—Portobelo (1668), Maracaibo (1669), and Panamá (1671)—for “information” regarding the attack. Unsurprisingly, Morgan returned with quite a bit of wealth—250,000 pieces of eight from Portobelo alone, while the Spanish estimated the losses from Panamá in millions of pesos.<sup>175</sup>

The loss of Jamaica and Morgan’s attacks only represent a portion of the crippling military, financial, and political blows Spain suffered in the second half of the seventeenth century, and yet—perhaps out of stubbornness—the falling empire still did very little to

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<sup>172</sup> Quoted in Lane, *Pillaging*, 105.

<sup>173</sup> Latimer, *Buccaneers*, 119.

<sup>174</sup> *Ibid.*, 165.

<sup>175</sup> Lane, *Pillaging*, 114, 122.

change with the times and stabilize itself. The Treaty of Madrid (1670) between England and Spain recognized English possessions in the Caribbean as legitimate but did not authorize trade with them, something that deeply frustrated Thomas Lynch, Modyford's successor as governor of Jamaica. Lynch was an advocate of peaceful trade and petitioned Spain for open trade links but was immediately rebuffed. Lynch then complained in a letter back to England that the Spanish were "the most ungrateful, senseless people in the world."<sup>176</sup>

Lynch was not entirely wrong. Spain's mistakes in both foreign and domestic policy meant that they spent the remainder of the seventeenth century protecting their treasure shipwrecks from salvagers and employing its own privateers to eliminate logwood cutters—a sharp drop-off from the treasure-laden convoys that crossed the Atlantic several times a year a century before.<sup>177</sup> By the beginning of the eighteenth century, Spain was all but forced to share the New World with its European brethren just to ensure its survival, and it had no hopes of overtaking England as the new dominant power in the Americas. International law established by Hugo Grotius dictated that no one nation could own the seas because "it is so limitless that it cannot become a possession of any one," something that Spain only learned through repeated failure in its attempts to either police "their" waters or prevent other European countries from partaking in its bounties.<sup>178</sup> In the end, Spain lost the empire it had taken through the ultimate act of piracy—theft of goods from the land by sea—in part because of French, English, and Dutch piracy, but mostly because

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<sup>176</sup> Quoted in Latimer, *Buccaneers*, 224.

<sup>177</sup> Latimer, *Buccaneers*, 225.

<sup>178</sup> Hugo Grotius, *The freedom of the seas; or, The right which belongs to the Dutch to take part in the East Indian Trade* (New York: Oxford University Press, 1916), 28.

of its own flaws. Finally, Spain was its own victimizer, the creator of the very system that ultimately caused its fall.

## CHAPTER FOUR

### The Imperfect Execution of Captain William Kidd

In the seventeenth and eighteenth centuries, public executions were a common ritual utilized to restore order to a society that had recently been disrupted through the actions of one individual. Enacted as social dramas, executions often served a dual purpose, simultaneously punishing offenders and reminding onlookers of what would happen to them if they mimicked the actions of the condemned. Thus, public executions were common enough to become popular entertainment, but not common enough to detract from their inherent meaning, which at its most basic level was the reassertion of control by the authorities over the people. Throughout the early modern period, such rituals were essential to maintaining order in places that were continuously disrupted, whether through outside influence or internal disorder. Although true for most of Western Europe, this was particularly true in England, where there was an exact chronological correlation between periods immediately following wars and periods of elevated crime.<sup>179</sup>

Included in this period was the Golden Age of Piracy (roughly 1650 to 1730), wherein most of history's most notorious pirates were actively threatening England's economy through the disruption of trade.<sup>180</sup> During this time, the British Parliament passed several laws, including the *English Act of Piracy of 1699*, which made it easier to execute pirates in its colonies rather than exclusively at Execution Dock in London.<sup>181</sup> Despite this,

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<sup>179</sup> Michael R. Weisser, *Crime and Punishment in Early Modern Europe* (Atlantic Highlands, NJ: Humanities Press, 1979), 114.

<sup>180</sup> Marcus Rediker, *Villains of All Nations* (Boston: Beacon Press, 2004), 8.

<sup>181</sup> Kris E. Lane, *Pillaging the Empire: Piracy in the Americas, 1500-1750* (Armonk, NY: M. E. Sharpe, Inc., 1998), 180.

Execution Dock remained the most central and the infamous locale for the public punishment of maritime criminals. There, 400 to 500 pirates were executed in one of the most concentrated efforts to eradicate them from 1716 to 1726 alone—a full tenth of all pirates operating in the Atlantic at the time.<sup>182</sup> The most notorious pirates met their end at Execution Dock, among them Captain William Kidd (1645-1701). Unlike most pirates, however, Kidd was a rather strange one to make an example of through public execution, popular press, and posthumous display of his body. His political connections, disputed status as a pirate, and unrepentant dying speech made his execution something the authorities could not control—an imperfect spectacle, with unintended consequences.

