Pirate

In the late sixteenth century, the Italian civil lawyer Alberico Gentili, a Protestant who settled in England after fleeing the persecution of the Catholic Church, wrote from his post at Oxford that enemies ‘are those who have officially declared war upon us, or upon whom we have officially declared; all others are brigands or pirates’ (‘hostes hi sunt, qui nobis, aut quibus nos publice bellum decreuimus caeteri latrones, aut praedones sunt’). Gentili used the Latin pirāta/piratae in his treatise, deriving from the word for ‘attack’ or ‘assault’, as well as the associations with sea theft that emerged from Old French in the thirteenth century. Early printed English dictionaries, such as The dictionary of syr Thomas Eliot (1538), defined ‘pirate’ as ‘a rover or robber of the sea’. Gentili drew on this meaning and the works of the Roman legal theorists Sextus Pomponius and Ulpian when developing his concept of just war (justum bellum) as a conflict between two or more sovereign states that shared the same legal status and respected the law of nations. As Gentili reminded his readers, it was impossible to have a ‘state of war’ with pirates and brigands since lawful war ‘is derived from the law of nations, and malefactors do not enjoy the privileges of a law to which they are foes’. The law of nations was ‘an agreement and a compact’ and those ‘who have withdrawn from the agreement and broken the treaty of the human race’ could never enjoy any legal right.

Until the Offences at Sea Act of 1536, the English had punished piracy as a civil offence, not unlike the crimes of highwaymen. The Offences at Sea Act established that piracy should be treated according to common law processes, which allowed for accomplice testimony and trial by jury. Increasingly, however, defining piracy required attention to both domestic and international codes of law, for, in Gentili’s words, ‘pirates are the common enemy of all mankind’ (‘piratae omnium mortalium hostes sunt

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5 Ibid., p. 14.
communes’), excluded from any kind of protection offered by the norms that regulated a just war.® Pirates and other lawbreakers ‘have utterly spurned all intercourse with their fellow men’, living ‘in the manner of wild beasts, and each one carried of what fortune offered to him as prey, trained to use his strength in accordance with his own impulses and to live for himself alone’, rather than for the common good.®® Applying Aristotelian ideas of civil society to the particular problem of the rise of piracy and its shaky relationship to the English state, Gentili classified pirates as criminals whose decision to live without any regard for international or civil law made them a threat to the civilised world.®® Influenced by Gentili and Roman piracy laws, the Jacobean jurist Edward Coke argued that as ‘enemies of mankind’ (hostis humanis generis), pirates should be trialled and punished as traitors.®®

This perception of pirates as marginal figures or potential traitors became more complicated, however, when reasons of state were considered. Definitions of the ‘pirate’ were subject to flux, not least because the English, like other European maritime powers, relied on commissioned private agents to attack the merchant fleets and ports of enemy or rival states. English merchants and captains frequently accused other European powers of committing acts of piracy on their vessels, while they themselves did not shy away from committing similar acts in the Mediterranean, the Indian Ocean, and the Atlantic.®® The strained relationship between England and Spain throughout Elizabeth’s reign had given pirates an ambiguous but at times privileged role in advancement the realm’s political and economic interests.

English monarchs often used legal instruments such as letters of marque, a document that established the conditions in which a state employed naval private agents to attack ships of a rival nation. The considerable profits obtained from these commissions led many merchants to petition the Crown for such letters. In May 1627, a group of London merchants petitioned

® Ibid.
®® Ibid.
®® R v Marsh (1615), 3 Bulstrode 27, 81 ER 23; Hildebrand, Brimston, and Baker’s case (1 rolle 285[1615], King’s Bench, Hilary Term).
the Duke of Buckingham, as Lord High Admiral of England, to intervene on their behalf and obtain a letter of marque from the king ‘for a voyage to Barbary in trade, and warfare’. The relationship between state and private agents stipulated by letters of marque led to the association of the word ‘privateer’ with these special assignments. George Carew, in his *Lex talionis, or, The Law of marque or reprizals* (1682), defined these instruments as ‘ambulatory, and revokable at Pleasure, being usually granted to all persons in all Nations that will ask for the same, to weaken the Enemy; as they did at Oast-End, Dunkirk, Flushed and Diep, in the times of War between Spain and England, France and England, and Holland and England; and those are called Privatters, or Private men of War’.

