



INSTITUTIONEN FÖR LITTERATUR,
IDÉHISTORIA OCH RELIGION

The Discipline of the Seas

Piracy and polity in England: 1688–1698

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Term: Spring 2020
Course ID: LIR207, 30 HEC
Level: Master
Supervisor: Johan Kärfelt

Abstract

Master's thesis in history of ideas

Title: The Discipline of the Seas: Piracy and Polity, 1688.

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Year: Spring 2020

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Keywords: Piracy; Henry Every; Matthew Tindall; Philip Meadows; subjecthood; sovereignty; jurisdiction.

This thesis is a study of the changing legal and political climate surrounding piracy in England in the years 1688-1698, between the Glorious Revolution and the passing in parliament of the Piracy Act 1698. During this time views of piracy changed in London where pirates were no longer seen as beneficial, but instead as obstacles to orderly trade. The aim of this thesis is to investigate English legal and political-theoretical writing on piracy and sovereignty of the seas to further understanding of what kinds of legal spaces oceans were in early modern English political thought, and the role of pirates as actors in those spaces. This is achieved by a study of legal and theoretical texts, which focuses on the concepts *subjecthood*, *jurisdiction* and *sovereignty* in relation to piracy. I show that piracy became a blanket-term of delegitimization applied to former kings as well as poor sailors and that the English struggle for the suppression of piracy was ideological as well as practical. By contrasting legal and political theory with its realpolitical context I show that diplomatic and economic concerns often eclipsed theory when judging pirates in legal praxis.

Introduction	1
Aim	3
Research questions	3
Sources	4
Theory and method.....	5
Literature review	8
Outline	10
The Sovereign and the Pirate.....	12
The State of Nature, or the Law of Nations.....	12
Sovereignty of the Seas	13
Piracy and the Maritime State	16
The Trials Held at the Old Bailey, 1696.....	19
Speeches of the Chief Justices.....	25
The Prosecution	28
The Piracy Act 1698.....	36
Order and Expediency	39
Ebb and Flow.....	43
Interlude.....	47
Subjects at Sea.....	48
Power, Authority or Jurisdiction?.....	58
Floating territory.....	58
The shape of sovereignty.....	62
Conclusions	67
Further research.....	69
Bibliography	70
Illustrations	73

Introduction

A pirate's life is lived in liberty. At least, the cultural image of the pirate would have us think so, but there seems to be something to it. During *the golden age of piracy*, sea rovers cut out pieces of the earth for themselves in the Bahamas, on Madagascar and in Tortuga most notably, where they could style themselves princes and assert their own sovereignty of sorts. When the last period of the golden age commenced at the end of the War for the Spanish Succession in 1714, privateer captain Benjamin Hornigold reportedly turned pirate because he “never consented to the articles of Peace with the French and Spaniards”, rejecting the crown's authority to decide his antagonisms.¹

*I am a free Prince, and I have as much Authority to make War on the whole World, as he who has a hundred Sail of Ships at sea, and an Army of 100,000 Men in the Field*²

The man quoted above, Samuel Bellamy, was a member of Hornigold's crew who later went on to become one of the most successful pirates the world has ever known, at least in terms of profit.

In styling himself a “prince” Bellamy intended not to exaggerate or glorify his person or mock those who hunted him. A prince had the right to the seas on his own terms without relying on commissions or swearing his life to a faraway sovereign. Lauren Benton has shown that pirates did not think themselves the outlaws they have so often been portrayed as, instead they knew that their area of operation, the oceans, was a legal grey area and at least some of them could take advantage it.³

The question of whom the freedom of the seas belonged to and by what right is central in understanding golden age piracy and one that was heavily influenced by politics, theory and commercial interests at a time when modern states were being moulded into their current form. Subjecthood, the right of sovereigns and navigation lay at the heart of this development in England at the turn of the eighteenth century.

¹ Marcus Rediker, *Villains of All Nations: Atlantic Pirates in the Golden Age* (London: Verso, 2004), 7.

² Daniel Defoe and Manuel Schonhorn, *A General History of the Pyrates* (Mineola, N.Y: Dover Publications, 1999), 587.

³ Lauren A. Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400--1900* (Cambridge ; New York: Cambridge University Press, 2010); Lauren Benton, ‘Legal Spaces of Empire: Piracy and the Origins of Ocean Regionalism’, *Comparative Studies in Society and History*; *Cambridge* 47, no. 4 (October 2005): 700–724.

The quotation from Bellamy is taken from the pseudonymous Captain Charles Johnson's *A General History of the Pyrates*, first published in 1724 and then again in 1726, the latter edition contains the story of "Black Sam". Johnson's book is widely regarded as the most influential work in the history of piracy – and the broader cultural history of the same – and paints Bellamy as someone who is acutely aware of the social and political context of his crimes,⁴ as someone who understands that pryncedom is a pivotal matter in his ventures, even armies and navies are secondary to it.

When Bellamy was only a child another pirate, likewise rich and successful, made great "Noise in the world", Henry Every.⁵

... he was represented in *Europe*, as one that had raised himself to the Dignity of a King, and was likely to be the Founder of a new Monarchy⁶

Every is regarded by many historians to have been the source of inspiration for a later generation of pirates, like Bellamy, who attained "half-legendary" status for his robberies and not least because he was never captured and brought to justice, to the shame of the English government and the East-India Company.⁷ Every's actions had created a diplomatic crisis for England in relation to its trading partner in India. He had exceeded his rights as an actor on the high seas by robbing ships belonging to the Mughal empire.

When Every reached his zenith in the 1690's, the question of rightful kingship was perhaps as significant as it would ever be. Following the Glorious Revolution in 1688 England had, as it were, two kings: William III, the prince of Orange, wore the crown in Westminster and James II looked on, exiled in France.

That sovereignty of the seas was a hotly debated concept in a formative moment in the history of piracy shows in *A General History of the Pyrates* where princes and commonwealths abound. The history of golden age pirates is a history of those who usurped the powers of imperial Europe and by that account the thoughts that informed those powers in their endeavour to take charge of the oceans as well as the peoples who lived in lands beyond them.

⁴ Marcus Rediker, *Outlaws of the Atlantic: Sailors, Pirates and Motley Crews in the Age of Sail* (Boston, MA: Beacon Press (MA), 2015), 153.

⁵ Defoe and Schonhorn, *A General History of the Pyrates*, 49.

⁶ Defoe and Schonhorn, 49.

⁷ Defoe and Schonhorn, xix.

Aim

The aim of this thesis is to investigate English legal and political-theoretical writing on piracy and sovereignty of the seas to further understanding of what kinds of legal spaces oceans were in early modern English political thought, and the role of pirates as actors in those spaces in the period 1688–1698. To this end, I investigate the concepts of sovereignty, subjecthood, jurisdiction as they are presented in the source material.

The end and beginning of this ten-year period are marked by the Glorious Revolution in 1688 and the passing of the second Piracy Act in 1698 in parliament respectively. Within this chronological constraint lies formative years in the history of piracy and the development of the modern state. The years following William III and queen Mary’s coronation saw great reform in English imperial rule, via an until then unparalleled growth of the institutions of the shipping industry and overseas trade, as well as a process of formalising and institutionalising finance and trade.

This new order meant that pirates, privateers and buccaneers had to a large extent outlived their usefulness as instruments in forwarding the English imperial vision. London had entered the “age of the admirals”⁸ and now considered “piracy and the irregular practices of privateers as forces disruptive to trade”.⁹ This changing view of piracy is a focal point for this thesis.

The use of political-theoretical texts in concert with legal documents is intended to first, sample different patterns of thought on the issues discussed and second, to show similarities and/or discrepancies between political theory and legal practice.

Research questions

Piracy and sovereignty were two closely related concepts in the Early-Modern maritime world. To further understanding of the scope of action for pirates in international space and the extent of their affiliation with the state, I posit the question: “In what ways do the concepts of subjecthood and sovereignty shape the framework for pirates as international actors?”

⁸ J. H. Parry, *Trade and Dominion: The European Oversea Empires in the Eighteenth Century*, History of Civilization (London: Weidenfeld and Nicolson, 1971).

⁹ Benton, ‘Legal Spaces of Empire’, 708.

From this question stems another concerning the nature of the international space the pirates move and act within: “How is the jurisdiction of the seas conceptualized in relation to piracy?”

In tying these two questions in with the overarching political and economic change in and modernization of England in the years following the Glorious Revolution, I ask: “How do the problemata of subjecthood and oceanic jurisdiction pertaining to piracy correlate with the transformation of the concept of piracy in the period 1688-1698?”

Sources

This thesis is built around an analysis of four texts published in the decade 1688-1698. *The Tryals of Dawson et.al.*¹⁰ was published in 1696 by appointment of the High Court of Admiralty of England. It is a record of a high-profile trial against six men for piracy committed under the command of “Every the Great Pirate”. The record was published as a pamphlet of twenty-eight pages and is an early example on the part of the English government to utilize print culture and public life, in what Douglas Burgess calls a manipulation of the media to “garner public support” for the government’s efforts to prosecute pirates.¹¹ In light of this ambition, the text does heavy ideological lifting in service of the ongoing work by the English government to alter the views on piracy throughout the empire.

“An Act for the more effectuall Suppression of Piracy”, hereafter called “the Piracy Act 1698”, was adopted by parliament in 1698 (and entered into effect in 1700) as a response to the great increase of piracy in the 1690’s. It was the second piracy law in England, superseding the first from 1536 and came to be “the governing law in the Atlantic” when the War for the Spanish Succession ended in 1714 and piracy entered its most golden of ages,¹² thereby ensuring that the legal and political discourse of the 1690’s earned a permanent place

¹⁰ Full title: *The Tryals of Edward Forseith, William May, William Bishop, and John Sparkes for Several Piracies and Robberies by Them Committed in the Company of Every the Grand Pirate, Near the Coasts of the East-Indies, and Several Other Places on the Seas : Giving an Account of Their Villainous Robberies and Barbarities*

¹¹ Douglas R. Burgess, ‘Piracy in the Public Sphere: The Henry Every Trials and the Battle for Meaning in Seventeenth-Century Print Culture’, *Journal of British Studies* 48, no. 4 (2009): 888.

¹² Rediker, *Villains of All Nations*, 26.

in the history of piracy. The source for the Piracy Act 1698 used in this thesis is the seventh volume of *The Statutes of the realm* edited by John Raithby and published in 1820.¹³

*An essay Concerning the laws of Nations and the Rights of Sovereigns*¹⁴ is a legal and philosophical commentary on the trials of Irish privateer captain John Golding in 1693–4 written by admiralty advocate and philosopher Matthew Tindall (1657–1733) published as a pamphlet of thirty-six pages. Explicitly and thoroughly reliant on Hugo Grotius, Tindall's *Essay* treats questions of how subjects and sovereigns relate under *the law of nations* and the role of pirates in those relations.

*Observations upon the Dominion and Sovereignty of the Seas*¹⁵ was written by sir Philip Meadows (1625–1718) and published in 1689. Meadows exhibits great deference to John Selden in debating the rights of the English to exclusive dominion of the seas surrounding the British Isles in matters of foreign naval thoroughfare, jurisdiction and fishing. In doing so, Meadows broaches questions of the nature of the sea, subjecthood, and most importantly for my purposes, what kind of legal spaces the seas are. Also a pamphlet, *Observations* is longer than the other sources at 46 pages (preface excluded), but since much of it treats subjects not directly tied into the subject of this thesis, such as fishing, more of it is excluded.

Theory and method

In the essay *Lives of Infamous Men*, Michel Foucault outlines an approach to writing history about persons whose being “comes down to exactly what was said about them: nothing subsists of what they were or what they did, other than what is found in a few sentences”. The history of the infamous, insane or otherwise insufferable can only be written by examining the points at which they intersected with and were described by power, “Indeed, the most intense point of a life is [...] where it comes up against power”.¹⁶

¹³ John Raithby and Great Britain, *The Statutes of the Realm*, vol. 7 ([n.p.]: n.p., 1810), <http://link.gale.com/apps/doc/U0109182718/MOME?u=gu&sid=zotero&xid=b6cb4e51>.

¹⁴ Full title: *An Essay Concerning the Laws of Nations, and the Rights of Sovereigns. With an Account of what was said at the Council-Board by the Civilians upon the Question, Whether their Majesties' Subjects taken at Sea acting by the late King's Commission, might not be looked on as Pirates? With reflections upon the Arguments of Sir T.P [Thomas Pinfold] and Dr. Ol. [Oldys]*

¹⁵ Full title: *Observations Concerning the Dominion and Sovereignty of the Seas: Being An Abstract of the Marine Affairs of England.*

¹⁶ Michel Foucault, 'Lives of Infamous Men', in *Essential Works of Foucault, 1954-1984. Vol. 3, Power* (New York: The New Press, n.d.), 162.

The insight is highly relevant to any who presume to write the history of golden age pirates, and the conception of this thesis' subject matter and the selection and consideration of source material for it was certainly informed by Foucault's thought. Unlike Foucault however, my intention is not to examine the lives and suffering of outcasts, but to examine the ideas and actions of the powerful who cast them out.

To that end, the source-material was selected with three principal criteria in mind. First, all of them were published in the years between the Glorious Revolution in 1688 and the passing in parliament of the Piracy Act 1698, which serves both as a source in its own right and as a chronological endpoint in the study.

Second, they all treat the question of sovereignty of the seas and/or piracy. Meadows' *Observations* being an outlier where piracy is only briefly mentioned directly, the text is nonetheless of relevance to the subject because of its treatment of maritime jurisdiction.

Third, all of the sources are issued by or represent different branches of the English government. Matthew Tindall was an admiralty advocate and Philip Meadows (together with, among others, John Locke) was a member of the inaugural "Commissioners for Trade and Plantations" in 1696, better known as the Board of Trade.¹⁷ Because of their positions, I treat them as representatives of the English polity. However, the two argue from two distinct and in some ways opposite theoretical traditions and while the men might be representatives, their views were not necessarily hegemonical. Instead the selection of these two different points of view is intended to show a plurality of thought pertaining to piracy by those who shaped the struggle against it.

A sizeable portion of this thesis is afforded to the juxtaposition of theory with praxis, or at least the contextualisation of theory in its historical situation. In that comparison I adhere to a materialistic position where the realpolitikal and practical takes precedence over the theoretical as causal factors. This is done partly out of preference but mostly in adherence to historical context. By the end of the 17th century, Piracy was first and foremost an economic problem for England and trade was the principal concern in the suppression of piracy.

¹⁷ Several other similar advisory bodies to the British government have also been known as "the board of trade", before and after the lifespan of the one mentioned here; 'Council of Trade and Plantations 1696-1782 | British History Online', accessed 11 May 2020, <https://www.british-history.ac.uk/office-holders/vol3/pp28-37#h3-0002>; Peter Laslett, 'John Locke, the Great Recoinage, and the Origins of the Board of Trade: 1695-1698', *The William and Mary Quarterly* 14, no. 3 (1957): 370-402.

From the materialistic outlook and the 10-year limitation follows a synchronistic view of the studied period under advisement and thus, little to no current theory is applied to the source material. I do however use older or contemporary texts to highlight theoretical relations with the sources.

In addition to a materialist view of history I use class, and especially work-discipline, in my analysis, an aspect of the text which owes a great deal to Markus Rediker's social history of piracy which is detailed in the literature review. This is of course also tied to a certain regime of international trade which pirates threatened.

As I intend to bring into the light part of the legal, political and to some extent, philosophical, framework that was taking shape in England as the state took large steps toward modernization after the Glorious Revolution, theories of statecraft and sovereignty were of vital importance to the study. To this end I use Thomas Hobbes' *Leviathan* (1651) and John Locke's *Second Treatise of Government* (1692), the two most influential works on the subject as a point of comparison and a tool for contextualization. Similarly, I use Hugo Grotius' *Mare Liberum* (1609) as a point of reference in the analysis of oceans as legal space.

The social contract-theory developed along different paths by both Hobbes and Locke is used to broaden the discussion on the vaguely defined concept of *subjecthood* – an analytical term I borrow from Lauren Benton which does not appear in the primary sources.¹⁸ Subjecthood is the state of being a subject to a sovereign. Unlike citizenship, subjecthood is not a formalisation of rights and it is signified by a personal relation to a monarch, rather than a state.

As this thesis deals with the friction, tensions and contradictions in the framework within which piracy is defined, I refrain from attempting a definition of the concept. Anne Pérotin-Dumon writes that “the lack of a legal definition for international piracy shows in the relativity that has always characterized the identity of the pirate”.¹⁹ Following Pérotin-Dumon's example, I use the words “pirate”, “privateer”, “buccaneer”, “corsair” etc. in accordance with the source material and generally refer to pirates by their names.

¹⁸ Benton, *A Search for Sovereignty*.

¹⁹ Anne Pérotin-Dumon, ‘The Pirate and the Emperor: Power and the Law on the Seas, 1450-1850’, in *The Political Economy of Merchant Empires*, ed. James D. Tracy (Cambridge; New York: Cambridge University Press, 1991), 203.

That said, some of these words have specific meanings or allude to certain historical contexts. A privateer is a private actor who has gained authorisation to rob enemy ships in war. Buccaneer is a term usually employed to describe predominantly English, Dutch and French pirates in the Caribbean around the middle of 17th century. The word Corsair is derivative of the French term *Guerre de course*, trade war (literally “war of the chase/hunt”) is mostly used in reference to Barbary Corsairs, north-African pirates mostly sailing out of modern-day Libya, Algeria and Tunisia, often in service to the Ottoman Empire.

The main reasons why piracy is such a fleeting concept are that, “violence [...] was not a trait of piracy but more broadly of the commerce” in the early-modern era, and that the distinction between pirates and privateers were opaque to say the least.²⁰ Janice E. Thomson has argued that piracy was virtually undefinable until privateering was banned by the Paris declaration in 1856.²¹ Because privateering is authorised piracy where states grant commissions to private persons to rob ships of an enemy nation, the distinction between privateers and pirates rest entirely on a definition of war (which is not always clear cut) and the recognition of sovereign powers of the party granting the commission – a political rather than legal question.

Piracy is a contentious and oftentimes paradoxical concept and because the friction, tensions and contradictions are what I study, it would be self-defeating to attempt a definition.