From the beginning, William Kidd was no ordinary pirate. The majority of pirates came from the lowest social classes that Europe and its colonies had to offer with very few “gentlemen” pirates among their number.<sup>183</sup> Kidd was neither working class nor was he a lord. Except that he was born into the family of a Scottish Presbyterian minister around 1645 in Greenock, Scotland, historians still know very little about Kidd or why he suddenly appeared in the record books in 1689, already a pirate of some repute.<sup>184</sup> After a moderately successful campaign in the Caribbean, Kidd turned to New York City in March 1690—not to loot it, but to help put down a colonial rebellion during King William’s War (1688-1697). Siding with the winners, Kidd placed himself and his ship at the service of the incoming governor, thereby putting him in line for future patronage, which he received through money and connections. Unusually for a pirate, Kidd even settled down in New

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<sup>182</sup> Peter Linebaugh, *The London Hanged: Crime and Civil Society in the Eighteenth Century* (Cambridge: Cambridge University Press, 1992), 19; Rediker, *Villains*, 9.

<sup>183</sup> Rediker, *Villains*, 50.

<sup>184</sup> Robert C. Ritchie, *Captain Kidd and the War Against the Pirates* (Cambridge, MA: Harvard University Press, 1986), 27.

York, marrying a wealthy widow and fathering two daughters.<sup>185</sup>

For five years, Kidd lived as though his pirating days were over—or at least he would have, had England's economy not tanked in the 1690s.<sup>186</sup> To make up for its own deteriorating economy, New York City became a notorious haven for merchants who both fenced stolen goods and traded with pirates based in Madagascar. Although extremely distant from the North American city, Madagascar and the pirates who operated there offered merchants who wished to engage in the Indian Ocean markets a cheaper, faster, and more direct way to do so.<sup>187</sup> Because of this, Kidd never truly escaped piracy. He lived somewhat legitimately on his wife's estate but also supplemented their income by engaging in short privateering voyages around New York City for local politicians.

Eventually, Kidd seemingly grew tired of the stability he had gained on land and decided to return to an adventurous life on the sea, sailing to England to solicit a privateering commission in early 1695.<sup>188</sup> Through Robert Livingston, one of the New York politicians with whom he had ingratiated himself, Kidd made a series of fortuitous connections with the newly powerful Whig lords of Parliament, namely with the earl of Bellomont, Richard Coote. Bellomont was extremely loyal to his party, as well as the newly named governor of New York and a man always in need of money.<sup>189</sup> Appealing to Bellomont's financial ambitions, Kidd offered to sail to Madagascar and suppress the pirate attacks that were disrupting the major trading routes to Africa and India. In exchange, Bellomont, Livingston, Kidd, and several other investors—including many Whigs and four

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<sup>185</sup> Ritchie, *Captain Kidd*, 35-6.

<sup>186</sup> *Ibid.*, 36.

<sup>187</sup> Lane, *Pillaging*, 176.

<sup>188</sup> Ritchie, *Captain Kidd*, 40.

<sup>189</sup> *Ibid.*, 47.

proxies for King William—would all receive one-tenth of all the profits from whatever goods Kidd recovered from the pirates he hunted.<sup>190</sup> With Bellomont's acceptance, Kidd obtained a letter of marque and became captain of a privateering vessel named the *Adventure Galley* by early 1696.<sup>191</sup>

Thus, at the beginning of his second captaincy, Kidd was not a pirate, but a privateer. He had the proper paperwork both to seize enemy ships and to hunt pirates who threatened the British East India Company and other merchants in the Indian Ocean. Sponsored by the most powerful men in England, Kidd was in an exciting but tenuous position. Success meant more wealth and patronage, while failure meant disfavor and poverty—or worse. The voyage began auspiciously enough with a few minor acquisitions, but the tide turned against him by the time he reached Africa. The ships he could legally take were few and far between, which gradually turned his crew closer and closer to mutiny.<sup>192</sup> Contributing to the unrest aboard the *Adventure Galley*, over thirty of his sailors succumbed to tropical fevers during the voyage, which for Kidd seemed to be the breaking point. Kidd turned to piracy to placate his crew, but even then mutiny still loomed. On November 3, 1697, near Tellicherry, India, tensions between Kidd and his crew came to a head. The crew demanded to take two Moorish ships; Kidd refused and lashed out at one of the chief instigators, the gunner William Moore, and accidentally killed him by throwing a wooden bucket at his head. After this incident, Kidd resumed privateering over piracy, taking only ships that possessed French passes (which he was legally sanctioned to claim as

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<sup>190</sup> Hans Turley, *Rum, Sodomy, and the Lash: Piracy, Sexuality, and Masculine Identity* (New York: New York University Press, 1999), 38; Ritchie, 54.

