

Maritime Law as Propaganda: The Case of Piracy Suppression in the British Atlantic

World histories do not seek to expand the geographic scope of traditional national histories simply to provide greater geographic and demographic coverage. Their aim is to produce narratives that challenge the framework of the nation-state, national history, and national identity. This methodology is particularly apt in the field of imperial studies because it directs one's attention to the tensions and dissonance between centers and peripheries, something to which contemporary writers—both in metropolises and overseas—were more attuned than modern historians have been. Studies of maritime trade shed light on the intricate dynamics between centers and peripheries. This is particularly true for the study of maritime crime, which underscores the contrasting circumstances, challenges, economic interests, and legal beliefs of metropolitan governments and local populations. The following examination of British piracy law suggests that it was a central component of a broad public-relations campaign by the imperial government against the commercial habits and legal beliefs of maritime communities around the British Atlantic. It aimed to transform the public's supportive attitude toward piracy and secure support for the Crown's piracy-suppression campaign. A list of online resources is provided in an appendix.

Piracy Law and State Power

Studies of early-modern piracy in the British Atlantic are shaped by the way historians understand state power in the eighteenth century. Piracy specialists have regarded the prevalence of piracy as a gauge for the power and legitimacy of the British state. The prevailing understanding of the rise and fall of Atlantic piracy takes the 1720s as a line of demarcation that signaled the end of the golden age of piracy and the beginning of a golden age of privateering. To these historians, this shift reflected the growth of British naval command in

the Atlantic World, as British officials on land and sea used the Royal Navy, the customs service, and the courts to confront, chase, capture, and execute pirates. And by suppressing piracy, they delegitimized it, turning public opinion against pirates and their commercial and political backers. According to this understanding of piracy's demise, the Royal Navy functioned as an effective police force, which in the course of a single generation (from the late 1690s to the 1720s), transformed the Atlantic from a wild, violent frontier into an orderly locus of maritime commerce and state-regulated privateering.

The chronology of this development is important, for it indicates a rapid and forceful suppression at sea and in port, which brought local courts and officeholders into compliance with Parliament and changed the commercial habits and legal beliefs of merchants, middlemen, and consumers throughout the British Atlantic. Effective policing converted coastal towns from enablers and supporters of piracy to enemies of it; from communities that ignored imperial law, to communities that internalized and adhered to it.¹

This historical narrative builds on traditional national histories that chart the gradual consolidation of power in central governments as peripheral regions and populations oriented themselves toward the metropole and integrated into a national community. These studies of piracy expand the geographic scope of investigation to cover the Atlantic Ocean, presenting a tale of successful state building on a grand geographic scale. They argue that the imperial government extended naval policing from British coastal waters to American waters and instilled metropolitan sensibilities in peripheral communities, thus integrating them into a strong imperial state governed from the center. These studies thus envision a powerful imperial state capable of policing remote coastlines and shaping the commercial behavior and legal beliefs of local populations in distant ports. By contrast, more recent studies on piracy, naval power, and state power suggest that frontier conditions in the Atlantic were persistent, and that this civilizing conquest of the ocean and distant port towns was more aspirational than real.² This body of scholarship indicates that piracy was not suppressed in the eighteenth century, and that when it disappeared in the 1830s and '40s, it did so peacefully, rather than under pressure from naval policing. (Economic forces made it less profitable, especially following the outbreak of a stable peace in 1815).³ Moreover, the public remained happily complicit in piratical activity in the eighteenth century, just as it had been during piracy's "golden age" in the seventeenth. Despite increasingly harsh anti-piracy legislation, the Atlantic in the eighteenth and early-nineteenth centuries remained a wild frontier, in which commerce raiding was the norm, not the exception.

What these studies point to is a vast and growing distance between statutory law and commercial practice at sea. This distance between imperial law and commercial practice reflected the physical distance between the seat of government and the myriad locations of commercial activity. Governments' efforts to bridge this ethical gap, therefore, involved attempts to bridge the geographic gap as well, by intensifying central governance and

diluting local governance in distant jurisdictions and at sea. This observation suggests that one should understand statutory law on piracy as a form of propaganda regarding the reach of state authority. The law should be understood as a proclamation of national governments' policy aspirations and their presumptions to jurisdiction and influence in peripheral communities. Such propaganda remained unconvincing under governments that demonstrated to constituents daily that they did not have the capacity to enforce the law.

The Gap between Law and Practice

Statutory law and royal proclamations and regulations from the seventeenth and eighteenth centuries—that is, during the golden age of piracy and the age of privateering that allegedly displaced it—clearly delineated the criminality of piracy. Yet imperial officials routinely complained about recalcitrant local communities that continued to support piratical enterprises, not only by trading in pirated goods and outfitting pirate vessels, but also by shielding accused pirates from prosecution. Distress over the flourishing pirate trade reflected broader imperial frustration with the government's inability to enforce its commercial laws regarding trade with the enemy in wartime, smuggling, contraband trade, and wrecking.⁴

Numerous ports, such as Newport, New York, Philadelphia, Charles Town, Nassau (New Providence), and Kingston (Jamaica), were known as hospitable harbors for pirates, with lucrative markets for pirated goods. Colonial governors and other local officials offered pirates (and other illegal traders) capital, intelligence, contacts, and legal aid, as well as privateering commissions and royal pardons.⁵ Indeed, the Board of Trade complained that even colonial judges and prosecutors were complicit in this effort by bringing piracy cases to trial before evidence was secured, or by using other procedural maneuvers designed to ensure acquittal.⁶ It is evident that these provincial officials were not corrupted into tolerating and participating in piracy; they simply shared the commercial interests and legal beliefs of their constituents and neighbors. Maritime raiders, or pirates, were not part of a fringe or underground criminal subculture; they were seen as legitimate traders who conducted their business openly and enjoyed material, civic, and political rewards for their service to their local economies, communities, and governments.⁷

Pirates were an integral component of coastal communities and even rose to positions of prominence.⁸ It was common for merchants and wealthy public officials to invest in piratical or privateering expeditions.⁹ These economic ties were cemented with social relations, as merchants and local officials entertained pirates, who reciprocated with gifts or special discounts for these men and their families. A contemporary account of New York politics from 1695, for example, reports on the exchange of expensive gifts between pirates and the colonial governor as part of efforts to encourage pirates to bring their cargoes to New York.



Image 1: L. Jean Leon Gerome Ferris's "Captain Kidd in New York Harbor," first published in 1932, is a romanticized view of a notorious privateer turned pirate welcoming two women aboard his ship at New York Harbor in the eighteenth century. Source: In the Public Domain at https://kn.m.wikipedia.org/wiki/%E0%B2%9A%E0%B2%BF%E0%B2%A4%E0%B3%8D%E0%B2%B0:Captain_Kidd_in_New_York_Harbor_cph.3f06373.jpg.

Similarly, Governor William Phips of Massachusetts received £1,500 from pirates in 1694 as part of a similar arrangement.¹⁰ Governor William Markham of Pennsylvania married his daughter to a known pirate, who later won a seat in the Pennsylvania Assembly.¹¹ The result of such exchanges was a reciprocal and mutually beneficial relationship between individuals who performed different roles in local economies and administrations, but who often came from the same social and economic circles. The merchant community, which was involved in piracy both directly and indirectly, was also well represented in colonial assemblies and councils.

Because coastal communities saw maritime raiders as conventional merchants, they resented and resisted efforts by imperial agents to harass and prosecute merchants, sea captains, and crews for engaging in commerce. This explains why, when New York's Governor Bellomont (1698–1701) hounded pirates and their backers, he triggered angry responses and intense political pressure from colonial subjects and their commercial associates in London. Local authorities obstructed his endeavors and tried to have him recalled, claiming that the governor was secretly working in the service of the Dutch to drive trade away from New York.¹² This strident opposition no doubt explains the decision of Bellomont's successors

to discontinue his policies. In 1704, New York's provincial council invited a pirate captain from Rhode Island to bring his prizes to New York by assuring him that the colony's Vice Admiralty judge did not obstruct such trade.¹³

The general public opposed the central government's anti-piracy campaign on economic grounds, but also on legal grounds. British and Anglo-American coastal communities believed that the sea was not governed; it was beyond the control of governments and courts of law. Even among jurists, there was a lack of clarity as to whether governments and courts had jurisdiction at sea. As late as the early-nineteenth century, the United States Supreme Court, under the leadership of John Marshall (who was not shy about claiming broad jurisdiction for the federal government) rejected American claims to jurisdiction at sea. Marshall's court held that activities outlawed by statute were, in fact, protected—or at least beyond the range of prosecution—on the high seas.¹⁴

The mechanism by which British imperial authorities aimed to communicate to constituents the criminality of unauthorized commerce raiding was harsh and effective enforcement of anti-piracy regulations. But the central government's efforts proved unequal to the task. Despite ratcheting up the law-enforcement and public-relations campaign against pirates and their accomplices, and despite the increased severity of penalties imposed on those convicted, the government curtailed neither maritime raiding nor the volume of pirated goods making their way to port towns. Indeed, the scope of piracy increased, a fact reflected in marine insurance rates in the seventeenth and eighteenth centuries, as well as in data from British, Spanish, and American criminal courts, official reports of the British Admiralty and United States Navy, and Parliamentary and Congressional legislation.¹⁵

The campaign to suppress and delegitimize unauthorized raiding at sea was unsuccessful, but it offered agents of state authority an opportunity to articulate—through legislation—an ideology of law and of state. Anti-piracy laws and proclamations reflected the imperial government's vision of its powers and jurisdictions. Yet this vision, and the policies it informed, were actively and successfully resisted by British subjects, who clung to more archaic views of society, state, and the law. This resistance was a product of economic self-interest, but also of genuinely held legal and constitutional beliefs. The backward-looking, traditional, localist worldview of wide swaths of British society (on both sides of the ocean) prompted and fueled active opposition to the policing and regulation of maritime trade.

This is evidenced by the fact that this resistance was not merely impulsive or lawless; it was articulated in legalistic and constitutional terms. Local communities not only differed with Parliament and the Crown about the criminality of a host of commercial activities, but also rejected the national government's claim to jurisdiction at sea and within the localities. This divergence between local communities and accepted custom, on the one hand, and the national government and the civil law, on the other, was particularly evident with regard to the sister industries of piracy and smuggling.

