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**Pirates and Privateers: their role in the Law of Nations and in pop culture.
Is the theoretical legal representation of pirates and privateers in pop culture correct?**

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INTRODUCTION

Golden Age piracy has been through a great deal of romanticizing throughout the ages. With Disney's "Pirates of the Caribbean" franchise, the public encounters a new wave of exciting and adventurous portrayals of the 18th century pirate. The television series "Black Sails" shows a darker side of piracy than the uplifting and whimsical Disney franchise, and portrays pirate-government relationships as one which is riddled with violence, economy and politics. Despite the rather gruesome storyline, this does seem to cut closer to the truth than the adventures of Jack Sparrow.

What pop culture conveniently tends to forget are the legal complexities these waves of sea robbers and other seafaring scoundrels have created on an international level. It doesn't mention the difference between the wide variety of sea robbers and the delicate terminology which decides whether a man will be hunted down by its own government or praised as a national hero. It doesn't stress the political and economic uses of sea robbers for men and kings. Piracy has brought to life a wide array of problems for both national governments and the international community as a whole, and thus quite some legal instruments have been called into existence to deal with this phenomenon and to try and distinct the pirate's illegal activities from the privateer's legal commissions.

We see a lot of piracy in pop culture, but the question remains whether what we see is legally and historically correct. This thesis will thus answer the big question: **is the theoretical legal representation of pirates and privateers in pop culture correct?**

The topic of this thesis can be considered rather broad, since piracy in its broad interpretation has existed for centuries. This is why we will narrow down this question both chronologically and geographically. Firstly we will narrow our research in time by looking almost exclusively to the Golden Age of Piracy, which took place approximately between 1670 and 1725¹. Although the exact time-frame varies, depending on which author one would consult, we're going to take these dates as a general reference point. This is done because piracy, and other forms of sea robbery, knew an all-time high at this point, which has led in turn to an abundance of sources about this timeframe. However, it must be noted that for purposes of clarification and research, this thesis will occasionally talk more in-depth about treaties, habits or facts from before this timeframe in light of their legal or historical relevance.

From a geographical point of view, this thesis will be limited to the Caribbean. This is done because of the fact that during this period of time, the Caribbean was a hotspot for English pirates and privateers as a result of English and Spanish imperialism. Another reason for explicit interest in Golden Age piracy in the Caribbean is vested in the fact that it has been a main source of inspiration for Hollywood as well, and thus makes my fictional and historical sources more prone to comparison.

Although a lot has been written on the topic of piracy, few authors seem to have submerged themselves in the legal facets behind the political intrigue. Legal theorists like GROTIUS and GENTILI are mentioned often in a superficial and passing manner, but their doctrine is barely every

¹ J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 5.

specifically applied to piratical practice. Although the internet provides many sources where self-declared historians discuss the historical accuracy of piratical behaviour, clothing and ships in movies, little is said about the existing legal frameworks at the time and their portrayal in pop culture. With that being said, Hollywood and its screenwriters seem to be aware of their gaping knowledge on the detailed judicial documents of the Golden Age and refrain from sporting their story lines too much on these legal intricacies, instead focussing more on the political intrigue. All in all, it's been a challenge to remain focused on the judicial perspective on piracy when the majority of sources emphasize the political and cultural aspects instead.

To answer the main research question, the chapters of this thesis will firstly attempt to answer the sub-questions in order to establish a clear-cut framework on what we are discussing and why.

The first chapter is designed to offer the reader an extensive background by answering the question: **what was the legal and political significance of the difference between privateers, buccaneers and pirates?** The answer will offer a description of who we are talking about by clarifying the various terminological distinctions, a task that has been neglected heavily in popular culture. This chapter will also discuss the legal and political implications of these statuses and place them in historical context.

The second chapter will provide an answer to the question: **what was the existing international legal policy on piracy and privateering in the 17th century?** The first section will be devoted to national and international laws surrounding piracy and privateering, and offer a more in-depth explanation of its effects in practice. The second section discusses the war against piracy and the establishment of universal jurisdiction from the point of view of both GROTIUS and GENTILI.

The third chapter studies how these laws and legal theories are put to use for the sake of international politics. As privateers are the most popular pawns in the play, the first section discusses the instruments by which their power is granted. The second section goes into the influence the use of privateers has had on international politics. The chapter will answer the question: **on the basis which legal instruments and to what extend was piracy used as a tool in international politics?**

CHAPTER I. TERMINOLOGICAL DISTINCTIONS IN THE HIGH SEAS

“I think it’d be rather exciting to meet a pirate”. “Think again, Miss Swann. Vile and dissolute creatures, the lot of them, I intend to see that any man who sails under a pirate flag or wears a pirate brand gets what he deserves: a short drop and a sudden stop” – Conversation between Elizabeth Swann and Commodore Norrington (Pirates of the Caribbean – The Curse of the Black Pearl)

1. There’s a wide variety of aggressive or even predatory naval activities, which both in and outside of pop culture have been often labelled indiscriminately as “piracy”. However, depending on the circumstances in which these activities have been conducted, not all of them can always be considered criminal. The goal of this chapter is to make clear that there are important terminological distinctions when talking about sea robbers and that these distinctions or their effects aren’t always clearly represented in movies and series.
2. Piracy has become a popular term in mainstream culture and is referred to in several movies, books and songs. With the “Pirates of the Caribbean” franchise and the series “Black Sails” being positively perceived by the major public, a certain romanticized image of piracy has taken hold of society. However, the politics and terms of whoever roamed the seas in the 17th and 18th century are far more complicated than shown in the media and the legal distinction between pirates, privateers and the royal navy is hardly ever explicitly mentioned. Pirates are perceived as heroes in these movies and privateers are deemed to be enemies who wish to suppress the pirate’s justified longing for freedom. The term “buccaneer” or its relevance to piracy culture isn’t even mentioned or recognized. All of these terms, however, are heavily interrelated with each other and show the complexity and ambiguity of piracy during the Golden Age. Before talking about international law and treaties, it’s important to make a clear distinction between these terms to make sure we know what we’re talking about. The first chapter will answer the question: what was the legal and political significance of the difference between privateers, buccaneers and pirates? The answer to this question will enable us to discuss the international policy on piracy and privateering with clear knowledge on the distinctions and history of the terminology.

SECTION I. PRIVATEERS

“Pirate? Nay. Privateer. On a sanctioned mission, under the authority and protection of the Crown”. – Hector Barbossa (Pirates of the Caribbean – On Stranger Tides)

§1. In history

3. Externally, privateers distinguish themselves from other sea robbers by the governmental commissions they usually carried with them². These commissions are usually, though not exclusively, called “letters of marque”, a term that will be discussed more elaborately in the third chapter. For now it’s important to note that they represent a license for the privateer, indicating to other parties that the privateer’s actions are sponsored and/or condoned by their

² G. KUHN, *Life Under the Jolly Roger – Reflections on Golden Age Piracy*, PM Press, 2010, 9.

state. This license authorized the privateer to capture all ships belonging to the targeted nation³. The line, though thin, is clear: pirates are ordinary sea robbers⁴, privateers are sea robbers which are sponsored by the state⁵.

4. Despite this clear technical distinction, pirates and privateers have nevertheless been confused with each other throughout the ages. This can be explained by the fact that fluctuations in numbers of pirates and privateers closely followed the tides of warfare and international relations. Since privateering was only allowed during times of war⁶, pirates had the tendency to turn into privateers whenever it was possible⁷ and then resort back to piracy when the war was finished⁸. Switching from piracy to privateering was beneficial for these men because they could almost seamlessly continue their actions⁹, but during wartime they had the added bonus of enjoying the protection of the British government. Since both professions seemed to be interchangeable, and the distinction between the two is quite blurred in practice¹⁰, it can hardly come as a surprise that privateer-turned-pirates were quite difficult to control and often crossed the line to illegality by capturing ships they weren't even commissioned to target¹¹ as a way to supplement their income¹². What can't be stressed enough is the hypocrisy of the English Crown with regard to matters of piracy, which is clearly present in the conduct of Queen Elizabeth I. While publicly condemning piracy and claiming that those engaged in acts of piracy were no longer under the Crown's protection¹³, her privateers and their damaging actions to the Spanish treasury remained outside the scope of illegality and were further encouraged by the Queen¹⁴.
5. Still, on paper, privateers were supposed to act in the interest of the authoritative powers by which their commissions had been granted. In the context of warfare, their one and primary goal

³ R. LESAFFER, "Too much history. From war as a sanction to the sanctioning of war" in M. WELLER (ed.), *The Oxford Handbook of the Use of Force in International Law*, Oxford, Oxford University Press, 47.

⁴ M. WACHSPRESS, "Pirates, Highwaymen, and the Origins of the Criminal in Seventeenth-Century English Thought, *Yale Journal of Law & the Humanities* Vol. 26 Iss. 2, 2015, 323.

⁵ J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 3; M. WACHSPRESS, "Pirates, Highwaymen, and the Origins of the Criminal in Seventeenth-Century English Thought, *Yale Journal of Law & the Humanities* Vol. 26 Iss. 2, 2015, 306.

⁶ S. C. NEFF, *War and the Law of Nations*, Cambridge, Cambridge University Press, 2005, 109; V. W. LUNSFORD, *Piracy and Privateering in the Golden Age Netherlands*, Palgrave Macmillan, New York, 2005, 10.

⁷ J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 10; V. W. LUNSFORD, *Piracy and Privateering in the Golden Age Netherlands*, Palgrave Macmillan, New York, 2005, 3.

⁸ J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 10.

⁹ H.A. ORMEROD, *Piracy in the Ancient World – An Essay in Mediterranean History*, Hodor and Stoughton Ltd., 1924, 61.

¹⁰ B. MABEE, "Pirates, privateers and the political economy of private violence", *Global Change, Peace & Security* Vol. 21 No. 2, 2009, 140.

¹¹ D. CONLIN, "A Private War in the Caribbean: Nova Scotia Privateering, 1793-1805", *The Northern Mariner* VI No. 4, October 1996, 38; J. NEUFELD, "The Evolution of the Legal Concept of Piracy in Early Modern England", *Journal of World History*, 2011, 7.

¹² J. NEUFELD, "The Evolution of the Legal Concept of Piracy in Early Modern England", *Journal of World History*, 2011, 4.

¹³ QUEEN ELIZABETH I, "A Proclamation Against the Maintenance of Pirates", 1569.

¹⁴ QUEEN ELIZABETH I, Instruction for the better direction to Privateers for the taking of Pirates and Sea Rovers, 1577.; B. ELLEMAN, "Historical Piracy and its Impact" in G. BRUINSMA (ed.), *Histories of Transnational Crime*, New York Springer, New York, 2015, 13

was to weaken the enemy's economy by targeting their commercial ships¹⁵. Besides the obvious benefit of causing damage to their enemy, this also reduced international commercial competition, giving the national economy of the other belligerent state the chance to flourish¹⁶. This system was beneficial on both sides of the contract. On behalf of the state, privateering was a notable beneficial to the national capital, the economy and the international political agenda¹⁷. The privateer, on the other hand, enjoyed the benefits of being protected by the government to seek extension of personal profit¹⁸.

6. It's also important to note that privateers were not part of, but rather an extension of the Royal Navy. Why this distinction? Firstly, a privateering ship was a privately owned vessel¹⁹, usually by the captain or a sponsor. Navy ships, on the other hand, were government property. The crew and captain of a privateering ship were considered to be mercenaries who were temporarily put to use in favour of the Crown during times of war²⁰. Another distinction lies in the fact that privateers had a certain autonomy which members of the Navy didn't have. They were allowed to mostly fare and do as they pleased, although they were subjected to a list of regulations from the Court of Vice-Admiralty²¹. Until the 19th century²², privateers were considered to be a useful extension of the country's naval powers and were an indispensable tool of warfare at sea²³.

§2. In pop culture

7. England's history with privateering has been going on far longer before the dawn of the Golden Age and their privateers had gained infamy with Queen Elizabeth's naval policy against Spain²⁴. The English privateers under Queen Elizabeth I were called "sea dogs"²⁵, the most famous is which was Francis Drake. In the movie "Elizabeth: The Golden Age" we can clearly see at a certain point that Spanish diplomats angrily accuse Queen Elizabeth I that she has been taking

¹⁵ G. ROMMELSE, "Political agendas and the contestable legality of privateering: the case of the Dutch-Portuguese War (1657-1662)", *Journal for Maritime Research* Vol. 17 Iss. 2, 2015, 183; J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 10.

¹⁶ J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 10.

¹⁷ D. CONLIN, "A Private War in the Caribbean: Nova Scotia Privateering, 1793-1805", *The Northern Mariner* VI No. 4, October 1996, 29; J. NEUFELD, "The Evolution of the Legal Concept of Piracy in Early Modern England", *Journal of World History*, 2011, 5; V. W. LUNSFORD, *Piracy and Privateering in the Golden Age Netherlands*, Palgrave Macmillan, New York, 2005, 4.

¹⁸ D. CONLIN, "A Private War in the Caribbean: Nova Scotia Privateering, 1793-1805", *The Northern Mariner* VI No. 4, October 1996, 29; G. ROMMELSE, "Political agendas and the contestable legality of privateering: the case of the Dutch-Portuguese War (1657-1662)", *Journal for Maritime Research* Vol. 17 Iss. 2, 2015, 183; V. W. LUNSFORD, *Piracy and Privateering in the Golden Age Netherlands*, Palgrave Macmillan, New York, 2005, 4.

¹⁹ D. CONLIN, "A Private War in the Caribbean: Nova Scotia Privateering, 1793-1805", *The Northern Mariner* VI No. 4, October 1996, 29; H.A. ORMEROD, *Piracy in the Ancient World – An Essay in Mediterranean History*, Hodor and Stoughton Ltd., 1924, 61.

²⁰ H.A. ORMEROD, *Piracy in the Ancient World – An Essay in Mediterranean History*, Hodor and Stoughton Ltd., 1924, 601; S. C. NEFF, *War and the Law of Nations*, Cambridge, Cambridge University Press, 2005, 109; V. BARBOUR, "Privateers and Pirates of the West-Indies", *The American Historical Review* Vol. 16, No. 4, April 1911, 539.

²¹ D. CONLIN, "A Private War in the Caribbean: Nova Scotia Privateering, 1793-1805", *The Northern Mariner* VI No. 4, October 1996, 29

²² J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 10.