<sup>191</sup> Lane, *Pillaging*, 176.

<sup>192</sup> *Ibid.*

prizes under his commission), but his reputation was already damaged.<sup>193</sup> The East India Company informed the British government of Kidd's piracies, and the government officially declared him a wanted pirate on November 23, 1698.<sup>194</sup>

Kidd learned of the warrant for his arrest in April 1699, when he arrived in the Caribbean with a starving crew and as much as £40,000 worth of goods and 2,000 pieces of eight to unload.<sup>195</sup> Hoping Bellomont would protect him from a government intent on prosecuting pirates, Kidd returned to New York in June with £10,000 in gold to give to his patrons. Unfortunately, the political climate had shifted drastically since Kidd left London three years earlier: the Tories had replaced the Whigs as the dominant party in Parliament, which meant that Kidd's connections no longer had the power or the inclination to protect him. Bellomont weighed his options and decided that it would be more profitable to arrest Kidd than it would be to acquire a pardon for him.<sup>196</sup> He then devised a scheme that led to Kidd's capture and Bellomont's possession of Kidd's original commission, which only barely saved Kidd's Whig patrons from public scandal.<sup>197</sup> For the next two years, Kidd was imprisoned in Boston and then in London, where the Court of Admiralty, the judicial body responsible for enforcing maritime law, would try him for murder and piracy.

Going into his trial, Kidd had very little hope for an acquittal. His arrest had come during the period, beginning in the 1680s, when the British government was determined to crack down on piracy, and did so by mounting mass trials and executions of convicted

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<sup>193</sup> Lane, *Pillaging*, 177-8.

<sup>194</sup> Ritchie, *Captain Kidd*, 165.

<sup>195</sup> *Ibid.*, 167.

<sup>196</sup> Lane, *Pillaging*, 179.

<sup>197</sup> Ritchie, *Captain Kidd*, 181.

pirates to set an example for sailors who contemplated “going on the account.”<sup>198</sup> This new and intensely anti-piratical initiative was a drastic change from what had come before, when piracy in the American and Caribbean colonies was rarely punished simply because colonists relied on pirates for trade and protection. Local feeling or inability to pass local anti-piracy laws tied most governors’ hands, while the rest tolerated pirates as long as they were sufficiently bribed. This finally changed with the establishment of the Board of Trade in 1696. Better regulation of trade increased, governors were held more accountable, and—spurred on by Kidd’s capture— in 1700 Parliament passed the “Act for the More Effectual Suppression of Piracy,” which allowed for pirates to be tried wherever they were caught instead of exclusively in London.<sup>199</sup> This more than anything else was the pivotal turning point in England’s attempt to tame and control the men who sailed the seas and interfered with their maritime empire.

Kidd knew that the climate had changed, but he was also desperate not to lose his life. He wrote several letters to countless politicians before his trial explaining his situation in hopes of obtaining a pardon, including the following, addressed to an unnamed lord and worth quoting almost entirely in full:

My Lord

Before I make any answer to ye Indictment read against me, I crave leave to acquaint your Lordship that I took no ships but such as had French passes for my justification.

In confidence that they would and ought to be allowed for my defense, I surrendered my selfe to my Lord Bellomont when I could have secured myself in several parts of ye world.

But my Lord Bellomont haveing sold his share in my ship, and in ye

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<sup>198</sup> Turley, *Rum, Sodomy, and the Lash*, 45.

<sup>199</sup> Ritchie, *Captain Kidd*, 149-54.

Adventure, thought it in his Interest to make me a pirate, whereby he could claim a share of my Cargo, and in order to it, stript me of ye French passes, frightened and wheedled some of my men to misrepresent me, and by his Letters to his friends here Advised them to admit me a pyrate, and to obtain a new Grant of my cargo from ye King.

[...] Whatsoever my fate must be, I shall not Contribute to my own destruction by pleading to this Indictment, till my passes are restored to me. It is not my fault if I admit my selfe as a pyrate as I must doe I plead without having those passes to produce.

Let me have my passes, I will plead presently, but without them I will not plead.