The massive scope of illegal trade in the British Empire reveals an early-modern commercial mentality—a conviction that these outlawed trades were conventional and legitimate. But it also reveals an early-modern political mentality. The investors and mariners involved in piracy (like those involved in other outlawed maritime trades) saw themselves as law-abiding and patriotic subjects or citizens. Rather than elevating private interest above the public good, they were regarded as providing local communities with cheap goods and lucrative markets (as Bellomont’s harsh experience in New York illustrates). Indeed, the de facto policy of “salutary neglect” in British America—characterized by, among other things, lax regulation of maritime trade laws—was beneficial to colonial economies. Piratical trade doubtless cut into the king’s revenues (since all pirated goods were smuggled to port), but it brought cheap commodities and imports into local communities and expanded the scope of commercial activity in individual colonies and in the empire as a whole.

Unauthorized commerce raiding, therefore, was the product not of a deficit of loyalty and patriotism but of a conventionally localist view of the economy and of the state. Indeed, accusations of disloyalty prompted illegal traders, their associates, and local officials to engage in a public debate with royal and Parliamentary authorities, explaining that adhering to local custom was not illegal or unpatriotic. This long-running debate—conducted through violent confrontations at sea and port, and through litigation, lobbying, and the press—was a constitutional one, centering on whether the new statute or the old custom held the legitimacy of law.¹⁶

In the face of a stream of statutes and regulations that became increasingly assertive and punitive, and despite increased enforcement efforts by the Royal Navy, customs service, the preventive service, coastal blockade, and coast guard, law-enforcement efforts

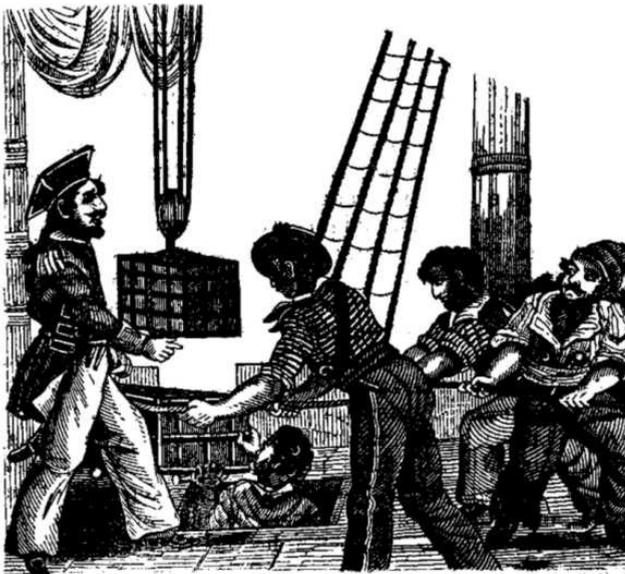


Image 2: “Captain [Henry] Avery receiving three chests of treasure on board of his ship” after robbing a ship belonging to the Emperor Aurangzeb off India on September 6, 1695. Although the subject of a global manhunt, Avery subsequently vanished. From Charles Ellms, *The Pirates Own Book: Authentic Narratives of the Most Celebrated Sea Robbers*, published in 1837. In the Public domain under provisions for use provided at <https://www.gutenberg.org/files/12216/12216-h/12216-h.htm>.

remained inadequate to the task. Maritime raiding, and the black market it supported, remained a key component of Britain's imperial economy throughout the eighteenth and early-nineteenth centuries, providing cheap goods for consumers and good jobs for many inhabitants in coastal communities—sailors, dock workers, transporters, hawkers, retailers, and others.¹⁷

Central governments remained powerless to legislatively alter local practices of maritime trade as late as the mid-nineteenth century. Nineteenth-century administrators charged with the task of enforcing metropolitan policies in American waters echoed the frustrated complaints of their seventeenth- and eighteenth-century predecessors, castigating locals for colluding en masse with criminals against the government.¹⁸

The Geographic Gap

When examining the vast gap between law and commercial practice at sea, one must keep in mind that, even on land, the central government faced serious difficulties in imposing its will and authority, enforcing the law, providing security on roads and city streets, collecting taxes, and, above all, convincing its subjects of the legitimacy of such efforts at centralized governance. This was doubly true at sea and at the water's edge, where the government's reach exceeded its grasp, and where its jurisdiction was highly contested, and mostly ignored.

Coastal villages and port towns were the point of contact between maritime commerce and the more ordered commerce of landed communities. And they exhibited the friction between the unregulated, violent nature of seaborne trade, and the law enforcement and taxation initiatives of landed governments. The increasingly severe rhetorical, legislative, and judicial measures against illegal trade were not effective in deterring pirates and their confederates from their trades, but these endeavors reflected the growing frustration of government agencies with the open lawlessness in the country. They also reflected the increasingly desperate financial needs of the treasury.

But if the government's law-and-order campaign was an effort to communicate to the public new standards of criminality (by punishing wrong-doers), the limited number of law-enforcement agents in distant ports undermined both undertakings. Woefully outnumbered by active supporters, allies, and partners of pirates, law-enforcement agents in Britain—and even more so in the colonies—were too few and marginalized to do their job effectively.

The post of customs officer was a thankless job, involving an unattractive combination of low wages, social isolation, and high risk of violence and prosecution. While customs authorities and prosecutors did have intermittent success in capturing pirated cargoes and bringing accused pirates to court, they were surrounded by hostile populations and local officials who discouraged imperial agents and magistrates from dutifully enforcing imperial trade laws.¹⁹

This was especially true in ports other than London, especially in the north and west of England. Scottish and Irish ports, even more than English ones, were known for hostility toward the customs service. Ireland, in particular, operated as a de facto free-trade zone.²⁰ Indeed, the stark violence toward customs agents that was evident in England was not as prevalent in Ireland and North America, because customs enforcement there was much weaker than along England's southern coast. (And it is notable that when enforcement efforts picked up in the American colonies in the 1760s, so did violence against customs officers.²¹)

Because distance strained available manpower and hampered efforts to curb and delegitimize piracy, the British government took various measures to enhance the presence of governmental enforcers at sea and in distant ports. For example, because local juries and magistrates habitually sheltered maritime and coastal raiders from arrest and prosecution, Parliament transferred piracy cases in 1700 from civilian courts to newly established Vice-Admiralty Courts (military tribunals).²² In response to continued depredations, governors were instructed to commission British warships within their jurisdictions to confront pirates at their host ports. During the Seven Years' War, Britain established coastal patrols by the preventive services to enhance enforcement, and also expanded the size and mandate of the customs service.²³

The solution to the problem of distance, therefore, was transporting or attracting more manpower to police the various localities of imperial trade. To the same end, imperial administrators also attempted to change bureaucratic structures to dilute what they considered the corrupting influence of local communities and institutions on enforcement agents of the royal government. The Revenue Act of 1762 and Sugar Act of 1764 established tighter Parliamentary supervision over customs agents, stipulated harsher penalties for collusion with suspected offenders, and prohibited the appointment of officers in ports near their places of birth or recent places of residence. Simultaneously, Parliament also provided measures to shield agents (and naval officers) from political pressure and judicial retaliation. For example, Parliament authorized changing the venue of trials against customs agents from the local court to a British court.²⁴

Law as Propaganda—The Credibility Gap

While these efforts did result in more productive collection of the customs during and after the Seven Years' War, the evidence indicates that the black market in pirated and smuggled goods continued to expand. Moreover, the public proved highly resistant to the government's effort to delegitimize unauthorized commerce raiding. Maritime raiding was regarded as both conventional and economically helpful to local economies (and also to the imperial economy). By contrast, the notion that landed governments had the jurisdiction and authority to disallow certain commercial practices at sea was regarded as unconventional and novel, as well as economically injurious.

Although the campaign against piracy failed to convince locals to shun pirates and pirated goods, it reveals a recognition on the part of imperial officials that a campaign against illegal trade required a public-relations campaign against the commercial, legal, and moral beliefs of consumers, merchants, and officeholders.²⁵ Simply outlawing certain trades by statute was not achieving the desired result. The fact that such acts and regulations were re-issued regularly and with escalating rhetorical ferocity indicates governmental frustration over continued practices; it should not be construed as inaugurating or reflecting new commercial ethics at sea or port.²⁶

This observation is a methodological critique directed at piracy specialists by legal and cultural historians. They point out that modern observers, including historians, have a natural tendency to project onto the eighteenth century the jurisprudence, sensibilities, and logic of the modern nation-state; to accept as ancient and self-evident what was, in fact, novel and quite contentious.²⁷ Modern accounts of piracy tend to give credence to early-modern statutes, royal proclamations, and Parliamentary rhetoric as credible indications of reality on board ships, in port towns, and in local government bureaucracies. But if a similar approach were adopted to study contemporary society, one might conclude that the government has curbed a host of social ills that, in actuality, it has been impotent to delegitimize, let alone control. Drug abuse and underage drinking are two obvious examples.

It is evident that statutes and official records can give a false impression of actual commercial practices and conventions in a society. As important, they do not reveal that they represent only one side of an ideological contest, nor do they reveal the degree to which Parliamentary or royal ideology of state was challenged or merely ignored locally. This suggests that modern scholars should see here two opposing legal belief systems: English custom accommodated the practice of violent seizure and tax evasion, while English law (statutory law, that is) increasingly sought to regulate and, eventually, eradicate these. When scholars discuss piracy using the language of crime, they validate eighteenth-century state rhetoric and ideology, even though all contemporary accounts—official and unofficial—report that British communities did not consider unauthorized maritime raiding to be criminal, illegitimate, or disreputable.²⁸

It is the equivalent of using the language of crime to describe violations of enclosure acts in the sixteenth and seventeenth centuries. There was a legal, ethical, and constitutional debate going on at the time regarding the status of common lands; to refer to the ancient legal use of these lands as crimes—poaching and trespassing—is to accept as established law what was at the time a legal novelty that was hotly debated. If modern readers were exposed only to statutory law regarding enclosures, they would have a skewed and anachronistically modern view of how life was lived locally.