²³ D. CONLIN, "A Private War in the Caribbean: Nova Scotia Privateering, 1793-1805", *The Northern Mariner* VI No. 4, October 1996, 29; V. W. LUNSFORD, *Piracy and Privateering in the Golden Age Netherlands*, Palgrave Macmillan, New York, 2005, 4.

²⁴ B. FUCHS, "Faithless Empires: Pirates, Renegadoes, and the English Nation, *ELH* Vol. 67 No. 1, 2000, 45.

²⁵ V. W. LUNSFORD, *Piracy and Privateering in the Golden Age Netherlands*, Palgrave Macmillan, New York, 2005, 4.

money from English sailors who have pillaged Spanish ships. He insinuates that Elizabeth is condoning these privateers, despite their illicit behaviour, and even encourages their aggressive actions towards Spain because of her political interests. This frustration of the Spanish empire was indeed quite poignant and they have accused England of being a nation of pirates²⁶. Queen Elizabeth did in fact condone and encourage the actions of Francis Drake, even knighting him for his attacks on Spanish ships, under heavy protest by the Spanish²⁷. This animosity between English privateers and the Spanish crown has a rich and long backstory, which is founded firstly in the differing views on religion²⁸. Elizabeth's refusal to adhere to the Spanish and Papal wish to see England return to Catholicism had put a strain on England's friendship with Philip II and resulted in a constant tension and threat of war²⁹. This already fragile friendship was put under even more pressure by Spain's increasing colonial powers and the monopoly it had established on trading relations with the New World³⁰. Queen Elizabeth was frustrated that Spain had forbidden its colonies to conduct foreign trade³¹ and, as a response, send her sea dogs into the Caribbean in order to attack Spanish commerce ships³². This propelled England and Spain into an unofficial war where Elizabeth's privateers weakened Spanish maritime trade and naval power³³. Over time, Spain would find itself increasingly battered by government-backed buccaneers, loose pirates and honoured privateers all supported by the English government, who wanted to establish its own powers of the New World³⁴.

8. The privateers in the *Pirates of the Caribbean* franchise or in *Black Sails* are portrayed as rather obvious villains; trying to either hunt these pirates down or force them to become privateers, subjected to government control. However, the flexibility of the notions "pirate" and "privateer" hasn't gone unnoticed in Hollywood and has been used quite frequently in pop culture.
9. It is firstly quite clearly displayed that the conversion from pirate to privateer and back again was quite a logical part of a seafarer's life. This is illustrated by Captain Barbosa's rapid change of heart in the third *Pirates of the Caribbean* movie, where he received the King's pardon for past transgressions and took on the role of dedicated privateer³⁵. However this career path ended rather quickly when, at the end of the movie, he ripped his commission to shreds with the following words:

"The Crown served me well. But now, by the Gods of sea and sky! Make way for Tortuga!"

And the Crown did serve him well, as it did plenty of other privateers in the 16th and 17th century who were able to rob and pillage ships under the protection of their letters of marque.

²⁶ J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 2; J. NEUFELD, "The Evolution of the Legal Concept of Piracy in Early Modern England", *Journal of World History*, 2011, 9.

²⁷ J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 11.

²⁸ W. SIMPSON, *The Reign of Elizabeth*, Oxford, Heinemann Educational Publishers, 2001, 31.

²⁹ *Ibid.*

³⁰ G. KUHN, *Life Under the Jolly Roger – Reflections on Golden Age Piracy*, PM Press, 2010, 10.

³¹ J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 14.

³² G. KUHN, *Life Under the Jolly Roger – Reflections on Golden Age Piracy*, PM Press, 2010, 11.

³³ J. A. SNYDER, *The Politics of Piracy: Pirates, Privateers and the Government of Elizabeth I, 1558-1588*, University of North Carolina Wilmington, 2006, 4.

³⁴ A.S. BRADFORD, *Flying the Black Flag - A Brief History of Piracy*, Praeger Publishers, 2007, 96.

³⁵ *Pirates of the Caribbean – On Stranger Tides*

10. However, Barbosa's strategically beneficial decision was apparently not copied by other characters in the movie. In the second instalment, "Pirates of the Caribbean – Dead Man's Chest", we see that Governor Cutler Beckett plans to employ the pirate Jack Sparrow as a privateer for the Crown, by offering him a Letter of Marque with a joined pardon.

"You will offer what amounts to a full pardon. Jack will be free, a privateer in the employ of England" – Governor Cutler Beckett (Pirates of the Caribbean – Dead Man's Chest)

Sparrow's friend, Will Turner, reacts accordingly:

"Somehow I doubt Jack will consider employment the same as being free" – Will Turner (Pirates of the Caribbean – Dead Man's Chest)

This statement contradicts what history tells us, however, that pirates flocked at the chance to be a privateer under the English Crown³⁶, rendering Will's response rather unrealistic and hollow. It also neglects the fact that the chance to obtain a full pardon wasn't passed on lightly by pirates, as is shown in the series *Black Sails*, where the pirates readily kidnap and deliver one of their own to Royal Navy, in order to obtain pardons for themselves³⁷. The most notable historical example of this would be that of Captain Woodes Rogers who arrived at New Providence with royal pardons for every man who was willing to give up piracy and pledge loyalty to the king³⁸. This pardon was, without question, accepted by every pirate on the island³⁹, although it must be mentioned that they were quick to discard those promises as well and resort to their old ways⁴⁰. The only pirates who did refuse this offer were Captain Charles Vane and his crew, which, admittedly, would offer a historical precedence for Jack Sparrow's deviation from the norm⁴¹.

11. Lastly, yet not least importantly, it is noted that the little difference in conduct between pirates and privateers has been adopted explicitly in certain episodes of the Starz-series "Black Sails". This is portrayed in an episode where the character Woodes Rogers finally captures the infamous pirate Blackbeard and decides to keelhaul the man three times, shredding him to pieces on the razor-sharp barnacles which are covering the ship⁴². This assumption that the cruel behaviour of privateers and pirates is very much alike continues on in another episode, where captured pirates are to battle to the death, with nothing to defend themselves but their bare hands⁴³. Since most privateers had, at one point, also been pirates, it's unsurprising that they

³⁶ J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 10; V. W. LUNSFORD, *Piracy and Privateering in the Golden Age Netherlands*, Palgrave Macmillan, New York, 2005, 3.

³⁷ *Black Sails*, Season 2 – Episode 9.

³⁸ R. ADAMSON, "The Fading Gleam of a Golden Age: Britain's Battle Against Piracy in the Americas in the Early 18th Century", *Honors Projects*, 2004, Paper 21, 14.

³⁹ *Ibid.*

⁴⁰ *Ibid.*, 21.

⁴¹ *Ibid.*, 14.

⁴² *Black Sails*, Season 4 – Episode 3.

⁴³ *Black Sails*, Season 4 – Episode 4.

maintained these cruel methods⁴⁴. In this context it must be stated that violence at sea was considered to be the norm in those times and viewed as an inherent risk of international trade⁴⁵.

12. Letters of marque didn't only serve as a justification for the privateer's conduct, but they were also used to limit the privateer's scope of action⁴⁶. If a privateer were to act outside of these limitations, he would be eligible for prosecution and punishment, as famously happened with Captain Kidd⁴⁷. However, as often as this happened with regard to transgression against the laws of property, this was very rarely so with regard to the use of violence against persons. ROMMELSE suggests this can be directly related to the fact that privateering was a form of privatization of warfare and thus state control, though present, was in practice relatively weak or non-existent⁴⁸. This happened to such an extent, that in 1549 King Edward VI issued Royal Proclamations which stated that the state would withdraw its support for all privateers who resorted to illegal actions and that they would risk to be punished by execution⁴⁹. However, as England remained heavily dependent on its privateers, these threats proved to be without consequences⁵⁰. Thus the threats of the Crown remained empty and privateers were very much left free with regards to their use of violence.
13. Looking at the Elizabethan era, it's clear that the Virgin Queen didn't take any transgressions of her sea dogs too seriously and she simply encouraged them to obey the letter of the commissions they received from the Admiralty Courts⁵¹. The military benefits she enjoyed from these privateers were deemed more valuable than the nuisance caused by awkward diplomatic relations⁵². Officially, the conduct of privateers was regulated and they were to uphold certain moral standards⁵³ yet the cultural acceptance of cruelty eroded the shocking effect of piratical acts, as it had become more or less regarded as the norm⁵⁴.

SECTION II. BUCCANEERS

“You know, for having such a bleak outlook on pirates, you are well on your way to becoming one: sprung a man from jail, commandeered a ship of the fleet, sailed with a buccaneer crew out of Tortuga, and you're completely obsessed with treasure” – Captain Jack Sparrow (Pirates of the Caribbean – The Curse of the Black Pearl)

⁴⁴ V. W. LUNSFORD, *Piracy and Privateering in the Golden Age Netherlands*, Palgrave Macmillan, New York, 2005, 43.

⁴⁵ J. NEUFELD, “The Evolution of the Legal Concept of Piracy in Early Modern England”, *Journal of World History*, 2011, 6.

⁴⁶ *Ibid.*, 3.

⁴⁷ COURT OF KING'S BENCH, *Rex v. Kidd*, 14 How St Tr 123, 1701.

⁴⁸ G. ROMMELSE, “Political agendas and the contestable legality of privateering: the case of the Dutch-Portuguese War (1657-1662)”, *Journal for Maritime Research* Vol. 17 Iss. 2, 2015, 184.

⁴⁹ J. NEUFELD, “The Evolution of the Legal Concept of Piracy in Early Modern England”, *Journal of World History*, 2011, 4.

⁵⁰ *Ibid.*

⁵¹ ELIZABETH I, “By the Queene, a proclamation to repress all piracies and depredations upon the sea”, 20 march 1601.

⁵² J. NEUFELD, “The Evolution of the Legal Concept of Piracy in Early Modern England”, *Journal of World History*, 2011, 5.

⁵³ G. ROMMELSE, “Political agendas and the contestable legality of privateering: the case of the Dutch-Portuguese War (1657-1662)”, *Journal for Maritime Research* Vol. 17 Iss. 2, 2015, 184.

⁵⁴ J. NEUFELD, “The Evolution of the Legal Concept of Piracy in Early Modern England”, *Journal of World History*, 2011, 6.

§1. In history

14. The term “buccaneer” is mentioned in various historical sources, but its meaning is rarely clarified. This confusion is probably caused by their eventful history, which makes it rather difficult to distinguish them from pirates or privateers.
15. To distinguish the group of buccaneers from pirates or other seafarers, we must first take a look at the history of Spanish imperialism. Until the 17th century, Spanish ships were prominently present in Middle- and South America, which led to various settlements in the New World. Buccaneers were social outcasts from society who banded together with runaway slaves, fugitives of the law and others who found themselves dissatisfied with their position at the bottom of the social ladder⁵⁵. The composition of this group led to a negative connotation with the word “buccaneer” in the eyes of civilized society⁵⁶. They also had quite a fearful and savage reputation⁵⁷. They were later joined by social outcasts from Spanish, Portuguese, English, French and Dutch origin⁵⁸. These communities inhabited forgotten Caribbean islands⁵⁹ on Spanish territory, to great disgruntlement of the Spanish, and survived through agriculture and, famously so, hunting⁶⁰. They owe their name to their practice of preserving meat by smoking it, a practice which was called “*boucaner*” in French, which resulted in the French nicknaming these hunters “*boucaniers*” and was then translated to “buccaneer” in English⁶¹.
16. In the early 17th century, however, Spanish imperialist power was in decline⁶² which led to a rise in the buccaneering population in the Caribbean⁶³. These buccaneers were prominently present in the Caribbean between 1630 and 1680⁶⁴. Spain tried to disband these buccaneering communities by killing off their herds and burning their lands, eliminating their means of survival⁶⁵. This prompted the buccaneers towards piracy, mainly targetting Spanish ships, and attacking the Spanish Caribbean settlements⁶⁶. This can be justified by two motivations: the obvious dominant Spanish presence in the Caribbean and the patriotic sentiment of the buccaneers⁶⁷.

⁵⁵ A. O. ESQUEMELING, *The Buccaneers of America*, G. Routledge, London, 1924, 49; R.J. ANTHONY, *Pirates in the Age of Sail*, W.W. Norton & Company, 2007, 11.

⁵⁶ R.J. ANTHONY, *Pirates in the Age of Sail*, W.W. Norton & Company, 2007, 12.

⁵⁷ G. KUHN, *Life Under the Jolly Roger – Reflections on Golden Age Piracy*, PM Press, 2010, 11.

⁵⁸ R.J. ANTHONY, *Pirates in the Age of Sail*, W.W. Norton & Company, 2007, 11.

⁵⁹ V. BARBOUR, “Privateers and Pirates of the West-Indies”, *The American Historical Review* Vol. 16, No. 4, April 1911, 536.

⁶⁰ A. O. ESQUEMELING, *The Buccaneers of America*, G. Routledge, London, 1924, 49; G. KUHN, *Life Under the Jolly Roger – Reflections on Golden Age Piracy*, PM Press, 2010, 9; J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 18; V. BARBOUR, “Privateers and Pirates of the West-Indies”, *The American Historical Review* Vol. 16, No. 4, April 1911, 536.

⁶¹ A. O. ESQUEMELING, *The Buccaneers of America*, G. Routledge, London, 1924, 51.

⁶² J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 17.

⁶³ J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 18; R.J. ANTHONY, *Pirates in the Age of Sail*, W.W. Norton & Company, 2007, 11.

⁶⁴ R.J. ANTHONY, *Pirates in the Age of Sail*, W.W. Norton & Company, 2007, 11.

⁶⁵ A. O. ESQUEMELING, *The Buccaneers of America*, G. Routledge, London, 1924, 51.

⁶⁶ A. O. ESQUEMELING, *The Buccaneers of America*, G. Routledge, London, 1924, 41; R.J. ANTHONY, *Pirates in the Age of Sail*, W.W. Norton & Company, 2007, 11.

⁶⁷ J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 13.