Literature review

The history of piracy has since 1987 with the publishing of *Between the devil and the deep-blue sea* seen the author of that work, Marcus Rediker, become an almost unavoidable reference for any who enter the field. His Marxist, social history of piracy has shaped much of the understanding of golden age piracy, framing it as a struggle between the maritime working class and the expansive capitalism of the 18th century. *The Many-headed Hydra* (2000), which he co-wrote with Peter Linebaugh, expands beyond piracy and *Villains of all Nations* (2004) zooms in on it. The leitmotif in most of Rediker’s work is class-conflict. One fundamental problem with that framework is for example, as Mark Hanna points out, that the

²⁰ Pérotin-Dumon, 202.

²¹ Janice E. Thomson, *Mercenaries, Pirates, and Sovereigns: State-Building and Extraterritorial Violence in Early Modern Europe*, Princeton Studies in International History and Politics (Princeton, N.J: Princeton University Press, 1994).

rift between the working class and capitalists has existed both before and especially after the golden age, without resulting in widespread piracy.²²

That is not to say however that piracy was a classless crime. Pirates wanted to make profit and did so by raiding the property of the wealthy, and even though some pirates belonged to the propertied class, many more were commoners.²³ So, that the struggle against piracy was fought along class lines, I hold to be generally true, but I share Hanna's apprehension at citing class-conflict as the principal cause and characteristic of piracy.

Janice E. Thomson offers another, slightly more straight-forward, way to frame the dichotomy between states and pirates in *Mercenaries, Pirates, and Sovereigns* (1994). In a history of state-monopolized extraterritorial violence, Thomson traces the history of pirates as non-state actors from the birth of Elizabethan privateering to the abolition of privateering in 1856 and how piracy transformed from a useful weapon, when European powers (Britain especially) vied for footholds in the Americas and the Indian ocean, into the universal adversary of global trade through a web of international relations. By showing how the views on, and the definition of piracy changes with each declaration of peace (when privateers became pirates) and declaration of war (when pirates became privateers again), Thomson demonstrates that the definition of piracy was in effect political rather than legal until privateering was abolished in the Paris Declaration in 1856 and piracy became a viable blanket-term for all sea-robbery.²⁴

It is a generally agreed among writers of the history of piracy that widespread deployment of privateers in wars and subsequent their wide-spread unemployment when the wars end was a major cause of piracy, especially in the already mentioned war for the Spanish succession. Captain Charles Johnson even espoused this view as early as 1724 when he theorised that the reason England fostered so many pirates compared to the Netherlands was that the Dutch “have a fishery, where their Seamen fin immediate Business” after a war.²⁵

²² Mark G. Hanna, ‘Well-Behaved Pirates Seldom Make History: A Reevaluation of English Piracy in the Golden Age’, in *Governing the Sea in the Early Modern Era*, ed. Peter C. Mancall and Carole Shammas (University of California Press, 2015), 129–68.

²³ B.R. Burg, ‘Legitimacy and Authority: A Case Study of Pirate Commanders in the Seventeenth and Eighteenth Centuries’, *The American Neptune* 1977, no. 37 (n.d.): 40–49.

²⁴ Thomson, *Mercenaries, Pirates, and Sovereigns*.

²⁵ Defoe and Schonhorn, *A General History of the Pyrates*, 4.

Robert C. Ritchie's seminal work *Captain Kidd and the war against the Pirates* (1986) is the premier history of English piracy in the closing decade of the 17th century. The most important conclusion is that piracy in its essence was politically volatile like little else. Through his depiction of the crises instigated by William Kidd and Every who made enemies with their own country as well as the Mughal Empire, also fostered enmity between England Ritchie manages to describe the political intricacies of piracy, as well as the changes in the English state that led to its turn away from piracy, in unparalleled detail. Much of the historical contextualization in this thesis is borrowed from Ritchie.

Lauren Benton fuses the history of piracy with theories of sovereignty and legal spaces, most notably in *A Search for sovereignty* (2015).²⁶ By examining legal theories and praxes Benton shows, among other things, how European powers arranged their territorial and/or jurisdictional claims over the sea along lanes rather than large stretches of open ocean. Benton also demonstrates that golden age pirates often were highly aware of the incomplete or patchwork legal order as well as the politically grey spectrum of pirate–privateer and used these factors to their advantages – pirates seldom acted as if they existed in a lawless condition.

Outline

This introductory chapter is followed by two contextualizing chapters, “The Sovereign and the Pirate” and “Piracy and the Maritime State”. Respectively, they are intended to provide the reader with some necessary theoretical background and historical context to unburden the analytical chapters.

In order to allow for the differences in genres, aims and means between the different sources and allow them to stand as they are. I have elected to break out two texts: *The Tryals of Joseph Dawson et.al.* and The Piracy Act 1698 which are treated separately. The aim of this treatment is twofold. One, it prevents the muddling together of legal texts with the political-theoretical. Two, it gives the study traction in a historical moment and ensures that the ties between theory and practice are clear – the theory of sovereignty, jurisdiction and dominion of the seas had an intimate relationship with the hangman's noose in the seventeenth century.

²⁶ Benton, *A Search for Sovereignty*.

Tindall's *Essay* and Meadows' *Observations* serve as the focal point for the theoretical chapters "Subjects at Sea" and "Power, Authority or Jurisdiction?" respectively, where I widen the theoretical discussion as well as contrast it with the questions and problems that arise from the treatment of *Tryals of Joseph Dawson et. al.* and the Piracy Act 1698.

The Sovereign and the Pirate

The State of Nature, or the Law of Nations

According to Martin Wight, Thomas Hobbes “seems to have been” the originator of the view that the state of nature and the law of nations were one and the same, which became the dominant view in the second half of the seventeenth century.²⁷ In *Leviathan*, the social contract between subject and sovereign is the creation of society, whatever came before is “by definition pre-contractual and non-social, so to speak of a society of nations is contradictory”.²⁸

Since there is no body of authority to bring the nations of the earth to heel, to discipline and punish them and to enforce peace, “Kings, and Persons of Sovereign authority, because of their Independency, are in continuall jealousies, and in the state and posture of Gladiators”.²⁹ This ensures their entrenchment in an eternal state of war in which there is no right or wrong, because “Where there is no common Power, there is no Law: where no law, no Injustice”, there is only a “warre , as is of every man, against every man”.³⁰

The Hobbesian position is ripe with an essentially pessimistic view of mankind. According to Hugo Grotius however “the state of nature was a condition of sociability, of the capacity for becoming social”.³¹ Grotius was of the opinion that “a minimalist core of morality for all human beings” existed and that even without a common power to discipline them, humans were at heart a reasonable lot who saw the benefit of peaceful relations. The law of nations in this view serves to preserve this essential universal rationality and sociability of mankind.

Another reason why the law of nations was considered synonymous to the state of nature is the concept of societies as *bodies politic* which was held by both Grotius and Hobbes. For Hobbes, the commonwealth was a mass of people “united in one person” by consenting to the social contract, but “This is more than Consent, or Concord; it is a reall

²⁷ Martin Wight, *International Theory: The Three Traditions*, ed. Gabriele Wight and Brian Porter (London: Leicester University Press for the Royal Institute of International Affairs, 1996), 30.

²⁸ Wight, 31.

²⁹ Thomas Hobbes, *Leviathan: Authoritative Text, Backgrounds, Interpretations*, ed. Richard E. Flathman and David Johnston, 1st ed, Norton Critical Edition (New York; London: W. W. Norton & Company, 1997), 71.

³⁰ Hobbes, 71,70.

³¹ Wight, *International Theory*, 38.

Unitie of them all, in one and the same Person, made by covenant of every man with every man”.³²

The many united under the “great LEVIATHAN”³³ thus makes a complete body in and of itself which can interact with other such bodies. Due to the previously mentioned lack of any international authority, the commonwealths of the world can only resort to the law of nature. Grotius promotes a similar view in *Mare Liberum*, but he views “peoples”, a far less distinctively defined concept, and not states as the subjects of the law of nations.³⁴

Lauren Benton points to another, more practical reason why the law of nations and the state of nature was considered to be synonymous, not because they believed in an “overarching legal regime”, instead it was done “in the service of attempts to equate the law of powerful empires with supposedly universal principles”.³⁵ The equation of communal law with nature also packs considerable symbolic punch as offences to the law of nations become violations of natural order and in extension affronts to its divine creator.

Sovereignty of the Seas

Oceans are elastic, they swell and regress by the minute in their perpetual intercourse with the moon. They have no fixed surface, no landmarks or natural borders within them. At any given time, the seas have a different shape than just a moment earlier before. Oceans are unreliable and unpredictable, yet constant.

Hugo Grotius espoused this view of the seas in his highly influential *Mare Liberum*, “the free seas”. Published at the behest of the Dutch government and East-India company in 1609, Grotius’ work was explicitly aimed at the Portuguese who hindered the Dutch East-India trade and to justify the resulting capture of the Portuguese ship *Santa Catarina* near Singapore on part of the Dutch.³⁶ In vilifying Portugal, Grotius laid down universal principles

³² Hobbes, *Leviathan*, 95.

³³ Hobbes, 95.

³⁴ Hugo Grotius, *The Freedom of the Seas or The Right Which Belongs to the Dutch to Take Part in the East Indian Trade*, ed. James Brown Scott, trans. Ralph van Deman Magoffin (New York: Oxford University Press, 1916).

³⁵ Benton, *A Search for Sovereignty*, 111.

³⁶ Benton, *A Search for Sovereignty*; Monica Brito Vieira, ‘Mare Liberum vs. Mare Clausum: Grotius, Freitas, and Selden’s Debate on Dominion over the Seas’, *Journal of the History of Ideas* 64, no. 3 (17 October 2003): 361–77.

for the dominion and navigation of the seas as well as postulating rights of all sovereign states and peoples to it.³⁷

Grotius distinguished between two types of *commons*, movable and immovable. The immovable can be fenced, occupied or manipulated by labour and thereby made property. Land, food, clothes and even animals fall into this category. The primary movable commons are the air and waters and therefore the sea “because it is so limitless that it cannot become the possession of any one”.³⁸ This commonality of the sea extends to things carried away by the sea, like beaches, shores therefore are also common according to *Mare Liberum*.³⁹

Because the freedom of the seas is derived from their nature, Grotius considers the law of nations to be derived from the will of God, who made the oceans unsusceptible to be made property and infested them with the winds that carry men across them. God also made different regions rich with different natural resources which means that it is up to men to make available these resources to each other by means of trade.⁴⁰

That the freedom of the seas and navigation thereof extended as far as the shores was an important foundation for what lie at the heart of Grotius’ theory, the freedom of trade: “Every nation is free to travel to every other nation, and to trade with it.”⁴¹ That the Portuguese inhibited the Dutch to trade with the people of, for example, Java, was not only a wrong done to the Netherlands but also to the Javanese.⁴²

Freedom of trade trumped most things and those who interfered with trade were guilty of the greatest malfeasance, which was as true for the Portuguese as it was for pirates. According to Grotius, the suppression of piracy belonged to the common right of the sea. Jurisdiction is not the same as dominion however, as the Romans whose claims to the sea “did

³⁷ David Armitage, *Foundations of Modern International Thought* (Cambridge; New York: Cambridge University Press, 2013).

³⁸ Grotius, *The Freedom of the Seas or The Right Which Belongs to the Dutch to Take Part in the East Indian Trade*, 28.

³⁹ There are certain exceptions to this. Grotius writes of certain shallow waters which can be closed off by stakes or other means, but these are outlying phenomena.

⁴⁰ Grotius, *The Freedom of the Seas or The Right Which Belongs to the Dutch to Take Part in the East Indian Trade*, 61–62.

⁴¹ Grotius, 7.

⁴² Hugo Grotius, *The Freedom of the Seas or The Right Which Belongs to the Dutch to Take Part in the East Indian Trade*, ed. James Brown Scott, trans. Ralph van Deman Magoffin (New York: Oxford University Press, 1916), 11; Grotius also dispels the notion that the Portuguese were discoverers of the East-Indies for the simple reason that they were already inhabited and thus previously discovered.

not extend beyond protection and jurisdiction” had shown.⁴³ The Roman fight against piracy was to the benefit of everyone since it promoted the free navigation of the seas. Combating pirates “who beset and infest our trade routes” is always a service to the common good.⁴⁴

The most influential response to Grotius came from John Selden who, in 1636 published *Mare Clausum*, “the closed sea”, in which he set out “to prove, *contra* the *Mare Liberum*, that the dominion over the sea could be demonstrated in law and had been established in fact.”⁴⁵ In arguing that the sea was susceptible to dominion and that England had sovereignty over the waters surrounding it, Selden’s prime motivation for claiming *mare clausum* was to assert English fishing rights in the North-Sea vis-à-vis the Dutch.

One of the key elements of Selden’s thought is that the sea is enclosed by land, and not the other way around as the Grotian tradition holds. Which means that it is a property of the sea itself to be able to be closed off by borders or otherwise. In arguing so, Selden effectively differentiated between national and international waters (where Selden mostly adhered to Grotius’ vision of free movement) – the high-seas – which Grotius never did. The division of the seas into different kinds of legal spaces is the perhaps most notable difference between the two.

In claiming ownership of territorial waters and the right to patrol them, Selden conflates possession with jurisdiction and power to the extent where the two become mutually dependent, meaning that the shared jurisdiction in fighting pirates Grotius propagated should not be possible.⁴⁶

Although modern nations generally adhere to a Seldenian notion of territorial waters, out of Grotius and Selden, Grotius has definitely had greater posthumous influence and in the years surrounding the Glorious Revolution, the period this thesis is concerned with, he was “The presiding authority in international law”.⁴⁷

⁴³ Grotius, 35.

⁴⁴ Grotius, 10.

⁴⁵ David Armitage, *The Ideological Origins of the British Empire*, 7. print, Ideas in Context 59 (Cambridge: Cambridge Univ. Press, 2009), 113.

⁴⁶ Armitage, *The Ideological Origins of the British Empire*.

⁴⁷ Armitage, *Foundations of Modern International Thought*, 146.

Piracy and the Maritime State

Since the widespread granting of *letters of marque*⁴⁸ in Europe began in the late 1500s, England, France and the Ottoman Empire especially utilized private forces in constant wars in the Mediterranean as well as in the race for the new world, where the Elizabethan “sea-dogs” and especially their figurehead sir Francis Drake made history by harrowing the Spanish colonial traffic in the Americas and securing “naval superiority over Spain”.⁴⁹

The preeminent benefit of enlisting privateers was that they were cheap. For example, in 1660 when the English feared that they might lose the newly acquired colony on Jamaica they sent an envoy to treat with the Spanish (to whom Jamaica had belonged until 1655) for peace and trade deals. When the Spanish refused the envoy, Lord Windsor instead gathered as many buccaneers⁵⁰ as he could and granted them privateering commissions, consolidating the English position in the region and although “English finances could not have funded such a fleet, [...] Windsor acquired it at the cost of a few pieces of paper.”⁵¹

Henry Morgan was one of the buccaneers sailing out of Jamaica. He was responsible for one of the most remarkable acts of violence on the part of any violent non-state actor when he laid siege to and subsequently razed Panama City in 1671. The sacking was a breach of an agreement between the English and Spanish signed only a year before and Morgan was consequently arrested and brought to England to answer for his crimes. Instead of a punishment, Morgan was recognized as a hero and awarded with a knighthood for his ventures in the west-indies. Later still Morgan returned to Jamaica as lieutenant-governor.⁵² His story is emblematic of England’s relation to sea-rovers up until the closing decades of the 17th century.

Marcus Rediker dates “the golden age of piracy” from around 1650 until 1725 and was separated into three distinct generations. The buccaneers in the west-indies were the first

⁴⁸ A letter of marque is an authorization, an official commission granting a private vessel the right to hunt the ships of rival nations in times of war. Both ships and seamen sailing under such a commission are called privateers.

⁴⁹ Thomson, *Mercenaries, Pirates, and Sovereigns*, 23.

⁵⁰ “Buccaneer” was a term used to describe predominantly English, Dutch and French pirates who lived on Caribbean islands and harassed Spanish ships from the mid to late seventeenth century. The name refers to pirates on Hispaniola who hunted cattle and smoked the meat. “Boucane” is French for the type of wooden frame used in the smoking process.

⁵¹ Robert C Ritchie, *Captain Kidd and the War against the Pirates*, 2005, 16.

⁵² Thomson, *Mercenaries, Pirates, and Sovereigns*, 47.

generation between c. 1650-1680 and Morgan was the most prominent among them. The second generation crops up in the Indian ocean in the 1690's – the period this thesis examines – and was made up of pirates often based on Madagascar. William Kidd and Henry Every are the most notable pirates of this generation. The last generation emerged in the wake of the war for the Spanish succession which ended in 1714. The final generation lasted until about 1725 and was the most sizable sprout of piracy ever. This is the period of Edward “Blackbeard” Teach, John Rackham, Samuel Bellamy, Bartholomew Roberts and the most well-known trope of piracy, the jolly roger.⁵³

The organized crackdown on piracy by the English government in the 1690's coincided with, or rather was symptomatic of a political climate more and more centred around property rights and an acceleration of the shift of power from the landed gentry to the merchant class.

The Glorious Revolution in 1688 was an invited invasion rather than a revolution. Without going into too much detail, the protestant dutchman William of Orange, was invited by a number of nobles and bishops to seize power from the catholic James II of house Stuart, late autumn 1688. James was deposed but was allowed to escape” to France, while William was married to James’ daughter Mary to ensure regnal continuity and was crowned William III in February 1689 as joint sovereign with queen Mary.⁵⁴ The Glorious Revolution, as it came to be known, “saw a restoration of power to the traditional ruling class, the shire gentry and town merchants”, as well as increasing the authority of parliament vis-à-vis the crown.⁵⁵ James’ escape to France meant that England, in a sense, had two living kings which came to shape the legal discourse on piracy in the 1690's as will be elaborated in this thesis.

The following years came with what Rediker and Linebaugh call “the consolidation of the maritime state” which entailed among other things an unparalleled growth in the number of joint stock companies in London from eleven in 1688, to over a hundred seven years later, the Bank of England was formed in 1694, the maritime insurance industry grew and “the Royal Navy had become England’s greatest employer of labor, its greatest consumer of material, and its greatest industrial enterprise.”⁵⁶ English merchants who had previously

⁵³ Rediker, *Villains of All Nations*.

⁵⁴ Christopher Hill, *The Century of Revolution 1603-1714* (London; New York: Routledge, 2002).

⁵⁵ Hill, 273.

⁵⁶ Peter Linebaugh and Marcus Rediker, *The Many-Headed Hydra: Sailors, Slaves, Commoners and the Hidden History of the Revolutionary Atlantic* (London, UK: Verso, 2012), 148.

profited from buccaneer activity now came to admonish it; organized shipping proved much more profitable. By the 1690's London's merchant community began to dismiss "unpleasant surprises generated by unruly elements in the market."