Privateering is a good example of how misleading the civil law can be in this respect. New governmental regulations in the early-eighteenth century indicate, to some scholars, that privateering had become a well-regulated business, “from the initial license to the

final decree in prize court.”²⁹ Indeed, European privateering commissions articulated the precise boundaries of legitimate commerce raiding, revealing metropolitan governments’ view of the legal and ethical line separating pirate from privateer.³⁰ These commissions offer lengthy and detailed legal procedures for capturing prizes, bringing them to port, and claiming title to them in court. Other acts, regulations, and royal proclamations provide exhaustive elucidation of the terms and restrictions binding privateers.³¹ These were supplemented by copious explanations of prize procedures, outlining procedures for processing prize claims, addressing the protests of aggrieved shipmasters or proprietors, assessing competing claims, and so forth.³² Privateer owners borrowed this legal boilerplate in their instructions to ship captains,³³ and admiralty courts applied such laws, regulations, and proclamations to actual cases brought before them.³⁴

Modern histories can thus point to these early-modern sources as a robust body of legal and bureaucratic evidence of a highly regulated privateering industry in the seventeenth and eighteenth centuries. While historians acknowledge, in passing, that such regulations were not effective at actually regulating the trade, they nevertheless present the dividing line between pirate and privateer as real.³⁵ In treating statutes, royal proclamations, and Parliamentary rhetoric as reliable reflections of actual commercial practices at sea, they give credence to Parliamentary and royal presumptions of authority, jurisdiction, and effectiveness on the peripheries of the British state; even though virtually all modern scholars and early-modern observers acknowledge that it was impossible to keep privateers within the



Image 3: The East Indiaman *Kent* (left) battling the privateer *Confiance*, commanded by French corsair Robert Surcouf in October 1800, as depicted by Ambroise Louis Garneray in a painting from about 1850. Source: In the Public Domain at https://commons.wikimedia.org/wiki/File:Confiance_Kent_fight.jpg.

bounds of their commissions and prevent them from broadening their operations into open piracy.³⁶

Moreover, privateering commissions attracted more individuals to commerce raiding and made Atlantic shipping more risky and violent. These licensed commerce raiders, many of whom were known pirates, utilized the same types of vessels and tactics as pirates, and often targeted the same prizes. By issuing privateering commissions, kings converted throngs of pirates in the Atlantic into law-abiding privateers. Only by accepting the language of the law—that these privateers were indeed agents of the state and essentially distinct from pirates—as a credible description of reality can a modern observer claim that piracy disappeared in the early eighteenth century.³⁷

By contrast, seventeenth- and eighteenth-century people, as products of a pre-modern state, intuitively accepted as a practical and ethical reality the murkiness and irrelevance of these legal categories—pirate and privateer—that were created by Parliament. Whereas state authorization for commerce raiding matters a great deal to modern piracy scholars, it was a relatively hollow concept in societies that did not recognize the state's jurisdiction, legal authority, or moral legitimacy to allow or disallow commerce raiding.

A 1795 scholarly study by Georg Friedrich de Martens on the laws governing privateering offers an illustrative example of this eighteenth-century mentality. De Martens points out that laws regulating privateering were “ill-observed” and that privateers exceeded their legal bounds as a matter of course. He reminds his students that these laws “console people for the evils which [strength occasions]; they give an idea of justice in the same manner as portraits give [an idea] of persons, whom we cannot behold.”³⁸ This observation is a salient reminder to modern readers that, even in the late eighteenth century, prize law functioned as a facade, conjuring for historians a semblance of order that contemporary merchants, vendors, laborers, and mariners did not perceive. So, while the line dividing pirate from privateer was legally valid according to the civil law, it was culturally untrue and—according to common law—also legally dubious.

This suggests that one should regard statutory law on these matters not as law—like the law that requires drivers to stop at a red light—but as a form of propaganda of state building. It failed in the eighteenth century to wash away constituents' attachment to local custom, common law, and local governance, but it was successful eventually. And this body of laws, regulations, and commissions in the archives creates an illusion of order that is real and sensible to historians of piracy, but which was neither real nor sensible to contemporaries.

As Douglas Hay's work on law and authority demonstrates, the strict and clear language of the criminal law cannot be taken as evidence of its application in practice, nor of popular acquiescence to it, nor of public acceptance of the central government's presumption to dictate standards of criminality.³⁹ Scholars like J. E. Cookson, Jack Greene, James

Henretta, Christopher Hill, and Joanna Innes reflect a similar understanding, pointing out that the law—as enacted by Parliament and understood by the Crown—differed from the legal beliefs, as well as the informed legal opinion, of wide segments of British society.⁴⁰ Statutory law was a tool for implementing and for explaining the emerging doctrines of Parliamentary supremacy and imperial Parliamentary jurisdiction, which were forming in governmental circles in London in the mid-eighteenth century.⁴¹ This is why the Crown went to the trouble of publishing and disseminating proceedings of piracy trials. But by the same token, the ease with which merchants, mariners, and their collaborators got around the law, upheld and explained a more archaic understanding of law, of state, and of the proper boundary between central and local authority.

On state jurisdiction at sea—for example, with regard to piracy—the English state had claimed sovereignty in the “British Seas” since the late-fourteenth century.⁴² Successive generations of Englishmen, therefore, were born, lived, and died with the recognition that despite the Crown’s rhetoric, the sea was free from governmental control and jurisdiction. Legislation that condemned maritime raiding and upheld state jurisdiction at sea was very old, but so was the widespread practical experience of the state’s *de facto* impotence at sea.⁴³ Commerce, as practiced, sent British constituents a signal stronger than any statute as to what business practices were legal, customary, and acceptable. In a political culture that did not codify state authority and jurisdiction, common practice and common law were the primary guides as to what was constitutional.⁴⁴

Conclusion

The accepted storyline on the rise, decline, and fall of Atlantic piracy is a tale of civilization taming a wild frontier. This narrative of creeping civilization imposed by state agents—marshals, armed forces, courts, and gallows—was meaningful and purposeful to Britons and Americans in the late-nineteenth and twentieth centuries. Energized national governments used frontiers on land and sea to articulate and uphold the difference between legitimate authority and force and illegitimate violence. This framing of frontiers cast nation-states as agents of civilization, and challengers to state authority as illegitimate agents of violence and disorder. It was during this period that the Great Powers discontinued privateering, drawing a sharp moral distinction between the force employed by government vessels and the violence applied by private vessels and the rogue regimes that commissioned them.

This historical narrative of national governments monopolizing violence on the periphery reflects the ideology of state that produced concepts such as absolutism, parliamentary supremacy, imperial Parliamentary jurisdiction, and nationalism. But this assessment of borderlands has been challenged since the 1990s by a recognition that frontier conditions were persistent and sustainable, and that national authorities often acquiesced to local customs, political arrangements, and power brokers. This borderlands scholarship suggests

that although the state's monopoly on violence was articulated in law, it was not accepted as legitimate or as a practical reality in peripheral communities, even as they accepted state sovereignty in other matters.⁴⁵

Although this assessment of frontiers has gained ground in scholarship on fields as varied as the Roman Empire, medieval Europe, and the American and Canadian west, it remains quite controversial in maritime and naval history. Perhaps the idea that a navy can police and command an ocean seems plausible because a wealth of archival sources articulate governmental jurisdiction and control over commercial activity at sea. These data condition modern observers to conceptualize the ocean as a zone of laws and jurisdictions. Moreover, the vastness of the ocean is probably beyond the spatial imagination of those (including most scholars and students) who have never been to sea. It is difficult to grasp how much privacy such expanses of water offer mariners not only in the eighteenth century, but also today.⁴⁶

Indeed, what likely explains modern credulity regarding governmental authority and enforcement at sea in the eighteenth century is that modern conceptions of oceans were formed in the age of steam, when industrial economies made their citizens less familiar with life at sea, when steam technology really did make navies more effective against interlopers, and when the idea of state jurisdiction at sea went from being legally dubious to a confused but nominally established doctrine of international law.⁴⁷

Fundamentally, the legitimacy that the state and statutory law enjoy in the hearts and minds of modern constituents is borne by firsthand experience that the state actually does have the practical ability to monopolize violence, to disarm non-state actors, to outlaw and delegitimize certain activities, and to enforce unpopular statutes from border to border, and even at sea. Governments did not enjoy this kind of credibility and legitimacy in the eighteenth century because they repeatedly demonstrated to constituents—through their failure to curb piracy and illegal trade, for example—that they did not have the capacity to exert real power locally. So the law, as a form of propaganda, remained unconvincing then.⁴⁸

In observing that “power tends to corrupt and absolute power corrupts absolutely,” Lord Acton suggested that wielding power over others encourages moral weakness in a ruler. But his central critique in this regard was that powerful rulers tend to corrupt those who observe and study them, namely historians. It is a useful warning to keep in mind when one studies state authority and legitimacy. Modern people—historians included—have been living within the modern nation state for roughly 150 years. We were born into it, we live in it, we educate our children and students in it; our children and students do the same, and on it goes. We observe tremendous administrative power wielded by our government bureaucracies in virtually every facet of our lives, and literally every single day of our lives. It is therefore natural for us to see the instruments, assumptions, and language

of state power as credible. Thus, when we encounter such assumptions and language in eighteenth-century statutes and regulations, our own experience of observing state power in our daily lives makes us credulous; and it obscures from us the credibility gap that contemporaries experienced between law and custom.

Appendix

Online Resources on Atlantic Piracy and Maritime Borderlands:

- Mark F. Hall, comp., Library of Congress, Virtual Programs and Services, “Golden Age of Piracy: A Resource Guide,” <https://www.loc.gov/rr/program/bib/pirates/index.html>.
- Mark G. Hanna, “A Lot of What Is Known about Pirates Is Not True, and a Lot of What Is True Is Not Known,” *Humanities* 38:1 (Winter 2017): <https://www.neh.gov/humanities/2017/winter/feature/lot-what-known-about-pirates-not-true-and-lot-what-true-not-known>.
- William Langewiesche, “Anarchy at Sea,” *The Atlantic* (September 2003): <https://www.theatlantic.com/magazine/archive/2003/09/anarchy-at-sea/376873/>.
- Brethren of the Coast, “Pirate Biographies,” http://brethrencoast.com/Pirate_Biographies.html.
- National Museum for American History, Behring Center, “Stories from Maritime America,” https://americanhistory.si.edu/onthewater/exhibition/1_5.html.
- The Pirates Realm, “Pirate Flags,” <https://www.thepiratesrealm.com/pirate%20flags.html>.