17. Since their affinity for attacking (almost exclusively) Spanish ships⁶⁸, these buccaneers were considered to be national heroes in the eyes of the English and were distinguished from pirates since they were acting in the interest of the state, despite their past as outlaws⁶⁹. Their acts can be described as “patriotic piracy”, as they were still perceived as pirates⁷⁰ by the Spanish but were considered to be national heroes by the English. Buccaneering was also referred to as “piratical imperialism”⁷¹, because the British and French used these pirates against the Spanish in an attempt to force the latter to recognize their New World Colonies⁷². Encouraging these buccaneers, in combination with national privateers, was a cheap way of continuously waging war with Spain⁷³.
18. Another distinction between buccaneers and pirates lies in the fact that the former were based in the West-Indies and had the tendency to return to their settlements after having conducted raids⁷⁴. The latter, however, often returned to England to spend their prizes before regrouping and going out at sea again⁷⁵.
19. The age of buccaneering in the Caribbean ended with the raiding of the safe havens in Jamaica and Tortuga⁷⁶, after which the buccaneers departed for the Bahamas or the American colonies⁷⁷. However, it must be noted that the age of buccaneering and the age of piracy aren’t clearly separated and flow over into each other. As we will see later on, buccaneers are considered to be the forerunners of “real” Caribbean pirates and the age of buccaneering can be seen as the first phase of piracy.

§2. In pop culture

20. Buccaneers are rarely ever mentioned in pop culture as a separate group and even in historical context they often get confused with pirates. Since they share plenty of similar characteristics and the distinction is rather vague, this seems quite forgivable. Although buccaneers themselves are rarely every mentioned by this specific name, their safe havens and communities are used very often and very prominently. Both in pop culture and in historic literature they are often referred to as pirates, to avoid confusion.

⁶⁸ R.J. ANTHONY, *Pirates in the Age of Sail*, W.W. Norton & Company, 2007, 12.

⁶⁹ G. KUHN, *Life Under the Jolly Roger – Reflections on Golden Age Piracy*, PM Press, 2010, 7; M. WACHSPRESS, “Pirates, Highwaymen, and the Origins of the Criminal in Seventeenth-Century English Thought, *Yale Journal of Law & the Humanities* Vol. 26 Iss. 2, 2015, 313.

⁷⁰ G. KUHN, *Life Under the Jolly Roger – Reflections on Golden Age Piracy*, PM Press, 2010, 9.

⁷¹ J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 13.

⁷² *Ibid*, 14.

⁷³ *Ibid*, 16.

⁷⁴ *Ibid*, 24.

⁷⁵ I. HARKAI, “The Questions of Piracy in the Light of International Law and the Responsibility of a Failed State”, *AARMS* Vol. 14, No. 2, 2015, 174.

⁷⁶ V. BARBOUR, “Privateers and Pirates of the West-Indies”, *The American Historical Review* Vol. 16, No. 4, April 1911, 537.

⁷⁷ J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 27.

21. In 1630 buccaneers established their own settlements on the tiny island of Tortuga, in Haiti⁷⁸. Together with Port Royal in Jamaica and the island of Hispaniola, Tortuga would later become one of the largest pirate sanctuaries in the Caribbean Sea⁷⁹. These three vestiges are frequently mentioned in pop culture and are, correctly so, portrayed as safe havens for pirates. *Pirates of the Caribbean – The Curse of the Black Pearl* portrays Tortuga as a vibrant, lawless society which has quite frankly resorted into the chaos of constant bar-brawls. Although the real life pirate communities were far from glamorous and they were undoubtedly quite distinctive, they did still uphold their own rules and customs and there still was a sense of order, both on⁸⁰ and off⁸¹ their ships, though undoubtedly in a different sense than that of civilized society. It can be stated, though, that there was no lack in the abundant presence of brothels, gambling halls and taverns⁸². In the same movie, however, Port Royal is portrayed as a quiet port, with a governor who has clear loyalties to the English Crown and an utter disregard for pirates. The real Port Royal during the 16th-17th century was considered to be a rendez-vous place for all sorts of seamen and was known for having a commercial port which was specialised in stolen goods⁸³.
22. The relevance of these ports hasn't been underestimated in pop culture, since they were deemed to grant strategic access to very important sea routes for ships of commerce, giving the buccaneers, and later on pirates, quite an advantage⁸⁴. The rebellious nature of these islands against their own colonial powers isn't fictional either. In *Pirates of the Caribbean*, Tortuga is shown to be a heaven for pirates, a place unreachable by the long arm of the law. Although this seems rather far-fetched and maybe too adventurous to be true, it does cut close to the reality of Tortuga in the 17th century⁸⁵. These are perfect examples of buccaneers organising themselves and forming their own societies in the Caribbean⁸⁶.

SECTION III. PIRATES

“We're back to the same two choices we've known our entire lives. Toil for another man's benefit or steal for our own.” – Long John Silver (Black Sails Season 2 – Episode 7)

§1. In history

23. WOMBWELL splits up Caribbean piracy into two phases⁸⁷. The first phase has been discussed elaborately under the above section on buccaneers. Here, piracy served as a sort of extension for

⁷⁸ J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 11; R.J. ANTHONY, *Pirates in the Age of Sail*, W.W. Norton & Company, 2007, 12; V. BARBOUR, “Privateers and Pirates of the West-Indies”, *The American Historical Review* Vol. 16, No. 4, April 1911, 537.

⁷⁹ J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 11.

⁸⁰ Bartholomew Roberts Shipboard Articles, 1721.

⁸¹ R.J. ANTHONY, *Pirates in the Age of Sail*, W.W. Norton & Company, 2007, 12; V. BARBOUR, “Privateers and Pirates of the West-Indies”, *The American Historical Review* Vol. 16, No. 4, April 1911, 539.

⁸² J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 20.

⁸³ R.J. ANTHONY, *Pirates in the Age of Sail*, W.W. Norton & Company, 2007, 12.

⁸⁴ J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 19.

⁸⁵ Ibid.

⁸⁶ R.J. ANTHONY, *Pirates in the Age of Sail*, W.W. Norton & Company, 2007, 12.

⁸⁷ J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 13.

the Navy in the warfare against the Spanish empire, yet without the necessity of commissions⁸⁸. It was more used as an informal yet handy phenomenon that took place on its own, but wasn't discouraged by the English government. However, by 1670, this buccaneering period came to an end, as their nations decided they had no more need for these sea robbers and started becoming more rigorous in their attempts to get rid of them. This was instigated by the realization that these pirates caused instability, endangered international relations and disrupted trade⁸⁹. Thus entered the second phase of piracy, where pirates were considered "*hostis humani generis*" and were at war with everyone, including their own home countries⁹⁰. This phase can also be referred to as the Golden Age of Piracy⁹¹, which depicts the research area for this thesis.

A. *Enemies of all mankind*

"From this moment on, any man participating in the act of high seas piracy, will be presumed to be one of your men. An enemy of the state. I will catch him, I will hunt him and I will hang him" – Captain Woodes Rogers (*Black Sails – Season 3, Episode 7*)

24. The phrase "*hostis humani generis*" had been introduced in Roman times by Cicero⁹², though in a different context, and it was reintroduced in Early Modern times by GENTILI⁹³. Afterwards it was reused by the Dutch, English and many other authorities in the 16th and 17th centuries as a clear message that they were dedicated to abolishing piracy⁹⁴. This declaration had been repeated multiple times throughout the ages, by several national and legal authorities whenever they felt the need to make a stand against piracy⁹⁵.
25. Branding pirates as "*hostis humani generis*" meant that they were considered to be enemies of mankind. This gave anyone the right to capture and prosecute pirates according to their own domestic legislation, regardless of the perpetrator's nationality or where the crime had taken place⁹⁶. Its effects on international policy and on the war against piracy will be discussed more thoroughly in the second chapter. However, on first sight, it might be noted that branding pirates as enemies of mankind seems quite a severe reaction to a lowly group of bandits. To understand the severity of the problem and how it was viewed and affected by international law, it's important to find out who these men were, what their actions entailed and why they grew to become such an enormous problem for the British Empire.

⁸⁸J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 13.

⁸⁹ Ibid.

⁹⁰ J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 13.

⁹¹ J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 25.

⁹² CICERO, *On Duties*, 44 B.C.E., 108, translated by E. M. ATKINS & M. T. GRIFFIN, Cambridge University Press, 1991.

⁹³ A. GENTILI, *De Legationibus Libri Tres*, translated by G. J. LAING, Oxford University Press, 1924 (1594), 79; T.

PAIGE, "Piracy and Universal Jurisdiction", *Macquarie Law Journal* Vol. 12, 2013, 136.

⁹⁴ V. W. LUNSFORD, *Piracy and Privateering in the Golden Age Netherlands*, Palgrave Macmillan, New York, 2005, 35.

⁹⁵ H.A. ORMEROD, *Piracy in the Ancient World – An Essay in Mediterranean History*, Hodor and Stoughton Ltd., 1924, 60.

⁹⁶ H. HAHN, "Pirates of the Caribbean – Above the Law", *Courmal International Law Journal Online*, 2017, <http://comellij.org/pirates-of-the-caribbean-above-the-law/>; T. PAIGE, "Piracy and Universal Jurisdiction", *Macquarie Law Journal* Vol. 12, 2013, 137.

1. Who were these pirates?

26. The first question to answer: who were these pirates? RUBIN has pointed out that this question has a lot of answers, since the meaning of the word “pirate” has known quite an evolution throughout the ages⁹⁷. However, I will restrict myself to the definition of piracy and the description of its community that is relevant to the 17th - 18th century. Since the piracy community of the late 17th century was heavily interrelated with the buccaneers, it comes as no surprise that pirate crews were equally riddled with escaped slaves, fugitives from the law and other social outcasts⁹⁸. Yet those weren’t the only ones who turned to piracy.
27. Between the 16th and 18th century, international conflicts reached a high level of intensity and the need for reinforcement of the English Royal Navy was constantly fluctuating⁹⁹. As mentioned above, this led to a rise in naval recruitment during times of war and a sudden mass unemployment of these sailors during times of peace, which caused these men to turn to other means of survival, like piracy¹⁰⁰. It can be said with near certainty that a large part of the piracy community had, at one point or another, either been part of Royal Navy or worked as a privateer¹⁰¹. Lots of seamen, whether they were part of the royal navy or working on a commerce ship, found themselves willingly joining a pirate crew¹⁰². In his memoirs, captain Snelgrave recalled how he and his crew were held captive by pirates. Although they were eventually set free, eleven of his men decided to stay behind to join the crew¹⁰³.
28. It’s important to remember that the biggest distinction between pirates on the one hand and buccaneers and privateers on the other hand, is the fact that pirates would attack any ship and do so indiscriminately and illegally¹⁰⁴. They didn’t carry a license, weren’t recognized by any legal authority and didn’t have any patriotic motives for their actions¹⁰⁵. Their loyalty lay with themselves and the hunt for booty¹⁰⁶. This is in stark contrast with privateers as their loyalties lay (supposedly) with their country¹⁰⁷.

⁹⁷ A. P. RUBIN, *The Law of Piracy*, Naval War College Press Newport, Rhode Island, 1988, 15.

⁹⁸ V. W. LUNSFORD, *Piracy and Privateering in the Golden Age Netherlands*, Palgrave Macmillan, New York, 2005, 105.

⁹⁹ R.J. ANTHONY, *Pirates in the Age of Sail*, W.W. Norton & Company, 2007, 6.

¹⁰⁰ J. NEUFELD, “The Evolution of the Legal Concept of Piracy in Early Modern England”, *Journal of World History*, 2011, 7.

¹⁰¹ M. REDIKER, “Under the Banner of King Death: The Social World of Anglo-American Pirates, 1716 to 1726”, *The William and Mary Quarterly*, Third Series Vol. 38 No. 2, 1981, 206.

¹⁰² T. TRAVERS, *Pirates: A History*, The History Press, 2012, 3.

¹⁰³ M. REDIKER, “Under the Banner of King Death: The Social World of Anglo-American Pirates, 1716 to 1726”, *The William and Mary Quarterly*, Third Series Vol. 38 No. 2, 1981, 218.

¹⁰⁴ M. WACHSPRESS, “Pirates, Highwaymen, and the Origins of the Criminal in Seventeenth-Century English Thought”, *Yale Journal of Law & the Humanities* Vol. 26 Iss. 2, 2015, 320; R.J. ANTHONY, *Pirates in the Age of Sail*, W.W. Norton & Company, 2007, 14.

¹⁰⁵ G. KUHN, *Life Under the Jolly Roger – Reflections on Golden Age Piracy*, PM Press, 2010, 7; H. HAHN, “Pirates of the Caribbean – Above the Law”, *Cornell International Law Journal Online*, 2017, <http://cornellilj.org/pirates-of-the-caribbean-above-the-law/>.

¹⁰⁶ G. KUHN, *Life Under the Jolly Roger – Reflections on Golden Age Piracy*, PM Press, 2010, 7; R. ADAMSON, “The Fading Gleam of a Golden Age: Britain’s Battle Against Piracy in the Americas in the Early 18th Century”, *Honors Projects*, 2004, Paper 21, 2.

¹⁰⁷ J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 3.

29. After the liquidation of pirate safe havens, like Tortuga and Port Royal, it became increasingly difficult for pirates to concentrate their numbers in large fleets, which caused them to sail in smaller fleets or even singularly¹⁰⁸. Their small ships were easy to navigate through shallow waters and could easily outrun the large ships from the Navy¹⁰⁹. This offered pirates a practical advantage and served as an extra obstacle to getting caught¹¹⁰.

2. What did piracy entail?

30. Unlike privateering, piracy was considered to be an unauthorized act of violence which either took place at sea or emanated from the sea towards settlements on the shore¹¹¹. This act can be unauthorized because the pirate hasn't received a commission by the necessary authorities or because his acts have exceeded the commission that has been granted to him¹¹². Piracy, depending on the narrow or broader definition¹¹³, entails committing certain acts of robbery¹¹⁴ or violence on sea which, if they had been committed on land in the same degree, would've been defined as a felony¹¹⁵.
31. One thing that is hardly exaggerated in today's movies and series is the horrendous acts of aggression both on and off the battlefield that pirates often committed, with no regard for certain norms of morality or humanity¹¹⁶. Pirates like L'Olonais and Low have several descriptive accounts written about them and their interrogation methods, which were considered savagely gruesome to say the least¹¹⁷. However, as gruesome as their actions may have been – and according to JOHNSON's accounts¹¹⁸ they were, in fact, quite terrible – violence was seen as an inherent part of travel at sea and it was generally accepted as the norm, which drastically reduced the shocking effect of piratical acts¹¹⁹.