Other terms, such as ‘buccaneer’ or ‘corsair’, were also associated with state-sponsored maritime piracy across the Atlantic and the Mediterranean. ‘Corsair’ usually identified the French, Italian, Ottoman, and other Mediterranean equivalents of privateers. William Okeley complained that the southern Mediterranean coast from Algiers to Istanbul was plagued with ‘Turkish Corsairs, which have long Tyrannized in, and been a Terror to the Neighbouring Seas’. ‘Buccaneer’ was a word used to refer to state-sponsored private pirates in North America and the Caribbean. The author of *The English empire in America* (1685) celebrated the actions of the English ‘[p]rivatiers, or Bucaniers Sloop, and Boatmen’ based in Jamaica for ‘their dayly attempts upon the Spaniards in Panama and other places, which for the hazard, conduct and daringness of their exploits have by some been compared to the Actions of Caesar and Alexander the Great’. Such grandiloquent and nationalist language aimed to attenuate the moral and legal ambiguity of predatory sea rovers in the Caribbean by highlighting their service to the English state.

The lives and careers of individual figures identified at various points as pirates expose the precariousness of their reputations and legal standing. Francis Drake remained widely celebrated by Protestant writers as the scourge of the Spanish empire in the Atlantic long after his death in 1596. The courtier Walter Ralegh, another of Elizabeth’s favourites, lost his political

power after James’s accession to the throne and failed disastrously to find gold in his voyage to South America in 1617, yet gained a formidable reputation in popular lore. Elizabeth indulged Drake and Ralegh as heroes, while Drake’s exploits also contributed to an enduring ‘populist affective bond with the nation’ that was not always directly related to the monarchical state, but rather with mercantile activity and the expansion of trading corporations. Elizabethan pirates were often ‘cast as defensive measures used to protect English commerce’, whereby a series of grants and concessions of privateering led to its legitimisation.

The legal standing of pirates changed drastically in England with Elizabeth’s death. Under James, a condemnation of piracy led to all pirates being declared illegitimate and outlawed. The Venetian ambassador in London in 1603 reported that when James heard of an English privateer attacking an Italian ship, the king ‘twisting his body, striking his hands together […] took the memorandum […] and said in a loud voice, “By God I’ll hang the pirates with my own hands”’. This evocative image of James writhing his body in frustration demonstrates his very real annoyance at subjects who interfered with the complex diplomatic interests of international law. ‘Don’t you know’, Robert Cecil smoothly informed the Italian ambassador, ‘that these are pirates, who took to buccaneering under the late Queen, and since God gave us his Majesty for our sovereign not one privateer has set sail’.

Despite such active disapproval of acts of piracy, controlling pirates continued to elude the state, particularly along the expanding margins of English maritime activity. The absence of a coherent legislative apparatus in English colonies rendered laws against pirates in the Atlantic particularly difficult to regulate. The High Court of Admiralty could overturn the decisions made by colonial courts. Both colonial and metropolitan authorities often protected or stimulated acts of piracy that suited their strategic interests. This confusing situation was recognised in 1700 with the issuing of the Act

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18 Ibid., p. 140.
21 Ibid.
for the More Effectual Suppression of Piracy, a legislative effort to end the complaints that ‘Persons committing Piracies, Robberies and Felonies on the Seas, in or near the East and West Indies, and in Places very remote, cannot be brought to condign Punishment without great Trouble’ by empowering English colonial authorities to arrest, try and punish pirates ‘in any of his Majesty’s Islands, Plantations, Colonies, Dominions, Forts, or Factories’.