They even turned away from free-market ideologies toward those that buttressed a more controlled and disciplined economy. London had become an entrepôt where men who profited from its growth wanted trade organized along systematic, predictable lines and looked to the government to ensure an appropriate framework of law.⁵⁷

Even though the Royal Navy had grown to an impressive size, it was mainly occupied in William's war with France 1688-1697 and nowhere near large enough to police both the seas around England and the colonies. No one had that kind of naval power at this point in time.⁵⁸ This meant that pirates could often find havens and supporters in the colonies, especially in the Americas, where they could offload booty and contraband.⁵⁹

Another crucial reason for the English turn away from piracy was that the actions of English pirates were becoming increasingly harmful to English trade interests by instigating diplomatic crises. Thomson identifies the Mughal empire as the perhaps most important actor in transforming the English view on piracy.⁶⁰ It is in this context that my study begins.

⁵⁷ Ritchie, *Captain Kidd and the War against the Pirates*, 138.

⁵⁸ Pérotin-Dumon, 'The Pirate and the Emperor: Power and the Law on the Seas, 1450-1850', 201.

⁵⁹ Douglas R. Burgess, *The Pirates' Pact: The Secret Alliances between History's Most Notorious Buccaneers and Colonial America* (Chicago: McGraw-Hill, 2008); Ritchie, *Captain Kidd and the War against the Pirates*.

⁶⁰ Thomson, *Mercenaries, Pirates, and Sovereigns*, 109.

The Trials Held at the Old Bailey, 1696

On Thursday the twenty-ninth of October 1696, six men stood before a court of high-ranking common and admiralty judges, solicitors and clerks at London's Old-Bailey. That in itself was out of the ordinary. Trials for piracy were not normally held at the Old-Bailey, but the might of the court and judges paled in comparison with the audacity of the crime they had gathered to assess.

Joseph Dawson, Edward Forseith, William May, William Bishop, James Lewis, and John Sparkes were indicted for “*piracy in Robbing and Plundering the Ship Gunsway*”⁶¹, nowadays often given as *Ganj-I-Sawai*, under the command of the then already legendary pirate, Henry Every.⁶² Captained by Muhammad Ibrahim, the *Ganj-I-Sawai* was the largest ship in the merchant fleet of Surat and was carrying goods to a great value, as well as affluent and influential passengers returning from a pilgrimage to Mecca.⁶³ According to Douglas Burgess, the robbery of the *Ganj-I-Sawai* was “the richest pirate haul ever taken” and a proclamation ordering his arrest in 1696 stated that Every and his crew “may be Probably known and Discovered by the Great Quantities of *Persian* and *Indian* Gold and Silver which they have with them.”⁶⁴ When the prize had been divided among the pirates, each man with a full share was a £1,000 richer.⁶⁵

The robbery brought on dire consequences for English traders and officials of the East-India Company who were highly dependent on the good-will of the Mughal emperor Aurangzeb who, upon learning about the robbery, stopped trade out of the company's

⁶¹ High Court of Admiralty, England And Wales, ‘The Tryals of Joseph Dawson, Edward Forseith, William May, [Brace] William Bishop, and John Sparkes for Several Piracies and Robberies by Them Comitted in the Company of Every the Grand Pirate, Near the Coasts of the East-Indies, and Several Other Places on the Seas : Giving an Account of Their Villainous Robberies and Barbarities : At the Admiralty Sessions, Begun at the Old-Baily o the 29th of October, 1696, and Ended on the 6th of November’ (London: Printed by John Everingham, bookseller, 1696).

⁶² More commonly spelled “Avery”, but in sources contemporary to him, nearly always given as “Every”. I have chosen to align myself with the primary source material in the spelling, but other variations might occur in quotes from secondary sources.

⁶³ Benton, *A Search for Sovereignty*, 142; Ritchie, *Captain Kidd and the War against the Pirates*, 88.

⁶⁴ Douglas R. Burgess, *The Pirates' Pact: The Secret Alliances between History's Most Notorious Buccaneers and Colonial America* (Chicago: McGraw-Hill, 2008), 138; Anonymous and Scotland Privy Council, *Proclamation for Apprehending Henry Every, Alias Bridgeman, and Sundry Other Pirates*. (Edinburgh, Scotland, p.). Edinburgh).

⁶⁵ Ritchie, *Captain Kidd and the War against the Pirates*, 88.

factories and imprisoned English traders, resulting in several deaths.⁶⁶ The abovementioned “Proclamation for Apprehending Henry Every” testifies to the gravity of the situation by offering an unparalleled £500 in rewards to whomever seizes Every and £50 any other of the crew.⁶⁷ This led to what Burgess calls “the first worldwide manhunt in recorded history”.⁶⁸

Every was sentenced in his absence alongside the men who stood trial in the London, but he was never captured himself (one reason for the many myths that still exist around his person). His not so lucky crewmembers however faced the justice of the admiralty at first hand and were subsequently executed on the twenty-fifth of November 1696 at the execution dock in Wapping. Like their commander, who according to Capt. Charles Johnson in 1724 made a “great Noise in the World”,⁶⁹ Joseph Dawson and the other men stirred quite some commotion in their last days – although not through their own doings – and in the end, the occasion for their execution was *not* the robbery of the *Ganj-I-Sawai*.

Following testimonies that “in the Opinion of the Court gave a full Evidence against the Prisoners”, a well-planned prosecution that appealed to justice, the good of the realm and mankind at large, and a confession of guilt by Joseph Dawson, the jury “contrary to the expectation of the Court” presented their verdict: not guilty.⁷⁰ This was a blow to the offices of government which had, each in their own way, invested quite a lot in this trial. At stake was the orderly domination of the sea, the fortification of trade routes and not least continual relations with the Mughal Empire, on which the East-India Company was so reliant.

⁶⁶ Benton, *A Search for Sovereignty*, 143.

⁶⁷ Anonymous and Council, *Proclamation for Apprehending Henry Every, Alias Bridgeman, and Sundry Other Pirates*; I have been able to find three different printings of the proclamation with roughly the same content, two printed in London on 10 and 17 August 1696 respectively, and one printed in Edinburgh on 18 August 1696. An even earlier reference to the proclamation exists in a leaflet signed by the governour of the East-India Company on 22 July 1696 to draw attention to the matter and the prize money.

⁶⁸ Burgess, *The Pirates' Pact*, 144.

⁶⁹ Defoe and Schonhorn, *A General History of the Pyrates*, 49.

⁷⁰ Two other members of Every's crew were indicted in July the following year, although one of them, Henry Adams, had escaped from jail prior to the proceedings. The other, David Adams, was found not guilty after a witness testified that he was forced into participation by Every; Anonymous et al., *The Proceedings of the King's Commission of Oyer and Terminer, and Goal Delivery for the Admiralty of England, of Several Persons, for Several Felonies and Piracies by Them Committed on the High Seas. At a Sessions of Admiralty, Held at Justice-Hall in the Old-Baily, London, on Monday the 28th Day of June, and Monday the 12th Day of July, 1697. And in the Ninth Year of His Majesties' Reign*. (London, England, 1697).



PROCLAMATION

For Apprehending Henry Every, alias Bridgeman, and sundry other Pirates.



WILLIAM By the Grace of GOD, King of Great-Britain, France and Ireland, Defender of the Faith, To

Our Privy Council, Messengers at Arms, Our Sheriffs in that part Conjunctly and severally, Specially Constitute Greeting, For as much as, We are Informed that *Henry Every*, alias *Bridgeman*, together with several other Persons, *English Men, Scots Men*, and Foraigners, to the Number of about One Hundred and Thirty, did Steal, and Run away with the *Ship* called the *Phaulse*, alias *Charles*, of Fourty six Guns from the Port of *Corunna* in *Spain*, and Commit several Acts of Pyrracy under *English* Colours upon the Seas of *India* or *Persia* Contrary to the Law of Nations, and of this Kingdom in particular; And that the said *Henry Every*, and severals of his Accomplises, since Committing of the saids Acts of Pyrracy, having left the said *Ship* in the *Island* of *Providence*, are Returned to, and have Disperfed themselves within this Our antient Kingdom, thinking, and intending thereby to Save & Shelter themselves from the Punishment & Execution of Law Due to such Hatinous and Notorious Offenders: And We being Resolved, that utmost Diligence shall be Used for Seizing, and Apprehending the Persons of such Open and Villanous Transgressors; Do therefore, with Advice of the Lords of Our Privy Council, Require, and Command, the Sheriffs of the several Shires, Stewarts of Stewartries, Baillies of Regalities, and their Respective Deputs, Magistrats of Burghs, Officers of Our Army, Commanders of Our Forces and Garisons, and all others Employed, or Trusted by Us in any Station whatsoever, Civil or Military within this Kingdom, and Our Good Subjects whatsoever within the same, to do their utmost Endeavour and Diligence to Seize upon, and Apprehend the Persons of the said *Henry Every*, alias *Bridgeman*, together with *James Cray, Thomas Summerton, Edward Kirwood, William Down, John Reddy, John Strager, Nathaniel Pike, Peter Soans, Henry Adams, Francis Frennier, Thomas Johnson, Joseph Dawson, Samuel Dawson, James Lewis, John Sparks, Joseph Goss, Charles Falconer, James Murray, Robert Rich, John Miller, John King, Edward Savil, William Philips, Thomas Jope*, and *Thomas Belish*; his Accomplises, or any of them, and such others as were with them in the said *Ship* (who may be Probably known and Discovered by the Great Quantities of *Persian* and *Indian* Gold and Silver which they have with them) and Deliver him or them Prisoners to the next Magistrat of any of Our Burghs, to be by them kept in safe Custody until farther Order be taken for bringing him or them to such Condign Punishment as their Crime does Deserve, and out of Detestation to such a Horrid villany, and to the Effect the same may not go Un-punished; and for Incouraging the Magistrats above-named, and any other of Our Good Subjects to Search for, and Apprehend such Notorious Rogues: We with Advice foresaid do make Offer, and Assure the Payment of the Sum of Five Hundred Pounds Sterling for the said *Henry Every*, alias *Bridgman*, and Fiftieth Pounds Sterling Money foresaid for every one of the other Persons above-named to any Person or Persons who shall Seize and Apprehend them or any of them, and Deliver him or them Prisoners to any of the Magistrats of Our Burghs, which shall be Truly and Faithfully payed, as a Reward to the said Person or Persons who shall Apprehend and Deliver Prisoner to any of Our Magistrats the saids *Henry Every*, or any other of his Accomplises above-named, Indemnifying hereby all and every one of Our Subjects from any Hazard of Slaughter, Mutilation, or other Acts of Violence which they may Commit against the said *Henry Every*, or any of his Accomplises, or any Persons that shall Assist them, to Hinder and Oppose their being Seized and Taken: And We with Advice foresaid Peremptorly Inhibit and Discharge all, and every one of Our Subjects whatsoever to Shelter, Harbour, Conceal, or any ways Assist, or Supply the said *Henry Every*, or any of his Accomplises above-named upon their highest Peril. OUR WILL IS HEREFOR, and We Charge you Strictly, and Command, that Incontinent these Our Letters seen, ye pass to the Mercat-Corss of *Edinburgh*, and Remanent Mercat Crosses of the Head-Burghs of the several Shires and Stewartries within this Kingdom, and there in Our Name and Authority make Intimation hereof that none may pretend Ignorance. And Ordains these Presents to be Printed.

Given under Our Signet at Edinburgh the Eighteenth Day of August, and of Our Reign the Eighth Year. 1696.

Per Aſſum Dominorum Secreti Concilii
D. A. MONCRIEFFE. Cl. Sii. Concilii.

GOD Save the King.

Edinburgh, Printed by the Heirs and Successors of Andrew Anderson, Printer to His most Excellent Majesty, Anno DOM. 1696

FIGURE 1. "Proclamation for Apprehending Henry Every".

THE
T R Y A L S

O F

Joseph Dawson,
Edward Forseith,
William Bay,

}}
}}

William Bishop,
James Lewis, and
John Sparkes.

For several

Piracies and Robberies

By them committed,

I N T H E

Company of *EVERY* the Grand Pirate,
near the Coasts of the *East-Indies*; and
several other Places on the Seas.

Giving an **ACCOUNT** of their *Villainous*
Robberies and Barbarities.

*At the Admiralty Sessions, begun at the Old-
Baily on the 29th of October, 1696. and end-
ed on the 6th. of November.*

L O N D O N,

Printed for *John Everingham*, Bookfeller, at the *Star* in
Ludgate-street, 1696.

FIGURE 2. The title page of *Tryals of Dawson et.al.*

However, the proceedings against Dawson and the other accused would not end there and the prosecution, intent on securing the verdict of guilt the believed necessary to prove to the world, and especially the Mughal empire, that England was not “a nest of Pirates”, brought the prisoners in on two new charges. One for the mutiny of the ship *Charles the Second* which was the inception of Every’s piratical career, and another indictment for piracy in robbing three ships: two Danish on the African west coast and one “Moorish” that sailed out of Mocha, in present day Yemen.

Commenced two days later, on the thirty-first of October, the case of the mutiny on the *Charles the second* was the more high-profile of the two new indictments. In May 1694 the merchant vessel lay at anchor outside La Coruña in Spain with their companion ship the *James*. For want of promised wages the ships had seized their voyage to the “*Spanish Indies*” (the West-Indies). During this time, tension and discontent rose among the crew which led to the eventual mutiny where Every replaced the sickly Captain Gibson and steered the *Charles* to the Indian ocean.

An entirely bloodless affair, the mutiny was, according to both defendants and witnesses, widely supported but every man who wouldn’t take part was allowed safe passage, except for the ship’s doctor who was considered valuable to the newly formed pirate crew. Later renamed the *Fancy*, the *Charles the second* became the base of Every’s ventures.⁷¹

Joseph Dawson pleaded guilty, as he did in the *Ganj-I-Sawai*-case, and was convicted along with the five other men convicted of “Piracy and Robbery committed on the High-seas, [...], in taking and carrying away a ship, and several Goods therein contained”. Lord Chief Justice sir John Holt who summarized the indictment before the jury’s withdrawal insisted repeatedly and forcefully that “beyond all contradiction, the force put on the Captain, and taking away this Ship, call’d the *Charles the second*, was a Piracy”.⁷² Only, it was not “beyond all contradiction”, hence Holt’s insistence.

The other indictment, for robbing two ships belonging to Denmark and another “Moorish” vessel, was fairly straightforward and all the prisoners were found guilty (Dawson

⁷¹ J. Franklin Jameson, *Privateering and Piracy in the Colonial Period: Illustrative Documents*, (New York: 1923), 154, <http://hdl.handle.net/2027/uc1.aa0009115072>.

⁷² High Court of Admiralty, England And Wales, ‘The Tryals of Joseph Dawson, Edward Forseith, William May, William Bishop, and John Sparkes, 4.

confessed) which was to be expected after the deliberations that followed the *Ganj-I-Sawai*-case.

When the court resumed after the failure of the first indictment the judges were forceful in voicing their disapproval of the jury's verdict in the *Ganj-I-Sawai*-case. Admiralty judge sir Charles Hedges pressed the importance of all men, including jurors, to observe principles of "honesty" and "humanity" when administrating justice. He diplomatically urged the virtuousness of caring for the innocent, "but", he continued,

... it should be considered likewise on the other side, that he who brings a notorious Pirate, or common Malefactor to Justice, contributing to the safety, and preservation of the lives of many, of the good by means of the assurance of protection, and the bad too by the terrour of Justice.⁷³

Lord chief justice Holt instead aimed his discontent at the court officials. When a new jury was presented to Holt for the *Charles the second*-case, he inquired whether any of those brought forth had been members of the former jury. When informed that this was indeed the case, Holt told the clerk:

If you have return'd any of the former Jury, you have not done well; for that Verdict was a dishonour to the Justice of the Nation.⁷⁴

Evidencing that not only was the general public in need of a schooling on the meaning of justice in relation to piracy, but the clerks of the court as well. So novel was this strain of thought that it had not yet penetrated the outer layers of government.

For the record to serve as a precept to local colonial and other polities, the troubles of the court and the shortcomings of the jurors and clerks might seem problematic. On the other hand, the record now displayed a bad example, and the deficiencies did give opportunity for the justices to scold and educate. So, what might seem like a weakness, can instead be construed as making the message even more forceful. This honest representation of the court's faults is serves to make the record all the more educational in nature. Not only does the document instruct in the exegesis of law but also of court procedures, so that there is something for everyone: judges, prosecutors, jurors and clerks.

⁷³ High Court of Admiralty, England And Wales, 'The Tryals of Joseph Dawson, Edward Forseith, William May, William Bishop, and John Sparkes, 8.

⁷⁴ High Court of Admiralty, England And Wales, 'The Tryals of Joseph Dawson, Edward Forseith, William May, William Bishop, and John Sparkes, 11.

Speeches of the Chief Justices

Two judges of the highest order were present at the proceedings. Sir Charles Hedges who presided over the court was the highest official in the courts of admiralty and by his side sat the lord chief justice of England and Wales, sir John Holt who assumed his office in 1689 at the new government's behest and was instrumental in incorporating commercial interests and among other things recognized the transfer of bills of exchange in common law – an aspect of finance that still holds great consequence.⁷⁵

In his speech opening the case for the mutiny on the *Charles the second*, Hedges meticulously articulated his concern for “the Navigation, Trade, Wealth, Strength, Reputation and Glory of this Nation”,⁷⁶ which he seemingly considered to be the real victims in the trial. Although not expressly stated, the fact that the victim of the mutiny, a captain Gibson, is an Englishman is not unimportant in the matter. Part of the problem with the first indictment according to Burgess, was that the far away emperor Aurangzeb was not someone an English jury would have sympathized with and “by recasting the trial as one for mutiny instead of piracy, the victim was transformed from the Great Mughal (an unlovable character) to the English people”.⁷⁷

Much of the trial, or at least the published transcript from it, had this lecturing quality and Hedges was the primary professor. Because, just as the proceedings were meant to send a message and establish a precedent, they were also meant to educate British subjects in the correct way of thinking about piracy.⁷⁸

Hedges represented the ambition of creating a coherent stance on piracy throughout the empire by an appeal of a proto-nationalistic character. Obedience to William “the best of Kings” is tied up with “a true English spirit” which entails “cheerfully” following the sovereign in his ambitions to achieve the expedient delivery of his justice and “the Discipline of the Seas”.⁷⁹

⁷⁵ Hill, *The Century of Revolution 1603-1714*, 269, 287–88.