¹⁰⁸ J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 25.

¹⁰⁹ R. ADAMSON, "The Fading Gleam of a Golden Age: Britain's Battle Against Piracy in the Americas in the Early 18th Century", *Honors Projects*, 2004, Paper 21, 5.

¹¹⁰ R. ADAMSON, "The Fading Gleam of a Golden Age: Britain's Battle Against Piracy in the Americas in the Early 18th Century", *Honors Projects*, 2004, Paper 21, 5.

¹¹¹ R.J. ANTHONY, *Pirates in the Age of Sail*, W.W. Norton & Company, 2007, 6.

¹¹² T. PAIGE, "Piracy and Universal Jurisdiction", *Macquarie Law Journal* Vol. 12, 2013, 134.

¹¹³ M. J. KELLY, "The Pre-History of Piracy as a Crime and & Its Definitional Odyssey", *Case Western Reserve Journal of International Law* Vol. 46 Iss. 1 & 2, 2013, 31.

¹¹⁴ G. KUHN, *Life Under the Jolly Roger – Reflections on Golden Age Piracy*, PM Press, 2010, 7; M. J. KELLY, "The Pre-History of Piracy as a Crime and & Its Definitional Odyssey", *Case Western Reserve Journal of International Law* Vol. 46 Iss. 1 & 2, 2013, 28.

¹¹⁵ H.A. ORMEROD, *Piracy in the Ancient World – An Essay in Mediterranean History*, Hodor and Stoughton Ltd., 1924, 60.

¹¹⁶ V. W. LUNSFORD, *Piracy and Privateering in the Golden Age Netherlands*, Palgrave Macmillan, New York, 2005, 137.

¹¹⁷ C. JOHNSON, *A General History of the Pyrates*, Ch. Rivington, London, 1724, 377; V. W. LUNSFORD, *Piracy and Privateering in the Golden Age Netherlands*, Palgrave Macmillan, New York, 2005, 137.

¹¹⁸ C. JOHNSON, *A General History of the Pyrates*, Ch. Rivington, London, 1724, 387; R. ADAMSON, "The Fading Gleam of a Golden Age: Britain's Battle Against Piracy in the Americas in the Early 18th Century", *Honors Projects*, 2004, Paper 21, 24.

¹¹⁹ J. NEUFELD, "The Evolution of the Legal Concept of Piracy in Early Modern England", *Journal of World History*, 2011, 6.

3. Why did they become such a problem?

32. The often untold story of piracy is that, before they were so famously persecuted by national authorities, they were actually sponsored or condoned by their national governments for centuries. More explicit state-sponsoring has been mentioned above with regard to Queen Elizabeth's dependence on privateers, but the more subtle variant was the Crown's indifferent position when it came to their buccaneers in the Caribbean who were mainly attacking Spanish and French ships, enemies of the English Crown¹²⁰. As long as the benefits, or the damage that was done to the rival belligerent nation, outweighed the damage done to the English economy itself, the English Crown remained suspiciously passive about the problem of piracy¹²¹. The Crown's enthusiasm to hunt for pirates was heavily influenced by the practical political interests of the nation¹²². Even at the start of the Golden Age, the British Empire still withheld from making any serious efforts to suppress piracy as it remained quite beneficial to their own political interests¹²³. Allowing the pirates to roam freely and do as they pleased was done in the spirit of "piratical imperialism", where the state enjoyed the benefits of an advancing trade and enlargement of their empire at the hands of pirates¹²⁴.
33. The perception of piracy went through an evolution from useful tool for state policy to deceptive scoundrels who formed an enemy of all mankind¹²⁵. Near the end of the 17th century, the political and economic developments were of such nature that piracy was no longer deemed useful and the government concluded that there was a need for effective persecution¹²⁶. With a sudden change of reputation, pirates had become "*hostis humani generis*"¹²⁷.
34. There are plenty of reasons why piracy managed to thrive for so long and why the, admittedly not always whole-hearted, attempts to suppress them didn't take effect immediately. This is easily portrayed by the Crown's refusal, for quite some time, to grant the English colonies in the Americas the power to establish Admiralty Courts and put their captured pirates to trial. Instead, all captured pirates were to be shipped to England. This notably put a damper on the enthusiasm to hunt pirates and government officials practiced a "catch and release" method¹²⁸, allowing captured pirates to avoid conviction and pick up their trade again quite quickly. This method

¹²⁰ A. PÉROTIN-DUMON, "The Pirate and the Emperor: Power and the Law on the Seas" in TRACY, J.D., *The Political Economy of Merchant Empires*, Cambridge University Press, Cambridge, 1991, 212; J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 4; J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 2.

¹²¹ R.J. ANTHONY, *Pirates in the Age of Sail*, W.W. Norton & Company, 2007, 6.

¹²² J. NEUFELD, "The Evolution of the Legal Concept of Piracy in Early Modern England", *Journal of World History*, 2011, 3; M. WACHSPRESS, "Pirates, Highwaymen, and the Origins of the Criminal in Seventeenth-Century English Thought", *Yale Journal of Law & the Humanities* Vol. 26 Iss. 2, 2015, 313; V. BARBOUR, "Privateers and Pirates of the West-Indies", *The American Historical Review* Vol. 16, No. 4, April 1911, 529.

¹²³ M. WACHSPRESS, "Pirates, Highwaymen, and the Origins of the Criminal in Seventeenth-Century English Thought", *Yale Journal of Law & the Humanities* Vol. 26 Iss. 2, 2015, 313; R.J. ANTHONY, *Pirates in the Age of Sail*, W.W. Norton & Company, 2007, 10.

¹²⁴ R.J. ANTHONY, *Pirates in the Age of Sail*, W.W. Norton & Company, 2007, 6.

¹²⁵ *Ibid*, 7.

¹²⁶ *Ibid*, 14.

¹²⁷ G. KUHN, *Life Under the Jolly Roger – Reflections on Golden Age Piracy*, PM Press, 2010, 7; R.J. ANTHONY, *Pirates in the Age of Sail*, W.W. Norton & Company, 2007, 14.

¹²⁸ P. T. LEESON, "Rationality, Pirates and the Law: A Retrospective", *American University Law Review* Vol. 59 Iss. 5, 2010, 1221.

persisted even more so because of the pirates' popularity in the American colonies and their rather positive relationship with the local administration. One particular governor, Benjamin Fletcher of New York, was even personally involved with the pirate captain Thomas Tew and engaged in a close friendship with the man¹²⁹. Near the end of the 17th century, pirates had spread all over the American colonies and had an intrinsic part of the local community through their material investments in the black market. Because of the economic benefits their presence brought to the colonies, these men were increasingly hard to capture and keep locked up since they had plenty of (corrupted) help to escape punishment¹³⁰.

35. To avoid the problem of piracy in the Caribbean, the European powers adhered to the "no peace beyond the line"-doctrine¹³¹. It implied that despite European peace treaties, there would be no enforcement of peace in the American waters¹³² and was a way to legitimize piracy in the Caribbean¹³³. Diplomats agreed to ignore all violence that occurred in west of line of 46°W. and didn't allow it to influence their relations within Europe¹³⁴. It was refuted in the Treaty of Madrid¹³⁵ where the Western powers decided to abandon this doctrine, severely weakening the position of pirates in the Caribbean¹³⁶.
36. The Spanish Succession war between Britain and Spain offered a short relief of piracy because plenty of pirates were mobilized as privateers or became part of the Royal Navy¹³⁷. The end of the war, however, introduced massive demobilization of the British Navy and English privateers, which in turn caused a remarkable rise in the trade of piracy since their services were no longer needed¹³⁸. The rise in piracy was also encouraged by the rise in maritime commerce¹³⁹. This because merchants were mainly interested in keeping their profit as high as possible, meaning that their ships were heavily loaded but with minimal safe-guarding¹⁴⁰.
37. When captured, it was also possible for pirates to escape their punishment by (re)joining the privateering ranks through the use of a letter of marque and a pardon, and becoming an extension of the country's maritime powers¹⁴¹.

¹²⁹ G. F. DOWN, *The Pirates of the New England Coast 1630-1730*, Dover Publications, 1996, 17.

¹³⁰ J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 29.

¹³¹ J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 23.

¹³² V. BARBOUR, "Privateers and Pirates of the West-Indies", *The American Historical Review* Vol. 16, No. 4, April 1911, 529.

¹³³ J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 23.

¹³⁴ *Ibid*, 14.

¹³⁵ *Ibid*, 23.

¹³⁶ *Ibid*, 25.

¹³⁷ P. T. LEESON, "Rationality, Pirates and the Law: A Retrospective", *American University Law Review* Vol. 59 Iss. 5, 2010, 1221.

¹³⁸ M. REDIKER, "Under the Banner of King Death: The Social World of Anglo-American Pirates, 1716 to 1726", *The William and Mary Quarterly*, Third Series Vol. 38 No. 2, 1981, 224; P. T. LEESON, "Rationality, Pirates and the Law: A Retrospective", *American University Law Review* Vol. 59 Iss. 5, 2010, 1221; R.J. ANTHONY, *Pirates in the Age of Sail*, W.W. Norton & Company, 2007, 6; V. W. LUNSFORD, *Piracy and Privateering in the Golden Age Netherlands*, Palgrave Macmillan, New York, 2005, 105.

¹³⁹ J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 2; M. J. KELLY, "The Pre-History of Piracy as a Crime and Its Definitional Odyssey", *Case Western Reserve Journal of International Law* Vol. 46 Iss. 1 & 2, 2013, 28.

¹⁴⁰ J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 2.

¹⁴¹ V. W. LUNSFORD, *Piracy and Privateering in the Golden Age Netherlands*, Palgrave Macmillan, New York, 2005, 3.

B. The End of Pirates

“There was a time when a pirate was free to make his own way in the world. But our time is comin’ to an end” – Captain Barbossa (Pirates of the Caribbean – At World’s End)

38. NEUFELD makes an interesting observation when he states that the war against piracy wasn’t based on a de jure change in the legal concept of piracy, but rather in a de facto change in the Crown’s position and a seizure of the, until then, tolerance towards it¹⁴². This change occurred simply because it befitted the political intentions of the state¹⁴³. Although piracy was already branded as an illegal activity by the law, this change in attitude resulted in a more rigid and severe application of existing law¹⁴⁴. This change in mentality was supported by a strong British navy and also a series of legal changes, meant to create a more efficient system for the capture and legal prosecution of pirates¹⁴⁵.
39. As said before, the English Crown was originally rather reluctant to take action against pirates and their criminal behaviour¹⁴⁶. Especially, during the buccaneering period, their main targets seemed to be Spanish trading ships, which caused Spain to become both increasingly aggressive and paranoid against English ships, denouncing England as a “nation of pirates”¹⁴⁷ and viewing every English ship as a pirate ship¹⁴⁸.
40. In the second half of the 17th century, when England was finally establishing itself as a primary commercial power and the Spanish navy had been weakened sufficiently, the attempts to eradicate piracy became more serious¹⁴⁹. Because of the prosperous trade with its own colonies, the success of the illicit market it had established with Spanish colonies¹⁵⁰ and the constant sabotage of its Spanish rivals, the British Empire flourished¹⁵¹. Although this evolution had originally taken place through use of piratical methods, the government now wished to pursue legitimate commerce which held a more promising future¹⁵². Now that England had become a large commercial power and wanted to maintain that position, piracy had become a burden rather than a benefit and had to be eradicated¹⁵³. However, the pirates refused to give up their

¹⁴² J. NEUFELD, “The Evolution of the Legal Concept of Piracy in Early Modern England”, *Journal of World History*, 2011, 1.

¹⁴³ Ibid.

¹⁴⁴ Ibid.

¹⁴⁵ P. T. LEESON, “Rationality, Pirates and the Law: A Retrospective”, *American University Law Review* Vol. 59 Iss. 5, 2010, 1219.

¹⁴⁶ J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 4.

¹⁴⁷ J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 2; J. NEUFELD, “The Evolution of the Legal Concept of Piracy in Early Modern England”, *Journal of World History*, 2011, 9.

¹⁴⁸ G. KUHN, *Life Under the Jolly Roger – Reflections on Golden Age Piracy*, PM Press, 2010, 7.

¹⁴⁹ J. NEUFELD, “The Evolution of the Legal Concept of Piracy in Early Modern England”, *Journal of World History*, 2011, 9.

¹⁵⁰ A.S. BRADFORD, *Flying the Black Flag - A Brief History of Piracy*, Praeger Publishers, 2007, 81.

¹⁵¹ J. NEUFELD, “The Evolution of the Legal Concept of Piracy in Early Modern England”, *Journal of World History*, 2011, 9.

¹⁵² J. NEUFELD, “The Evolution of the Legal Concept of Piracy in Early Modern England”, *Journal of World History*, 2011, 9.

¹⁵³ J. NEUFELD, “The Evolution of the Legal Concept of Piracy in Early Modern England”, *Journal of World History*, 2011, 9; R. ADAMSON, “The Fading Gleam of a Golden Age: Britain’s Battle Against Piracy in the Americas in the Early 18th Century”, *Honors Projects*, 2004, Paper 21, 3.

trade and, since they lacked governmental sponsorship, started targeting English commercial ships as well¹⁵⁴.