I am not afraid to dye, but will not be my own Murderer, and if an English Court of Judicature will take my life for not pleading under my Circumstances, I will think my death will tend very little to the Credit of their Justice.<sup>200</sup>

Kidd's entire case rested upon the fact that he was innocent of piracy and had only taken ships that he was legally allowed to take under his commission. This defense hung on his passes; Bellomont sent them to England, but Kidd never received them, and thus he was denied the evidence that he believed would prove his innocence.<sup>201</sup> The blurry distinction between pirate and privateer was not much of a defense to begin with, but it was the only one he had, with or without the passes. In the end, it only complicated the political issues behind his trial. With the Whigs eager to distance themselves from a now notorious criminal and the Tories just as eager to condemn him *because* of his connections to their opposition, Kidd's trial was over before it had even begun.<sup>202</sup>

The trial took place over the span of two days on May 8 and 9, 1701. Kidd was first tried for the murder of William Moore and then for five counts of piracy. Given the broad

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<sup>200</sup> Reprinted in Ritchie, 209-10, from a letter located in the High Court of Admiralty Records, Public Record Office, London.

<sup>201</sup> Ritchie, *Captain Kidd*, 208.

<sup>202</sup> Turley, *Rum, Sodomy, and the Lash*, 38.

authority granted to a captain on the high seas—privateers included—it may seem strange that Kidd was charged for William Moore’s death, but even captains did not have the right to commit murder.<sup>203</sup> Before the clerk could read the charges against him, however, Kidd spoke out of turn and asked to “putt [*sic*] off my Tryal for as long as I can, till I can get my Evidence ready.”<sup>204</sup> This disruption of the proceedings annoyed the judges considerably, who reminded him several times that he had had ample time to send for his evidence; therefore, he had to plead. Nonetheless, Kidd persisted, arguing vehemently that he needed his passes:

*Will. Kidd.* I beg your Lordships I may have Council admitted, and that my Tryal may be put off, I am not really prepared for it.

*Mr. Recorder.* Nor never will if you could help it.

*Dr. Oxenden.* Mr. Kidd, You have had reasonable Notice, and you knew you must be tried, and therefore you cannot plead you are not ready.

*Will. Kidd.* If your Lordship permit those Papers to be read, they will justifie me. I desire my Council may be heard.

*Mr. Coniers.* We admit of no Council for him.

*Mr. Recorder.* There is no issue joined, and therefore there can be no Council assigned. Mr. Kidd, you must plead.

*Will. Kidd.* I cannot plead till I have those Papers that I insisted upon.

*Mr. Lemmon [Kidd’s counsel].* He ought to have his Papers delivered to him, because they are very material for his Defence. He has endeavoured to have them, but could not get them.

[...]

*Will. Kidd.* My Papers were all seized, and I cannot make my Defence without them. I desire my Tryal may be put of [*sic*] till I can have them.

*Mr. Recorder.* The Court is of Opinion, they ought not to stay for all your Evidence, it may be they may never come. You must plead, and then if you can satisfie the Court, that there is Reason to put off your Tryal, you may.<sup>205</sup>

The judges were not impressed, nor were they swayed, even though Kidd continued to argue for some time until he was finally forced to relent, hold up his hand, and plead not

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<sup>203</sup> Ritchie, *Captain Kidd*, 214.

<sup>204</sup> *Arraignment, Tryal, and Condemnation of Captain William Kidd for Murther and Piracy, Upon Six several Indictments...* (London: J. Nutt, 1701), 3.

<sup>205</sup> *Ibid.*, 4.

guilty to the murder of William Moore. This trial did not go well for him; indeed, the guilty verdict was returned in the middle of Kidd's second trial for the first count of piracy. The judges thought nothing of condemning him to death while Kidd was still defending his life, but in spite of this, Kidd continued to present a spirited defense.<sup>206</sup>

Kidd first read into the record his privateering commission to take French ships, even claiming that he had even tried to give back the ships he had captured, but his men had voted against it.<sup>207</sup> In all four trials for piracy, he asked witnesses to testify that they seen the passes he was unable to produce in court, if only to prove their existence, and argued in two that he did have legal basis for acting as a privateer.<sup>208</sup> Unfortunately for Kidd, the testimony was not enough for the juries, and Kidd was found guilty of all five counts of piracy, and therefore condemned to death twice. Despite this, Kidd resolutely maintained that he was innocent. When asked by the clerk, "What hast thou to say for thyself why thou should'st not die according to the Law?" Kidd answered, "I have nothing to say, but that I have been sworn against by perjured and wicked People."<sup>209</sup>

Before the trial (which was not open to the general masses), Kidd was mostly kept in solitary confinement at Newgate Prison. His name was famous and his deeds sensationalized in newspapers and broadsides, but he was isolated from the public until the authorities knew what to do with him. After the trial, however, Kidd became a public spectacle veritably from the moment he was sentenced until the moment he was executed. Kidd was exhibited to the public for a fee, his imprisoners capitalizing on his international

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<sup>206</sup> Ritchie, *Captain Kidd*, 217.