Guy Chet is Professor of History at the University of North Texas, teaching classes on early-American and military history. His first book (*Conquering the American Wilderness: The Triumph of European Warfare in the Colonial Northeast*) is a study of English and American military culture. Addressing narratives of Americanization and Anglicization, it points to trends of cultural continuity between the Old World and the New. This theme of transatlantic cultural cohesion is also at the heart of his subsequent books—on the origins, nature, and ends of the American Revolution (*The Colonists’ American Revolution: Preserving English Liberty, 1607–1783*), and on Atlantic piracy and illegal trade (*The Ocean is a Wilderness: Atlantic Piracy and the Limits of State Authority, 1688–1856*). Portions of this essay are drawn from *The Ocean is a Wilderness*, with the kind permission of the University of Massachusetts Press. He can be contacted at Guy.Chet@unt.edu.

NOTES

¹ Marcus Rediker, *Between the Devil and the Deep Blue Sea: Merchant Seamen, Pirates, and the Anglo-American Maritime World, 1700–1750* (Cambridge: Cambridge University Press, 1987), 256, 281–5; Marcus Rediker, *Villains of All Nations: Atlantic Pirates in the Golden Age* (Boston: Beacon, 2004), 127, 144; Robert C. Ritchie, *Captain Kidd and the War against the Pirates* (Cambridge: Harvard University Press, 1986), vi, 235–6; Robert C. Ritchie, “Government Measures against Piracy and Privateering in the Atlantic Area, 1750–1850,” in *Pirates and Privateers: New Perspectives on the War on Trade in the Eighteenth and Nineteenth Centuries*, ed. D. J. Starkey, E. S. van Eyck van Heslinga, and J. A. de Moore (Exeter: University of Exeter Press, 1997), 10–12, 16; N.A.M. Rodger, *The Command of the Ocean: A Naval History of Britain, 1649–1815* (New York: Norton, 2005), 232; Daniel A. Baugh, ed., *Naval Administration 1715–1750* (London: Navy Records Society, 1977), xiii; David J. Starkey, *British Privateering Enterprise in the Eighteenth Century* (Exeter: University of Exeter Press, 1990), 19; James G. Lydon, *Pirates, Privateers and Profits* (Upper Saddle River: Gregg Press, 1970), 30–33, 36–59, 260; Janice E. Thomson, *Mercenaries, Pirates, and Sovereigns: State-Building and Extraterritorial Violence in Early Modern Europe* (Princeton: Princeton University Press, 1994), 51–53; Peter Galvin, *Patterns of Pillage: A Geography of Caribbean-based Piracy in Spanish America, 1536–1718* (New York: Peter Lang, 1999), 1; Kris E. Lane, *Pillaging the Empire: Piracy in the Americas, 1500–1750* (Armonk: M. E. Sharpe, 1998), 165, 191; Mark G. Hanna, “The Pirate Nest: The Impact of Piracy on Newport, Rhode Island and Charles Town, South Carolina, 1670–1730” (PhD dissertation, Harvard University, 2006), 8–9; Joel Baer, “General Introduction,” in *British Piracy in the Golden Age: History and Interpretation, 1660–1730* (New York: Routledge, 2016), vol. I, xiv, xvii; Benerson Little, *The Sea Rover’s Practice: Pirate Tactics and Techniques, 1630–1730* (Washington, DC: Potomac Books, 2005), 15–16; Shirley Carter Hughson, *The Carolina Pirates and Colonial Commerce, 1670–1740* (Baltimore: Johns Hopkins Press, 1894), 128; Clarence Henry Haring, *The Buccaneers in the West Indies in the XVII Century* (London: Methuen, 1910), 272; Jenifer Grant Marx, *Pirates and Privateers of the Caribbean* (Malabar: Krieger, 1992), 8–9; Fabio Lopez Lazaro, “Predation’s Place within Profit: Pirates and Capitalists within the Seventeenth-Century Rise of Lockean Liberalism,” *International Journal of Maritime History* 23 no. 1 (June 2011), 250, 275; Alejandro Colas and Bryan Mabee, “Flow and Ebb of Private Seaborne Violence in Global Politics: Lessons from the Atlantic World, 1689–1815,” in *Mercenaries, Pirates, Bandits and Empires: Private Violence in Historical Context*, ed. Colas and Mabee (New York: Columbia University Press, 2010), 101–3; Douglas 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 (October 2009), 896; and Carl E. Swanson, “Privateering in Early America,” *International Journal of Maritime History* 1, no. 2 (1989), 255.

² Lauren Benton, “Colonial Law and Cultural Difference: Jurisdictional Politics and the Formation of the Colonial State,” *Comparative Studies in Society and History* 41, no. 3 (1999): 563–88; Benton, “Legal Spaces of Empire: Piracy and the Origins of Ocean Regionalism,” *Comparative Studies in Society and History* 47, no. 4 (2005): 700–724; Benton, *A Search for Sovereignty: Law and Geography in European Empires* (Cambridge: Cambridge University Press, 2011); Benton, “Toward a New Legal History of Piracy: Maritime Legalities and the Myth of Universal Jurisdiction,” *International Journal of Maritime History* 23, no. 1 (June 2011): 225–40; Guy Chet, *The Ocean Is a Wilderness* (Amherst: University of Massachusetts Press, 2014); Eliga Gould, “Zones of Law, Zones of Violence: The Legal Geography of the British Atlantic, circa 1772,” *William and Mary Quarterly* 60, no. 3 (July 2003): 471–510; Paul

Monod, "Dangerous Merchandise: Smuggling, Jacobitism, and Commercial Culture in Southeast England, 1690–1760," *Journal of British Studies* 30, no. 2 (April 1991): 150–82; Anne Pérotin-Dumon, "The Pirate and the Emperor: Power and the Law on the Seas, 1450–1850," in *Bandits of the Sea: A Pirate Reader*, ed. C. R. Pennell, 25–54 (New York: New York University Press, 2001); Joshua M. Smith, *Borderland Smuggling: Patriots, Loyalists, and Illicit Trade in the Northeast, 1783–1820* (Gainesville: University Press of Florida, 2006); and Thomas M. Truxes, *Defying Empire: Trading with the Enemy in Colonial New York* (New Haven: Yale University Press, 2008). See also Itty Abraham and Willem van Schendel, eds., *Illicit Flows and Criminal Things: States, Borders, and the Other Side of Globalization* (Bloomington: Indiana University Press, 2005), 4–5, 7–9, 19.

³ David Starkey, "A Restless Spirit: British Privateering Enterprise, 1739–1815," in *Pirates and Privateers*, 137–39; Kenneth W. Porter, *The Jacksons and the Lees: Two Generations of Massachusetts Merchants, 1765–1844* (Cambridge: Harvard University Press, 1937), 1:21–22; and Henning Hillman and Christina Gathmann, "Overseas Trade and the Decline of Privateering," *Journal of Economic History* 71, no. 3 (September 2011), 731–33, 740–49; Chet, *The Ocean Is a Wilderness*, 93–94.

⁴ R. G. Marsden, *Documents Relating to Law and Custom of the Sea* (London: Navy Records Society, 1915–16), 2:157; Richard Pares, *Colonial Blockade and Neutral Rights, 1739–1763* (Oxford: Oxford University Press, 1938), 198–210; Pares, *Yankees and Creoles: The Trade between North America and the West Indies before the American Revolution* (Hamden: Archon, 1968), 128; Britain, Public Record Office, *Calendar of State Papers, Colonial Series: America and West Indies*, edited by Sir John William Fortescue (London: Mackie, 1905–1908), 16:256–57, 303, 398, 481, 562; Truxes, *Defying Empire*, 5, 94, 173, 176, 201–4; Joyce E. Harman, *Trade and Privateering in Spanish Florida, 1732–1763* (St. Augustine, FL: St. Augustine Historical Society, 1969), 33, 40–42, 47–59; Cathy Matson, *Merchants and Empire: Trading in Colonial New York* (Baltimore: Johns Hopkins University Press, 1998), 22–23; Wim Klooster, *Illicit Riches: Dutch Trade in the Caribbean, 1648–1795* (Leiden: KITLV Press, 1998), 228, 240; Arthur Pierce, *Tobacco Coast: A Maritime History of Chesapeake Bay in the Colonial Era* (Baltimore: Johns Hopkins University Press, 1984), 350; Jenny West, *Gunpowder, Government, and War in the Mid-Eighteenth Century* (Rochester, NY: Boydell, 1991), 119–21; Monod, "Dangerous Merchandise," 150, 153–59, 168–75, 181–82; Burgess, *The Pirates' Pact: The Secret Alliance between History's Most Notorious Buccaneers and Colonial America* (New York: McGraw-Hill, 2009), 212–15; Rediker, *Between the Devil and the Deep Blue Sea*, 66, 133–34; Casper F. Goodrich, *Our Navy and the West Indian Pirates: A Documentary History* (Annapolis, MD: United States Naval Institute, 1916–17), 1936–37; Bernard Bailyn, *The New England Merchants in the Seventeenth Century* (Cambridge: Harvard University Press, 1979), 182; Nicholas Magens, *An Essay on Insurances: Explaining the nature of the various kinds of insurance practiced by the different commercial states of Europe, and shewing their consistency or inconsistency with equity and the public good* (London: J. Haberkorn, 1755), 2:357–66; and John Rule, "Wrecking and Coastal Plunder," in *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England*, edited by Douglas Hay et al. (New York: Pantheon, 1975), 167, 172–78, 185–86.

⁵ Hanna, "The Pirate Nest," 135–36; Lydon, *Pirates, Privateers, and Profits*, 50; Thomson, *Mercenaries, Pirates, and Sovereigns*, 50–51; and Joel Best, "Licensed to Steal: Toward a Sociology of English Piracy, 1550–1750," in *Changing Interpretations and New Sources in Naval History*, edited by Robert W. Love (New York: Garland, 1980), 97–98. This contrast between imperial law and common practice was evident also in colonial Latin America, with local elites determining the course of law enforcement. Christoph Rosenmuller, ed., *Corruption in the Iberian Empires: Greed, Custom, and Colonial Networks* (Albuquerque: University of New Mexico Press, 2017), 2–3. See also Jesse Cromwell, *The Smugglers'*

World: Illicit Trade and Atlantic Communities in Eighteenth-Century Venezuela (Chapel Hill: University of North Carolina Press, 2018).