41. This change of economic climate had also influenced the cultural perspective of the problem, since it now became much more preferential to uphold stable and consistent long-term trading relationships with satisfied partners who didn't fear to be badgered by these Caribbean partners, instead of enjoying short-term unorganized profits which didn't serve to build long-term prosperity¹⁵⁵.
42. Eventually merchants were forced to lobby the government to undertake action against these sea robbers since its harm to the English economy became notable. It was then that Great-Britain finally decided to unleash its full naval power in the West-Indies¹⁵⁶. This culminated in the Piracy Act of 1698, which served as a turning point and formed the beginning of the end of piracy¹⁵⁷.
43. Despite its best efforts, it still took Great-Britain nearly 60 years to bring about the end of piracy in the Caribbean. Both the Nine Years War, from 1688 to 1697, and the Spanish Succession War, from 1701 – 1713, contained an obstacle on the road to complete annihilation of piracy¹⁵⁸. For one, these wars gave rise to scores of pirates, who wanted to continue their ways and did so under the guise of a letter of marque, abusing the powers it had granted them¹⁵⁹. Another returning phenomenon at the end of these wars was the rise of unemployed sailors, as the Royal Navy discharged nearly 75% of the manpower they employed during wartime, and privateers who were left without commissions and without work¹⁶⁰. As mentioned before, these men had a particular set of skills and an acceptable alternative to these jobs would be piracy¹⁶¹.
44. From the 1670s onwards, England did what it could to try and suppress pirates and it did so through several different methods.
45. Since the governors in the American colonies took in a rather favourable position towards the pirates, one of Britain's tactics was to replace the corrupted governors by more honest and patriotic officials¹⁶². This was done by introducing the Act for preventing frauds and regulating abuses in the Plantation Trade, which brought a new fleet of officers to the colonies¹⁶³. The

¹⁵⁴ H. HAHN, "Pirates of the Caribbean – Above the Law", *Cournal International Law Journal Online*, 2017, <http://comellij.org/pirates-of-the-caribbean-above-the-law/>; J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 12; R. ADAMSON, "The Fading Gleam of a Golden Age: Britain's Battle Against Piracy in the Americas in the Early 18th Century", *Honors Projects*, 2004, Paper 21, 1.

¹⁵⁵ J. NEUFELD, "The Evolution of the Legal Concept of Piracy in Early Modern England", *Journal of World History*, 2011, 10.

¹⁵⁶ J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 12.

¹⁵⁷ J. NEUFELD, "The Evolution of the Legal Concept of Piracy in Early Modern England", *Journal of World History*, 2011, 13.

¹⁵⁸ J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 26.

¹⁵⁹ *Ibid.*

¹⁶⁰ *Ibid.*

¹⁶¹ *Ibid.*

¹⁶² J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 30.

¹⁶³ WILLIAM III, "An Act for Preventing Frauds and Regulating Abuses in the Plantation Trade", 1695-6; R. ADAMSON, "The Fading Gleam of a Golden Age: Britain's Battle Against Piracy in the Americas in the Early 18th Century", *Honors Projects*, 2004, Paper 21, 7.

increase of manpower and ships in the West-Indies formed a serious obstacle to the pirate's free roaming spirit¹⁶⁴. These officers were tasked with the enforcement of new rules and a new legal system was put into plays to effectively prosecute and/or discharge those officials who were deemed too familiar with pirates¹⁶⁵. This act was followed by a letter of King William III which warned all those in similar position that they would suffer the same fate if they didn't seize their harmful actions¹⁶⁶.

46. Another one of their methods included the offering of general pardons¹⁶⁷. To make the offer even more tempting, the general pardon of 1717 went hand in hand with the threat that there would be a bounty placed on the heads of those who didn't accept and continued in their ways of piracy¹⁶⁸.
47. The Golden Age of piracy eventually ended in 1726, through a multifaceted approach that included the replacing of corrupted colonial governors, a larger and more efficient Royal Navy, an increase in the creation and enforcement of relevant naval laws and royal pardons¹⁶⁹.

§2. In pop culture

48. The pilot of the Black Sails series takes place in 1715 in the West-Indies¹⁷⁰. The story is introduced with the following quote:

“The Pirates of New Providence Island threaten maritime trade in the region. The laws of every civilized nation declare them hostis humani generis. Enemies of all mankind. In response, the pirates adhere to a doctrine of their own...war against the world”.

49. One must admit that pop culture usually does get the geographical setting right when portraying Golden Age piracy. New Providence Island is part of the Bahamas island group. In the 17th century, these islands were sold by the British King Charles II to a set of proprietors of South Carolina¹⁷¹. The governor of the Bahamas started selling letters of marque indiscriminately to the local pirates which turned into disobedient privateers, encouraging an environment where piratical conduct, surpassing the commission granted to them, tended to thrive well¹⁷². The lethargic legal policy and lifeless politics in the Bahamas made it easier for piracy to thrive

¹⁶⁴ J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 26.

¹⁶⁵ R. ADAMSON, “The Fading Gleam of a Golden Age: Britain’s Battle Against Piracy in the Americas in the Early 18th Century”, *Honors Projects*, 2004, Paper 21, 7.

¹⁶⁶ R. ADAMSON, “The Fading Gleam of a Golden Age: Britain’s Battle Against Piracy in the Americas in the Early 18th Century”, *Honors Projects*, 2004, Paper 21, 8; R. C. RITCHIE, *Captain Kidd and the War against the Pirates*, Cambridge, Harvard University Press, 1986, 150.

¹⁶⁷ J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 25.

¹⁶⁸ KING GEORGE I, “A Proclamation for suppressing of Pirates”, *The London Gazette*, Issue Number 5573, 1716; J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 25.

¹⁶⁹ J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 5; M. REDIKER, “Under the Banner of King Death: The Social World of Anglo-American Pirates, 1716 to 1726”, *The William and Mary Quarterly*, Third Series Vol. 38 No. 2, 1981, 225; R. ADAMSON, “The Fading Gleam of a Golden Age: Britain’s Battle Against Piracy in the Americas in the Early 18th Century”, *Honors Projects*, 2004, Paper 21, 3.

¹⁷⁰ Black Sails, Season 1- Episode 1.

¹⁷¹ J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 27.

¹⁷² *Ibid.*

there¹⁷³. Although the Bahamas were scarcely populated and didn't offer many trading opportunities at first, American smugglers soon saw an opportunity arise and flocked towards smaller islands in the nearby regions in order to establish lucrative trading posts with the pirates¹⁷⁴. The black market thrived with the help of pirates and it had a significant positive impact on the American (colonial) economy¹⁷⁵. Because of the personal profits many merchants made from trading with pirates, they were often willing to even provide safe haven for them in order to keep this illicit trade going¹⁷⁶.

50. The colony of New Providence in the Bahamas has historically been referred to as a "vile nest of rogues"¹⁷⁷, acknowledging the fact that piracy was quite a notable problem there¹⁷⁸. The reality was that New Providence was considered to be a troublesome area as it served as a primary safe haven and refuge for pirates¹⁷⁹. The island of Nassau was known as the Republic of Pirates from 1706 until 1718¹⁸⁰.
51. In *Black Sails*, we can see that the Guthrie family has established a certain commercial power over Nassau, the port city of New Providence. Eleanor Guthrie serves as the dominant authority on the island based on her skills in smuggling and her almost solitary position as provider on the black market. She is portrayed as a black market fence who knowingly buys the pirate's stolen goods with the intention of selling it further through illicit channels. This scenario is actually quite plausible since American colonists, who were increasingly frustrated with the British Crown and its Navigational Acts¹⁸¹, were more than willing to make use of these opportunities and bought their supplies for a far lower price on the black market¹⁸².
52. The *Pirates of the Caribbean*, one of Disney's most popular franchises, has undoubtedly been using the concept of piracy in a rather selective and blindsided manner¹⁸³. Its first and very obvious flaw on the portrayal of piracy in the Caribbean is the timeframe. These movies are, incorrectly so, set in the 1740s¹⁸⁴ or later. Not only had piracy in the Caribbean been deemed

¹⁷³ J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 27.

¹⁷⁴ *Ibid.*

¹⁷⁵ J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 29; R. ADAMSON, "The Fading Gleam of a Golden Age: Britain's Battle Against Piracy in the Americas in the Early 18th Century", *Honors Projects*, 2004, Paper 21, 6; V. BARBOUR, "Privateers and Pirates of the West-Indies", *The American Historical Review* Vol. 16, No. 4, April 1911, 539.

¹⁷⁶ R. ADAMSON, "The Fading Gleam of a Golden Age: Britain's Battle Against Piracy in the Americas in the Early 18th Century", *Honors Projects*, 2004, Paper 21, 6; V. BARBOUR, "Privateers and Pirates of the West-Indies", *The American Historical Review* Vol. 16, No. 4, April 1911, 539.

¹⁷⁷ A. SPOTSWOOD, *The Official Letters of Alexander Spotswood: Lieutenant-Governor of the Colony of Virginia – Volume 2*, Richmond Va. The Society, 1882, 168.

¹⁷⁸ V. BARBOUR, "Privateers and Pirates of the West-Indies", *The American Historical Review* Vol. 16, No. 4, April 1911, 537.

¹⁷⁹ G. KUHN, *Life Under the Jolly Roger – Reflections on Golden Age Piracy*, PM Press, 2010, 141; R. ADAMSON, "The Fading Gleam of a Golden Age: Britain's Battle Against Piracy in the Americas in the Early 18th Century", *Honors Projects*, 2004, Paper 21, 14.

¹⁸⁰ G. KUHN, *Life Under the Jolly Roger – Reflections on Golden Age Piracy*, PM Press, 2010, 141.

¹⁸¹ J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 4.

¹⁸² J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 4.

¹⁸³ R. ADAMSON, "The Fading Gleam of a Golden Age: Britain's Battle Against Piracy in the Americas in the Early 18th Century", *Honors Projects*, 2004, Paper 21, 19.

¹⁸⁴ POTC WIKI, *Pirates of the Caribbean: The Curse of the Black Pearl*, http://pirates.wikia.com/wiki/Pirates_of_the_Caribbean:_The_Curse_of_the_Black_Pearl.

non-existing or dormant by 1730¹⁸⁵, both Tortuga and Port Royal had already been conquered by the French, respectively the English, and been returned to order by the second half of the 17th century¹⁸⁶. When in its third establishment, Lord Cutler Beckett proclaims a war against piracy¹⁸⁷, he does so more than 10 years after piracy had already been eradicated in the Caribbean and after Britain's war against piracy had been concluded in 1725¹⁸⁸. This chronological error will not be repeated during the remainder of this thesis when observing other aspects of the portrayal of Golden Age piracy in this franchise, but has been duly noted.

53. As *Black Sails* shows a darker and rather grim picture of piracy in the 17th century, *Pirates of the Caribbean* has contrasted this in a lot of different ways. Whether through the use of its light-hearted and humorous pirates – not quite in character according to Captain JOHNSON¹⁸⁹ – or the gentlemanly, yet completely unrealistic, conduct towards women¹⁹⁰, it has done its best to abandon as much historical accuracy as possible and reinterpret the small amount of factual reality left. This lack of feeling with historical sentiment is portrayed in Jack Sparrow's following statement:

*"Wherever we want to go, we go. That's what a ship is, you know. It's not just a keel, and a hull, and a deck and sails. That's what a ship needs. But what a ship is, what the Black Pearl really is, is freedom"*¹⁹¹

Historians can do little but chuckle at this dramatic statement, since this freedom went hand in hand with food deprivation, dehydration, diseases and, inevitably, the type of violence that isn't usually shown in a Disney movie¹⁹². Despite this portrayal of pirates as likeable underdogs and rebels against societal order, the reality is riddled with examples of cruelty, desperation and piratical greed¹⁹³.

54. Although the phenomenon of piracy in pop culture has known an enormous revival with Disney's famous "Pirates of the Caribbean" franchise, and its success has been continued in the *Black Sails* series, it originates from the time when actual Caribbean pirates were still around. During the Golden Age, this fascination with pirates gave rise to a wide array of books, pamphlets, songs¹⁹⁴ and illustrations which made their way through the population¹⁹⁵. These accounts could be both fictional and non-fictional and would often depict pirates as national

¹⁸⁵ J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 36.

¹⁸⁶ J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 19-20.

¹⁸⁷ *Pirates of the Caribbean – At World's End*

¹⁸⁸ V. W. LUNSFORD, *Piracy and Privateering in the Golden Age Netherlands*, Palgrave Macmillan, New York, 2005, 103.

¹⁸⁹ C. JOHNSON, *A General History of the Pyrates*, Ch. Rivington, London, 1724, 377

¹⁹⁰ G. KUHN, *Life Under the Jolly Roger – Reflections on Golden Age Piracy*, PM Press, 2010, 73.

¹⁹¹ *Pirates of the Caribbean – The Curse of the Black Pearl*, Captain Jack Sparrow

¹⁹² R. ADAMSON, "The Fading Gleam of a Golden Age: Britain's Battle Against Piracy in the Americas in the Early 18th Century", *Honors Projects*, 2004, Paper 21, 20.

¹⁹³ A.S. BRADFORD, *Flying the Black Flag - A Brief History of Piracy*, Praeger Publishers, 2007, 86; R. ADAMSON, "The Fading Gleam of a Golden Age: Britain's Battle Against Piracy in the Americas in the Early 18th Century", *Honors Projects*, 2004, Paper 21, 24.

¹⁹⁴ J. F. JAMESON, *Privateering and Piracy in the Colonial Period*, The Macmillan Company, New York, 1923, 253.

¹⁹⁵ V. W. LUNSFORD, *Piracy and Privateering in the Golden Age Netherlands*, Palgrave Macmillan, New York, 2005, 127.

heroes. However, in the second half of the 17th century, under influence of political and cultural changes, pirates had become increasingly more infamous and took on the role of England's new antagonists in folklore and songs¹⁹⁶.

CHAPTER II. INTERNATIONAL POLICY ON PIRACY

When the king brands us pirates, he doesn't mean to make us adversaries. He doesn't mean to make us criminals. He means to make us monsters. For that's the only way his god-fearing, tax-paying subjects can make sense of men who keep what is theirs and fear no one. When I say there's a war coming, I don't mean with the Scarborough, I don't mean with King George or England. Civilization is coming. And it means to exterminate us. – Captain Flint (Season 1, Episode 1)

55. Now that we have cleared up the terminology and how it's been used in pop culture so far, we turn towards legal matters and look at the international policy and legal ethos on piracy in the 17th and 18th centuries. In this chapter will describe the existing international legal policy on piracy and privateering in the 17th century.
56. The first section will focus on both national and international law, and its effects on piracy. It will set out the different important English Acts on piracy and the effects they have had, and discuss international treaties in which attempts have been made to stop the use of piracy as a tool of warfare. The second section will continue the on the topic of pirates as "hostis humani generis" and the implications this had on the war against piracy and the establishment of universal jurisdiction.