⁷⁶ High Court of Admiralty, England And Wales, ‘The Tryals of Joseph Dawson, Edward Forseith, William May, William Bishop, and John Sparkes’, 8.

⁷⁷ Burgess, ‘Piracy in the Public Sphere’, 901.

⁷⁸ Burgess, ‘Piracy in the Public Sphere’.

⁷⁹ High Court of Admiralty, England And Wales, ‘The Tryals of Joseph Dawson, Edward Forseith, William May, William Bishop, and John Sparkes’, 8.

One of the defendants, William May, picked up on Hedges' insistence on the virtues of Englishness and national fraternity when allowed to speak in his own defence. Seemingly aware of the fact that he had no chance of acquittal (May is portrayed by the witnesses as the most zealous among the accused), his appeal to the court is a first-person testimony of his own character. All of the men on trial, except Dawson who confessed, claimed to have been forced by Every and his closest counsels into their crimes.

Accordingly, May tells the court how he and some others of the crew fell ill and were set ashore. When they were later discovered by three English East Indiamen, the pirates fled rather than fight unprepared, but May refused to come with them,

And I told them, [Every's men] I will not go with you, I will rather trust to the mercy of my Countrey-Men, or the mercy of the *Negroes* [the inhabitants of Joanna]; I should endanger my life, if I go aboard; If I stay, no question my Countrey-men will have compassion on me⁸⁰

When said countrymen later arrived May begged one of the captains to bring him to India to face justice there, stating, that "I had rather suffer Death by the Laws of my Countrey, then to be left to the mercy of these *Negroes*."⁸¹ Even if he is inconsistent regarding his opinion on the local population's care for him, May's turn of phrase in the passages quoted above are similar enough to be rehearsed beforehand and tells of his awareness that proving an "English spirit" would be advantageous to his cause.

All of the defendants, except for Dawson who was never tried on account of his confession, claimed they were coerced or otherwise involuntary accessories to Every's "designs". William Bishop, for example, claimed that "I was forced away; and when I went I was but 18 Years old, and am now but 21, and desires Mercy of the King and the Court".⁸² Assertions of involuntary involvement was not an uncommon defence in trials for piracy and not without good reason as it was often successful. Lauren Benton notes that,

... sorting out unrepentant offenders from forced participant came to be a routine function of court proceedings and invited testimony from pirates about how they

⁸⁰ High Court of Admiralty, England And Wales, 'The Tryals of Joseph Dawson, Edward Forseith, William May, William Bishop, and John Sparkes, 23.

⁸¹ High Court of Admiralty, England And Wales, 'The Tryals of Joseph Dawson, Edward Forseith, William May, William Bishop, and John Sparkes, 23.

⁸² High Court of Admiralty, England And Wales, 'The Tryals of Joseph Dawson, Edward Forseith, William May, William Bishop, and John Sparkes, 28.

came to serve, whether they participated willingly, and even whether they fought with gusto.⁸³

The last aspect would doom any chances May had of defending himself by way of a reported statement of his that came to be a repeated talking point in the trials. One of the witnesses, David Creagh, himself a prisoner for treason and a former crewmember of *Charles the second*, testified that during the mutiny “he [May] said, God damn you, you deserve to be shot through the Head and then he held a Pistol to my head” and that he “drank a health” to Every’s success.⁸⁴

May, seemingly the most desperate of the prisoners to make a good impression on the court, also alleged that his intention was always to report the crime to the authorities and that a “man in Virginia knew the truth of the matter”, and the pirate’s moral qualities. When asked why he had not spoken to authorities until forced to do so May claimed, as if in flattery, that he “had a design to discover it to the Lords of the Admiralty” and no one else.⁸⁵

In a politically sensitive trial such as this, however, the court would hear none of that, just as it would not five years later when another notorious pirate of the seventeenth century’s closing decade, William Kidd, was sentenced. Just like Every, Kidd had targeted another ship with ties to the Mughal empire, the *Quedah Merchant*, and the proceedings bear many similarities to the *Ganj-I-Sawai*-case. The trial was closely observed by Mughal representatives and there was simply no chance for Kidd to survive the king’s justice, regardless of how good his defence ought to have been.⁸⁶

It should be noted that another man in Every’s crew was tried for the *Ganj-I-Sawai*-robbery less than a year later, in July 1697. The man, David Evans, was acquitted after Philip Middleton, once again called as the king’s evidence, testified according to Evans’ plea that he had been forced into participation in piracy.⁸⁷ Showing that political climate or relations and trade interests weren’t the only causes for convictions, testimonies counted for something.

⁸³ Benton, *A Search for Sovereignty*, 118n30.

⁸⁴ High Court of Admiralty, England And Wales, ‘The Tryals of Joseph Dawson, Edward Forseith, William May, William Bishop, and John Sparkes, 15.

⁸⁵ High Court of Admiralty, England And Wales, ‘The Tryals of Joseph Dawson, Edward Forseith, William May, William Bishop, and John Sparkes, 22.

⁸⁶ Benton, *A Search for Sovereignty*, 116–119.

⁸⁷ Anonymous et al., *The Proceedings of the King’s Commission of Oyer and Terminer, and Goal Delivery for the Admiralty of England, of Several Persons, for Several Felonies and Piracies by Them Committed on the High Seas. At a Sessions of Admiralty, Held at Justice-Hall in the Old-Baily, London, on Monday the 28th Day*

It also seems to prove a point that Lauren Benton has repeatedly made in regard to the popular belief, or rather assumption, that the pirate was an outlaw revelling in the lawlessness of the seas. A view forwarded to some extent by Rediker. Not only were the seas not lawless, Benton points out, but pirates very much considered themselves subjects and acted perhaps not according to the law but definitely in relation to it. Benton dubs it “legal posturing”, which required some knowledge of the law and not least preparation. Pirate crews set their stories straight, forged commissions and did their best to frame their actions in a hue of grey. Even the notoriously violent Blackbeard knew how to play the court and colonial government of Virginia to his advantage upon being arrested.⁸⁸

The Prosecution

When the prosecutor, Dr Newton, presented the charges of piracy pertaining to the robbery of the Mughal ship to the court, he took great care in his speech to underline that piracy was a crime against all nations, thus England as well, and the fact that the accused rovers were subjects to the king of England might incur revenge on the part of the Indians with their “*natural Inclination [...] to revenge*”⁸⁹ – again doing harm to the homeland.

Newtons insistence on England well-being was hardly made out of patriotism per se, but in anticipation of the jury’s probable sympathies for Every’s deeds, a worry that turned out to be well-founded. How was it that such a high-profile crime could not unite sovereign and subject in what, on the face of it, seemed a simple verdict?

The views on whether pirates were damaging to the national interest were divided along other lines than judicature/jury, but through time and space as well. That pirates were a kind of popular heroes is not a unique feature of post-*Treasure Island* literature and film. In fact, both street and palace had long touted the ideal of the gentleman adventurers, frontiersmen like sir Francis Drake or Henry Morgan who harrowed catholic seafarers along the Spanish main. It had also been a colonial policy to employ and deploy privateers and pirates to

of June, and Monday the 12th Day of July, 1697. And in the Ninth Year of His Majesties’ Reign. (London, England, 1697).

⁸⁸ Benton, ‘Legal Spaces of Empire’, 723; Benton, *A Search for Sovereignty*; Defoe and Schonhorn, *A General History of the Pyrates*.

⁸⁹ High Court of Admiralty, England And Wales, ‘The Tryals of Joseph Dawson, Edward Forseith, William May, William Bishop, and John Sparkes, 4; There was of course no real basis for this statement. The only reason seems to be painting the Mughal and his subjects as the Other in an attempt to frame the English nation as the victim rather than an emperor on the other side of the world for whom the jury had no sympathies.

forward English trade interests, especially in the Caribbean where Henry Morgan even became governor of Jamaica.⁹⁰

Shortly after the mutiny in 1694, a broadsheet ballad entitled *A copy of Verses, Composed by Captain Henry Every, Lately Gone to Sea to seek his Fortune* was published in London. The ballad appears as a proclamation of intent, supposedly written by Every himself.⁹¹ It is remarkably patriotic for someone who had supposedly abandoned his country to live outside the law, announcing that Every had made enemies of “French Spaniards the Portuguese, the Heathen Likewise” and further claiming “I honour St George & his Collours I Weare”.⁹² Every was a public figure already two years before the capture of the *Ganj-I-Sawai*, and his depiction in the ballad is an example of the kinds of sentiment the government was battling with the the *Tryals of Dawson et. al.* At stake was the idea of what kind of international actor England was.

In fact, the trials of Every’s men only further proved that opinions differed widely, in an embarrassingly public way. One of the witnesses, Philip Middleton, implicated the governor of Providence Island where Every and his crew sought shelter upon concluding their piratical excursion in the Indian Ocean.

They went to Ascension, and then to the Island *Providence* in the *West-Indies*:
And then they wrote a letter to the Governour, to know if he would let them come in, and said they would present the Governour with 20 pieces of eight, and two pieces of Gold, if he would let them come in; and the Captain, because he had a double share; he offered 40 pieces of eight and four of Gold; and with that they sent some men down, *Adams* and others, with the letter: And they came again, with a Letter, from the *Island*, that they should be welcome, and come and go again when they pleased.⁹³

⁹⁰ Parry, *Trade and Dominion*; Linebaugh and Rediker, *The Many-Headed Hydra*.

⁹¹ Baer is able to date the ballad between 7 May 1694, the date of the mutiny and 10 August later that year, when the ballad was submitted to the Privy council as part of an inquiry about the events. Joel H. Baer, ‘Bold Captain Avery in the Privy Council: Early Variants of a Broadside Ballad from the Pepys Collection’, *Folk Music Journal* 7, no. 1 (1995): 4–26.

⁹² On the subject of colours, the ballad contains a description of Every's flag: “Four Chiviliges [chevrons] of Gold in a Bloody Field; Invironed with Green now this is my shield”. An early example of a pirate's banner. Anonymous, ‘A Copy of Verses, Composed by Captain Henry Every, Lately Gone to Sea to Seek His Fortune.’ (London: Printed for Theophilus Lewis, 1694), Pepys Ballads 5.384, Magdalene College - Pepys.

⁹³ High Court of Admiralty, England And Wales, ‘The Tryals of Joseph Dawson, Edward Forseith, William May, William Bishop, and John Sparkes, 20.

+ A
COPY of VERSES,
COMPOSED BY
Captain Henry Every,
L A T E L Y
Gone to S E A to seek his F O R T U N E.
To the Tune of, *The two English Travellers.*

Licens'd according to Order.

Come all you brave Boys, whose Courage is bold,
Will you venture with me, I'll glut you with Gold;
Make haste unto *Corona*, a Ship you will find,
That's called the *Fancy*, will pleasure your mind.

Captain *Every* is in her, and calls her his own;
He will box her about, Boys, before he has done:
French, Spaniard and Portuguese, the *Heathen* likewise,
He has made a War with them until that he dies.

Her Model's like Wax, and she sails like the Wind,
She is rig'd and fitted and curiously trimm'd,
And all things convenient has for his design;
God bless his poor *Fancy*, she's bound for the *Mine*.

Farewel, fair *Plimouth*, and *Cat-down* be damn'd,
I once was Part-owner of most of that Land;
But as I am disown'd, so I'll abdicate
My Person from *England* to attend on my Fate.

Then away from this Climate and temperate Zone,
To one that's more torrid, you'll hear I am gone,
With an hundred and fifty brave Sparks of this Age,
Who are fully resolv'd their Foes to engage.

These Northern Parts are not thrifty for me,
I'll rise the Anterhife, that some Men shall see
I am not afraid to let the World know,
That to the *South-Seas* and to *Persia* I'll go.

Our Names shall be blaz'd and spread in the Sky,
And many brave Places I hope to descry,
Where never a *French man* ever yet has been,
Nor any proud *Ind. b. man* can say he has seen.

My Commission is large, and I made it my self,
And the Capst'n shall stretch it full larger by half;
It was dated in *Corona*, believe it, my Friend,
From the Year Ninety three, unto the World's end.

I Honour *St. George*, and his Colours I were;
Good Quarters I give, but no Nation I spare,
The World must assist me with what I do want,
I'll give them my Bill, when my Money is scant.

Now this I do say and solemnly swear;
He that strikes to *St. George* the better shall fare;
But he that refuses, shall suddenly spy
Strange Colours abroad of my *Fancy* to fly.

Four Chivilliges of Gold in a bloody Field,
Environ'd with green, now this is my Shield;
Yet call out for Quarter, before you do see
A bloody Flag out, which is our Decree,

No Quarters to give, no Quarters to take,
We save nothing living, alas 'tis too late;
For we are now i'worn by the Bread and the Wine,
More serious we are than any Divine.

Now this is the Course I intend for to steer;
My false-hearted Nation, to you I declare,
I have done thee no wrong, thou must me forgive,
The Sword shall maintain me as long as I live.

London: Printed for Theophilus Lewis.

FIGURE 3. Facsimile copy of "A copy of Verses, Composed by Captain Henry Every".



FIGURE 4. An anonymous artists depiction of Henry Every with his ship *Fancy* engaging another vessel in the background.

This proved what the government of course already knew, that the views on piracy differed vastly between London and the colonies, but in light of the fact that the proceedings against Dawson et. al. was a decidedly public affair meant to crack down on precisely that sort of thinking, Middleton's testimony was an embarrassment.⁹⁴

London had entered the "age of the admirals"⁹⁵ and wanted the empire to know. The trials of Every's men was a part of an effort to consolidate a coherent position against high-seas piracy on the part of the crown, the admiralty and the East India Company. The aim of the proceedings was to educate the public and officials throughout the empire to suffer no pirates.

Not only was it to be made embarrassingly clear that the goal was further on down the road than government would have liked, the proceedings also showed that their position was not an easy one to hold and that the definition of piracy was not only ambiguous, but fraught with heavily debated ideas pertaining to the sovereignty of the seas and the legislation of the same. The trials appear as much an experiment as a demonstration in this regard.

When it comes to the classification of the crime, Hedges puts it deceptively simple: "Now Piracy is only a Sea term for Robbery, Piracy being a Robbery committed within the Jurisdiction of the Admiralty", only to expand the term in the next sentence.

If the Mariners of any Ship shall feloniously dispossess the Master, and afterwards carry away the Ship it self, or any of the Goods, or Tackle, Apparel, or Furniture, with felonious Intention, in any place where the Lord Admiral hath, or pretends to have Jurisdiction; this is also Robbery and Piracy.⁹⁶

Likely due in part to the fact that a mere mutiny-sentence would not satisfy the Mughal, it was vital to frame the mutiny on the *Charles the second* as piracy. Douglas Burgess names this a "tenuous stretch of logic" to accommodate an important trading partner and it is true that the justices took great pains to articulate why, or rather *that*, a mutiny was piracy.⁹⁷ Holt, as previously mentioned, called it a piracy "beyond all contradiction" and although the continual urging of the judges suggest that the point was not at all clear cut, calling it stretch of logic is an exaggeration.

⁹⁴ Burgess, 'Piracy in the Public Sphere'.

⁹⁵ Parry, *Trade and Dominion*.

⁹⁶ High Court of Admiralty, England And Wales, 'The Tryals of Joseph Dawson, Edward Forseith, William May, William Bishop, and John Sparkes, 6.

⁹⁷ Burgess, 'Piracy in the Public Sphere', 902.

Partly because logic or legal continuity was never really the concern when it came to piracy. For one thing, no coherent interpretation and above all enforcement of the law against piracy existed at the time, nor had it existed before. Not only were English attitudes toward actual pirates highly dependent on a given historical moment, the exegesis of legal statutes in regard to piracy was an arbitrary affair. Benton notes,

The term *piracy* in the seventeenth century could be applied to an array of actions, including mutiny, shipboard felonies, and unlicensed raiding of various kinds.⁹⁸

Burgess' concerns for the ambiguity in naming mutineers "pirates" are based on a misunderstanding of the duplicitous meaning of the term *piracy*. It is true that piracy is a robbery on the seas, but it is so much more than that. I propose, that it is more fruitful to think, not of sea robbers as enemies of all mankind, but the other way around, that is, piracy as an instantiation of *hostis humani generis*, highly influential ancient concept in the history of piracy.

In 1694, two years before the *Ganj-I-Sawai*-case, Matthew Tindall wrote in reference to another trial for piracy that, "Hostis Humani Generis, is neither a Definition, or as much as a Description of a Pirat, but a Rhetorical Invective to shew the Odiousness of that Crime."⁹⁹ Piracy became synonymous with an invective and synonyms go both ways, and by that logic, when a court deliberated on an indictment of piracy, they were rather determining who was worthy of universal spite, than who had robbed on the seas.¹⁰⁰

This becomes quite clear in the case of Thomas Vaughan who was sentenced by the same court on 6th November for "high-treason on the high seas". The Irishman Vaughan had robbed English ships under a commission granted by the French king, Louis XIII. His actions were the same but the sentence another, showing that piracy was not defined merely as a "robbery on the seas",¹⁰¹ not even by the judges who had coined it just that.¹⁰²

⁹⁸ Benton, *A Search for Sovereignty*, 113.

⁹⁹ Tindall, 27–28.

¹⁰¹ High Court of Admiralty, England And Wales, 'The Tryals of Joseph Dawson, Edward Forseith, William May, William Bishop, and John Sparkes, 25.

¹⁰² Thomas Bayly Howell and Thomas Jones Howell, *Cobbett's Complete Collection of State Trials and Proceedings for High Treason: And Other Crimes and Misdemeanor from the Earliest Period to the Present Time ... from the Ninth Year of the Reign of King Henry, the Second, A.D.1163, to ... [George IV, A.D.1820]* (R. Bagshaw, 1812), 485.

For this reason, one of the court's self-imposed missions was to establish a definition of the common good. In the age of the expansion of maritime commercial interests, the answer was simple, trade, echoing Grotius determination that freedom to trade was a universal liberty.¹⁰³ Orderly navigation was perceived as a fundamental condition for the common good and that is what Hedges invokes when he speaks of “the discipline of the seas”.

Piracy then, was a breach of order and a violation of the law of nations – and by that measure, defiance of nature and universal principle. With this understanding of the term, branding mutineers as pirates does not seem illogical or capricious, but consistent.