<sup>207</sup> *Ibid.*, 218.

<sup>208</sup> *Ibid.*, 211, 220.

<sup>209</sup> *Arraignment*, 60.

notoriety.<sup>210</sup> Most often this occurred during the twice-daily sermons of the ordinary of Newgate, Paul Lorrain, when the criminals were made to sit in the front pews of the chapel, facing a coffin draped in black.<sup>211</sup> In the meantime, Kidd continued to try to secure a pardon by writing to more politicians, most notably to Robert Harley, speaker of the House of Commons and loyal Tory. In this letter, he tried to bargain for his life: if he were allowed to go to the West Indies, he could recover £100,000 he had hidden there for the benefit of the government. If he failed, he should be “forwith [*sic*] executed,” and the money lost forever.<sup>212</sup> Despite the tempting sum, Kidd had lost any value as a weapon against the Whigs once the trial was over, and Harley never bothered to write back.

The execution was set for May 23, 1701, and it came in spite of Kidd’s hope for a last-minute reprieve. Kidd and several other pirates were to be executed at Execution Dock in Wapping, as opposed to more common gallows at Tyburn. The former was reserved for criminals condemned by the Admiralty courts, while the latter hanged men and women who committed their crimes on land.<sup>213</sup> The unilocality of these locations helped to routinize public punishment, making it a ritual that reiterated the power of the state to an extreme degree.<sup>214</sup> More often than not, the ordinary who attended the condemned (in this case, Paul Lorrain) and the condemned himself orchestrated the executions as morality plays. In order for the execution to be successful, the “dying malefactor” had to be willing to go along with social obligations and deliver a “last dying speech” full of confessions and

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<sup>210</sup> Willard Hallam Bonner, “The Ballad of Captain Kidd,” *American Literature*, 15, no. 4 (Jan. 1944): 362.

<sup>211</sup> Ritchie, *Captain Kidd*, 223.

<sup>212</sup> *Ibid.*, 221.

<sup>213</sup> Linebaugh, *The London Hanged*, 16.

<sup>214</sup> Pieter Spierenburg, *The Spectacle of Suffering: Executions and the Evolution of Repression: From a Preindustrial Metropolis to the European Experience* (Cambridge: Cambridge University Press, 1984), 45.

repentance to become a warning and an example to others.<sup>215</sup> The condemned criminals became central participants in a theatre of punishment, which offered not merely a spectacle for a public, but also a reinforcement of the state's values—in this case, respect for human life but also, and arguably more importantly, respect for private property.<sup>216</sup> Thus, if handled properly, as Lorrain was accustomed to doing when he became Kidd's spiritual guide to the afterlife, dying criminals could be made into powerful organs of social propaganda.<sup>217</sup> Lorrain himself often capitalized on this, writing pamphlets and broadsheets detailing the last moments and last speeches of dying criminals, supplementing his income and leading him to be called the first "historiographer of crime."<sup>218</sup>

What Lorrain expected from Kidd and what he actually received were two very different things. The vast majority of criminals that Lorrain escorted to the scaffold—or, at the very least, the ones whose executions he recorded and published—complied with the ritual and legitimized the suffering they faced at the hands of the state through their speeches.<sup>219</sup> Kidd, on the other hand, refused to confess to his crimes, and, thanks to the crowd lining the streets from Newgate to Execution Dock, he arrived at the scaffold obviously drunk.<sup>220</sup> Writing for the broadside he published the morning after the execution, Lorrain's disappointment was palpable. In his words, Kidd was "much out of order, and no

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<sup>215</sup> Lincoln B. Faller, "In Contrast to Defoe: The Rev. Paul Lorrain, Historian of Crime," *Huntington Library Quarterly* 40, no. 1 (Nov. 1976): 68.

<sup>216</sup> J. A. Sharpe, "'Last Dying Speeches': Religion, Ideology and Public Execution in Seventeenth-Century England," *Past & Present*, no. 107 (May 1985): 156.

<sup>217</sup> *Ibid.*, 65.

<sup>218</sup> Faller, "In Contrast to Defoe," 59.

<sup>219</sup> Sharpe, "'Last Dying Speeches,'" 163.