⁶ Hanna, “The Pirate Nest,” 160.

⁷ Waddel Cunningham and Thomas Greg, *Letterbook of Greg & Cunningham, 1756–57: Merchants of New York and Belfast*, edited by Thomas Truxes (London: Oxford University Press, 2001), 34; Porter, *The Jacksons and the Lees*, 1:104; Kenneth Morgan, *Bristol and the Atlantic Trade in the Eighteenth Century* (New York: Cambridge University Press, 1993), 179–80; Matson, *Merchants and Empire*, 270–73; and Christian J. Koot, *Empire at the Periphery: British Colonists, Anglo-Dutch Trade, and the Development of the British Atlantic, 1621–1713* (New York: New York University Press, 2011), 120–21, 124–25, 135–37, 190–91.

⁸ John Esquemeling, *The Buccaneers of America* (London: George Allen & Unwin, 1951; originally published in Dutch, 1678), xii–xiii; Anon., *The Grand Pyrate, or the life and death of Capt. George Cusack the great sea robber* (London: Jonathan Edwin, 1676), 1–31; CSP-Col (*Calendar of State Papers, Colonial Series*), 14:114, 134, 519, 16: vi–vii, xi–xv, 112–14, 256–57, 303, 398, 481, 562; *Niles’ Weekly Register*, 47 (1834–35), 333–34; Gardner W. Allen, *Our Navy and the West Indian Pirates* (Salem, MA: Essex Institute, 1929), 15, 18–19; USCSS, 18th Cong., 1st sess., House Report 124; Best, “Licensed to Steal,” 104–5; John McCusker and Russell Menard, *The Economy of British America, 1607–1789* (Chapel Hill: University of North Carolina Press, 1999), 331–36, 341–44; John R. McNeill, *Atlantic Empires of France and Spain: Louisbourg and Havana, 1700–1763* (Chapel Hill: University of North Carolina Press, 1985), 82, 241n72; Lydon, *Pirates, Privateers, and Profits*, 30, 37–38, 57; Maurice Besson, *The Scourge of the Indies: Buccaneers, Corsairs, and Filibusters, from Original Texts and Contemporary Engravings* (New York: Random House, 1929), 23; Cyrus H. Karraker, *Piracy Was a Business* (Rindge, NH: Richard R. Smith, 1953), 66–104, 138–40, 158, 203–8; W. Cunningham, *The Growth of English Industry and Commerce in Modern Times* (New York: Augustus M. Kelly, 1968), 2:271–72; Lunsford, *Piracy and Privateering*, 1–3, 141–42, 146–50, 158–60; Henry Atton and Henry Holland, *The King’s Customs* (New York: Augustus M. Kelley, 1967), 2:427; Hanna, “The Pirate Nest,” 95, 108–9, 111, 119–97; Marx, *Pirates and Privateers of the Caribbean*, 131, 192–95; W. H. Beehler, “The United States Navy and West India Piracy, 1821–25,” *Frank Leslie’s Popular Monthly* 29 no. 1 (January 1890), 2–3; Burgess, *Pirates’ Pact*, 204–11; Thomson, *Mercenaries, Pirates, and Sovereigns*, 50–51; Hughson, *Carolina Pirates*, 9–14, 18, 22–23, 29–33, 39, 52–54; Frank Bowen, *Ships for All* (London: Ward, Lock, 1952), 201; Goerge F. Dow and John H. Edmonds, *The Pirates of the New England Coast, 1630–1730* (Salem, MA: Marine Research Society, 1923), 342–44, 349; Rediker, *Between the Devil and the Deep Blue Sea*, 133–34; Donald Shomette, *Pirates on the Chesapeake: Being a True History of Pirates, Picaroons, and Raiders on Chesapeake Bay* (Centreville, MD: Tidewater Publishers, 1985), 65–67, 74–75, 95–97; Rodger, *Command of the Ocean*, 232; Haring, *Buccaneers in the West Indies*, 235–36, 253; C. Bradford Mitchell, *A Premium on Progress: An Outline History of the American Marine Insurance Market, 1820–1970* (New York: The Newcomen Society, 1970), 17; and Pierce, *Tobacco Coast*, 206.

⁹ Best, “Licensed to Steal,” 102; Lydon, *Pirates, Privateers, and Profits*, 25, 36–46; Cunningham, *The Growth of English Industry*, 2:271–72; Lunsford, *Piracy and Privateering*, 11–12, 26–27; Michael J. Jarvis, *In the Eye of All Trade: Bermuda, Bermudians, and the Maritime Atlantic World, 1680–1783* (Chapel Hill: University of North Carolina Press, 2010), 83; Richard Grassby, *The Business Community of Seventeenth-Century England* (New York: Cambridge University Press, 1995), 212; and Swanson, “American Privateering and Imperial Warfare, 1739–1748,” *William and Mary Quarterly* 42, no. 3 (July 1985), 358. The crews (who invested their labor and risked their lives) split the profits with

the financial backers of these ventures. Spanish noblemen captured in such attacks were sometimes offered in public auction to anyone who was willing to house and feed them while waiting for their ransoms to be paid. Cunningham, *The Growth of English Industry*, 2:69–70.

¹⁰ CSP-Col, 14:213, 228, 504–5, 15:345, 16: xviii; Cunningham, *The Growth of English Industry*, 2:271–72; Marx, *Pirates and Privateers of the Caribbean*, 192–95; and Thomson, *Mercenaries, Pirates, and Sovereigns*, 50–51.

¹¹ Shomette, *Pirates on the Chesapeake*, 96–98.

¹² Matson, *Merchants and Empire*, 85–87; Thomson, *Mercenaries, Pirates, and Sovereigns*, 51; and Lydon, *Pirates, Privateers, and Profits*, 50–51.

¹³ Lydon, *Pirates, Privateers, and Profits*, 57; Thomson, *Mercenaries, Pirates, and Sovereigns*, 50–51; New York, Governor, *An Ordinance of His Excellency Edward Viscount Cornbury captain general and governour in chief of the provinces of New-York, New-Jersey . . . this fourteenth day of April, 1705. Whereas the Court of Admiralty in the province of New-York has been found to be a great discouragement to privateers (which prevents the security of our coasts, and prejudices our trade) . . .* (New York: William Bradford, 1705); and Anon., *An account of the behaviour and last dying speeches of the six pirates, that were executed on the Charles River, Boston side, on Fryday June 30th, 1704* (Boston: Nicholas Boone, 1704).

¹⁴ From the start, the crime of piracy—including the claim to state sovereignty at sea—was anchored in English civil law, rather than common law. Piracy came into being as a felony not from English case law, but through legislative action. While Henry VIII conferred jurisdiction on common-law courts to decide on piracy cases, the definitions of the offense, as well as the punishment for it, were found in the civil law. Burgess, “Piracy in the Public Sphere,” 897–98; William M. McKinney and Burdett A. Rich, eds. *Ruling Case Law: As developed and established by the decisions and annotations . . .* (New York: Edward Thompson Company, 1918), 21:421; Thomas W. Williams, *The Whole Law Relative to the Duty and Office of a Justice of the Peace* (London: John Stockdale, 1812), 3:555–59. Edward White, “The Marshall Court and International Law: The Piracy Cases,” *American Journal of International Law* 83 no. 4 (October 1989), 728–29, 732–34; Edwin Dickinson, “Is the Crime of Piracy Obsolete?,” *Harvard Law Review* 38, no. 3 (1925), 339–40, 347–48; Benton, “Toward a New Legal History of Piracy,” 226n2, 228; Benton, *Search for Sovereignty*, 28–33; and Gould, “Zones of Law, Zones of Violence,” 474, 478–81, 507. Although rejected by the Marshall court, Parliament’s position regarding state jurisdiction at sea was adopted in some segments of American government, at least with regard to US persons, often with the suggestion that offenses on the high seas fell under the jurisdiction of the national government rather than state or local governments. Pennsylvania, Supreme Executive Council, *Pennsylvania, ss. A proclamation. By the Supreme Executive Council of the Common-wealth of Pennsylvania. Whereas the following named persons, late and heretofore inhabitants of this state . . .* (Lancaster: John Dunlap, 1778); United States, *An Ordinance, to amend an ordinance, entitled, “An Ordinance for establishing courts for the trial of piracies and felonies committed on the high seas”* (Philadelphia, 1783); and United States, Department of Foreign Affairs, *The Secretary of the United States . . . reports the draft of an ordinance for the trial of piracies and felonies committed on the high seas* (New York, 1785). Even in the early twenty-first century, one can detect practical problems with the enforcement of universal jurisdiction at sea with regard to piracy offenses. Benton, “Toward a New Legal History of Piracy,” 226n2; and Abraham and Schendel, *Illicit Flows and Criminal Things*, 4–9, 17–19. See also Tom Farer, ed., *Transnational Crime in the Americas: An Inter-American Dialogue Book* (New York: Routledge, 1999).