But even if it was illogical, there is little reason to believe that the government actually cared about the legal fineries surrounding piracy, they cared about the trade relations in the Indian Ocean.¹⁰⁴ Piracy was a way to paint broad brushstrokes over any who breached order in a way that was perceived as damaging to commercial interests, which is why the term lends itself so well to be deployed in other fields, like copyright infringement. It would simply not make sense to call unlicensed printers “pirates” if only sea-robbers fit the bill.

Furthermore, while piracy conjures images of lawless men who hunt indiscriminately with no concerns but for their own freedom – at least to modern eyes – sea-robbers were not a homogenous category of people. Freebooters who today might rather be remembered as rebels or revolutionaries were branded pirates in attempts to discredit their cause. The campaign against the Jacobite cause in the¹⁰⁵ 1690's was largely successful, a similar effort against American revolutionaries in 1776 was not.¹⁰⁶

Dr Newton spoke again at the opening of the third indictment, the one for the piracy of two Danish ships near the “Isle of Princes” and an Arabic vessel “at the Mouth of the *Red-Sea*”.¹⁰⁷ I will quote the address at some length.

My Lord, and Gentlemen of the Jury,

The crime the Prisoners at the Bar stand Charged with, and which has been opened to you, upon the Indictments, is Piracy; which is the worst sort of

¹⁰³ Grotius, *The Freedom of the Seas or The Right Which Belongs to the Dutch to Take Part in the East Indian Trade*.

¹⁰⁴ This was also due to the fact that the legal fineries never really lent themselves to be cared about in great length as I hope will be made clear in this text.

¹⁰⁵ Most likely Principe, since the *Fancy* had just left Guinea.

¹⁰⁶ Olive Anderson, ‘British Governments and Rebellion at Sea’, *The Historical Journal* 3, no. 1 (1960): 56–64.

¹⁰⁷ High Court of Admiralty, England And Wales, ‘The Tryals of Joseph Dawson, Edward Forseith, William May, William Bishop, and John Sparkes, 28.

Robbery, both in its Nature and in its Effects, since it disturbs the Commerce and Friendship betwixt Nations; and if left unpunished, involves them in War and Blood: For sovereign Powers and Nations have no Courts of Justice afterwards to resort to, as the Subjects of Princes have, in their own Countries, for Redress or Punishment; but they can only have recourse to Arms and War, which how Expensive, and how Dangerous they are, and what calamities and Ruin they carry along with them, no Person can be a Stranger to.¹⁰⁸

Newton echoes what had previously been established, that piracy is “not a less Crime because committed on the Sea, but rather the more”,¹⁰⁹ but gives perhaps the most stringent account of the views on the nature of international space. Newton’s fears for the peace between nations is an invocation of Hobbes’ opinion of international space, that is, the *law of nations* and the *law of nature* are one and the same.

For Hobbes, the commonwealth personified in “that great LEVIATHAN [...] to which we owe under the *Immortal God*, our peace and defence”¹¹⁰ is the cure for the fearful *state of nature*. There is in the sovereign a point of reference to which all men can, or rather must, adhere. No such body existed, as Newton points out, to police the nations of the earth and for many seventeenth century-writers this meant that nations related to on another like individual persons did in the state of nature, forever locked in fearful competition.¹¹¹ So, while it may seem at first glance as if Newton exaggerated in professing his concerns for world-peace, he was actually adhering to a well-established idea.

¹⁰⁸ High Court of Admiralty, England And Wales, ‘The Tryals of Joseph Dawson, Edward Forseith, William May, William Bishop, and John Sparkes, 27–28.

¹⁰⁹ High Court of Admiralty, England And Wales, ‘The Tryals of Joseph Dawson, Edward Forseith, William May, William Bishop, and John Sparkes, 25.

¹¹⁰ Hobbes, *Leviathan*, 95.

¹¹¹ Armitage, *Foundations of Modern International Thought*.

The Piracy Act 1698

In response to the growing problem of piracy in the 1690's, parliament decided that it needed to come down hard on the question of piracy and as it happens, many of the problems that plagued the *Ganj-I-Sawai*-trials were addressed. Whether the case had a direct influence on the deliberations in the house of commons is hard to say, however.

The “Act for the more effectually suppression of piracy” was aptly named as its focus is first, streamlining the delivery of justice *wherever* required and second, establishing a broader definition of the pirate to make sure that most of those involved in piracy were penalised.

Not in effect until 1700, the Piracy Act 1698 built on and expanded Henry VIII's *offences at sea act* which was outdated by the turn of the 18th century.

... since the making of the said Act and especially of late Yeares it hath been found by experience That Persons committing Piracies Robberies and Felonies on the Seas in or neare the East and West Indies and in Places very remote cannot be brought to condign Punishment without great Trouble and Charges in sending them into England to be tried within the Realme...¹¹²

It is clear that the system of justice had not kept up with the English navigation into the remote parts of the world in order to ensure continual orderly and “effectual” trade and flow of capital throughout the empire, the admiralty needed a more pragmatic way to enforce the law.

The reform which made this possible was a simplification of the procedures to set up a court wherever the admiralty had “Power Authority or Jurisdiction”.¹¹³ Not only was the spatiality of the law greatly expanded and decentralised in this, so too was the authority. The long arm of the law reached down throughout the ranks so that by the Piracy Act 1698 any admiral in the royal navy and “any such Person or Persons Officer or Officers by Name for the time being as His Majesty shall think fit” to appoint as commissioners were granted the power to set up and preside over a court of at least seven people.¹¹⁴ The admiralty mimicked the form of the many-headed monster against which it struggled.

¹¹² Raithby and Great Britain, *The Statutes of the Realm*, 7:590.

¹¹³ Raithby and Great Britain, 7:590.

¹¹⁴ Raithby and Great Britain, 7:591.

If seven officers of the royal navy were not available, three of them were given authority to assemble four others provided they were,

knowne Merchants Factors or Planters or such as are Captains Lieutenants or Warrant officers in any of His Majesties Shippes of Warr or Captains Masters or Mates of some English Shipp¹¹⁵

The judicators elect then had to be sworn in under an oath that, among what was to be expected had to vow that they had no “interest Directly or Indirectly” in a ship subjected to “the piratically takeing”.¹¹⁶

If or when the accused were found guilty, pirates were to be “executed and put to Death at such time in such manner and in such place upon the Sea or within the ebbing or Flowing thereof as the President or the major part of the Court” thought fit. Ensuring that, at least theoretically, the delivery of justice was restricted only per the possibilities of establishing a court, once that was achieved the proceedings could be quite rapid. It must be noted that swift trials were not an uncommon phenomenon in the golden age of piracy and therefore not unique to proceedings following the Piracy Act 1698.¹¹⁷

On the subject of the classification of the crime, the Piracy Act 1698 firmly settled on the matter of English subjects accepting lettres of marque from foreign sovereigns, “every [one] of them shall be deemed adjudged and taken to be Pirates Felons and Robbers”¹¹⁸ (this issue will be revisited in the next chapter).

Furthermore, mutineers were to be unequivocally deemed pirates after 1700. Mutineers was considered to “in any Place where the Admirall hath Jurisdiction betray his Trust” by taking a ship or any of its munitions, goods etc. It was also piracy to “yield them up voluntarily to any Pirate” and perhaps most interesting, it was to be considered piracy to “bring any seduceing Messages from any Pirate Enemy or Rebell” with the intent to “corrupt” any “Commander Master Officer or Marriner” into mutiny or yielding a ship to pirates.¹¹⁹ Showing that the Piracy Act 1698 was not only aimed at combating piracy but to thwart the ideas that informed it. Moreover, failure to protect the ship against pirates or hindering the

¹¹⁵ Raithby and Great Britain, 7:591.

¹¹⁶ Raithby and Great Britain, 7:591.

¹¹⁷ Joseph Gibbs, ‘The Brevity and Severity of “Golden Age” Piracy Trials’, *International Journal of Maritime History* 31, no. 4 (1 November 2019): 729–86.

¹¹⁸ Raithby and Great Britain, *The Statutes of the Realm*, 7:592.

¹¹⁹ Raithby and Great Britain, 7:592.

commander to do the same was also piracy according to the act, which then turns to the matter of accessories.

Addressing the aforementioned problem of differing opinions of pirates in metropolitan London and in overseas holdings, parliament seems resolved to crack down hard on collaborators.

AND whereas several evill disposed Persons in the Plantations and elsewhere have contributed very much towards the Encrease and Encouragement of Pirates by setting them forth and by aiding abetting receiving and concealeing them and their Goods [...] shall be deemed and adjudged to be accessory to such Piracy and Robbery¹²⁰

These “evill disposed Persons” had been allowed to corrupt the organisational fabric of the new English order of the seas for too long and the Piracy Act 1698 states that those among them who did not cease their crimes when the new statutes came into force on the 29th of September 1700 “shall suffer such Pains of Death Losses of Lands Goods and Chattells and in like Manner as the Principalls of such Piracies Robberies and Felonies ought to suffer” in accordance with the first piracy act, which came into force under Henry VIII.¹²¹

Governors and officials in the plantations were addressed rather forthright as well. Failure to comply with the new law was “declared to be a Forfeiture of all and every the Charters granted for the Government or Proprierty of such Plantation”.¹²²

In addition to preventing unwanted behaviour the Piracy Act 1698 was also meant to encourage sailors to obey and protect the discipline of the seas. A compensatory sum was to be paid to any who aided in the defence of a ship against pirates, or to their widows or children should the die or be wounded in an attempt to do so. Those who reported a “Combination or Confederacy” to mutiny could also expect a reward.

The Piracy Act 1698 was in effect in its original form until 1715 and was amended a second time in 1719 following a radical increase in Atlantic piracy in the wake of the War of the Spanish Succession which ended in 1714 and was therefore the defining piece of

¹²⁰ Raithby and Great Britain, 7:592.

¹²¹ Raithby and Great Britain, 7:592.

¹²² Raithby and Great Britain, 7:593.

legislature for the most consequential and well-remembered part of the golden age of piracy.¹²³

Order and Expediency

It was generally held that, as John Holt put it in 1696, piracy “was not a less Crime because committed on the Sea, but rather the more”.¹²⁴ While the severity of the crime was increased on the oceans, it remains unclear whether the dignity of justice delivered was greater or lesser by virtue of its maritime locale. If anything, the easier and quicker appointment of courts should give the court thus set up less expertise in matters of law following 1700. Indeed, competence in matters *de jure* is not a criterion for assigning courts in the Piracy Act 1698.

Instead, the law instructs selection of court members by rank or social standing. If they should not be officers on some English ship the members of court were to be “no Persons but such are knowne Merchants Factors or Planters”.¹²⁵ This deputizing of propertied men in admiralty courts echo a broader trend in British society at the time, the consolidation of the interests of the propertied class. Even though the monarch was still endowed with considerable powers, in the wake of 1688 the strengthening of parliament meant that the propertied class’ “control of society had been established against the monarchical absolutism”.¹²⁶

Furthermore, in the 1690’s “The whole administrative system was coming to be based on interlocking communities”, boards and committees were an increasingly significant means of ruling, and through that more influence than ever was granted to “the people”, as John Locke termed them, but as Christopher Hill notes “it was perfectly clear that by “the people” he meant the propertied class”.¹²⁷ The new requirements for appointing courts at sea then, were aligned with the general development of society. With the aim of ridding the seas of pirates in an “effectual” way, it seems prudent to align the class interests of legislature and judicature.

¹²³ Rediker, *Villains of All Nations*.

¹²⁴ High Court of Admiralty, England And Wales, ‘The Tryals of Joseph Dawson, Edward Forseith, William May, William Bishop, and John Sparkes, 25.

¹²⁵ Raithby and Great Britain, *The Statutes of the Realm*, 7:591.

¹²⁶ Hill, *The Century of Revolution 1603-1714*, 296.

¹²⁷ Hill, 296; John Locke, *Two Treatises of Government*, ed. Peter Laslett (Cambridge, 1960), 384–85.

It would at the very least make a fiasco like the *Ganj-I-Sawai*-acquittal less likely to repeat itself in the temporary courts. This points to an important sociological feature of golden age piracy. Although some pirates might have styled themselves princes, most were of low birth and poverty, unemployment or poor working conditions on merchant ships were part of the equation of piracy. Pirates generally hailed from the lower classes, not seldom in English coastal cities where they could witness first-hand the bounties of the sea.¹²⁸ Several historians align piracy with class interest.¹²⁹ Marcus Rediker has repeatedly attributed the will to piracy by seamen to the harsh conditions sailors had to endure on merchant vessels “facing a ship captain of almost unlimited disciplinary power and an ever readiness to use the cat-o’-nine-tails” and that, beginning in the closing decade of the seventeenth century, sailors “organized a social world apart from the dictates of mercantile and imperial authority and used it to attack merchants’ property”.¹³⁰

The contents of the Piracy Act 1698 lend the idea some credence. It does conflate disobedience to work discipline with piracy to a point where it seems as if its authors considered the relation between discontentment with authoritarian work order and men turning pirates to be causal. The way in which the Piracy Act 1698 extended the legal definition of piracy make the deliberations and reasoning from the *Ganj-I-Sawai*-case only two years earlier appear in a different light. It unequivocally settles that mutiny is a form of piracy, and by adding the refusal to protect a ship, a sailor was expected to die for the profit of their employer rather than succumb to pirates.

¹²⁸ Burg, ‘Legitimacy and Authority’. Burg analyses the provenance of thirty pirate captains in the golden age based on available sources and shows that an absolute majority came from the lower strata of society and held low-ranking positions on the ships which they worked before their turning to piracy, among them Henry Every.

¹²⁹ Johnson did so as early as 1724 and wrote “*I have not so much as heard of a Dutch Pyrate*”, which he attributes to the Dutch fishing industry which employed and fed the masses who otherwise would have been without work when their military service ended. If English seamen had “*the same Recourse in their Necessities, I am certain we should find the same Effect from it*”. Daniel Defoe and Manuel Schonhorn, *A General History of the Pyrates* (Mineola, N.Y: Dover Publications, 1999), 4. The establishment of a national fishery was, judging from the amount of writing on the subject, a hotly debated question in the 1690’s.

¹³⁰ Rediker, *Villains of All Nations*, 25; Linebaugh and Rediker, *The Many-Headed Hydra*, 156; Rediker, *Outlaws of the Atlantic*. Rediker (with Peter Linebaugh), constructs a view of the Atlantic Ocean where pirates are members of a working-class with revolutionary potential that spans not only time and space, but race and gender as well. For Rediker, golden age piracy was a political and critical phenomenon that grew in opposition to the oppressive practices and ideas of the ruling class (primarily in England). This shaped the social order of pirate ships into becoming egalitarian and democratic. This has not been undisputed, and Burg (1977) points out that not only were illiterate pirates uneducated in the ways of the Locke-like liberalism the are often attributed, but captains in illegal ventures lacked traditional means of upholding authority like law, high birth or civil rank which meant that power had to be shared.

That the spreaders of “seduceing Messages” from pirates were to be considered and punished as pirates themselves shows that lawmakers were aware of the appeal of the pirate’s life to the average sailor and believed that prohibiting the spread of the romance would serve the desired suppression. The phrasing of the passage further accentuates the importance of the above, other than “seduceing messages”, the act prohibits seamen to:

consult combine or confederate with or attempt or endeavour to corrupt any
Commander Master Officer or Marriner to yield up or run away with any Shipp
Goods or Merchandizes or turne Pirate or goe over to Pirates¹³¹

Showing that the struggle to suppress piracy was in part considered to be a war of information just like the trials of Joseph Dawson et. al. made clear, the English government was working towards the goal of changing views on piracy – piracy was not only to be policed and legislated against but was also an issue for ideologues.

In the previously mentioned broadsheet ballad supposedly authored by Every, a counterexample can be found. In the final verse, the first-person narrator addresses his England directly. The verse reads:

Now this is the Course I intend for to steere
My false hearted Nation to you I declare
I have done thee no wronge thou may’st me forgive
For the Sword Shall maintaine me so Long as I Live¹³²

In accusing his nation of being false-hearted and expressing a sense of betrayal, the narrator sheds light on the transforming ideology – England was changing, not pirates. Most likely, this is the reason why Hedges saw fit to invoke “English spirit” in *Tryals of Dawson et.al.* and why legislature could not only focus on the materially tangible but required ideological work.

Significantly, towards the end of the seventeenth century, broadsheet ballads were the literature of a “a semi-literate lower class: apprentices, servants, charwomen, farm-workers, laborers, soldiers and sailors”.¹³³ Meaning, that the audience for Every’s proclamation was likely just the sort of people susceptible to turn pirate. Similar feelings of betrayal can be found in another broadsheet ballad titled “The Sea-Martyrs” which sings the English sailor’s

¹³¹ Raithby and Great Britain, *The Statutes of the Realm*, 7:592.

¹³² Anonymous, ‘A Copy of Verses’.

¹³³ Dianne Dugaw, *Warrior Women and Popular Balladry, 1650-1850*, Cambridge Studies in Eighteenth-Century English Literature and Thought, 4 (Cambridge: University Press, 1989), 20.

lament and grieves times past when seamen's duties were less thankless: "This is not like Old *Englands ways, New Lords, new Laws*, the Proverb says."¹³⁴

Because of this, the Piracy Act 1688 is as, or perhaps even more, concerned with prevention as it is with suppression. To this point, the decree that those who deserted "Merchant Shippes in parts beyond the Seas" forfeited their wages, including what they had earned anterior to their desertion. According to the statute, that was "the chiefe Occasion of their turning Pirates".¹³⁵

This view was shared by the Board of Trade who in 1699, advised king William III to order increase naval presence in the Americas to battle the increased and continually increasing force of pirates who were,

debauching and engaging many of the seamen to quit their honest employments and go along with them, [...] manning their ships with the men whom they so debauch and increasing thus their strength to such a degree that the apprehensions of future mischief may not only be from single ships but squadrons, and the corruption already spread and still further spreading by this means amongst our seamen may in the end prove too universal, that we humbly conceive the consequences are greatly to be dreaded.¹³⁶

In other words, the discipline of the seas was not only a matter of combating pirates wherever they appeared, but also of preventing seamen from turning to piracy or disturbing shipboard work-discipline and failing to protect the property of their employers – without impeding the availability of cheap labour on which the maritime economy relied. Discipline, Christopher Hill notes, had gained a new crowd of supporters in the 1690's, it "was felt by the non-working classes to be a national necessity, preached now by economists with the same zest as by theologians."¹³⁷

Another aspect of the act that supports Rediker's contention that pirates were part of a broader community comes to light when the text turns to the matter of accessories.