SECTION I. THE LAW

§1. The Crown's initiatives

57. England has a long and dubious history with pirates, privateers and all sorts in between. Because of their dependence on naval commerce and because a majority of pirates in the Caribbean were English, it's quite obvious that there was a pressing need for the establishment of a clear and repressive national legislative framework concerning piracy.
58. Anti-piracy law before the 16th century was hardly to be taken seriously. In order to convict a pirate he either had to confess his crimes, or two separate eye-witnesses, who had nothing to do with the crime, had to confirm that acts of piracy had taken place¹⁹⁷.
59. This situation was altered in 1536 when England brought the "Offences at Sea Act" into existence in an attempt to improve its laws on piracy¹⁹⁸. Not only did this act modify the rules

¹⁹⁶ J. NEUFELD, "The Evolution of the Legal Concept of Piracy in Early Modern England", *Journal of World History*, 2011, 10.

¹⁹⁷ P. T. LEESON, "Rationality, Pirates and the Law: A Retrospective", *American University Law Review* Vol. 59 Iss. 5, 2010, 1220.

concerning burden of proof, it also authorized the Admiralty Court with the administration of justice with regard to pirates and privateers who surpassed the legality of their letters of marque¹⁹⁹. It was also established that, in case of necessity, the Admiralty Court was to administer the death penalty²⁰⁰. Although this act enabled England to put pirates more effectively to trial, the same can't be said for its colonies which were left without legal tools to deal with the problem when the English government ruled that the colonies had no jurisdiction in cases of piracy²⁰¹. While the Caribbean developed into a hot spot for piracy, the English colonies were left legally unequipped to do anything about it²⁰². They were to ship their captured pirates to England, where trial would await them²⁰³.

60. In 1569, Queen Elizabeth I made a proclamation that stated that those who were practicing piracy were beyond her protection and should be captured and punished by anyone who was able or willing to do so²⁰⁴. Although she publically ordered the seas to be cleared from pirates, in order to soothe the Spanish diplomats, she also honoured and knighted her seadogs which brought economic ruin to Spain²⁰⁵. As stated above, this was a notable example of England's hypocrisy on the subject of piracy and privateering.
61. In 1681, the anti-piracy act called the "Jamaica law" was brought into existence²⁰⁶. This act proclaimed that the governor of Jamaica was authorized to establish admiralty courts in its colony with the power to capture and punish pirates²⁰⁷. This was followed by another initiative in 1696 with the establishment of the Board of Trade. This board was tasked with the investigation of colonial piracy and assessed its influence on English trade²⁰⁸.
62. These changes then culminated into the Act for the More Effectual Suppression of Piracy, or simply the Piracy Act, of 1698²⁰⁹. This act was an expansion on and an amelioration of the

¹⁹⁸ J. NEUFELD, "The Evolution of the Legal Concept of Piracy in Early Modern England", *Journal of World History*, 2011, 2.

¹⁹⁹ J. NEUFELD, "The Evolution of the Legal Concept of Piracy in Early Modern England", *Journal of World History*, 2011, 2.

²⁰⁰ J. NEUFELD, "The Evolution of the Legal Concept of Piracy in Early Modern England", *Journal of World History*, 2011, 4; R. ADAMSON, "The Fading Gleam of a Golden Age: Britain's Battle Against Piracy in the Americas in the Early 18th Century", *Honors Projects*, 2004, Paper 21, 9.

²⁰¹ P. T. LEESON, "Rationality, Pirates and the Law: A Retrospective", *American University Law Review* Vol. 59 Iss. 5, 2010, 1221.

²⁰² *Ibid.*

²⁰³ *Ibid.*

²⁰⁴ QUEEN ELIZABETH I, "A Proclamation Against the Maintenance of Pirates", 1569.

²⁰⁵ B. ELLEMAN, "Historical Piracy and its Impact" in G. BRUINSMA (ed.), *Histories of Transnational Crime*, New York Springer, New York, 2015, 13; J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 15.

²⁰⁶ J. NEUFELD, "The Evolution of the Legal Concept of Piracy in Early Modern England", *Journal of World History*, 2011, 11.

²⁰⁷ J. NEUFELD, "The Evolution of the Legal Concept of Piracy in Early Modern England", *Journal of World History*, 2011, 11.

²⁰⁸ J. NEUFELD, "The Evolution of the Legal Concept of Piracy in Early Modern England", *Journal of World History*, 2011, 11.

²⁰⁹ P. T. LEESON, "Rationality, Pirates and the Law: A Retrospective", *American University Law Review* Vol. 59 Iss. 5, 2010, 1222.

previously mentioned Offences at Sea Act²¹⁰ and marked the start of English war against piracy²¹¹.

63. On the basis of this act, all colonies were granted commissions by the Crown of England which allowed them to establish admiralty courts²¹². These courts were then given the legal authority to prosecute and punish pirates within their jurisdiction²¹³. It was re-established that all those who had committed piracy or who sympathized with pirates and their actions, risked the same punishment as pirates and could also risk receiving the death penalty²¹⁴. This made it no longer necessary for colonies to ship the capture pirates to England for trial²¹⁵. The Piracy Act of 1698 was clearly an improvement of the original act of 1536 and ensured a far more aggressive and determined suppression of piracy²¹⁶. At last the Royal Navy had obtained the necessary tools to effectively wipe out piracy²¹⁷. Additionally, the act also granted rewards to every commander, merchant or common sailor who would defend its own ship against piracy or capture and destroy the pirate ships they encountered²¹⁸. It also re-established the death penalty for those convicted of piracy²¹⁹ and equally severe punishment for those who are guilty of aiding and abetting pirates or who actively sympathized with pirates²²⁰.
64. The opening scene of *Pirates of the Caribbean – At World’s End*, depicts Governor Cutler Beckett overseeing the mass hangings of pirates in Port Royal. Among the hanged are old men, women and children, illustrating how vigorous and thorough the actual war against piracy and all associated with it was conducted in the early 18th century²²¹. During the hanging, a soldier reads the following statement:

²¹⁰ J. NEUFELD, “The Evolution of the Legal Concept of Piracy in Early Modern England”, *Journal of World History*, 2011, 12.

²¹¹ G. KUHN, *Life Under the Jolly Roger – Reflections on Golden Age Piracy*, PM Press, 2010, 15.

²¹² P. T. LEESON, “Rationality, Pirates and the Law: A Retrospective”, *American University Law Review* Vol. 59 Iss. 5, 2010, 1222.

²¹³ J. NEUFELD, “The Evolution of the Legal Concept of Piracy in Early Modern England”, *Journal of World History*, 2011, 12; P. T. LEESON, “Rationality, Pirates and the Law: A Retrospective”, *American University Law Review* Vol. 59 Iss. 5, 2010, 1222; R. ADAMSON, “The Fading Gleam of a Golden Age: Britain’s Battle Against Piracy in the Americas in the Early 18th Century”, *Honors Projects*, 2004, Paper 21, 9.

²¹⁴ WILLIAM III, “An Act for the More Effectual Suppressing of Piracy”, 11 Will 3 c 7, 1698, articles X, XI, and XII; A. P. RUBIN, *The Law of Piracy*, Naval War College Press Newport, Rhode Island, 1988, 366; R. ADAMSON, “The Fading Gleam of a Golden Age: Britain’s Battle Against Piracy in the Americas in the Early 18th Century”, *Honors Projects*, 2004, Paper 21, 10.

²¹⁵ R. ADAMSON, “The Fading Gleam of a Golden Age: Britain’s Battle Against Piracy in the Americas in the Early 18th Century”, *Honors Projects*, 2004, Paper 21, 9.

²¹⁶ J. NEUFELD, “The Evolution of the Legal Concept of Piracy in Early Modern England”, *Journal of World History*, 2011, 13.

²¹⁷ J. NEUFELD, “The Evolution of the Legal Concept of Piracy in Early Modern England”, *Journal of World History*, 2011, 13.

²¹⁸ Boston News Letter, 02/12/1717; A. P. RUBIN, *The Law of Piracy*, Naval War College Press Newport, Rhode Island, 1988, 366; P. T. LEESON, “Rationality, Pirates and the Law: A Retrospective”, *American University Law Review* Vol. 59 Iss. 5, 2010, 1222; R. ADAMSON, “The Fading Gleam of a Golden Age: Britain’s Battle Against Piracy in the Americas in the Early 18th Century”, *Honors Projects*, 2004, Paper 21, 10.

²¹⁹ R. ADAMSON, “The Fading Gleam of a Golden Age: Britain’s Battle Against Piracy in the Americas in the Early 18th Century”, *Honors Projects*, 2004, Paper 21, 9.

²²⁰ P. T. LEESON, “Rationality, Pirates and the Law: A Retrospective”, *American University Law Review* Vol. 59 Iss. 5, 2010, 1222.

²²¹ G. KUHN, *Life Under the Jolly Roger – Reflections on Golden Age Piracy*, PM Press, 2010, 17; V. W. LUNSFORD, *Piracy and Privateering in the Golden Age Netherlands*, Palgrave Macmillan, New York, 2005, 103.

*“In order to affect a timely halt to deteriorating conditions, and to ensure the common good, a state of emergency is declared for these territories by decree of Lord Cutler Beckett, duly appointed representative of His Majesty, the King. By decree, according to martial law, the following statuses are temporarily amended: Right to assembly, suspended. Right to habeas corpus, suspended. Right to legal counsel, suspended. Right to verdict by a jury of peers, suspended. By decree, all persons found guilty of piracy or aiding a person convicted of piracy, or associating with a person convicted of piracy, shall be sentenced to hang by the neck until dead”*²²²

Firstly, Cutler Beckett’s primary title is governor of the East India Company for West Africa²²³ and thus had no business in Jamaica. Although the title “duly appointed representative of the King” sounds rather impressive it has no actual meaning. Additionally, Jamaica had its own governor at the time, who was quite adept in capturing pirates and managed to hunt down the infamous Calico Jack Rackham and his lover Anne Bonny²²⁴.

Yet the suspension of these rights and the right to a fair trial hadn’t been established in any legal documents at the start of the war against piracy. It even goes directly against article 1 of the Piracy Act, which states that accusations of piracy are to be investigated by a Court consisting of at least seven persons²²⁵. In general, it could be said that even pirates had a right to trial and could be judged by their peers²²⁶, although it is true that these trials were conducted in a speedy fashion with the end result being mostly conviction²²⁷. However, there was an exception in the case of pirates at sea were defeated by the crew of the ship they had targeted²²⁸. JOHNSON confirmed this by stating that if pirates were caught while performing piratical acts and captured then *“the captors may, without any solemnity of condemnation, hang them up at the Main-Yard; if they are brought to the next Port, and the Judge rejects the Tryal, or the Captors cannot wait for the Judge, without Peril or Loss, Justice may be done upon them by the Captors condemnation”*²²⁹. This implied that they eventually did lose their right to trial²³⁰ and that the victorious party had the authority to execute the pirates on the spot²³¹.

65. In the Piracy Act of 1698 it was additionally stated that trials concerning piracy were to be conducted in public and that those who were found to be guilty, would be

*“... executed and put to Death, at such Time, in such Manner, and in such Place upon the Sea, or within the ebbing or flowing thereof ...”*²³²

²²² Pirates of the Caribbean – At World’s End.

²²³ POTC WIKI, *Cutler Beckett*, http://pirates.wikia.com/wiki/Cutler_Beckett.

²²⁴ J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 35.

²²⁵ G. KUHN, *Life Under the Jolly Roger – Reflections on Golden Age Piracy*, PM Press, 2010, 15.

²²⁶ COURT OF KING’S BENCH, *Rex v. Kidd*, 14 How St Tr 123, 1701; A. HIGGINS, “The Tryal of Captain Thomas Green and his Crew”, *Piracy, Robbery and Murder*, 1705, 1.

²²⁷ C. JOHNSON, *A General History of the Pyrates*, Ch. Rivington, London, 1724, 228.

²²⁸ H. TURLEY, *Rum, Sodomy and the Lash*, New York University Press, New York, 1999, 46.

²²⁹ C. JOHNSON, *A General History of the Pyrates*, Ch. Rivington, London, 1724, 425.

²³⁰ S. BARRINGER, “Enemies of Mankind: The Image of Pirates in 18th-Century England”, *Primary Source* Vol. 5 Iss. 1, 2014, 1.

²³¹ H. TURLEY, *Rum, Sodomy and the Lash*, New York University Press, New York, 1999, 46.

²³² WILLIAM III, “An Act for the More Effectual Suppressing of Piracy”, 11 Will 3 c 7, 1698, article VI; A. P. RUBIN, *The Law of Piracy*, Naval War College Press Newport, Rhode Island, 1988, 362.

In “Pirates of the Caribbean – The Curse of the Black Pearl” a certain scene clearly shows the decomposing bodies and skeletons of convicted pirates, hanging near the entrance of a port to scare of pirates. A harrowing sight it may have been, yet this was a much-used scaring tactic in the beginning of the 18th century. It was meant to show other sailors what gruesome fate would await them if they’d dare to abandon their legit profession and turn to piracy²³³. The pirates’ bodies were then dipped in tar - a process called gibbeting - and strung up in a visible place near the sea, serving as a constant reminder for others²³⁴.

66. Despite this quite revolutionary act being England’s most serious attempt to get rid of piracy so far, the problem didn’t seem to diminish in the slightest at the start of the 18th century²³⁵. This led to great dissatisfaction with certain governors who hadn’t succumbed yet to corruption and made use of the pirate’s economic benefits²³⁶. This dissatisfaction was expressed by the governor of Virginia, who stated in his letters that the amount of pirates had, in fact, increased²³⁷ and that there was great need for more soldiers and ships to secure international trade, since their port had been blocked by pirates for the past six weeks²³⁸. Eventually, after receiving numerous letters from colonial governors, King George III issued a Proclamation for suppressing pirates in which he acknowledged that the problem of piracy was still on-going and that its negative impact on trade remained unaltered, possibly leading to a complete liquidation of trade in the region²³⁹. He then made a list of all military equipment and personnel that was to be dispatched to the colonies in order to secure local trade and assist the governors in their fight against pirates²⁴⁰.
67. This proclamation was immediately followed by a tempting alternative for criminals who wished to change their lives for the better: a pardon. As previously mentioned, King George I offered a general pardon in 1717 for all pirates who were willing to accept it²⁴¹. To be absolved of their crimes, they only needed to turn themselves in with the local governor. However, this rather generous offer was accompanied with the warning that those who didn’t accept the

²³³ R. ADAMSON, “The Fading Gleam of a Golden Age: Britain’s Battle Against Piracy in the Americas in the Early 18th Century”, *Honors Projects*, 2004, Paper 21, 9.