<sup>220</sup> Ritchie, *Captain Kidd*, 225.

so concern'd and affected as he ought to have been" in facing his imminent demise.<sup>221</sup>

Kidd's notoriety guaranteed a large crowd—a blessing if the execution went according to plan, a curse if it did not.<sup>222</sup> Lorrain was given a spectacle that was somewhere in between. Kidd's speech was not confessional, but bitter and politically inflammatory, laying the blame for his situation on his backstabbing patrons and his mutinous crew. He ended his speech with a warning, not to the common sailor to be wary of the temptations of piracy, as was expected, but rather to captains to use caution and prudence in private and public affairs.<sup>223</sup>

Defiance at the gallows was generally not permitted and very rarely reported, simply to reduce the spread of subversive actions and ideas.<sup>224</sup> The fact that Kidd's was more or less left out of Lorrain's account is telling, but not surprising. Although factually correct for the most part, the ordinary's pamphlets sensationalized executions and were intentionally didactic and normative. More than anything, the ordinary wished to articulate a certain set of values, inculcate a certain behavioral model, and bolster a social order he perceived as threatened.<sup>225</sup> Only a small number of people witnessed Kidd's insubordination before he was executed, but the pamphlet account was designed to reach a much wider audience. By leaving Kidd's final speech out of his account, Lorrain could almost erase the fact that it ever happened and successfully make his piratical crimes a

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<sup>221</sup> Paul Lorrain, *The Ordinary of Newgate, His Account of the Behavior, Confessions, and Dying Words of Captain William Kidd, and Other Pirates, that were Executed at the Execution Dock in Wapping, Friday, May 23, 1701* (London, 1701). Quoted in Faller, "In Contrast to Defoe," 60.

<sup>222</sup> Ritchie, *Captain Kidd*, 224.

<sup>223</sup> *Ibid.*, 226.

<sup>224</sup> Sharpe, "Last Dying Speeches," 164.

<sup>225</sup> *Ibid.*, 147-8.

moralistic lesson for everybody—pirate and non-pirate alike.<sup>226</sup> This might have worked, had not another anonymous writer published Kidd’s dying speech in another pamphlet.<sup>227</sup> Indeed, apart from Lorrain’s account, several more pamphlets, trial records, and at least two ballads were published during Kidd’s trial and execution, all of which contributed to the atmosphere of “exemplarity-with-a-moral” actively cultivated by the authorities and by the press.<sup>228</sup> Additionally, these publications attempted to establish and control the public’s impressions of the pirate—sometimes successfully, sometimes not.<sup>229</sup>

Although Kidd’s non-cooperation undoubtedly frustrated Lorrain, he nonetheless managed to make a moral lesson out of an unrepentant pirate’s execution.<sup>230</sup> Lorrain was able to do this in describing what happened during Kidd’s very last moments, when his first noose snapped and he had to be hung a second time. “Now I found him in a much better temper than before,” Lorrain wrote, and upon the ordinary’s last-minute renewal of redemptive pleas, Kidd confessed in something of a daze and went to his death “upon the easy Condition of stedfast Faith, true Repentance, and perfect Charity.”<sup>231</sup>

After Kidd perished, his body was cut down and transported to Tilbury Point, where a gibbet awaited. Gibbeting was a process that was meant to be as degrading as possible: the body was saturated with tar for preservation, wrapped in chains, and left to rot.<sup>232</sup> While degrading, this punishment was also meant for others and secured the permanence of the criminal’s exemplarity, if only because it was displayed along a prominent inter-

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<sup>226</sup> Turley, *Rum, Sodomy, and the Lash*, 54.

<sup>227</sup> Ritchie, *Captain Kidd*, 226.

<sup>228</sup> Turley, *Rum, Sodomy, and the Lash*, 55; Spierenburg, *The Spectacle of Suffering*, 58-9.

<sup>229</sup> Turley, *Rum, Sodomy, and the Lash*, 45.

<sup>230</sup> *Ibid.*, 53.

<sup>231</sup> Lorrain quoted in Faller, “In Contrast to Defoe,” 60.

<sup>232</sup> Harry Potter, *Hanging in Judgment: Religion and the Death Penalty in England*. (New York: Continuum Publishing Company, 1993), 73.

urban route.<sup>233</sup> Kidd's exposure on the Thames was intended to be a special warning to non-residents—particularly sailors contemplating piracy—coming in to London via its waterways.<sup>234</sup> Further, Kidd's gibbeting was meant to be a “terror to all who saw it” along the Thames until it had served the needs of the Admiralty. In Kidd's case, his decaying, gibbeted body was displayed for three years until it was taken down and unceremoniously disposed of at Lyme House.<sup>235</sup>

Still, Kidd's status as an out-and-out pirate was murkier than what the Admiralty wished to convey. At the time of his execution, he was a legally sanctioned privateer (in spite of the missing passes, which were later discovered in the twentieth century in the records of London's Board of Trade) *and* a legally condemned pirate.<sup>236</sup> Because of this, there had to be another, clearer reason for the Admiralty's making such an example out of Kidd. The reason is actually quite simple: the crimes Kidd committed were against property, something that was taken very seriously in England.