¹³⁴ Anonymous, 'The Sea-Martyrs, OR, The Seamen's Sad Lamentation for Their Faithful Ser-Vice, Bad Pay, and Cruel Usage. Being a Woful Relation How Some of Them Were Unmercifully Put to Death for Pressing for Their Pay, When Their Families Were like to Starve. Thus Our New Government Does Subjects Serve, And Leaves Them This Sad Choice to Hang or Starve' (n.p., 1691), Pepys Ballads 5.375r-v, Magdalene College - Pepys.

¹³⁵ Raithby and Great Britain, *The Statutes of the Realm*, 7:593–94.

¹³⁶ Signed on 9 November 1699 in Kensington by, among others, Philip Meadows and John Locke. Cecil Headlam, ed., *Calendar of State Papers Colonial, America and West Indies: Volume 17, 1699 and Addenda 1621-1698*. (London: His Majest's Stationery Office, 1908), §943.

¹³⁷ Hill, *The Century of Revolution 1603-1714*, 294.

Evidencing that piracy was often a collaborative effort that required participants in several steps – not least in fencing or storing stolen goods – which supports Redikers claims about a broad Atlantic collective of sailors, workers and pirates, and suggests that the polity in London was aware of the community. As mentioned, the Piracy Act 1698 directly addresses governors who sponsored or allowed piracy and by that admits that colonial support for pirates was one of the pillars of English sea-roving, a pillar that had to fall.

The extension of the definition of piracy is extended not only to include mutiny, failure to resist pirates or spreading piratical ideas, but also indirect participation or enabling of the crime. And so, those who “receive entertaine or conceale” pirates or to take into “custody any Shipp Vessell Goods or Chattells which have been by any such Pirate or Robber piratically and feloniously taken” were following the passing of the Piracy Act 1698 considered accessories to piracy and should be brought to justice as if they were “the Principalls of such Piracies”.¹³⁸

Following 1700 it would, in law, require less of both offenders and judicatures to be judged or judge pirates. It is clear that parliament had recognized that the suppression of piracy required a holistic approach that attacked supporting actors and structures. The new law pulled no punches when it came to drawing the primary line of battle between propertied men and their employed labourers, involving the former in the distribution of justice and threatening the latter to stand in line. The discipline of the seas meant a solidification of the ties between finance and state and it seems fitting that the aptly named “effectuall” fight against pirates should herald the dawn of the eighteenth when British maritime supremacy would stand undisputed – and have a rigid relationship with finance.

Ebb and Flow

In his opening speech for the trial for mutiny on the *Charles the second*, sir Charles Hedges proclaimed the jurisdiction of his office to try the accused parties for piracy as follows:

Now, the Jurisdiction of the Admiralty is declared, and described in the Statute and Commission by virtue of which we here meet, and is extended throughout all

¹³⁸ Raithby and Great Britain, *The Statutes of the Realm*, 7:592.

Seas, and the Ports, Havens, Creeks and Rivers beneath the first Bridges next [to] the sea, even unto the higher Water-mark.¹³⁹

Further, Hedges claimed the right for the English admiralty to “jurisdiction over all people” who committed piracy against English ships or those belonging to any who enjoyed “Trade and Correspondence” with England.¹⁴⁰ Statements that echo Grotius both in considering the freedom of the seas to extend as far as their waters reached and in considering all who interfere with trade and navigation as just targets for reprisals, even when England was not directly involved. Suggesting a community of amiable commerce much like Grotius, albeit only extending as far as England’s interests.

At the time Grotius was “the presiding authority in international law”,¹⁴¹ but one major issue in *Mare Liberum* is that freedom of navigation extending to the shore is not always politically practical. For example, in 1611, only three years after Grotius had been commissioned to advocate liberty unto the shore by the Dutch polity, “the Dutch asked for and were granted permission to send warships into English and Irish harbors” to hunt pirates.¹⁴² Thomson takes this to mean an acknowledgement of English territorial waters by the Dutch and that England admitted a failure “to meet its sovereign obligations”.¹⁴³ While that was the result in principle, a simpler explanation is that any pragmatically inclined statesman would recognize the political ramifications of sending men-of-war into foreign ports without warning. In other words, that the Dutch asked permission does not necessarily entail a refutation of Grotian theory, but it does perhaps say something of its limitations.

Another crucial point is that while European states might have declared sovereign rights, jurisdiction or simply “power” over all the earth’s seas in suppressing piracy, “nation-states in the process of formation were capable of none of this”. Partly because most of their resources were sunk into wars with each other and because no one possessed a strong enough navy to enforce such claims.¹⁴⁴

¹³⁹ High Court of Admiralty, England And Wales, ‘The Tryals of Joseph Dawson, Edward Forseith, William May, William Bishop, and John Sparkes, 6.

¹⁴⁰ Rediker, *Villains of All Nations*, 26.

¹⁴¹ Armitage, *Foundations of Modern International Thought*, 146.

¹⁴² Thomson, *Mercenaries, Pirates, and Sovereigns*, 116.

¹⁴³ Thomson, 116.

¹⁴⁴ Only in the nineteenth century did Britain and the United States become capable of mustering such maritime force. Pérotin-Dumon, ‘The Pirate and the Emperor: Power and the Law on the Seas, 1450-1850’, 201.

Hedges remark also differentiates between sovereignty and jurisdiction, sovereignty is exclusive, jurisdiction is shared. Grotius, in defending the Dutch capture of the *Santa Catarina* argues a similar division, he recognizes that claims to sovereignty over large portions of the sea is impossible for the abovementioned reason, no one had the power to enforce it. Jurisdiction on the other hand was another thing, it “could travel with ships over the sea so long as the authority holding such jurisdiction” did not infringe on the commonality of the seas and its use to everyone.¹⁴⁵ Prosecuting pirates in fact does the opposite of decreasing the utility of the oceans, like in the case of the Romans who, according to Grotius, claimed jurisdiction – suppressing piracy increases the usefulness of the sea and is thus a service to the common good.

Sovereignty on the other hand, reduces common utility because it is the exclusion of other actors, it “means a particular kind of proprietorship, such in fact that it absolutely excludes like possession by any one else”.¹⁴⁶ The claim to the territorial, the British seas, distinguishes between territorial waters and the high-seas, but also that the suppression of piracy is not subject to this distinction, as exemplified in the first quote.

The Piracy Act 1698 makes no such distinction as well as no specific claims to protect English trade or prosecute English pirates, instead it aims to repress

all Piracies, Felonies, and Robberies in or upon the sea or in any Haven, River, Creeke or Place where the Admirall or Admiralls hath power, authority, or Jurisdiction¹⁴⁷

It is so unashamedly inclusive and expansive that it sheds most theory and offers no reasoning, other than being “effectual”, as to what the basis for the admiralty’s prerogative is. With the inclusion of “Place” the act does away with any attempt at defining the sea or why it is susceptible to the jurisdiction of the admiralty. What sets this idea apart from most others is that the legislature seemingly had no interest in the fineries of legal philosophy, they only wanted to prosecute pirates and would not write themselves into a corner. In relegating the question of jurisdiction to, at best, equal terms with power or authority the law also makes clear that the rights of the admiralty derive from the admiralty itself.

¹⁴⁵ Benton, *A Search for Sovereignty*, 135.

¹⁴⁶ Grotius, *The Freedom of the Seas or The Right Which Belongs to the Dutch to Take Part in the East Indian Trade*, 22.

¹⁴⁷ Raithby and Great Britain, *The Statutes of the Realm*, 7:590.

This sheds light on the perhaps most fruitful way of thinking about the jurisdiction of the seas. As Benton has shown, European empires never exerted sovereignty over all of the seas, their control and power instead manifested in “sea-lanes”. This “oceanic regionalism” consisted of patterns made mostly along trading routes, i.e. where ships sailed.¹⁴⁸ Jurisdiction then is a function not of the sea itself as Grotius might have it, but of the sailors, which is an important reason for branding mutineers pirates, as the Piracy Act 1698 did. “Mutinies attacked the legitimacy of captains, and piracy turned ships into vectors not of law but of lawlessness.”, mutinies broke the spatial continuity of the law. Jurisdiction then, in the Piracy Act 1698, travels along with English ships, wherever they go, and the text only serves to make *wherever* as large as possible.

A caveat to the claimed spatial totality of the piracy act, was the fact that English jurisdiction and state power in factories on the coasts of the Indian ocean fell to the East India company, making the Atlantic and the Indian ocean institutionally distinct legal spaces. The extent of power of the courts of the East-India Company was ambiguous. The company was granted authority to suppress interloping in their areas of business in 1683, but they “had no direct connection to the navy to enforce sanctions [...] and no appellate relation to the High Court of Admiralty in England”. Furthermore, the courts were not prize courts¹⁴⁹ and the East-India Company therefore lacked an important function for regulating English robbing in the Indian ocean, which contributed to the opacity with which English mariners viewed it. An example of the East-India company’s lacking power in suppressing piracy is their previously mentioned failure to bring William May to court from his infirmity on the Comoros.¹⁵⁰

¹⁴⁸ Benton, ‘Legal Spaces of Empire’; Benton, *A Search for Sovereignty*.

¹⁴⁹ A court which adjudges the legality of prizes taken.

¹⁵⁰ Benton, *A Search for Sovereignty*, 148.

Interlude

One of the most striking aspects of both the *Tryals of Dawson et.al.* and the Piracy Act 1698 is their extension of the definition of piracy, and a consolidation of the opposition to piracy in civil society.

Tryals of Dawson et.al. does it through education and instruction of the populace to align opinion and attempt to create a united front in the newly conceived war between civil society and piracy. The prosecution and the judges also highlight the idea piracy is a crime against all the nations of the earth by disrupting their peaceful dealings, a contention that betrays the fact that the government was in no insignificant way pressed into taking legal action against the robbers of the *Ganj-I-Sawai* by the Mughal empire.

The Piracy Act 1698 does it through an expansion of the judicature and alignment of the interests and authority of the propertied class with the crown and admiralty against mutineers, malcontents and sea-robbers as well as the cohorts of pirates. It epitomizes the “modern” in early-modern and so constitutes an economic rationality where the ideal suppression of piracy is not righteous or forceful, not liberating or just, but “effectual” and in the interest of stabilizing trade and navigation by protecting it from internal (mutinies, want of work-discipline) and external (pirates) threats.

Moving on to the next chapters I leave the legal realm to discuss theoretical texts which deal with two of the ways in which pirates relate to states: subjecthood and jurisdiction.

Subjects at Sea

The diplomatic crisis between England and the Mughal Empire that Every sparked was largely due to Aurangzeb's policy of adjudging the responsibility for European pirates by their subjecthood. "If the pirates who attacked his ships were white Europeans who spoke English, then in his view, they were the responsibility of the English mercantile company [the East-India Company]",¹⁵¹ a policy the admiralty were painfully aware of, which shows in *The Tryals of Dawson et.al.* In addressing the jury, Hedges remarks that if England fails to prosecute its piratical subjects, then "our whole nation must unavoidably suffer both in reputation and interest, and all as it were through our own default".¹⁵²

Dr Newton makes a related remark when he says of the accused prisoners that, "if they shall go away unpunished, when it is known whose Subjects they are, the consequences may be, to involve the Nation concerned, in War and Blood".¹⁵³ Subjects who engage in piracy become representatives, why the distinction between pirates and privateers in many cases becomes indiscernible and why piracy and the concept of subjecthood are inextricably linked.

The concepts were brought to light in Matthew Tindall's *Essay Concerning the Laws of Nations and the Rights of Sovereigns*, which was written as a commentary on the trial of John Golding et.al, for the crime of "Engaging, and Hauling the *James Galley*, one of their Majesty's [...] men of War" under a commission granted them by "the late King James".¹⁵⁴ Being Jacobites, Golding et.al. was originally brought in under charges of high treason for accepting the commission of a foreign king and attacking England.

¹⁵¹ Thomson, *Mercenaries, Pirates, and Sovereigns*, 116.

¹⁵² High Court of Admiralty, England And Wales, 'The Tryals of Joseph Dawson, Edward Forseith, William May, William Bishop, and John Sparkes, 8.

¹⁵³ High Court of Admiralty, England And Wales, 'The Tryals of Joseph Dawson, Edward Forseith, William May, William Bishop, and John Sparkes, 4.

¹⁵⁴ Anonymous, *An Account of the Tryals of Captain J. Golden. Thomas Jones. John Gold. Lawrance Maliene. Patrick Whitley. John Slaughter. Const. D'Heaity. Richard Shewers. Darby Collins. John Ryon. Dennis Cockram. John Walsh. At the Court of Admiralty Held in the Marshalsea in Southwark, before the Right Honourable the Judges: On Monday the 25th. of Feb. 1693/4. Of Which 9 Were Found Guilty, and Received Sentence of Death: 3 for High Treason, and 6 for Piracies and Roberys on the Seas, under the Colour of the Late King James's Commission. Licens'd Feb. 27th. 1693/4* (London, England, p.). London), <http://search.proquest.com/eebo/docview/2240859681/citation/9CD9AFDBC5FA4965PQ/25>.

A N E S S A Y

Concerning the

L A W S of N A T I O N S,

A N D T H E

R I G H T S of S O V E R A I G N S.

With an Account of what was said at
the Council-Board by the Civilians
upon the Question, Whether their
Majesties Subjects taken at Sea acting
by the late King's Commission, might
not be looked on as Pirates ?

With R E F L E C T I O N S upon the
A R G U M E N T S of Sir T. P. and Dr. O.

By *Mat. Tindall*, Doctor of Laws.

The Second Edition.

L O N D O N, Printed for *Richard Baldwin* near the
Oxford-Arms in *Warwick-Lane*, 1694.

FIGURE 5. Facsimile copy of the title page of *An Essay Concerning the Laws of Nations and the Rights of Sovereigns*.

Branding the crime high-treason did not sit well with the lords of the Admiralty and the government who felt that such a charge acknowledged the veracity of James's commission and thus his rights as a sovereign. The prosecutor who had indicted, Dr William Oldys, along with a few other admiralty advocates (Tindall among them) were consequently brought before the Privy Council to debate the issue. Oldys stood his ground and was consequently removed from his position as admiralty advocate.¹⁵⁵ His replacement, Dr Littleton, indicted Golding et. al. for piracy.¹⁵⁶ In his *Essay Concerning the Laws of Nations*, Tindall argues against Oldys and in favour of Littleton's position.

The Piracy Act 1698 brought further legal affirmation to the position by establishing that it is piracy to,

commit any Piracy or Robbery or any Act of Hostility against His Majesties Subjects upon the Sea under Colour of any Comission from any Forreigne Prince or State or Pretence of Authority from any Person whatsoever¹⁵⁷

A clear response to the problems of Jacobite privateers in the war with France 1688-1697 and to cases like Golding's, or the previously mentioned Thomas Vaughan's. The choice of words, "Pretence of Authority from any Person whatsoever", is particularly poignant category which seems to fit James II more than most, at least according to Tindall and the admiralty.

The question of whether or not Golding et.al. should be considered pirates rests a great deal on the distinction between public and private actors in international space. Tindall's basic contention is that James II lost his sovereign rights in the Glorious Revolution of 1688 and since then had been reduced to a private person, greatly limited as an international actor, particularly when it came to violence.

In the trial of Dawson et. al. for the robbery of the *Ganj-I-Sawai* Dr Newton, the prosecutor, as well as Charles Hedges, forcefully presses the idea that if England let its pirates go unpunished, the rest of the world would have no recourse but to attack English navigation *as if* all English were responsible. The issue revolves around *representation*, which is why the concept of subjecthood is of major importance in early modern thought about international space, both for subjects as representatives and sovereign bodies as represented.

¹⁵⁵ Jody Greene, 'Hostis Humani Generis', *Critical Inquiry* 34, no. 4 (2008): 683–705.

¹⁵⁶ In the end a rather unsatisfactory compromise was reached, were some of the indicted were convicted for piracy and some for high-treason.

¹⁵⁷ Raithby and Great Britain, *The Statutes of the Realm*, 7:592.

Regarding the first aspect, subjects as representatives, the concept of the *body politic* is of significant relevance. That a commonwealth is a singular totality of the many, united in one body enlightens the idea of representation in international space. For Hobbes, the concept meant that the focal point of the state, the sovereign Leviathan, was the only viable representative consented to through the social contract. The distinctively more modern Tindall did not consider the person of the king to be holy, but writes instead of the exiled king James:

the Interest of a King, when he has no longer the Management of the Affairs of any Nation, is no more sacred than that of any other private Person, who by Nature is his equal: it was only the Office which is sacred¹⁵⁸

Other being a prime example of the disappearance of the divine right of kings in favour of the supreme power of offices, Tindall clearly defines the role of kings as managers of national affairs. Decidedly, the interrelating of nations falls under that rubric. The king's dialectical opposite possesses no such rights. When a king has been deposed, "the Peace and Quiet, or Trade and Commerce of a Nation ought not to be disturbed more for his, than any other particular Person's Interest".¹⁵⁹ A claim which relies on the distinction between the general and the particular, or the public and the private.

The ocean then being "public space", as it were, "that great and still remaining Common of Mankind"¹⁶⁰ as John Locke dubbed it, susceptible only to the peaceful or hostile intercourse of nations, cannot be justly used by private persons for their own gain to the cost of sovereign powers, whether they are subjected to them or not. This means, among other things, that the concept of enmity is restricted to nations alone, therefore "The English have neither Peace nor War with the late King, and look in him as a private Person incapable of making either".¹⁶¹ Finding supporters in "All Authors both Modern and Ancient", Tindall plainly states that only "those that have *summum imperium*" can be termed enemies and all the rest are "either Robbers, or Pirates".¹⁶² To be named enemies, two parties need to share some basic properties, like being a public body. In the Grotian tradition, enmity is, as

¹⁵⁸ Tindall, 25.

¹⁵⁹ Tindall, 25.

¹⁶⁰ Locke, *Two Treatises of Government*, 307.

¹⁶¹ Tindall, 22.

¹⁶² Tindall, 18–19.

mentioned, reciprocal and requires that the two parties belong to the same category in the dichotomy of public–private.

In part, this is related to the Ciceronian notion of *hostis humani generis*, although Cicero used the phrase *communis hostis omnium*, “the common enemy of all”.¹⁶³ According to him no contract made with a pirate is binding.¹⁶⁴ No trust can be breached, because trust is not applicable to pirates. In the same way that pirates cannot be legal enemies, neither can they be lawful allies. Tindall broaches the concept of *hostis humani generis* in an original way.

