

Eye Patches, Investment and Law

A Legal Look at The Golden Age of American Piracy

The Politics of Piracy: Crime and Civil Disobedience in Colonial America

Written by Douglas R. Burgess Jr.
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Americans have always enjoyed a peculiar relationship with pirates and their trade. The pirates as we know them kind of died out in the 1730s only to be revived in an entertainingly abstract form by Robert Louis Stevenson in the late 19th century. Today we celebrate the days of yore with pirate costumes at Halloween, pirate flags and never ending concoctions of spiced rum.

Douglas Burgess' legal history, "The Politics of Piracy," does not read as easily as Stevenson or even some of the more recent histories on the subject. But it is after all, a legal history, and some of the tale is worth repeating. Burgess is a professor of Atlantic History at Yeshiva University and a law professor at Benjamin N. Cardozo School of Law.

Piracy has always been a part of world culture. It is still prevalent today in the Far East and, as we know from recent history, along the horn of Africa around Somalia. But the piracy we have grown to know and love (from a careful distance) is Atlantic piracy. And it turns out that Atlantic piracy was not exclusive to the Caribbean by any means.

Burgess's book actually opens with a reference to Pennsylvania's colonial governor William Markham. In 1697 the Board of Trade wrote to Markham asking for his cooperation in the pursuit and capture of anyone who had been part of the crew of Henry Every (some spell as Avery), a pirate who had caused a good deal of diplomatic difficulty for the British crown. It seems that like many others of his ilk, Every chose not to confine his activity to depredations

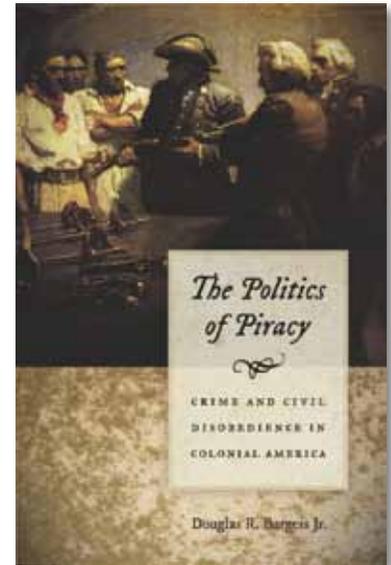
on French and Spanish vessels in the Caribbean. He was not above sailing around the Cape of Good Hope and up into the Red Sea where each year hundreds of vessels carried wealthy Muslims to undertake the hajj from Medina to Mecca. These passengers traveled with both their wives and their wealth that made them ripe targets for anyone interested in enjoying either or both.

Every happened upon a vessel that included friends and family of the Great Mughal and spared no effort in robbing the men and raping the women. At the time the government of Great Britain was amidst efforts to win the Mughal into a series of political and economic alliances and the Mughal did not respond kindly to British subjects attacking his citizens while they were en route to the holiest of religious places. So the call went out to find Every and bring his crew back to England for trial.

It turns out that at least some of Every's crew probably was resident in William Penn's peaceable kingdom. But Gov. Markham's response to the inquiry about these fellows was not exactly what one would expect. He told customs agent William Snead that he had no business trying to arrest these men as it was none of his affair and they brought good solid income to Philadelphia and its inhabitants.

Was Markham some kind of rogue governor? If so, he had plenty of company. Because it turns out that just about every colony on the Atlantic coast tolerated pirates and, in some cases actually licensed them to plunder enemies at sea without being too careful about defining who was an enemy.

The story is one of how England transformed itself from tiny island colony to nation and ultimately the world's greatest naval power. Recall that in Elizabethan times, the queen made



free use of "gentlemen" like Francis Drake and Walter Raleigh to sail and capture foreign merchants for the benefit of the crown and to harass England's enemies, Spain and France. But with the defeat of Spanish Armada in 1588, Britain began to turn from protecting its own island to trader with the world. With the establishment of Jamestown and the formation of the East India Company in 1600, Britain began to emerge as the leading carrier of foreign trade. And as Europe became addicted to everything from sugar to tea and tobacco, Britain needed to protect its commercial trade routes.

The British navy was not born overnight. In fact, Britain had to rely strongly on private ship owners to provide defense of its new trading ports around the globe. The crown did not have millions for defense so it made deals that permitted ship owners to prey upon foreign enemy vessels in exchange for dividing the "booty" that came from capturing foreign ships laden with gold and silver from the Americas and coffees and spices from the Middle East. Ship owners were issued "commissions" or letters of marque that licensed them to capture foreign vessels. They were supposed to bring the vessel back to a British port where the ship would be condemned as a prize and the cargo sold with the government taking a portion and the privateers dividing the rest. All of this was legal.

But as the British economy grew wildly

from foreign trade in the 17th century, seafarers and royal governors relied less and less on official British permissions to ply this trade. As Burgess notes, particularly in the tiny but enormously rich sugar islands of the Caribbean, private vessels were often the only reliable ships available to defend these ports. So governors freely issued permissions to capture foreign ships or, alternatively turned a blind eye to what was going on. Time and again, these governors were supposed to be the chief law enforcers, but many were contemporaneously “investors” sponsoring ships whose sole business was to capture foreign vessels transporting commodities and keep whatever they seized.

The problem was not exclusive to the Western half of the Atlantic. While the Lords of Trade and its successor the Board of Trade, tried valiantly to make order out of the chaos of transatlantic trade, Burgess notes that not all of the British upper class was in favor of a “new order.” While Parliament did pass a series of Navigation Acts during the 17th century intended to regulate shipping,

the Acts were sometimes riddled with loopholes and enforcement was often winked at even in London and Liverpool. After all, there was a lot of money to be made from stealing other people’s property especially if those people had interests inimical to Mother England. Yes, occasionally pirates like William Every crossed the line but ironically when Every was captured and tried for his attack upon the Mughal’s vessel and passengers, a common pleas jury had the temerity to acquit him of the crime; further embarrassing the government in Whitehall and enraging an emperor who controlled all of present day India and Pakistan.

The fun continued until the advent of the 18th century when economic growth and the emergence of real government sponsored navies made piracy something the crown could no longer tolerate. Thus began an orchestrated war on piracy that was evidenced in port cities like Philadelphia with dead pirates hanging from gibbets over the Delaware River. The message was clear. The golden age of piracy would sink into the mists

of time until 1883 when Stevenson published “Treasure Island,” what he called a story for boys

The theme of this trails us through history. As noted, the Navigation Acts passed in the 17th century were not really enforced until Britain found itself besieged with debt from the French & Indian Wars. American colonists who had traded freely and thus ignored the Navigation Acts were incensed to see Britain now suggesting that trade restrictions needed to be obeyed. The response in America was a demand for representative government if England wished to enforce its laws in America. We know how that struggle came out. More recently, we have heard the cry raised most notably by U.S. District Court Judge Jed Rakoff that very few of the pirates who co-opted American financial markets in the last decade were ever brought to justice. America still loves its pirates, or at least turns a patched eye to their prosecution. ■

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