Even before Kidd, property crimes had always taken primacy in English law. Throughout English history, the vast majority of hanged criminals were those convicted of property offenses.<sup>237</sup> Indeed, England was one of the first European countries to extend the death penalty to cover any offense associated with the theft of property and real goods. In 1689 there were about fifty offences punishable by death, a number that increased to more than two hundred by the end of the eighteenth century. Nearly every time that Parliament enacted a law regulating trade or commerce, it appended a rider calling for capital

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<sup>233</sup> Spierenburg, *The Spectacle of Suffering*, 56-7.

<sup>234</sup> *Ibid.*, 57.

<sup>235</sup> Ritchie, *Captain Kidd*, 228.

<sup>236</sup> *Ibid.*, 208.

<sup>237</sup> Potter, *Hanging in Judgment*, 2.

punishment in cases of crime related to that particular economic activity.<sup>238</sup> Piracy was absolutely included in these laws. This concern for crimes against property was even reflected in the pamphlets recording the last dying speeches of hanged criminals. The authors who recorded the speeches either chose them because they were considered particularly wicked or their crimes exceptionally reprehensible, or because they committed property offenses.<sup>239</sup> Fear of violent crime against property reached its highpoint during Kidd's lifetime, which fueled the clamor for more draconian measures to curb such crimes.<sup>240</sup> By the early eighteenth century, concern for property had overwhelmingly replaced concern for immorality in the British *zeitgeist*, and those who committed such offenses suffered accordingly.<sup>241</sup>

Either as a pirate or a privateer, Kidd was an explicitly *economic* criminal, whose crimes were a threat to property and the acquisition of wealth.<sup>242</sup> His taking of the *Quedah Merchant* alone, which accounted for one of the counts of piracy against him, cost its owners £3,530 in losses. Kidd represented a threat to the stability of England's economy, which was a serious enough crime to be defined as something that offended the sovereign and merited execution.<sup>243</sup> Like other criminals executed for similar property offenses, the spectacle of Kidd's punishment extended beyond his execution into the realm of the popular press, but the question remains: was the spectacle successful?

Perhaps it was at the moment of Kidd's death, but all in all, the results were imperfect. The rumor of Kidd's buried treasure captured the popular imagination, as did a

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<sup>238</sup> Weisser, *Crime and Punishment*, 138-9.

<sup>239</sup> Sharpe, "Last Dying Speeches," 163-4.

<sup>240</sup> Potter, *Hanging in Judgment*, 4.

<sup>241</sup> Sharpe, "Last Dying Speeches," 165-6.

<sup>242</sup> Turley, *Rum, Sodomy, and the Lash*, 51-2.

<sup>243</sup> Spierenburg, *The Spectacle of Suffering*, 78.

ballad published the day after his execution, titled *Captain Kidd's Farewell to the Seas*. Sticking closer to the facts than many of the fictionalized accounts of Kidd's life that followed, the ballad made no mention of Kidd's treasure, but its hymn-like tune helped transform Kidd from a warning to a legend.<sup>244</sup> Indeed, within twenty-five years of Kidd's death, Charles Johnson portrayed him as a brave antihero, a captain who only turned to piracy because he had no other choice, rather than the reluctant pirate of the trial transcripts:

“Here it was that [Kidd] first began to open himself to his Ship's Company, and let them Understand that he intended to change his Measures; for, happening to talk to the *Mocha Fleet*, which was to sail that way, he said, *We have been unsuccessful hitherto; but Courage, my Boys, we'll make our Fortunes out of this Fleet.*”<sup>245</sup>

Ironically, the Kidd portrayed by Johnson was exactly the pirate the Admiralty courts and Paul Lorrain wanted him to be. Although romanticized, willing pirates who deliberately transgressed property law—and, ideally, confessed to it—were the best ones to punish and make examples of. Kidd was not that pirate in reality, but in punishment and in memory, that was what he became.

During his lifetime, Kidd had the unfortunate privilege of walking the fine line between pirate and privateer, and in the end, he was sacrificed to politics because of it. His execution served as a sort of peace offering intended to placate the directors of the East India Company and other merchants who endured the escapes and acquittals of other pirates before Kidd.<sup>246</sup> He was a liminal figure who was only welcomed back into society after his execution—not because he repented, but because his reputation contributed to

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<sup>244</sup> Bonner, “The Ballad of Captain Kidd,” 366, 380.

<sup>245</sup> Daniel Defoe, *A General History of the Robberies and Murders of the Most Notorious Pirates* (Reprint, New York: Carroll & Graf Publishers, Inc., 1999 [1724]), 372.