The soon to be ousted Dr Oldys defended his indictment of Golding et.al. as traitors before the lords of the admiralty and the privy council with the aid of Dr Thomas Pinfold who claimed that the accused could not be pirates, “for a Pirate was *hostis humani generis*, but they were not Enemies to all Mankind”.¹⁶⁵ Tindall mockingly recounts that upon hearing Pinfold’s remark “all smiled”.¹⁶⁶ When asked by one of the lords of admiralty if there ever could exist such a thing as pirates “if none could be a Pirate but he that was actually in War with all Mankind”, Oldys and Pinfold were, in Tindall’s telling, left speechless.¹⁶⁷

Tindall then launches into his own thoughts on the nature of the pirate’s state of enmity with the state which I will quote at some length:

Hostis humani generis, is neither a Definition, nor as much as a Description of a Pirat, but a Rhetorical Invective to shew the Odiousness of that Crime. As a Man, who, tho he receives Protection from a Government, and has sworn to be true to it, yet acts against it as much as he dares, may be said to be an Enemy to all Governments, because he destroyeth, as far as in him lieth, all Government and all Order, by breaking those Ties and Bonds that unite People in a Civil Society under any Government: So a Man that breaks the common Rules of Honesty and Justice, which are essential to the well-being of Mankind, by robbing but one Nation, may justly be termed *hostis humani generis*; and that Nation has the same right to punish him, as if he had actually robbed all Nations.¹⁶⁸

¹⁶³ Daniel Heller-Roazen, *The Enemy of All: Piracy and the Law of Nations* (New York: Cambridge, Mass: Zone Books; Distributed by The MIT Press, 2009), 16.

¹⁶⁴ Marcus Tullius Cicero, *On Obligations*, trans. P. G. Walsh (Oxford; New York: Oxford University Press, 2000), 121.

¹⁶⁵ Tindall, 27; The implication is that they were only enemies to England.

¹⁶⁶ Tindall, 27.

¹⁶⁷ Tindall, 27.

¹⁶⁸ Tindall, 27.

The recognition of what Jody Greene calls “a hyperbole” that “has been taken for granted even by those who continue to employ it” is of vital importance in the passage above, the operative phrase being “as if he had actually robbed all Nations”.¹⁶⁹ In employing the grandeur of *hostis humani generis* and simultaneously admitting its legal shortcomings, Tindall engages in a paradoxical pattern of thought symptomatic for his place and time.

Like the judges Hedges and Holt, Tindall is adamant that *piracy* be reduced to mere robbery and persistent in robbing pirates of their legitimacy and glory. However, in Tindall’s essay as opposed to the *Tryals of Dawson et. al.*, the trope is a means to a slightly different end. The East-India Company, the government and the admiralty needed to distance themselves from the actions of Every’s crew in order to maintain England’s status as a serious trading partner to the Mughal empire.¹⁷⁰ By naming Every nothing but a common robber, England thought to maintain its international legitimacy. In the Golding case however, the political significance of judging the accused as pirates is intended to delegitimize James II by proxy through recognizing that the pirates acted on his illegal behalf.

In both attempting to deemphasize the significance of pirates but at the same time catering to their political importance, as in the *Ganj-I-Sawai*-case, or actively employing it to oppose the Jacobite cause, as in Tindall’s *Essay*, the admiralty displays a fundamentally paradoxical relationship with piracy. Because of either external pressure or internal agency, the extended English government was not yet able to effectively end England’s complicated love affair with piracy.

Another important aspect of the above quotation from Tindall in regard to sovereignty is the statement that pirates break the “Ties and Bonds that unite People in a Civil Society under any Government”, which I deem to be related to the contract theories of Hobbes and Locke. Peter Hayes has also spotted the relation and employs it to argue that Buccaneer crews formed legitimate political communities according to Locke’s theory. While Hayes analyses at the word “contract” quite literally¹⁷¹ to the detriment of the arguably more relevant concept of *tacit consent*, he brings to light one of the most interesting feature of Tindall’s writing,

¹⁶⁹ Greene, ‘Hostis Humani Generis’, 691.

¹⁷⁰ Ritchie, *Captain Kidd and the War against the Pirates*.

¹⁷¹ Upon their formation, pirate crews often agreed to and signed what they called “articles”, a contract that determined for example how a prize was to be shared, rules of engagement, the extent of the captain’s authority and general rules of conduct. For more on the social order of pirates, see Rediker (2004).

namely that powerful enough groups of pirates, as in the case of the notorious “barbary corsairs” sailing out of Maghreb, can become legitimate societies.

The notion that the difference between pirates and “peoples” also appears in an oft repeated literary image commonly attributed to Augustine who tells of a confrontation between Alexander the Great and a pirate prisoner:

When the king asked him what he meant by infesting the sea, the pirate defiantly replied: ‘The same as you do when you infest the whole world; but because I do it with a little ship I am called a robber, and because you do it with a great fleet, you are an emperor.’¹⁷²

The same trope appears in Johnsons *General History of the Pyrates* where Samuel Bellamy tells the captain of a prize that the between the pirates and the rich men they rob, “there is only this Difference, they rob the Poor under the Cover of Law, forsooth, and we plunder the Rich under the Protection of our own Courage.”¹⁷³ showing that the idea that size matters has had considerable sway in the history of piracy.

The close association of commonwealth with strength espoused by Tindall makes a comparison with Hobbes unavoidable, with the difference that Tindall seems to consider some measure of absolute size necessary for the formation of society while Hobbes’ argues that relative size is requisite enough to form a commonwealth.¹⁷⁴ Tindall instead forwards the view that a commonwealth needs certain properties in order to justly engage in international congress with other nations. James II was not entitled to appoint privateers since,

There is no way of making a Titular King weary of granting such Commissions [...] No reprisals to be made, because he has no Ships to lose but those of his Privateers [...] He has no Trade or Commerce to be ruined. There is no way of making him desist by invading his Territories, since he has none to be invaded. In short, he has nothing to lose by Sea or Land, and by consequence no way of making him weary of eternally granting such Commissions.¹⁷⁵

¹⁷² Augustine and R. W. Dyson, *The City of God against the Pagans*, Cambridge Texts in the History of Political Thought (Cambridge; New York: Cambridge University Press, 1998), 148.

¹⁷³ Defoe and Schonhorn, *A General History of the Pyrates*, 587.

¹⁷⁴ “The Multitude sufficient to confide in for our Security, is not determined by any certain number, but by comparison with the Enemy we feare”. Thomas Hobbes, *Leviathan: Authoritative Text, Backgrounds, Interpretations*, ed. Richard E. Flathman and David Johnston, 1st ed, Norton Critical Edition (New York; London: W. W. Norton & Company, 1997), 94.

¹⁷⁵ Tindall, 15.

This highlights the reciprocity of the *rationalist* Grotian international theory, the pursuit of the common good is a game of checks and balances between nations, rather than a Hobbesian war “of every man, against every man”.¹⁷⁶ It was not that James was powerless “but that he lacked the concomitant vulnerability that was essential to Tindall’s claim that the law of nations was founded on reciprocity”.¹⁷⁷ There is seemingly nothing in Hobbes’ thought that contradicts the notion that powerful enough pirates might form a commonwealth, like Tindall says. In the cases of Golding or Every however, there was never any real question of whether the pirate crews constituted commonwealths.

Instead, a crucial point in Tindall’s denial of rights of sovereignty to James II was that the Irishman Golding and his crew were English subjects (the same was true for Every for previously established reasons). Apart from being the reason they were originally accused of high treason, their English subjecthood serves as the negation of their claimed allegiance to James II. Even so, Tindall claims that pirates break “all Ties and Bonds” with society, which surely should entail the end of subjecthood.

Part of the explanation to this lies in the rhetorical flair of entire passage, it would most likely be a mistake to take Tindall’s words at face value. Nevertheless, he does actualize an interesting and still to this day persistent feature of the image of golden age pirates, the notion that they were outlaws, which begs the question: what lies at the end of subjecthood?

Tindall’s statement is first and foremost a conjuring of Cicero who wrote that no valid contract or agreement could be made with a pirate – no one was beholden to promises made to pirates – a position Locke shares.¹⁷⁸ With this strong tradition in mind, I agree with Hayes observation that social contract theory and piracy has a theoretical relationship. In Locke’s *Second Treatise of Government* the right belongs to everyone to “kill a murderer” for the sake of their own and others’ security in the state of nature.

¹⁷⁶ With that in mind, it is noticeable that during the length of the speeches in *The Tryals of Joseph Dawson et. al.*, neither of the judges or Dr Newton seem to consider the reprimands they fear unjust or unlawful, but as natural and reasonable. The possible exception being Newton’s offhand remark about the “natural inclination of the Indians to revenge”, which seems to be scaremongering more than anything else. Wight, *International Theory*; Hobbes, *Leviathan*, 70; High Court of Admiralty, England And Wales, ‘The Tryals of Joseph Dawson, Edward Forseith, William May, William Bishop, and John Sparkes’, 4.

¹⁷⁷ Peter Hayes, ‘Pirates, Privateers and the Contract Theories of Hobbes and Locke’, *History of Political Thought* 29, no. 3 (2008): 472.

¹⁷⁸ Cicero, *On Obligations*, 121; Heller-Roazen, *The Enemy of All*; Locke, *Two Treatises of Government*, §176.

... a murderer, [...] who having renounced reason, the common rule and measure God hath given to mankind, hath, by the unjust violence and slaughter he hath committed upon one, declared war against all mankind, and therefore may be destroyed as a lion or a tyger, one of those wild savage beasts, with whom men can have no society nor security:¹⁷⁹

That the debauchment of piracy relegated men to be on par with animals is an idea that reappears in Johnson's *General History of the Pyrates* in the description of captain Edward England who has embarked upon, "a Course of Life, that so much debases humane Nature, and sets them upon a Level with the wild Beasts of the Forest, who live and prey upon their weaker fellow creatures".¹⁸⁰

An offender in the state of nature then, according to Locke, becomes *hostis humani generis* and it seems highly unlikely that a politically involved and knowledgeable person such as Locke would invoke such a well-known trope unknowingly.

In Hobbes' *Leviathan* another part of social contract theory lends itself well to the notion of pirates as societal defectors. The wording of the contract by Hobbes begins "*I Authorise and give up my Right of Governing my selfe*",¹⁸¹ leaving society could thus be construed as a recapturing of agency and self-governance which is a recurring theme in Marcus Rediker's work on golden age piracy where pirates are often characterized as nihilistic counter-culturists intent on recovering the agency denied to them by work-discipline or the repressive state. Piracy, according to Rediker, "was a way of life voluntarily chosen, for the most part, by large numbers of men who directly challenged the ways of the society from which they excerpted themselves."¹⁸²

However, as Lauren Benton has repeatedly pointed out, pirates seldom considered themselves, or at least did not act as if they were, outlaws.

Individuals – including seemingly legally marginalized rogues and pirates – did not imagine themselves as cut off from legal authority even when very far from home and on the open seas.¹⁸³

¹⁷⁹ Locke, *Two Treatises of Government*, 292.

¹⁸⁰ Defoe and Schonhorn, *A General History of the Pyrates*, 114.

¹⁸¹ Hobbes, *Leviathan*, 95.

¹⁸² Rediker, *Outlaws of the Atlantic*, 64.

¹⁸³ Benton, *A Search for Sovereignty*, 110.

Even though Benton argues otherwise, the above might only serve to further prove pirates' disregard for civil society. If Every and his crew considered themselves bound in some way to England and knew that their actions interfered with or usurped the "legal authority" of their homeland, the robbery of the *Ganj-I-Sawai* seems so much graver.

In the ballad claiming to profess Every's intent he claims, "My Commission is large, and I have made it my self".¹⁸⁴ Whether or not Every the historical man actually uttered these words, Every the public figure shows some political awareness in refuting the crown he was subjected to. Making his criminal intent as well as urge to take for himself what the laws of nations denied him clear and unlike James II, he does not need the approval of subjects or other nations. His rights and actions stem from his own agency.

¹⁸⁴ Anonymous, 'A Copy of Verses'.

Power, Authority or Jurisdiction?

However much interesting matter can be mined from Tindall's essay, one dimension of the question of pirates and subjects moving in international space is absent, just that, international space.

Floating Territory

A text concerned with international space is sir Philip Meadows' 1689 pamphlet *Observations concerning the Dominion and Sovereignty of the Seas*. Meadows, who had held high offices under Cromwell and had been welcomed back into the fold after 1688 since falling out of grace during the Stuart restoration, was a staunch follower of John Selden's theory of sovereignty in *Mare Clausum*, which he dubbed "a Treatise so comprehensive of what can be said on that Argument, that he, who should now write of the same, would certainly incur the old Censure, of writing an Iliad after Homer".¹⁸⁵

Needless to say, Meadows relies heavily on Selden and his *Observations* have the aim of perpetuating and enforcing the idea of territorial dominion of British territorial waters, "the four seas", the waters surrounding England in all four cardinal directions. Meadows held that "Jurisdiction is an Essential and Inseparable part of the Sovereignty, which a prince has within his own Territory",¹⁸⁶ (this also applies to overseas holdings) which means that he makes a clear distinction between territorial waters and the high-seas.

Within the four seas, Meadows considers jurisdiction and territory to be inextricably linked, meaning that jurisdiction is not an applicable term to the high seas. Instead, when a subject travels "he is within the Ligeance of his own Prince, and therefore within the Kingdom of *England*" until he disembarks his vessel and exists the sea on foreign shores and there enters "the Ligeance of another Prince."¹⁸⁷ Subjection to the king's law, is something personal in *Observations*, reaching even into foreign territorial waters and in this last respect, it is clear national seas are not dominion in the same way as land.

¹⁸⁵ Philip Meadows, *Observations Concerning the Dominion and Sovereignty of the Seas: Being an Abstract of the Marine Affairs of England* (London. in the Savoy: printed by Edw. Jones, 1689), [No pagination].

¹⁸⁶ Meadows, 8.

¹⁸⁷ Meadows, 12.

OBSERVATIONS
CONCERNING THE
DOMINION
AND
SOVEREIGNTY
OF THE
SEAS:

BEING

An ABSTRACT of the *MARINE*
AFFAIRS of *England*.

By Sir PHILIP MEDOWS, Knight.

In the SAVOY:

Printed by *Edw. Jones*; and sold by *Samuel Lowndes*, against *Exeter*
Change in the *Strand*; and by *Edward Jones*, in the *Savoy*: 1689.

FIGURE 6. Facsimile copy of the title page of *Observations Concerning the Dominion of the Seas*.

For example, “If one Foreigner does any Injury to another, be it Fraud or Violence, upon the *British Seas*”¹⁸⁸ the injured part should not appeal to the English Admiralty for justice, but need instead look to “his own Sovereign” or “the Sovereign of the Wrong-Doer”.¹⁸⁹ If the same crime had been committed on English soil however, the crime would have been subject to English courts, according to Meadows. Even though Meadows implies it, the sovereignty and dominion of the seas does not function along the same lines as the dominion of land.

Meadows moves on with another sample situation:

if two *Englishmen* be under the Pay and Service of the *French King*, and one of them Kill the other, aboard a *French Man of War*, within the Seas; The *French King’s* Judicature will have the Conusance [cognisance] of the Crime, as done within his Ligeance, and against the peace and protection of his Crown.¹⁹⁰

In other words, Meadows equates ships with territory to the extent where the territoriality of the ship trumps even the sovereignty of the waters in which it sails.

Questions of shipboard jurisdiction and subjecthood not only formed theoretical problems, they also reflected an organisational problem of sorts, the seafaring working class was notoriously multinational.¹⁹¹ A fact which, according to Thomson, prevented the Mughal policy discussed in the previous chapter from widespread use. This meant that “sovereignty and nationality could be entirely divorced”.

Despite the fact that a ship flew the flag and carried the official documents of the British state—meaning the British state exerted sovereign authority over it—the crew might not include a single British national.¹⁹²

The same problem existed in the classification of barbary corsairs since many who sailed among them were Christian Europeans, perhaps calling Tindall’s statement that the barbary pirates had become commonwealths into question

In England, the Navigation Act of 1660 attempted to tackle this issue, in the mercantilist interest of creating a national monopoly of shipping, by offering a definition of an English ship. It had to be fully owned in England, Wales, Ireland or the plantations, it needed an

¹⁸⁸ Meadows, 29.

¹⁸⁹ Meadows, 29.

¹⁹⁰ Meadows, 29.

¹⁹¹ Linebaugh and Rediker, *The Many-Headed Hydra*.

¹⁹² Thomson, *Mercenaries, Pirates, and Sovereigns*, 117.

English master and a minimum three quarters of the crew had to be English subjects.¹⁹³ Since European oceanic voyagers generally imagined law and subjecthood to travel with them, this assured the continuation of jurisdiction at sea.¹⁹⁴ It did not mean that sailing communities became homogenous, as even after the Navigation act “English ships continued to be worked by African, Briton, quashee, Irish, and American (not to mention Dutch, Portuguese, and lascar) sailors”.¹⁹⁵ Consequently, a sailor’s allegiances were formed along other lines than ethnicity or nationality which in turn led to pirate crews being fiercely multi-ethnic.¹⁹⁶

Whether jurisdiction was a function of the ship or the crew, remains opaque. Heller-Roazen brings up a “classic solution” from Emer de Vattel in his *Law of Nations* from 1758: if a child is born at sea, it is to be considered a natural born subject of the nation under whose sovereignty the ship sails.¹⁹⁷ The exact same idea is found in Meadows’ *Observations*: “A Child born at Sea in any of the King’s Ships, or other *English Vessel*, Navigated by *English Master and Crew*, is a Native”.¹⁹⁸ The vessel thus becomes a floating piece of territory, which creates a notion of territoriality detached from geographical space that acts as a legal fiction to be employed anywhere.¹⁹⁹ In that sense, it allows sea-fairing nations to claim sovereignty wherever they so desire.

However, the legal continuity from crown to ship should not be construed as total. Instead, “English and French captains [...] had wide-ranging authority to conduct inquiries and inflict punishments on their crews,” effectively meaning that ships had “semi-autonomy in judicial matters”.²⁰⁰ The captain had “near-dictatorial powers” and often had complete control over “the labor process, the dispersing of food, and general social life on board the ship.”²⁰¹ This was accompanied by a culture of corporal punishment, the foremost medium and symbol of which is the vicious whip, the infamous cat-of-nine-tails.²⁰²

¹⁹³ C. Ernest Fayle, *A Short History of the World’s Shipping Industry*, 2015, 186.