Individuals who engaged in the lucrative business of privateering were also understandably not always prepared to give it up. Peter Eston was one such pirate. Having fought against the Spanish in the Armada of 1588, Eston was undefeated in his sea battles, had pressed coastal fisherman into service, and amassed a formidable personal fleet of some twenty ships. Although James cancelled his letters of commission, Eston continued to attack ships in the Atlantic, particularly around Newfoundland. Whereas Elizabeth had channelled Eston’s energies to the benefit of the Crown, James’s hard anti-pirate stance only revealed the ruptures between monarchical power in theory and practice. When James offered Eston a pardon, the pirate refused. He was ‘a famous pirate’, an ambassador in London observed in 1612, ‘who haughtily refused the pardon offered by his Majesty, declaring that he would not bow to the order of one king when he himself was in a way, a king as well’. Eston retired in Savoy and lived as the Marquis of Duchy, living comfortably off a lifetime of spoils.

The other choice available to pirates was accepting the king’s terms. Henry Mainwaring, who attacked Spanish ships on the Barbary Coast, accepted James’s pardon in 1616. Assuming the role of the humble reformed pirate, Mainwaring presented the king with a ‘Discourse on Piracy’ and took up service in the royal navy, supporting the royalist cause in the English civil wars. Mainwaring admitted that ‘experience proves it to be undoubtedly true, that English Pirates do first arm and horse themselves within your Highness’ Dominions’, reinforcing the idea, among authorities, that piracy was a form of rebellion or banditry that started with dissident behaviour on land. ‘I fell not purposely but by mischance into those courses’, Mainwaring insisted, and ‘being in them, ever strove to do all the service I could to this State, and the merchants’. Mainwaring played on the legal ambiguities

26 Ibid., p. 8.
of early modern English piracy, emphasising the patriotism of the pirate in serving the monarch and bolstering the realm’s political economy.

Some literature in the late sixteenth and early seventeenth centuries celebrated commercial piracy as an alternative to, or an adaptation of, the knightly ethos of gentlemen, casting pirates as patriotic merchant-adventurers or shrewd pragmatists who served English interests in the faraway.27 Claire Jowitt has pointed out that in the writing of a large range of English authors – from the prose fiction of Philip Sidney and Lady Mary Wroth, to the plays of Shakespeare, Thomas Heywood, Philip Massinger, and Robert Daborne, and in anonymous broadsheets and ballads in cheap print – the figure of the pirate played a vital conceptual role, ‘simultaneously both central and marginal to orthodox conceptions of English identities’.28 This is particularly evident in the popular drama of the period, which includes plays such as The Famous Historye of the life and death of Captaine Thomas Stukeley (acted c. 1596–1597), Thomas Heywood’s Fair Maid of the West, Part 1 (composed between 1596–1603), Thomas Heywood and William Rowley’s Fortune by Land and Sea (1607–1609), Robert Daborne’s A Christian Turned Turk (1612), and Philip Massinger’s The Renegado (1623–1624). Pirates in such plays were presented as explorers and martial figures whose ‘adventures’ shift between the mercantile and the chivalric, even as they were denounced and punished as liminal, wandering figures of unregulated violence.

The ambiguous loyalties of pirates, as they travelled across national boundaries and navigated uncharted waters, also raised authorities’ fears about breaking the social order. Their role in moving wealth in and out of state coffers and private stores suggested a pirate’s ability to progress beyond established class hierarchies. Francis Drake began as a seaman on board William Hawkins’s ships in the 1560s, working his way to the position of admiral. In a portrait from 1581, Drake wore a large ruff and flamboyant court clothes, a clear statement of his own hand in securing the status of a gentleman. In pandering to court culture while living much of their life at sea, where alternative societies were formed on board ship, pirates often defied the carefully prescribed social orders of sixteenth- and seventeenth-century England, forming various alliances and enmities that did not map onto the idealised world picture expressed by English authorities.

Scholarship on piracy must also take into account the discrepancy between the status of ‘pirate’ and how such individuals actually saw, and termed, themselves. For all the English praise of the individual go-betweens