²³⁴ R. ADAMSON, “The Fading Gleam of a Golden Age: Britain’s Battle Against Piracy in the Americas in the Early 18th Century”, *Honors Projects*, 2004, Paper 21, 16.

²³⁵ R. ADAMSON, “The Fading Gleam of a Golden Age: Britain’s Battle Against Piracy in the Americas in the Early 18th Century”, *Honors Projects*, 2004, Paper 21, 10.

²³⁶ Ibid.

²³⁷ A. SPOTSWOOD, *The Official Letters of Alexander Spotswood: Lieutenant-Governor of the Colony of Virginia*, Richmond Va. The Society, 1882, 264.

²³⁸ A. SPOTSWOOD, *The Official Letters of Alexander Spotswood: Lieutenant-Governor of the Colony of Virginia*, Richmond Va. The Society, 1882, 249.

²³⁹ King George I, “A Proclamation for suppressing of Pirates”, *The London Gazette*, Issue Number 5573, 1716; C. JOHNSON, *A General History of the Pyrates*, Ch. Rivington, London, 1724, 39; R. ADAMSON, “The Fading Gleam of a Golden Age: Britain’s Battle Against Piracy in the Americas in the Early 18th Century”, *Honors Projects*, 2004, Paper 21, 12; V. BARBOUR, “Privateers and Pirates of the West-Indies”, *The American Historical Review* Vol. 16, No. 4, April 1911, 565.

²⁴⁰ KING GEORGE I, “A Proclamation for suppressing of Pirates”, *The London Gazette*, Issue Number 5573, 1716; C. JOHNSON, *A General History of the Pyrates*, Ch. Rivington, London, 1724, 41; R. ADAMSON, “The Fading Gleam of a Golden Age: Britain’s Battle Against Piracy in the Americas in the Early 18th Century”, *Honors Projects*, 2004, Paper 21, 12.

²⁴¹ J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 25; R. ADAMSON, “The Fading Gleam of a Golden Age: Britain’s Battle Against Piracy in the Americas in the Early 18th Century”, *Honors Projects*, 2004, Paper 21, 12.

pardon would be hunted by not only the Royal Navy and Military, but also by every single subject of the British Empire²⁴² as previously mentioned under the Piracy Act of 1698²⁴³. Although this pardon was generally accepted with enthusiasm, despite the fact that its terms were violated again pretty quickly²⁴⁴, there were exceptions to the rule. JOHNSON wrote quite vividly about Captain Bartholomew Robert's reaction to King George's general pardon and accompanied threats to piracy:

*"... they should accept no Act of Grace; that the King and the Parliament might be damned with their Acts of Grace for them ..."*²⁴⁵

Even more so, he also encouraged pirates to fight to the death if the Royal Navy, or any other enemy in the name of the government, would ever attempt to overpower them:

*"... but that if they should ever be overpower'd they would set Fire to the Powder with a Pistol, and go all merrily to Hell together"*²⁴⁶.

It would seem that the previously mentioned Charles Vane and Bartholomew Robert were indeed the type of pirates which had inspired the image of pirates as unbound and fearless rebels who took a stand against authority. Sadly, his rebellion was ended in 1722, when he was killed in a battle against the Royal Navy²⁴⁷.

68. 1721 brought forth another act which encouraged the merchants to protect their own ships against pirates by punishing those who surrendered freely, despite being in possession of arms and being capable to fight²⁴⁸. Merchants who dared to trade with pirates were also at risk of punishment under this act²⁴⁹.
69. From a legal perspective, we can see that England has clearly undergone quite some growth throughout the 17th century, though it must be mentioned that this change didn't necessarily happen solely through the changes in its own legislative framework. It simply evolved the interpretation of its own laws from ambivalent and opportunistic to restrictive and stern²⁵⁰.
70. Either way, the English war against piracy was finally concluded in 1725²⁵¹ as the British legal system had elaborate legal instruments in place to hunt pirates and employ privateers²⁵².

²⁴² R. ADAMSON, "The Fading Gleam of a Golden Age: Britain's Battle Against Piracy in the Americas in the Early 18th Century", *Honors Projects*, 2004, Paper 21, 13.

²⁴³ WILLIAM III, "An Act for the More Effectual Suppressing of Piracy", 11 Will 3 c 7, 1698, article I.

²⁴⁴ R. ADAMSON, "The Fading Gleam of a Golden Age: Britain's Battle Against Piracy in the Americas in the Early 18th Century", *Honors Projects*, 2004, Paper 21, 14.

²⁴⁵ C. JOHNSON, *A General History of the Pyrates*, Ch. Rivington, London, 1724, 217.

²⁴⁶ *Ibid.*

²⁴⁷ *Ibid.*, 269.

²⁴⁸ GEORGE I, "An Act for the More Effectual Suppressing of Piracy", 8 Geo 1 c 24, 1721, article VI; P. T. LEESON, "Rationality, Pirates and the Law: A Retrospective", *American University Law Review* Vol. 59 Iss. 5, 2010, 1224.

²⁴⁹ GEORGE I, "An Act for the More Effectual Suppressing of Piracy", 8 Geo 1 c 24, 1721; P. T. LEESON, "Rationality, Pirates and the Law: A Retrospective", *American University Law Review* Vol. 59 Iss. 5, 2010, 1224.

²⁵⁰ J. NEUFELD, "The Evolution of the Legal Concept of Piracy in Early Modern England", *Journal of World History*, 2011, 13.

²⁵¹ G. KUHN, *Life Under the Jolly Roger – Reflections on Golden Age Piracy*, PM Press, 2010, 15; V. W. LUNSFORD, *Piracy and Privateering in the Golden Age Netherlands*, Palgrave Macmillan, New York, 2005, 103.

However, it must be kept in mind that despite England's increasingly hostile legal instruments, practice showed that barking dogs didn't always necessarily bite. England's apparent disapproval of piracy was beneficial to its diplomatic relations and international prestige, yet until the very end of the 17th century, it remained quite ambivalent towards piracy as long as it played in the Crown's favour²⁵³.

§2. International treaties

71. The tendency to prohibit and punish piracy was also portrayed in several international treaties and peace agreements, especially because both illegal and "legal" forms of piracy, the latter being privateering, had such an influence on international relations²⁵⁴.
72. The treaty of Münster (1648) was concluded between the Netherlands and Spain to end the 8-year war in which multiple nations had participated²⁵⁵. This treaty entailed the agreement of both parties that they were to do their best in keeping their territories free from pirates and were obligated to punish those who were caught²⁵⁶. As good as those intentions may have been, Dutch ships found themselves harassed by Spanish privateers barely a year after the treaty had been signed²⁵⁷, proving, once again, the dichotomy between theory and reality.
73. The Treaty of Madrid of 1670 was an attempt to settle the disputes between England and Spain. Here, England promised to enforce a peace settlement with Spain throughout the world²⁵⁸, in the text referred to as a "universal peace"²⁵⁹, meaning its focus wouldn't rest solely on animosity within Europe but also on the problems caused by English pirates in the Caribbean. Article 4 of the treaty also contained the promise to revoke all commissions containing reprisals or letters of marque and abstain from dispensing them in the future. In return, Spain promised to recognize English colonies in the Caribbean²⁶⁰. However, Spain's continued refusal to allow England to conduct trade with Spanish colonies kept the door open for future conflict²⁶¹.
74. The Treaty of Utrecht in 1713 marked the end of the Spanish Succession war and the start of the supreme reign of the English Royal Navy at sea²⁶². However, this led to a wide array of sailors who were left without a job after the war and thus turned to piracy, causing the governors to beg

²⁵² D. CONLIN, "A Private War in the Caribbean: Nova Scotia Privateering, 1793-1805", *The Northern Mariner* VI No. 4, October 1996, 35.

²⁵³ J. NEUFELD, "The Evolution of the Legal Concept of Piracy in Early Modern England", *Journal of World History*, 2011, 3.

²⁵⁴ V. W. LUNSFORD, *Piracy and Privateering in the Golden Age Netherlands*, Palgrave Macmillan, New York, 2005, 35.

²⁵⁵ *Ibid.*

²⁵⁶ Treaty of Münster, 1648, article LXXV.

²⁵⁷ V. W. LUNSFORD, *Piracy and Privateering in the Golden Age Netherlands*, Palgrave Macmillan, New York, 2005, 108.

²⁵⁸ J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 23.

²⁵⁹ Treaty of Madrid, 1670 in F. G. DAVENPORT, *European Treaties bearing on the History of the United States and its Dependencies Vol. 2*, Washington D.C., Carnegie Institution of Washington, 1929, article 2 and 3.

²⁶⁰ J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 23.

²⁶¹ J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 23; V. BARBOUR, "Privateers and Pirates of the West-Indies", *The American Historical Review* Vol. 16, No. 4, April 1911, 553.

²⁶² J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 12.

the Crown for assistance²⁶³. The danger of piracy and its influence on international trade had become so palpable, it was necessary for merchant vessels to be accompanied by war ships of the Royal Navy to avoid the suffering of immense losses²⁶⁴.

SECTION II. THE LEGAL IMPLICATIONS OF HOSTIS HUMANI GENERIS

“War against the World” – Tagline Black Sails

§1. The War against Piracy

“A pirate is in a perpetual war with every individual, and every state, Christian or infidel”²⁶⁵.

75. Since piracy was considered to be a threat to the international legal community and those engaged in piracy had obviously discarded the laws of nations, both GENTILI and GROTIUS had come to the conclusion that pirates were enemies of mankind²⁶⁶. The pirates’ conduct had placed them outside of the law and thus they could be destroyed by any nation, without the necessity of a declaration of war²⁶⁷. However, it must be noted that both authors came to this conclusion through different methods.
76. GENTILI breaks with the traditional just war theory which states that war is only permitted as punishment for wrong-doing and instead pursues a theory based on moral neutrality²⁶⁸. He starts out with the assumption that wars could only be instigated by the legal authority of a sovereign²⁶⁹. To define this legal authority, he makes a distinction between pirates and “*hostes*”, the latter being a legitimate and public enemy who can officially declare war²⁷⁰, and concludes that pirates can’t be considered members of the international community at all²⁷¹. Since they refuse to obey the legal order and adhere to their civil obligations, pirates lack any possibility of obtaining international legal identity and thus can’t be considered as equals to sovereign states. GENTILI doesn’t distinguish natural law from the law of nations, and thus there was no separate legal order on the basis of which these pirates could exercise rights if they had rejected the law of nations or *ius gentium*²⁷². This makes it impossible for pirates to be engaged in a war and to

²⁶³ R. ADAMSON, “The Fading Gleam of a Golden Age: Britain’s Battle Against Piracy in the Americas in the Early 18th Century”, *Honors Projects*, 2004, Paper 21, 1.

²⁶⁴ C. HEADLAM (ed.), *Calendar of State Papers, Colonial Series, America and West Indies: Volume 30*, p. 17, no. 54; R. ADAMSON, “The Fading Gleam of a Golden Age: Britain’s Battle Against Piracy in the Americas in the Early 18th Century”, *Honors Projects*, 2004, Paper 21, 1.

²⁶⁵ A. HIGGINS, “The Tryal of Captain Thomas Green and his Crew”, *Piracy, Robbery and Murder*, 1705, 48.

²⁶⁶ M. WACHSPRESS, “Pirates, Highwaymen, and the Origins of the Criminal in Seventeenth-Century English Thought”, *Yale Journal of Law & the Humanities* Vol. 26 Iss. 2, 2015, 336.

²⁶⁷ A. GENTILI, *De Legationibus Libri Tres*, translated by G. J. LAING, Oxford University Press, 1924 (1594), 79

²⁶⁸ M. WACHSPRESS, “Pirates, Highwaymen, and the Origins of the Criminal in Seventeenth-Century English Thought”, *Yale Journal of Law & the Humanities* Vol. 26 Iss. 2, 2015, 305

²⁶⁹ T. PAIGE, “Piracy and Universal Jurisdiction”, *Macquarie Law Journal* Vol. 12, 2013, 136.

²⁷⁰ A. GENTILI, *De Iure Belli Libri Tres*, translated by J. C. Rolfe, The Clarendon Press, 1933 (1612), 15.

²⁷¹ M. WACHSPRESS, “Pirates, Highwaymen, and the Origins of the Criminal in Seventeenth-Century English Thought”, *Yale Journal of Law & the Humanities* Vol. 26 Iss. 2, 2015, 305.

²⁷² A. GENTILI, *De Iure Belli Libri Tres*, translated by J. C. Rolfe, The Clarendon Press, 1933 (1612), 423.

rely on the law of nations which was applicable between belligerents²⁷³, since, according to GENTILI, a war must firstly be public - not a quarrel between individuals²⁷⁴ - and can only take place between two equal belligerents²⁷⁵.

77. This distinction is a fundamental component to GENTILI's theory on the laws of war, as he claims that these laws and the permissible actions depend entirely upon the nature of one's opponent and whether one is considered to be "*hostes*" or a "pirate"²⁷⁶. It has to be noted though, that in GENTILI's theory the word "pirate" has a far wider meaning than that of a simple rogue sea-robber. He uses the word "pirate" as a way to describe any person or any internationally recognized entity that doesn't fulfil the conditions necessary to be perceived as "*hostes*"²⁷⁷. This distinction, as clear as it was to GENTILI, wasn't reflected in the real world, as those who fell under GENTILI's category of "legitimate enemies" often made use of mercenaries, known as privateers, to pursue national interest²⁷⁸.
78. The different international status of "pirates" and "*hostes*" was supported by BODIN, who claimed that we "*ought to have no society or community*" with pirates²⁷⁹. Because of the nature of their status, their lack of membership to the international community, and their savage conduct, the laws of warfare didn't apply to these pirates²⁸⁰.
79. GROTIUS shared the same conclusion as GENTILI and claimed that violence against pirates was not limited by the law of warfare²⁸¹. However, he approached this question differently than GENTILI²⁸². GROTIUS had a dualistic approach and recognized the existence of the law of nature as separate from voluntary law or the law of nations²⁸³. Aside the question of whether a war was just or not, he was also interested in whether a war was legal or not. Legal wars were those which adhered to formalities and were formally declared upon the enemy²⁸⁴. Just as GENTILI, GROTIUS makes a distinction between pirates and "*hostes*"²⁸⁵. He clearly excludes pirates from

²⁷³ A. GENTILI, *De Iure Belli Libri Tres*, translated by J. C. Rolfe, The Clarendon Press, 1933 (1612), 15; M. WACHSPRESS, "Pirates, Highwaymen, and the Origins of the Criminal in Seventeenth-Century English Thought, *Yale Journal of Law & the Humanities* Vol. 26 Iss. 2, 2015, 307.