¹⁹⁴ Benton, *A Search for Sovereignty*.

¹⁹⁵ Linebaugh and Rediker, *The Many-Headed Hydra*, 151.

¹⁹⁶ Rediker, *Outlaws of the Atlantic*.

¹⁹⁷ Heller-Roazen, *The Enemy of All*, 126.

¹⁹⁸ Meadows, 13.

¹⁹⁹ Heller-Roazen, *The Enemy of All*, 147.

²⁰⁰ Benton, ‘Legal Spaces of Empire’, 704.

²⁰¹ Marcus Rediker, *Between the Devil and the Deep Blue Sea: Merchant Seamen, Pirates, and the Anglo-American Maritime World, 1700-1750* (Cambridge; New York: Cambridge University Press, 1987), 212.

²⁰² Rediker, 212.

Ships thus played a dual role as sources of order in the oceans: they were islands of law with their own regulations and judicial personnel, and they were representatives of "municipal" legal authorities – vectors of crown law thrusting into ocean space.²⁰³

Mutinies therefore posed a significant threat to the exertion of jurisdiction at sea and because maritime work order did not necessarily inspire loyalty, they occurred with some regularity, dictating the necessity for both *Tryals of Dawson et.al.* and the Piracy Act 1698 to mark them as un-English and piratical.

Another reason why mutinies occurred is exemplified by Every's power-grab on the *Charles the Second*. The ship was lying outside La Coruña because of "bureaucratic delays" which meant that the crew was denied wages for eight months until eventually their patience wore thin.²⁰⁴ Although Every's reaction was unparalleled, the predicament was in no way unique and it was not uncommon for a sailor to be owed years' worth of unpaid wages.²⁰⁵

The notion that ships are extensions of English legal space, as floating territory, coupled with work discipline discourse make vessels flying English colours a medium for ensuring that English power and authority followed its subjects and traversed the seas.

The Shape of Sovereignty

In *Tryals of Dawson et.al.* sir Charles Hedges described the reach of English justice as follows,

The King of *England* hath not only an Empire and Sovereignty over the British Seas; but also an undoubted Jurisdiction, and Power, in concurrency with other Princes, and States, for the punishment of all Piracies and Robberies at Sea, in the most remote parts of the World²⁰⁶

The assertion of "Sovereignty over the British seas" is indicative of Selden's influence, indeed the phrase "British seas" appears as something of an oxymoron from a Grotian standpoint.²⁰⁷ However, the full quotation seems to be something of a hybrid between

²⁰³ Benton, 'Legal Spaces of Empire', 704.

²⁰⁴ Baer, 'Bold Captain Avery in the Privy Council', 8.

²⁰⁵ Linebaugh and Rediker, *The Many-Headed Hydra*, 151.

²⁰⁶ High Court of Admiralty, England And Wales, 'The Tryals of Joseph Dawson, Edward Forseith, William May, William Bishop, and John Sparkes, 6.

²⁰⁷ "The British seas" are the waters surrounding the British Isles.

Selden's theory of maritime dominion and Grotius idea of shared jurisdiction in international society. Showing that the two are not necessarily mutually exclusive.

It makes sense that Hedges as a representative of the admiralty to adopt Selden's view that England has the sole dominion of its surrounding waters. Although the English seas were the sole property of the crown according to Meadows, this meant first and foremost that foreign ships of war as well as alien fishing enterprises should be prohibited. Because even though the waters were the enclosed dominion of England,

A Field is a private Property, but the Market-Path over it is publick, and when it was first made a Property, it was with reservation of a Path. [...] The Sea, say we, is the publick Property of the Crown of *England*; but yet as 'tis a Way, 'tis common to the peacable Traders of all Nations.²⁰⁸

Meadows exhibits an astute mind for analogy here. Equating the seas to fields highlights that the primary motivation behind the *mare clausum*-position is the protection of exclusive fishing,

without which it would be a Property without Profit, a Name without a Thing. He, who has the Soil, or Ground, has the Herbage, and other Growth of it, or else a Rent for it; if others may freely departure with him, it is a Common²⁰⁹

On the back of two centuries of English history where lands previously considered common or church property saw large-scale expropriation and fell into the hands of wealthy landowners who enclosed it in order to profit,²¹⁰ Meadows' remark seems symptomatic. Considering the previously mentioned ongoing increased appraisal of property rights at the end of the 17th century, it makes perfect sense that the seas should be viewed from the same perspective.

The analogy of paths is also an apt one for understanding navigation on the high-seas. Benton has shown that enforceable territorial claims by European powers took the form of lanes or corridors rather than vast stretches of open ocean. Partly because early-modern European powers were incapable of enforcing control over vast stretches of open ocean, and

²⁰⁸ Meadows, 6.

²⁰⁹ Meadows, 33.

²¹⁰ Hill, *The Century of Revolution 1603-1714*; Linebaugh and Rediker, *The Many-Headed Hydra*.

partly because they did not need to, claims of sovereignty were arraigned along trade routes, at the mouths of rivers, along ocean streams, according to wind patterns or in straits.²¹¹

When the Portuguese claimed the East-India Trade for their own exclusive exploitation in the 16th century, they did so not by diplomatic behaviour such as Grotius might have suggested, the Asian nations were not interested in buying European goods. Instead the Portuguese, by means of their ships' prowess, took control over essential trade routes, "they seized ports such as Goa, Cochin, Hormuz, and Malacca"²¹² which meant that they could control and exert tolls on the flux of goods at strategic places.

Indeed, the Dutch capture of the Portuguese ship *Santa Catarina* which prompted Grotius to write *Mare Liberum* in defence of the action, took place in one of these strategically inhabited places, the Singapore strait.²¹³ That the Dutch felt it necessary to take violent action and Grotius' lengthy justification of it is really a testament to the success of the Portuguese tactics of domination.

Every's robbery of the *Ganj-I-Sawai* further illustrates the significance of routes, seeing that it took place on the Mughal ship's passage between Surat and Mocha, which India's Muslim elite used as the route of pilgrimage to Mecca.²¹⁴ This was not the only such attack, only the grandest, and as a result the Mughal Empire demanded protection by the East-India Company for pilgrim ships.²¹⁵

The new provisory admiralty courts enabled by the 1698 piracy act also support a notion of fragmented sovereignty. In showing different imperial strategies for asserting possession, Benton writes that "in the absence of settlements, the trappings of legal institutions could be used to show the presence of royal authority".²¹⁶ Though mobile and institutionally flimsy, the courts served to assert English sovereignty where they stood. They did however have another consequence, which was to essentially make the Atlantic and Indian oceans into two separate spheres of English law.

²¹¹ Pérotin-Dumon, 'The Pirate and the Emperor: Power and the Law on the Seas, 1450-1850', 201; Benton, *A Search for Sovereignty*.

²¹² Ritchie, *Captain Kidd and the War against the Pirates*, 7-8.

²¹³ Benton, *A Search for Sovereignty*, 131.

²¹⁴ Ritchie, *Captain Kidd and the War against the Pirates*, 131.

²¹⁵ Ritchie, *Captain Kidd and the War against the Pirates*; Thomson, *Mercenaries, Pirates, and Sovereigns*.

²¹⁶ *A Search for Sovereignty*, 57.

The East-India Company retained their monopoly on the East India-trade until 1698 (when they were forced to share it with the less than creatively named New East-India Company), before that (and to a lessening extent after) they had far-reaching authorities in the region. They could make war or peace with nations, they could muster a fighting force, build fortifications and factories.²¹⁷ The company's charter also ensured that they had "legal jurisdiction over their employees in foreign lands".²¹⁸

The company also established its own courts which "operated, in effect, as admiralty courts".²¹⁹

Operating under the aegis of the Company, the courts had no direct connection to the navy to enforce sanctions, little attraction for privateers as a place to bring prizes, and no appellate relation to the High Court of Admiralty in England.²²⁰

Seeing that the Piracy Act 1698 was in effect "where the Admirall or Admiralls have Power Authority or Jurisdiction"²²¹, the company's jurisdiction meant that in whatever way the Piracy Act was a response to the actions of Every and other pirates in the Indian Ocean, there was no guarantee that the new law would be enforced as intended at the scene of the crime.

By phrasing it "Power Authority or Jurisdiction" the Piracy Act 1698 clearly distinguishes its vision of the sovereignty of the seas from the Seldenian total merger of *dominium*, property, and *imperium*, jurisdiction and power. As Meadows put it:

He who affirms a Sea-Dominion, and by it understands any thing less than Property, embraces a Cloud for *Juno*. To ride actual Master at Sea with a well Equipp'd Fleet, or to have such a Plenty of Naval Stores in constant readiness, as shall be sufficient to answer all Occasions, is not the Dominion of the Sea; This is Power, not Property...²²²

All that said, there is one exception to Meadows' Seldenian notion of *dominium* and *imperium* on the seas: piracy. Even though England has the sole jurisdiction of its territorial waters, if a foreign vessel should apprehend a pirate of any nationality within the British seas "they do

²¹⁷ Thomson, *Mercenaries, Pirates, and Sovereigns*, 35.

²¹⁸ Thomson, 35.

²¹⁹ Benton, *A Search for Sovereignty*, 148.

²²⁰ Benton, 148.

²²¹ Raithby and Great Britain, *The Statutes of the Realm*, 7:590.

²²² Meadows, 9.

not remit him to the Admiralty of England, [...] but they carry him before their own Judicatories, and judge him as an Enemy of Mankind by the Law of Nations.”²²³

Whether no limiting framework for jurisdiction of the seas is established as in the Piracy Act 1698, or a clear structure is established as in Meadows’ *Observations*, a prominent feature of the ways in which the seas were constructed legal spaces is a legally convenient measure for suppressing piracy.

²²³ Meadows, 28–29.

Conclusions

The campaign against piracy instigated in the 1690's was characterized first and foremost by a strive towards order.

The proceedings against Joseph Dawson and his pirate brethren in 1696 tells of a state desperate to reel in subjects exceeding the scope of action allowed them in international space, a state desperate to prove their reliability to its trading partners in the east and a state desperate to bring its people in England and in the colonies in on the new stance on piracy.

Crucially, it was not piracy that was changing – it only increased in scale and audacity – but the state's opinion of it. Which is why the captain Every of the ballad bore "feelings of betrayal by a 'false hearted Nation'".²²⁴ With that in mind it is significant that sir Charles Hedges associated opposition to piracy with "a true English spirit".²²⁵ The national spirit of the English was on of the theatres in the war against piracy.

The Piracy Act 1698 targeted not only pirates themselves but accessories of pirates, most notably colonial administrators who were more kindly disposed towards pirates than their counterparts in the imperial capital, which was a direct consequence of the fact that the British government and admiralty could not exert the power and authority they claimed in all parts of the sea. In the service of orderly trade however, the empire had to banish pirates everywhere, which the Piracy Act acknowledges and the *Tryals of Dawson et. al.* made embarrassingly obvious when it became clear that the world's most notorious pirate secured the protection of the governor of Providence Island for a relatively moderate cost.

Pirates not only had supporters in the ranks of colonial administration but also among the general public – again embarrassingly demonstrated in the *Ganj-I-Sawai*-case by the jury's failure to make the correct assessment according to the government – and the sailing working class. The latter is expressed in the Piracy Act 1698's branding of those who "bring any seduceing Messages from any Pirate Enemy or Rebell" as pirates.²²⁶

The impulse to ideological control had an intimate relation with a shipboard work-order where sailors were completely subjected to the captain's will. It is for this reason that the

²²⁴ Baer, 'Bold Captain Avery in the Privy Council', 8.

²²⁵ High Court of Admiralty, England And Wales, 'The Tryals of Joseph Dawson, Edward Forseith, William May, William Bishop, and John Sparkes, 8.

²²⁶ Raithby and Great Britain, *The Statutes of the Realm*, 7:592.

Piracy Act 1698 includes its perhaps most significant proposition, namely that it makes mutiny legally a piracy. This ties the Piracy Act 1698 with a way of thinking of ships as a form of sovereign territory, a view forwarded by Philip Meadows, which ensures the legal continuity at sea. The notion entails that a person does not leave English territory until they disembark their vessel outside of the sovereignty of the king.

Furthermore, I show that *piracy* was a term of delegitimization, both of former kings and of other private persons. Mutinies have a part in this as well, as they end legal continuities from sovereign to subject. Upon the completion of a mutiny, the ship and crew are severed from civil society, and their actions from that point on are considered beyond the responsibility of their sovereign and in violation of the law of nations.

The *Ganj-I-Sawai* case shows that this distancing is not unconditional, however. When push comes to shove, economic and political factors gain the upper hand over theories and principles. However much legal theorists wanted to disassociate pirates with civil society, realpolitik concerns did not allow for the severing of bonds so easily. As is exemplified in the *Tryals of Dawson et. al.* by Hedges' remark that if English pirates are allowed to wreak havoc on trade with the East-Indies, England would have to "suffer both in reputation and interest, and all as it were through our own default".²²⁷

The same notion of "as if" is central to Tindall's argument in his *Essay* where the delegitimizing power of piracy is aimed at the former king James' claim to the throne of England. This shows the political stopping power of the concept.

The only legitimate actions in international space are the ones taken "as if" an entire commonwealth was behind them, James II who lacks this supporting mass, cannot therefore act legitimately. For the same reason, actions in international space need to be heavily regulated, which brings us back to the point of the austere ideological and physical shipboard order.

Hostis humani generis is also construed as a means for England to disassociate itself from pirates by both Tindall and Meadows, since if pirates are the enemies of all, the suppression of piracy concerns all the nations of the world, who in that sense share the responsibility the English were eager not to be held to. If England could legally and

²²⁷ High Court of Admiralty, England And Wales, 'The Tryals of Joseph Dawson, Edward Forseith, William May, William Bishop, and John Sparkes, 8.

philosophically delegitimize, and separate itself from, them, it would no longer be perceived as “a nest of Pirates”.²²⁸

All of the above boils down to what Hedges tellingly referred to as “the Discipline of the seas”.²²⁹ A notion which entails orderly conduct of subjects and offices, both in material labour and in thought, across legal spaces to ensure orderly trade and control. It is an expression of the modernisation of the English state that accelerated in the years following the Glorious Revolution. It was also to a large extent a failed policy, both in its lack of popular support in England and its colonies, and in England’s incapability to erect anything other than a patchwork legal order, unable to apprehend one of history’s most notorious pirates.

Further Research

An aspect of sovereignty and piracy not brought up in this thesis is the two concepts’ relation to property. In John Locke’s *Second Treatise of Government* social contract is inextricably linked to his theory of property. Mirroring Grotius, Locke calls the ocean “that great and still remaining Common of Mankind”.²³⁰ Where the sea begins, law and sovereignty end: “the Government has a direct Jurisdiction only over the Land”.²³¹ While ships can be interpreted as floating pieces of territory, they are most definitely floating pieces of property as well and by that bound to the laws of the society that enables and protects it.

This might provide another way to theorize traveling with law, that property and ownership could constitute a bond between pirates and states by the ships or goods they steal. According to Locke’s writing about conquest, things procured by force do not become the legitimate property of the conqueror.²³² This could mean, for example, that the legal continuity supposedly broken by a mutiny persists by virtue of the ship’s status as property within a specific legal system.

²²⁸ High Court of Admiralty, England And Wales, ‘The Tryals of Joseph Dawson, Edward Forseith, William May, William Bishop, and John Sparkes, 8.

²²⁹ High Court of Admiralty, England And Wales, ‘The Tryals of Joseph Dawson, Edward Forseith, William May, William Bishop, and John Sparkes, 8.

²³⁰ Locke, *Two Treatises of Government*, §30, 307.

²³¹ Locke, §121, 367.

²³² Locke, §176, §183.

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Illustrations

FIGURE 1. Scotland, Privy Council of. *English: Proclamation for Apprehending Henry Every, Alias Bridgeman, and Sundry Other Pirates. Edinburgh: Printed by the Heirs and Successors of Andrew Anderson, Printer to His Most Excellent Majesty, Anno Dom. 1696. Privy Council of Scotland.* 19 June 2011. This image is available from the National Library of Scotland Ann Arbor, Michigan: University of Michigan Library, 2009 Early English Books Online - Text Creation Partnership. https://commons.wikimedia.org/wiki/File:Proclamation_for_apprehending_Henry_Every.jpg.

FIGURE 2. Anonymous. *English: The Title Page of The Tryals of Joseph Dawson, Edward Forseith, William May, William Bishop, James Lewis, and John Sparkes (London: Everingham, 1696) This Report Was Issued Following the Trial of Some of Pirate Henry Every's Captured Crewmembers by the High Court of Admiralty.* The 28-Page Report Was Released as a Folio Pamphlet. It Is Available at the Library of Congress. 19 June 2011. Microfilm reproduction of original in the British Library Ann Arbor, Michigan: University of Michigan Library, 2009. Early English Books Online - Text Creation Partnership. https://commons.wikimedia.org/wiki/File:Trials_of_Joseph_Dawson_et_al.png.

FIGURE 3. Anonymous. 'A Copy of Verses, Composed by Captain Henry Every, Lately Gone to Sea to Seek His Fortune.' London: Printed for Theophilus Lewis, 1694. Pepys Ballads 5.384. Magdalene College - Pepys.

FIGURE 4. Unknown author, *English: Pirate Captain Henry Every Is Depicted on Shore While His Ship, the Fancy, Engages an Unidentified Vessel.*, 18th century engraving, 18th century engraving, <http://images.fineartamerica.com/images-medium-large/henry-every-c-1653-c-1712-notorious-everett.jpg>, https://commons.wikimedia.org/wiki/File:Henry_Every.gif.

FIGURE 5. Tindal, Matthew, 1653?-1733. *An Essay Concerning the Laws of Nations, and the Rights of Sovereigns with an Account of what was Said at the Council-Board by the Civilians upon the Question, Whether their Majesties Subjects Taken at Sea Acting by the Late King's Commission, might Not be Looked on as Pirates? : With Reflections upon the Arguments of Sir T.P. and Dr. Ol / by Mat. Tindall.* London, Printed for Richard Baldwin, 1694. <https://search-proquest-com.ezproxy.ub.gu.se/docview/2240918217?accountid=11162>.

FIGURE 6. Meadows, Philip. *Observations Concerning the Dominion and Sovereignty of the Seas: Being an Abstract of the Marine Affairs of England*. [London] in the Savoy: printed by Edw. Jones, 1689.
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