¹⁵ Caribbean-based Spanish freebooters operated as far north as New Jersey and New York during the wars of the mid-eighteenth century, persisting in peacetime as well. T 1/380/37, Treasury Board Papers and In-Letters, UK National Archives, Kew; Britain, *The Statutes at Large, from the 30th to the 33rd year of King George II* (Cambridge: Joseph Bentham, 1766), 22:474–75, 479; 78/306, State Papers Foreign, UK National Archives, Kew; *Lloyd's Evening Post and British Chronicle*, issue 260 (March 16–19, 1759); *Gazetteer and New Daily Advertiser*, Issue 15984 (May 5, 1780); *Middlesex Journal or Chronicle of Liberty*, issue 420 (December 7–10, 1771); John Villette, *The Annals of Newgate; or, Male-factors Register* (London: John Wenman, 1776), 1:110–11; Atton and Holland, *The King's Customs*, 1:337, 469; Marion Tinling, ed., *The Correspondence of the Three William Byrds of Westover, Virginia, 1684–1776* (Charlottesville: University Press of Virginia, 1977), 1:326–27, 2:604; Baugh, *Naval Administration*, 62; *Caledonian Mercury*, issue 15357 (February 7, 1820); McNeill, *Atlantic Empires of France and Spain*, 98–99, 241n72; Pierce, *Tobacco Coast*, 355; Jean O. McLachlan, “The Uneasy Neutrality: A Study of Anglo-Spanish Disputes over Spanish Ships Prized, 1756–1759,” *Cambridge Historical Journal* 6 no. 1 (1938), 74; Shomette, *Pirates on the Chesapeake*, 230–32, 239; John F. Jameson, ed., *Privateering and Piracy in the Colonial Period: Illustrated Documents* (New York: Macmillan, 1923; reprinted, Augustus M. Kelley, 1970), 579–80; Anon., *The following circumstances relating to the famous Ansell Nickerson, and the boy, (mentioned in the trial to be carried away by the pirates) . . .*, (Boston, 1773); *Whitehall Evening Post* (1770), issue 5456 (March 31–April 3, 1781), Issue 5887 (February 5–8, 1785); *Morning Post and Daily Advertiser*, issue 3901 (August 11, 1785); *London Chronicle*, issue 5212 (December 29–31, 1789); Connecticut, State, *Acts and Laws, made and passed by the General Court or Assembly . . . on the second Thursday of October, (being the 14th day of said month), A.D. 1779* (New-London: Timothy Green, 1779), 537; United States, *An Ordinance, to amend an ordinance, entitled, “An Ordinance for establishing courts for the trial of piracies and felonies committed on the high seas”*; and United States, Department of Foreign Affairs, *The Secretary of the United States . . . reports the draft of an ordinance for the trial of piracies and felonies*. See Chet, *The Ocean Is a Wilderness* 13–19.

¹⁶ See Chet, *The Ocean Is a Wilderness*, 83–87; Truxes, *Defying Empire*, 6, 106–9; and Koot, *Empire at the Periphery*, 7–13.

¹⁷ George Bishop, *Observations, remarks, and means, to prevent smuggling, humbly submitted to the consideration of the Rt. Honorable the House of Peers . . .* (Maidstone, 1783), 4–5; Cal Winslow, “Sussex Smugglers,” in *Albion's Fatal Tree*, 121, 123–24; Neville Williams, *Contraband Cargoes: Seven Centuries of Smuggling* (Hamden, CT: Shoe String Press, 1961), 101–2; Atton and Holland, *The King's Customs*, 2:95–134, 231–77; and Monod, “Dangerous Merchandise,” 168. It is impossible to gauge the volume of pirated goods that entered British and American ports, because pirated cargoes entered a vast black market alongside other smuggled goods. Economic historians cannot separate pirated goods from other smuggled commodities, but they estimate that the scope of this black market expanded in the eighteenth century. W. A. Cole, “Trends in Eighteenth-Century Smuggling,” *Economic History Review* 10, no. 3 (1958): 395–410; Hoh-cheung Mui and Lorna H. Mui, “‘Trends in Eighteenth-Century Smuggling’ Reconsidered,” *Economic History Review* 28 (1975): 28–43; William Ashworth, *Customs and Excise: Trade Production and Consumption in England, 1640–1845* (New York: Oxford University Press, 2003), 190–99; Conway, *Britain, Ireland, and Continental Europe in the Eighteenth Century: Similarities, Connections, Identities* (New York: Oxford University Press, 2011), 244–54; Conway, *War, State, and Society in Mid-Eighteenth-Century Britain and Ireland* (New York: Oxford University Press, 2007), 100–101; and G. D. Ramsay, *English Overseas Trade during the Centuries of Emergence* (London: Macmillan, 1957), 166, 172. For similar estimates regarding the Portuguese Empires, see Fabricio

Prado, “Addicted to Smuggling: Contraband Trade in Eighteenth-Century Brazil and Rio de la Plata,” in *Corruption in the Iberian Empires: Greed, Custom, and Colonial Networks*, edited by Christoph Rosenmuller (Albuquerque: University of New Mexico Press, 2017), 197–8, 200.

18 The Napoleonic Wars were a bonanza for Caribbean and American pirates. Trading firms in Havana, for example, reported piracy-related losses of \$2–3 million between 1808 and 1817. The United States government initiated legislative, judicial, naval, and diplomatic efforts at piracy suppression, though without much success. The end of the Napoleonic Wars saw the return of thousands of sailors—Spanish, American, French, British, and Latin American—from serving on warships or privateers to similar service as pirates. In the decade following the Napoleonic Wars, more than 3,000 acts of piracy in the West Indies and off the coast of Florida were recorded in *Niles’ Weekly Register*. Kenneth Scott, “Bonaparte Toscan and the Cuban Pirates.” *The American Neptune: A Quarterly Journal of Maritime History* 6, no. 2 (April 1946), 93; Marx, *Pirates and Privateers of the Caribbean*, 267, 277–83; Richard G. Lowe, “American Seizure of Amelia Island.” *Florida Historical Quarterly* 45 (July 1966), 21–27; Edward White, “The Marshall Court and International Law: The Piracy Cases,” *American Journal of International Law* 83, no. 4 (October 1989), 730; Anon., *Lives and confessions of John Williams, Francis Frederick, John P. Rog, and Peter Peterson, who were tried at the United States Circuit Court in Boston, for murder & piracy* (Boston: J. T. Buckingham, 1819); *Times*, July 24, 1822, 3c; August 1, 1822, 3a–c; August 8, 1822, 2d; and November 18, 1822, 2d–e; *USCSS*, 16th Cong., 1st sess., Senate Document 100; *USCSS*, 16th Cong., 2nd sess., House Document 38; *USCSS*, 17th Cong., 1st sess., House Report 53; *USCSS*, 17th Cong., 2nd sess., Senate Document 4; *USCSS*, 17th Cong., 2nd sess., House Document 8; *USCSS*, 18th Cong., 1st sess., House Report 124; *USCSS*, 18th Cong., 2nd sess., House Document 6; *USCSS*, 18th Cong., 2nd sess., House Document 14; *USCSS*, 18th Cong., 1st sess., House Report 124; *USCSS*, 18th Cong., 2nd sess., House Report 22; *USCSS*, 18th Cong., 2nd sess., House Report 47; Allen, *Our Navy and the West Indian Pirates*, 5, 10–15, 18–19, 28–31, 33, 37, 45–46, 50, 59; Goodrich, *Our Navy and the West Indian Pirates*, 321, 1202–3, 1480, 1936–37; Beehler, “The United States Navy and West India Piracy,” 2–3; Jerome R. Garitee, *The Republic’s Private Navy: The American Privateering Business as Practiced by Baltimore during the War of 1812* (Middletown, CT: Wesleyan University Press, 1977), 227–28; Jane De Grummond, *Renato Beluche: Smuggler, Privateer and Patriot, 1780–1860* (Baton Rouge: Louisiana State University Press, 1983), 39–41, 69–73; Swanson, “American Privateering and Imperial Warfare,” 358; Swanson, *Predators and Prizes: American Privateering and Imperial Warfare, 1739–1748* (Columbia: University of South Carolina Press, 1991), 74; Ritchie, “Government Measures,” 20; Conway, *The British Isles and the War of American Independence* (Oxford: Oxford University Press, 2002), 47–48, 65–66; Britain, Admiralty Office, “An account of pirate vessels destroyed by ships of war on the Jamaica station, between the 1st of January 1821, and the 31st March 1823” (June 30, 1823), Peabody Essex Museum collections; Francis B. C. Bradlee, *Piracy in the West Indies and Its Suppression* (Glorieta, NM: The Rio Grande Press, 1990. Originally published by the Essex Institute, Salem, MA, 1923), 23, 29–30, 33–37; Beehler, “The United States Navy and West India Piracy,” 2–3, 4–16; 28/89/4, 28/90/29, 28/90/40, 137/15, Colonial Office and Predecessors, UK National Archives, Kew; *Morning Post*, issue 15595 (March 10, 1821); *Times*, July 24, 1822, 3c; *Times*, August 1, 1822, 3a–b; *Times*, August 8, 1822, 2d; *Times*, November 18, 1822, 2d–e; *Times*, August 1, 1822, 3c; Britain, Court of Admiralty, *Trial of Charles Christopher Delano, and others, the crew of the brig William, of Liverpool, for piracy* (London: John Murray, 1820); United States, Circuit Court, *A correct report of the trial of Josef Perez, for piracy, committed on board the schooner Bee, of Charleston, S.C. . . . On Tuesday, Sept. 9th, 1823* (New York: J. W. Bell, 1823); *Times*, July 24, 1822, 3c;

August 1, 1822, 3a–b; August 8, 1822, 2d; and November 18, 1822, 2d–e; and Matthew McCarthy, *Privateering, Piracy and British Policy in Spanish America, 1810–1830* (Rochester, NY: Boydell, 2013), 149–51. See Chet, *The Ocean Is a Wilderness* 15–20. A survey of piracy cases adjudicated in federal court in New Orleans (District Court of the US Eastern District of Louisiana) reveals the persistence of piracy in the early nineteenth century: 8 cases tried in the three years prior to the War of 1812, 40 cases during the war, and 124 cases adjudicated in the twelve years following the war’s end. This data from the New Orleans federal court corresponds with findings from other federal courts. Piracy trials continued to be adjudicated in British and Spanish courts as well, during the 1820s–40s. 1/1/4, 1/2/4, Central Criminal Court: Depositions, UK National Archives, Kew; Anon., *The trial of Peter Heamen and Francois Gautiez before the High Court of Admiralty at Edinburgh . . . for piracy and murder* (Leith: William Reid, 1821); Ferdinand Bayer, trans. *Dying declaration of Nicholas Fernandez, who with nine others were executed in front of Cadiz harbour, December 29, 1829. For piracy and murder on the high seas* (New York, 1830); Anon., *The confession of Chas. Gibbs alias James Jeffreys, who has been sentenced to be executed at N. York, on the 22d April 1831 for piracy and murder on board the brig Vineyard* (Boston, 1831); Congressional stenographer, *A report of the trial of Pedro Gibert, Bernardo de Soto, Francisco Ruiz, . . . and Juan Montenegro alias Jose Basilio de Castro, before the United States Circuit Court on an indictment charging them with the commission of an act of piracy, on board the brig Mexican, of Salem* (Boston: Russell, Odiorne & Metcalf, 1834); United States, Circuit Court, *A correct report of the trial of Josef Perez; Member of the Bar, A brief sketch of the occurrences on board the brig Crawford on her voyage from Matanzas to New-York; together with an account of the trial of the three Spaniards . . .* (Richmond: Samuel Shepherd & Co., 1827); Anon., *Piracy and Murder: Particulars of the horrid and atrocious murders committed on board of the brig Crawford* (New York: E. M. Murden & A. Ming, Jr., 1827); United States, Circuit Court, *Trial of the twelve Spanish pirates of the schooner Panda, a Guinea slaver* (Boston: Lemuel Gulliver, 1834); and United States, Circuit Court, *A supplement to the report of the trial of the Spanish pirates with the confessions or protests written by them in prison* (Boston: Lemuel Gulliver, 1835).