<sup>246</sup> Lane, *Pillaging*, 180.

the image of the pirate in popular culture, so much so that he eventually became one of the archetypal figures of eighteenth-century piracy along with Avery and Blackbeard. Kidd died a symbol of piracy rather than the hardened, notorious criminal the authorities attempted to make him out to be.<sup>247</sup> In return, Kidd gradually became a celebrated symbol of that piracy he so stubbornly claimed he was innocent of committing. In this way, the spectacle of his execution had unintended consequences. The messages that the Admiralty and the ordinary of Newgate sent to the general public were not the ones that the public received.

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<sup>247</sup> Lane, *Pillaging*, 180.

## CONCLUSION

In his seminal work, Robert C. Ritchie calls William Kidd a “transitional figure,” a man whose life represents “a turning point in the history of empire as well as in the history of piracy.”<sup>248</sup> He is not wrong. Kidd’s life, but especially his execution, exemplifies a world gradually moving away from the global chaos started by Spanish *conquistadores* in the New World and continued by pirates of all nationalities, and moving toward a more codified world that did not tolerate challenges to the state. In many ways, the western hemisphere of the sixteenth and seventeenth centuries needed piracy as a secondary support system as the European countries competed for dominance and struggled to create its merchant empires. Piracy in its various forms, from English privateering to Dutch freebooting to unequivocal raiding, flourished as long as it was a convenient tool for challengers of the status quo. As a double-edged sword of wartime strategy and economic disruption, piracy fit in perfectly with the war-riddled and ambitiously imperial period that characterized the late sixteenth and seventeenth centuries.

As discussed in Chapter 3, the previous centuries’ expedient disorderliness did not carry over into the eighteenth century for very long. As Spain fell by the wayside, England emerged victorious in the late seventeenth century because it took the legal and administrative steps necessary to prioritize its economy and the protection of its empire.<sup>249</sup> By the early eighteenth century, pirates had outlived their usefulness. Merchants accepted

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<sup>248</sup> Robert C. Ritchie, *Captain Kidd and the War Against the Pirates* (Cambridge, MA: Harvard University Press, 1986), 2.

<sup>249</sup> Christopher Harding, “‘*Hostis Humani Generis*’ – The Pirate as Outlaw in the Early Modern Law of the Sea,” In *Pirates? The Politics of Plunder, 1550-1650*, edited by Claire Jowitt (New York: Palgrave Macmillan, 2007), 37.

the protection of state rather than fend for themselves, and the government changed outdated policies to usher in a century that now saw pirates as nuisances rather than heroes.<sup>250</sup> James I (r. 1603-1625) early moves against piracy set the stage for later acts, such as the *English Act of Piracy of 1699*, which made it possible to execute pirates locally in colonies as opposed to centrally in London.<sup>251</sup> This was a crucial deterrent and shrewd act of imperial management, one that was infinitely more successful in eliminating widespread piracy than Spain's limited methods of defense.

To further aid in the elimination of piracy, English civil and religious authorities used gallows literature and propaganda to alter the popular image of the pirate. Before William Kidd (d. 1701), pirate identity was surprisingly fluid. However, by the time William Fly was executed in 1723, pirates were characterized by all as the worst of the worst, *hostis humani generis*, the common enemy of all mankind. This overall change in English attitude towards pirates transformed them from economic criminals to the worst of all moral offenders. Using condemned pirates as examples—and, in the case of Kidd's gibbeting, sometimes quite vividly—the sailors of England and its colonies were forced to reconcile the harm piracy caused to society with its potential and personal rewards. As more pirates were executed and as their last dying speeches were widely published, it became clear that the New World was no longer *terra incognita*. There were fewer and fewer places for pirates to hide.

Thus, a combination of better imperial management and sensationalized rhetoric

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<sup>250</sup> Anne Pérotin-Dumon, "The Pirate and the Emperor: Power and the Law on the Seas, 1450-1850," in *Bandits at Sea: A Pirate's Reader*, edited by C.R. Pennell (New York: New York University Press, 2001), 42.

<sup>251</sup> Kris E. Lane, *Pillaging the Empire: Piracy in the Americas, 1500-1750* (Armonk, NY: M. E. Sharpe, Inc., 1998), 180.

disseminated to the public helped to remove piracy as a threat to the British empire by the 1730s. William Kidd was not the last man to be executed for piracy, but he was the one who solidified the English shift in attitudes against piracy. Gone were the days of convenient chaos on the seas. With the advent of the eighteenth century, economic prosperity—without either the aid of or hindrance from pirates—became the watchword of empire.

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