27 Ibid., p. 141; Jowitt, The Culture of Piracy, p. 137.
28 Jowitt, The Culture of Piracy, p. 16.
who seemed to fight so intently for English interests abroad, the ‘pirate’ was not an enviable status for those who sought preferment and honour within the realm. Other words appeared in its stead in pro-English expansionist propaganda: ‘captain’, ‘privateer’, ‘navigator’, ‘commander’. On the other side of this, certain words that might be associated with the actions of the pirate are tellingly absent, such as ‘kidnapper’ or ‘slaver’. While Thomas Greepe celebrated Drake in *The true and perfecte newes of the worrthy and valiaunt exploytes, performed and doone by that valiant knight Syr Frauncis Drake* (1587), Drake’s status as gentleman would have been tarnished by the label ‘pirate’, and the word does not appear once in Greepe’s text. Similarly, George Peele’s *A farewell Entitled to the famous and fortunate generalls of our English forces* (1589) and Philip Nichols’s *Sir Francis Drake revived* (1626) referred to Drake as a ‘general’ or ‘captain’, never ‘pirate’. Letters sent to Elizabeth’s privy council concerning Drake similarly referred to him as ‘knight’ or ‘lord admiral’. Conversely, the Spanish repeatedly called English merchants and colonists ‘pirates’. One Spanish captive in the English colony in Virginia likened Jamestown to the most infamous den of piracy in the Mediterranean Sea: ‘this new Algiers in America, which is being established’ in Virginia, he wrote to a Spanish ambassador in London, has made the colonists nothing but corsairs, and the colony might easily become ‘a gathering-place of all the pirates of Europe’.

As trading companies gained ascendency in the later seventeenth century, they fiercely protected their trading monopolies from interlopers, and sought to punish those who operated outside of their regulations, often condemning them as pirates. This in fact exposed alternative ways of operating that challenged English religious, social, and moral codes, as when English privateers in West Africa and the Indian Ocean established new homes for themselves, married non-European or non-Christian women, and adopted alternate names and identities for themselves far from their country of origin. Thus, the English merchant and East India Company (EIC) employee Edward Misselden asserted, pirates were one of the major

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‘forreine causes’ for the nation’s ‘want of money’. Like pirates, Misselden maintained, interlopers into trade were ‘evill Engines’ who subverted the finance and power of the ‘Companyes, yea, Kingdomes also’. Company officials believed interlopers were worse ‘than Pirates & deserve as much to be hanged’, conveying the belief that pirates should be punished as low-born criminals.

As in earlier periods, political imperatives and diplomatic relations helped dictate how and when pirates were celebrated or punished. In South Asia, for instance, seeking lucrative cargo from Indian ports, many English pirates targeted non-European ships, such as Mughal vessels near the Red Sea and Persian Gulf. The EIC came under fire in the early 1690s after several incidents concerning so-called English pirates in the Indian Ocean, the most famous involving the seizure of two Mughal ships by the English captain Henry Avery. Angered by the incident, Mughal officials banned all European trade out of Surat and requested Avery be punished. Having long declared itself the only government over English people in the East, the EIC promised to pay full financial reparations. At Avery’s trial one year later, the Advocate of the Admiralty Thomas Newton accused him of practicing ‘many and great Pyracies’. According to Newton, the act of piracy exceeded ‘[t]heft or Robbery at Land’; to ‘suffer pirates’ would mean the ‘Commerce of the World must cease’, leading to the ‘destruction of the Innocent English in to Countries’ and to the ‘total loss of the Indian trade’. Newton thus concluded that piracy threatened English commercial and territorial aims, and would lead to the ‘[i]mpoverishment of this Kingdom’, an example of the EIC using the language of piracy to place their own actions within the bounds of legality.

The pirate both evaded authorities and acted on their behalf; represented dangerous self-seeking behaviour that harmed the state and placed individual glory at the expense of the common good; and could be admired and celebrated as a hero who advanced the well-being of the nation. Pirates pushed the boundaries of lawful violence and starkly exposed the governing

32 Edward Misselden, Free trade, or, The meanes to make trade florish (London, 1622; STC 17987), pp. 17–18.
37 Ibid.
38 Ibid.
regime's ability or failure to execute justice, bringing questions of author-
ity and jurisdiction to the oceanic worlds that Europeans navigated with
increasing frequency. The pirate also operated in other roles: courtier or
merchant, naval commander or traitor, renegade or vagrant. Such figures
continually served as a prism through which the English interrogated
nascent ideas of national identity, social order, and belonging, while their
multicultural ships helped facilitate cultural transfer between areas across
the globe, from Japan to Madagascar to Jamaica.

Related keywords: courtier, merchant, subject, traitor