¹⁹ CSP-Col, 14:84; Rhode Island, Province, *Records of the Colony of Rhode Island, and Providence Plantations, in New England* (Providence: Knowles, Anthony & Co., 1858), 3:334, 351; *Whitehall Evening Post* (1770), issue 5456 (March 31–April 3, 1781); Benton, “Legal Spaces of Empire,” 717–18; Jarvis, *In the Eye of All Trade*, 83; Matson, *Merchants and Empire*, 62–63; Hanna, “The Pirate Nest,” 3, 159–60, 185, 189n94, 311; Thomson, *Mercenaries, Pirates, and Sovereigns*, 50; Rule, “Wrecking and Coastal Plunder,” 174–75, 177; Cathryn Pearce, *Cornish Wrecking, 1700–1860: Reality and Popular Myth* (Woodbridge, Suffolk: Boydell, 2010), 123–26; A. K. Hamilton Jenkin, *Cornish Seafarers: The Smuggling, Wrecking and Fishing Life of Cornwall* (Toronto: J. M. Dent, 1934), 16–27, 41–58; Hughson, *Carolina Pirates*, 22–23, 29–33; McNeill, *Atlantic Empires of France and Spain*, 184, 196–201, 241n72; Rediker, *Between the Devil and the Deep Blue Sea*, 66; Klooster, *Illicit Riches*, 145–46; William Webb, *Coastguard: An Official History of HM Coastguard* (London: Her Majesty’s Stationery Office, 1976), 12–13; Smith, *Borderland Smuggling*, 37–40; Winslow, “Sussex Smugglers,” 128–29, 140–44; Geoffrey Hufton and Elaine Baird, *The Scarecrow’s Legion, or, Smuggling in the South East* (Sittingbourne, Kent: Rochester Press, 1983), 42–44; Williams, *Contraband Cargoes*, 106–7; James H. Levitt, *For Want of Trade: Shipping and the New Jersey Ports, 1680–1783* (Newark: New Jersey Historical Society, 1981), 18–20; Kenneth Clark, *Many a Bloody Affray: The Story of Smuggling in the Port of Rye and District* (Rye: Rye Museum, 1968), 7–8, 17, 24–26; Atton and Holland, *The King’s Customs, 1:185–90*; Christian J. Koot, *Empire at the Periphery: British Colonists, Anglo-Dutch Trade, and the Development of the British Atlantic, 1621–1713* (New York: New York University Press, 2011), 122–24, 190–91; Matson, *Merchants and Empire*, 83–86,

270–72, 277; Kammen, *Empire and Interest: The American Colonies and the Politics of Mercantilism* (New York: Lippincott, 1970), 117–18; Ashworth, *Customs and Excise*, 190–96; Monod, “Dangerous Merchandise,” 157–58; and Nuala Zahedieh, *The Capital and the Atlantic Economy, 1660–1700* (New York: Cambridge University Press, 2010), 38–40, 101–3.

²⁰ As one historian in the field observed, “A more carefree band of men than the Irish Customs officials was not to be found in the whole of Europe.” Williams, *Contraband Cargoes*, 137–40, quot. on 139; and Elizabeth Hoon, *The Organization of the English Customs System, 1696–1786* (New York: Augustus Kelley, 1968), 185–86.

²¹ Chet, *The Ocean Is a Wilderness*, 86–87.

²² John Irving Maxwell, *The Spirit of Marine Law; or, Compendium of the statutes relating to the Admiralty . . .* (London: Joyce Gold, 1808), 2:220–22; Lydon, *Pirates, Privateers, and Profits*, 32, 108; Neal Stout, *The Royal Navy in America, 1760–1775* (Annapolis, MD: Naval Institute Press, 1973), 3, 7; National Maritime Museum (Britain), *Piracy and Privateering* (London: Her Majesty’s Stationery Office, 1972), 4; and Rediker, *Villains of All Nations*, 26.

²³ Stout, *The Royal Navy in America*, 26–27; Margarette Lincoln, *Representing the Royal Navy: British Sea Power, 1750–1815* (Burlington, VT: Ashgate, 2002), 87; Hoon, *Organization of the English Customs System*, 87–89; Massachusetts, Governor, *By His Excellency Jonathan Belcher . . . Whereas His Majesty hath received repeated complaints, that the trade of his subjects in the West-Indies, and else-where, suffers much damage and molestation from piratical vessels* (Boston: B. Green, 1731); Anon., *The tryals of sixteen persons for piracy, &c. Four of which were found guilty, and the rest acquitted. At a special Court of Admiralty for the tryal of pirates, held at Boston . . .* (Boston: Joseph Edwards, 1726); John Cockburn, *A faithful account of the distresses and adventures of John Cockburn, mariner, and five other Englishmen; who were taken prisoners by a Spanish pyrate . . .* (London: C. Rivington, 1740); *Boston News-Letter*, October 31–November 8, 1734, 1; *Boston News-Letter*, June 26–July 3, 1735, 2; *Weekly Reheral*, April 14, 1735, 2. In the Spanish Empire as well, the imperial government sought to overcome the problem of enforcement at a distance by commissioning privateers and pirates as coastguards in distant ports. John Campbell, *The Spanish Empire in America* (London: M. Cooper, 1747), 289, 310; Tinling, *Correspondence of the Three William Byrds*, 1:363–34, 2:547; Pares, *War and Trade in the West Indies, 1739–1763* (Oxford: Oxford University Press, 1936), 16–17; Pares, *Colonial Blockade*, 22, 42–43; Benton, “Legal Spaces of Empire,” 706–12, 720; Jarvis, *In the Eye of All Trade*, 203–5; and McNeill, *Atlantic Empires of France and Spain*, 89–91.

²⁴ Atton and Holland, *The King’s Customs*, 1:179, 186; Stout, *The Royal Navy in America*, 48–51, 55, 71–77, 88–89, 129–30; and Webb, *Coastguard*, 13–14; *CSP-Col*, 16:323–26. Local juries did more than merely acquit accused offenders; they were used as a tool to punish and intimidate customs agents who proved to be too diligent in executing their office. The Board of Customs reported to Parliament that it had become common practice by the early-eighteenth century to load onto smuggling vessels goods on which customs had been paid and to lure customs officers into seizing them. The customs officers would then be sued for damages, relying on local juries to find for the plaintiffs. This had a chilling effect on customs officers, and eventually led—in the latter part of the eighteenth century—to the authorization of a change of venue (to London) for trials in which customs officers stood accused.

²⁵ Burgess, “Piracy in the Public Sphere,” 888–90.

²⁶ Present-day sensibilities regarding law and state power are reflected back by certain types of eighteenth-century sources. Such sources provide modern readers with a reassuring, but misplaced, sense of order with regard to maritime shipping and trade.

²⁷ Pérotin-Dumon, “The Pirate and the Emperor,” 29. See also Klooster, *Illicit Riches*; Koot, *Empire at the Periphery*; Matson, *Merchants and Empire*; James A. Henretta, “Salutary Neglect”: *Colonial Administration under the Duke of Newcastle* (Princeton: Princeton University Press, 1972); John Phillip Reid, *The Ancient Constitution and the Origins of Anglo-American Liberty* (DeKalb: Northern Illinois University Press, 2005); Truxes, *Defying Empire*; Renaud Morieux, “Diplomacy from Below and Belonging: Fishermen and Cross-Channel Relations in the Eighteenth Century,” trans. Sarah Kane, *Past and Present* 202 (February 2009): 83–125; Benton, “Colonial Law and Cultural Difference; Benton, *Law and Colonial Cultures*; Benton, “Legal Spaces of Empire”; Benton, “Toward a New Legal History of Piracy”; Gould, “Zones of Law, Zones of Violence”; J. E. Cookson, *The British Armed Nation, 1793–1815* (New York: Oxford University Press, 1997); Christopher Harding, “‘Hostis Humani Generis’—The Pirate as Outlaw in the Early Modern Law of the Sea,” in *Pirates? The Politics of Plunder, 1550–1650*, edited by Claire Jowitt (New York: Palgrave Macmillan, 2007), 20–38; and Rosenmuller, *Corruption in the Iberian Empires*, 2–4. See also Abraham and Schendel, *Illicit Flows and Criminal Things*, 4–11, 16.

²⁸ Pro-smuggling and pro-freebooting sentiment is often understood as an outlaw discourse. While it did become an outlaw discourse by the late nineteenth century—as the nation-state asserted its authority legislatively, bureaucratically, and psychologically, and as it gained legitimacy in the hearts and minds of subjects and citizens—it was not so in the eighteenth. For discussion of modern equivalents of such tension, see Abraham and Schendel, *Illicit Flows and Criminal Things*, 4–6, 16.

²⁹ Ritchie, “Government Measures,” 18–19.

³⁰ Marsden, *Documents Relating to Law and Custom of the Sea*, 2:139, 152–53, 246–49, 270–73, 291–93, 390–92, 413–35; Gomer Williams, *History of the Liverpool Privateers and Letters of Marque, with an Account of the Liverpool Slave Trade* (London: William Heinemann, 1897), 670–73; Lunsford, *Piracy and Privateering*, 2–3; and Starkey, *Pirates and Privateers*, 3–4.

³¹ Britain, *Statutes at Large, from the 30th to the 33rd year of King George II*, 22:472–73, 475–78; Britain, Sovereign, *Her Majesties most gracious declaration for the encouragement of her ships of war and privateers*. (Boston: Re-printed by Bartholomew Green & John Allen, September 24th, 1702); Mages, *Essay on Insurances*, 2:488; Marsden, *Reports of Cases Determined by the High Court of Admiralty and upon Appeal Therefrom, temp. Sir Thomas Salusbury and Sir George Hay, Judges, 1758–1774* (London: William Clowes & Sons, 1885), 186–87; Marsden, *Documents Relating to Law and Custom of the Sea*, 2:153, 246–49, 393; United States, Continental Congress, *Instructions for Privateers. By the United States in Congress assembled, April 7, 1781* (Philadelphia: David C. Claypoole, 1781); Denmark and Norway, Sovereign, *Instructions for Privateers*, trans. Fridk. Schneider (Copenhagen: E. M. Cohen, 1810); John Williams Powell, *Bristol Privateers and Ships of War* (Bristol: J. W. Arrowsmith, 1930), xvii; and Starkey, *British Privateering Enterprise*, 24–25.

³² Britain, Sovereign, *Her Majesties most gracious declaration*; United States, Continental Congress, *By the United States in Congress assembled, April 7, 1781*; Rhode Island, Governor, *By His Excellency . . . Instructions to the commanders of private ships or vessels of war* (Rhode Island, 1779); Maxwell, *Spirit of Marine Law*, 2:223–302; and Georg Friedrich de Martens, *An essay on privateers, captures and particularly on recaptures, according to the law, treaties and usages of the maritime powers of Europe*, trans. Thomas Hartwell Horne (London: E. & R. Brooke, 1801), 50–52, 120.

³³ Williams, *History of the Liverpool Privateers*, 27–29; and Powell, *Bristol Privateers*, appendix 1, 355–59.

³⁴ Christopher Robinson, *Reports of Cases Argued and Determined in the High Court of Admiralty; (Great Britain) commencing with the judgments of the Right Honorable Sir William Scott, Michaelmas term 1798* (Philadelphia: James Humphreys, 1800), 1: iv–viii.

³⁵ See Chet, *The Ocean Is a Wilderness*, Chapter 2; Lydon, *Pirates, Privateers, and Profits*, 30–33; George Woodbury, *The Great Days of Piracy in the West Indies* (New York: Norton, 1951), 204; Jarvis, *In the Eye of All Trade*, 240; Bruce Elleman, Andrew Forbes, and David Rosenberg, eds. *Piracy and Maritime Crime: Historical and Modern Case Studies* (Newport, RI: Naval War College Press, 2010), 7; and Hillman and Gathmann, “Overseas Trade and the Decline of Privateering,” 730–31.

³⁶ Scholars like Christopher Harding, J.E. Cookson, and Lauren Benton warn against taking early modern states’ claims to legal sovereignty at face value. Such claims give the misleading impression of a unitary imperial state, with a comprehensive legal system, and with state-law ascendant. She describes early modern states as multicentric legal orders—“those in which the state is one among many legal authorities”—rather than a legal order that elevates the state law above other sources of law and authority. “Historians’ attention to the narrative of rising state power in Western Europe has tended to obscure the degree [to which fluidity in the legal order] was for participants an expected, even naturalized, aspect of the social order.” Benton, *Law and Colonial Cultures*, 8–11 (quot. on 11), 31–32 (quot.); Benton, “Colonial Law and Cultural Difference,” 563–64. Jack Greene’s and Eliga Gould’s assessments that peripheral consent was what endowed constitutional legitimacy on measures adopted by metropolitan governments reflects a similar appreciation of early modern legal structures and beliefs. Jack P. Greene, *Peripheries and Center: Constitutional Development in the Extended Politics of the British Empire and the United States, 1607–1788* (New York: Norton, 1990), xi; and Eliga H. Gould, “Liberty and Modernity: The American Revolution and the Making of Parliament’s Imperial History,” in *Exclusionary Empire: English Liberty Overseas, 1600–1900*, edited by Jack Greene (New York: Cambridge University Press, 2010), 113, 115–16, 128–29. See also Craig Yirush, *Settlers, Liberty, and Empire: The Roots of Early American Political Theory, 1675–1775* (New York: Cambridge University Press, 2011).

³⁷ Manuel Schonhorn, for example, posits that during the War of Spanish Succession, Atlantic pirates became privateering patriots to their respective nations, “and in these years, piracy almost disappeared from the seas.” It reappeared, however, with greater vigor at war’s end. Daniel Defoe, *A General History of the Pyrates*, edited by Manuel Schonhorn (Columbia: University of South Carolina Press, 1972), xx–xxi. Other scholars likewise contend that piracy declined in wartime and reemerged thereafter. E. T. Fox, “Jacobitism and the ‘Golden Age’ of Piracy, 1715–1725,” *International Journal of Maritime History* 22 no. 2 (2010), 279; and Luke Owen Pike, *History of Crime in England* (Montclair, NJ: Patterson Smith, 1968), 2:371.

³⁸ Martens, *Essay on privateers*, 2–3 (quots. on 3), 29.

³⁹ Hay, “Property, Authority and the Criminal Law,” in *Albion’s Fatal Tree*, 49–52; Henretta, “Salutary Neglect”; Greene, *Peripheries and Center* (1990), xi; and Prado, “Addicted to Smuggling: Contraband Trade in Eighteenth-Century Brazil and Rio de la Plata,” 198.

⁴⁰ Christopher Hill, *Liberty against the Law: Some Seventeenth-Century Controversies* (New York: Penguin, 1996); Joanna Innes, “Legislation and Public Participation 1760–1830,” in *The British and Their Laws in the Eighteenth Century*, edited by D. Lemmings (Woodbridge, 2005); Joanna Innes and John Styles, “The Crime Wave: Recent Writing on Crime and Criminal Justice in Eighteenth-Century

England," *Journal of British Studies* 25, no. 4 (October 1986): 380–435; Eric Hobsbawm, *Bandits* (London: Weidenfeld & Nicolson, 1969); Hobsbawm, *Primitive Rebels: Studies in Archaic Forms of Social Movement in the 19th and 20th Centuries* (Manchester: Manchester University Press, 1959); E. P. Thompson, "The Moral Economy of the English Crowd in the Eighteenth Century," *Past and Present* 50, no. 1 (1971): 76–136; and Richard White, "Outlaw Gangs of the Middle Border: American Social Bandits," *Western Historical Quarterly* 12 no. 4 (October 1981): 387–408.

⁴¹ See Sarah Kinkel, "The King's Pirates? Naval Enforcement of Imperial Authority, 1740–76," *William and Mary Quarterly* 71, no. 1 (2014): 3–34; Jack P. Greene, "The Glorious Revolution and the British Empire, 1688–1783," in *The Revolution of 1688–1689*, edited by Lois Schwoerer (Cambridge: Cambridge University Press, 1992), 260–71; and Greene, *Peripheries and Center*.

⁴² Rodger, *Command of the Ocean*, 12, 81, 157, 175, 583; and Rodger, *The Safeguard of the Sea: A Naval History of Britain, 660–1649* (New York: Norton, 1998), 79.

⁴³ Henry G. Crocker, ed., *The Extent of the Marginal Sea: A Collection of Official Documents and Views of Representative Publicists* (Washington, DC: Government Printing Office, 1919), 14–19; and White, "The Marshall Court and International Law," 728–29. Hugo Grotius's *Mare Liberum* (1609) directly and purposefully contradicted English claims to exclusive sovereignty in British waters by upholding widely recognized practices of maritime trade.

⁴⁴ Greene, "The Glorious Revolution and the British Empire," 263–6; Greene, *Peripheries and Center*, 62–5, 75, 235 n. 18; Henretta, "Salutary Neglect," 319; and Linda Colley, *Britons: Forging the Nation, 1707–1837* (New Haven: Yale University Press, 2009), xiv–xv, 378–81. In "Diplomacy from Below and Belonging," Renaud Morieux describes commerce and local administration in French villages and towns along the English Channel. His study indicates that, like English townships, French communities exhibited a sharply localist political mentality, elevating local interests and practices above those of the national government. Morieux, "Diplomacy from Below and Belonging," 83–125.

⁴⁵ See Abraham and Schendel, *Illicit Flows and Criminal Things*, 4–11, 19, 23–25; Willem van Schendel, "Spaces of Engagement: How Borderlands, Illegal Flows, and Territorial States Interlock," in *Illicit Flows and Criminal Things*, 38–39; and Kenneth Simala and Maurice Amutabi, "Small Arms, Cattle Raiding, and Borderlands," in *Illicit Flows and Criminal Things*, 204–205.

⁴⁶ Those in the business of transoceanic trade know how chaotic maritime shipping is currently, and might be better positioned to imagine the limits of state authority at sea in the eighteenth century. See Willaim Langewiesche, *The Outlaw Sea: A World of Freedom, Chaos, and Crime* (New York: North Point Press, 2004); Tom Farer, ed., *Transnational Crime in the Americas: An Inter-American Dialogue Book* (New York: Routledge, 1999); Moisés Naím, *Illicit: How Smugglers, Traffickers, and Copycats are Hijacking the Global Economy* (New York: Anchor Books, 2006); and Eric Tagliacozzo, *Secret Trades, Porous Borders: Smuggling and States Along a Southeast Asian Frontier, 1865–1915* (New Haven: Yale University Press, 2005).

⁴⁷ Controlling maritime traffic (in the form of blockades and off-shore patrols, for example) is routinely used by governments against rival governments and non-state malefactors. Yet even in the twenty-first century, such naval actions take place amid heated disagreement among governments, legal scholars, and trading firms as to the status of the sea in relation to state sovereignty—whether it is an extension of the geopolitical world order, a commons, a no-man's land, or an untidy mix of these.

⁴⁸ Modern constituents differ from early-modern ones in their deference to statutory law, and in the legitimacy they grant it. In the early-modern era, when the central government was seen as an external force in people's local lives, its statutes were met with suspicion—not only for their novelty,

but also because they were seen as the design of outsiders who did not share locals' circumstances, interests, and values. During the twentieth century, however, the combination of democracy and nationalism has created in the West a different perception of national governments and, therefore, also of its statutes and regulations. Statutory law is now seen not as an instrument of a government that is alien to the community, but as an embodiment of the will of the community (the *national* community). By contrast, English settlers in the New World brought with them from the mother country a *localist* political, cultural, and legal mindset—a restrictive view of the role of the national government in local governance, and an expansive reliance on past judicial precedents.