²⁷⁴ A. GENTILI, *De Iure Belli Libri Tres*, translated by J. C. Rolfe, The Clarendon Press, 1933 (1612), 12.

²⁷⁵ A. GENTILI, *De Iure Belli Libri Tres*, translated by J. C. Rolfe, The Clarendon Press, 1933 (1612), 32; M. WACHSPRESS, "Pirates, Highwaymen, and the Origins of the Criminal in Seventeenth-Century English Thought, *Yale Journal of Law & the Humanities* Vol. 26 Iss. 2, 2015, 304.

²⁷⁶ M. WACHSPRESS, "Pirates, Highwaymen, and the Origins of the Criminal in Seventeenth-Century English Thought, *Yale Journal of Law & the Humanities* Vol. 26 Iss. 2, 2015, 307.

²⁷⁷ M. WACHSPRESS, "Pirates, Highwaymen, and the Origins of the Criminal in Seventeenth-Century English Thought, *Yale Journal of Law & the Humanities* Vol. 26 Iss. 2, 2015, 308.

²⁷⁸ M. WACHSPRESS, "Pirates, Highwaymen, and the Origins of the Criminal in Seventeenth-Century English Thought, *Yale Journal of Law & the Humanities* Vol. 26 Iss. 2, 2015, 313.

²⁷⁹ J. BODIN, *Six Books of the Commonweale*, Harvard University Press, 1962 (1606), 75.

²⁸⁰ *Ibid.*

²⁸¹ H. GROTIUS, *De Jure Belli Ac Pacis*, translated by F. W. KELSEY et al., 1925, 143; M. WACHSPRESS, "Pirates, Highwaymen, and the Origins of the Criminal in Seventeenth-Century English Thought, *Yale Journal of Law & the Humanities* Vol. 26 Iss. 2, 2015, 310.

²⁸² M. WACHSPRESS, "Pirates, Highwaymen, and the Origins of the Criminal in Seventeenth-Century English Thought, *Yale Journal of Law & the Humanities* Vol. 26 Iss. 2, 2015, 309.

²⁸³ S. C. NEFF, *War and the Law of Nations*, Cambridge University Press, 2005, 87.

²⁸⁴ H. GROTIUS, *De Jure Belli Ac Pacis*, translated by F. W. KELSEY et al., 1925, 57.

²⁸⁵ M. WACHSPRESS, "Pirates, Highwaymen, and the Origins of the Criminal in Seventeenth-Century English Thought, *Yale Journal of Law & the Humanities* Vol. 26 Iss. 2, 2015, 309.

the category of “just enemies”²⁸⁶ in the same way GENTILI did. However, where GENTILI’s distinction was decisive for the just or unjust character of war, the private or public identity of the belligerents is not considered a relevant component in GROTIUS’ theory on just wars²⁸⁷. This was quite notable, since it meant that war was no longer waged solely on the basis of the authority of the sovereign, but rather on the basis of the heinous actions of the perpetrator which deserve punishment²⁸⁸. GROTIUS does agree that pirates were not part of a civil community and thus violence used against them knew no limitations in the law of nations.²⁸⁹ He reasons that, when in battle with pirates, the state is under no obligation to adhere to the laws on war because these men are unlikely to reciprocate the same justified treatment to the belligerent state²⁹⁰. He also points out that, since the opponent lacks the ability to conclude treaties, there’s no prospect on the possible end of violence through a peace treaty, rendering the rules that are meant to enable a long-lasting peace between nations rather useless²⁹¹.

§2. Universal jurisdiction

80. This claim that pirates were the enemies of all mankind implied that they were no longer included in the definition of humanity and that there was a sense of bestiality to their behaviour. Their inherent nature made punishment necessary, as it was riddled with constant wrongdoing²⁹². Not only had pirates, at one point or another, threatened every maritime nation on the face of the earth, but their actions had also led to the disruption of international trade and communications, severely – and negatively – affecting international sociability and relations²⁹³.
81. The question on who was allowed or obligated to capture and punish pirates was an important one in the Early Modern Age, yet there were no exact answers. A problem arose with the fact that the high seas were under no state’s jurisdiction, causing some serious legal ambiguity on how to combat piracy²⁹⁴. The high seas had a certain sense of lawlessness about them, since it was impossible for states to exercise a consistent legitimate force over these seas. According to GROTIUS, this meant that all states were free to enter the high seas, but none could establish its exclusive jurisdiction over it²⁹⁵. The establishment of jurisdiction in these waters, though

²⁸⁶ H. GROTIUS, *Commentary on the Law of Prize and Booty*, translated by G. L. WILLIAMS, Liberty Fund, 2006 (1868), 126.

²⁸⁷ M. WACHSPRESS, “Pirates, Highwaymen, and the Origins of the Criminal in Seventeenth-Century English Thought,” *Yale Journal of Law & the Humanities* Vol. 26 Iss. 2, 2015, 309.

²⁸⁸ M. WACHSPRESS, “Pirates, Highwaymen, and the Origins of the Criminal in Seventeenth-Century English Thought,” *Yale Journal of Law & the Humanities* Vol. 26 Iss. 2, 2015, 328.

²⁸⁹ H. GROTIUS, *De Jure Belli Ac Pacis*, translated by F. W. KELSEY et al., 1925, 165.

²⁹⁰ H. GROTIUS, *De Jure Belli Ac Pacis*, translated by F. W. KELSEY et al., 1925, 143.

²⁹¹ *Ibid*, 417.

²⁹² M. WACHSPRESS, “Pirates, Highwaymen, and the Origins of the Criminal in Seventeenth-Century English Thought,” *Yale Journal of Law & the Humanities* Vol. 26 Iss. 2, 2015, 341.

²⁹³ M. WACHSPRESS, “Pirates, Highwaymen, and the Origins of the Criminal in Seventeenth-Century English Thought,” *Yale Journal of Law & the Humanities* Vol. 26 Iss. 2, 2015, 320.

²⁹⁴ H. HAHN, “Pirates of the Caribbean – Above the Law”, *Cornell International Law Journal Online*, 2017, <http://cornellilj.org/pirates-of-the-caribbean-above-the-law/>.

²⁹⁵ H. GROTIUS, *Mare Liberum: The Freedom of the Seas*, translated by R. Van Deman Magoffin; New York, Oxford University Press, 1916 (1609), p. 28.

attempted by many, has been a rather unfruitful quest and the lack of transnational legal rules made it easy for the pirates to use this lawlessness to their own benefit²⁹⁶.

82. VITORIA established the rule that the state most closely connected to the pirates, through intention or nationality, is responsible for the damage they cause to other nations²⁹⁷. If the sovereign neglects to pay damages, the affected nation could exercise its right over any, usually innocent, national of the responsible state through reprisal²⁹⁸. This was an attempt to deal with the complexities of everyday reality on the high seas and forced states to take responsibility for their own ambiguous behaviour towards their nation's pirates and privateers²⁹⁹. However, the lack of international law in the 17th century made it nearly impossible to fight piracy in an effective way, since the English laws were only applicable to English citizens on English grounds, making it easy for pirates to evade punishment by fleeing to Ireland or Morocco³⁰⁰. However, this theory was quickly followed by differing legal philosophies.
83. The notion of universal jurisdiction makes it impossible for acts of piracy to fall under the exclusive jurisdiction of one state³⁰¹. Piracy forms an exception to the rule that a state's power to exercise jurisdiction outside its own territories is limited and allows for states to extend their municipal law over the high seas and over any national, since pirates are by definition outside of any state's scope of protection³⁰². However, the practice of universal jurisdiction over piracy was thwarted by the lack of a singular, unified definition of the crime, which only appeared in the course of the 20th century³⁰³.
84. COKE attempted to obtain a form of universal jurisdiction with regard to piracy by stating that every ship which sails under a British flag is considered to be English territory and falls under the jurisdiction of the Admiralty Courts³⁰⁴. GROTIUS, however, aimed for universal jurisdiction through different methods. He argued that piracy was a breach of natural law, committed by individuals through their transgressions on the natural right of property³⁰⁵. He then proceeded to establish universal jurisdiction by claiming that sovereignty could be obtained on sea the same way it can on land: through military force and effective control over the vessel³⁰⁶. Effective control was thus deemed more important than the flag the ship was sporting. Capturing a pirate ship and maintaining effective control over it would establish England's sovereignty over the

²⁹⁶ M. WACHSPRESS, "Pirates, Highwaymen, and the Origins of the Criminal in Seventeenth-Century English Thought," *Yale Journal of Law & the Humanities* Vol. 26 Iss. 2, 2015, 320

²⁹⁷ M. WACHSPRESS, "Pirates, Highwaymen, and the Origins of the Criminal in Seventeenth-Century English Thought," *Yale Journal of Law & the Humanities* Vol. 26 Iss. 2, 2015, 306.

²⁹⁸ F. DE VITORIA, *Political Writings*, Cambridge University Press, 1991 (1539), 318.

²⁹⁹ M. WACHSPRESS, "Pirates, Highwaymen, and the Origins of the Criminal in Seventeenth-Century English Thought," *Yale Journal of Law & the Humanities* Vol. 26 Iss. 2, 2015, 306.

³⁰⁰ J. NEUFELD, "The Evolution of the Legal Concept of Piracy in Early Modern England", *Journal of World History*, 2011, 8.

³⁰¹ B.A. ELLEMAN, A. FORBERS and D. ROSENBERG, *Piracy and Maritime Crime – Historical and Modern Case Studies*, Naval War College Newport Papers, Newport, 21.

³⁰² *Ibid.*

³⁰³ *Ibid.*

³⁰⁴ E. COKE, *The Third Part of the Institutes of the Laws of England*, Garland Publishing Company, 1979, 113; T.

PAIGE, "Piracy and Universal Jurisdiction", *Macquarie Law Journal* Vol. 12, 2013, 136.

³⁰⁵ M. WACHSPRESS, "Pirates, Highwaymen, and the Origins of the Criminal in Seventeenth-Century English Thought," *Yale Journal of Law & the Humanities* Vol. 26 Iss. 2, 2015, 324.

³⁰⁶ H. GROTIUS, *De Jure Belli Ac Pacis Libri Tres*, translated by F. W. KELSEY et al., 1925, 631.

ship and make the individuals on it subjected to municipal law³⁰⁷. In GROTIUS' view, the right to punish those who transgress natural law, like pirates, lies with every single individual as it's their prerogative to protect "common Humanity"³⁰⁸. GENTILI supported this with his famous declaration that pirates were "enemies of mankind" and that any nation could attempt to destroy them without a declaration of war³⁰⁹. Thus, it was concluded that action against pirates was "in the interest of all"³¹⁰.

85. However, we can see that these legal theories to establish universal jurisdiction over the act of piracy weren't as frequently used in practice as one might think. A first example is the trial of Captain Vaughan from 1696³¹¹. Captain Vaughan, an Englishman, was caught while sailing under French commission while France and England were in conflict with each other, which was deemed to be treason to the Crown³¹². Even though his conduct was riddled with heinous acts, which would've rendered his commission invalid and made him guilty of the crime of piracy, he was tried for treachery instead, a crime without universal elements and subjected only to municipal law.
86. A different approach to the establishment of universal jurisdiction was taken by Judge JENKINS, who argued that, since pirates were considered to be enemies of mankind, they could be legally captured by anyone who comes across them³¹³. This was considered to be common practice in the Early Modern Age³¹⁴ and is still in line with GROTIUS' and GENTILI's philosophy. However, he distinguished this theory by additionally claiming that the Admiralty Courts had jurisdiction over the high seas and that this jurisdiction was concurrent with other sovereign states³¹⁵. In the case *Rex v. Dawson*³¹⁶ it was argued that pirates, by nature of their crimes, had forgone the protection of the sovereign, which rendered them to be stateless³¹⁷ and made them independent individuals who were responsible for their own actions under international law and who derive their legal status from this conduct. Privateers, however, enjoyed the protection of their commission and were considered to be an extension of their sovereign's power which caused a derivation of responsibility³¹⁸. This caused the state, and not the privateer himself, to be primarily responsible for his (sanctioned) actions³¹⁹. Based on JENKINS' arguments, a pirate's

³⁰⁷ H. GROTIUS, *De Jure Belli Ac Pacis Libri Tres*, translated by F. W. KELSEY et al., 1925, 631; T. PAIGE, "Piracy and Universal Jurisdiction", *Macquarie Law Journal* Vol. 12, 2013, 137.

³⁰⁸ H. GROTIUS, *De Jure Belli Ac Pacis*, translated by F. W. KELSEY et al., 1925, 385.

³⁰⁹ A. GENTILI, *De Legationibus Libri Tres*, translated by G. J. LAING, Oxford University Press, 1924 (1594), 79

³¹⁰ B.A. ELLEMAN, A. FORBERS and D. ROSENBERG, *Piracy and Maritime Crime – Historical and Modern Case Studies*, Naval War College Newport Papers, Newport, 21.

³¹¹ COURT OF KING'S BENCH, *Rex v Vaughan*, 13 How St Tr 485, 1696.

³¹² T. PAIGE, "Piracy and Universal Jurisdiction", *Macquarie Law Journal* Vol. 12, 2013, 137.

³¹³ W. WYNNE, *The Life of Sir Leoline Jenkins: Judge of the High-Court of Admiralty – Vol. 1*, Gale Ecco, Print Editions, 2010, 36.

³¹⁴ T. PAIGE, "Piracy and Universal Jurisdiction", *Macquarie Law Journal* Vol. 12, 2013, 137.

³¹⁵ W. WYNNE, *The Life of Sir Leoline Jenkins: Judge of the High-Court of Admiralty – Vol. 1*, Gale Ecco, Print Editions, 2010, 90.

³¹⁶ COURT OF KING'S BENCH, *Rex v Dawson*, 13 How St Tr 451, 454–455, 1696.

³¹⁷ W. WYNNE, *The Life of Sir Leoline Jenkins: Judge of the High-Court of Admiralty – Vol. 1*, Gale Ecco, Print Editions, 2010, 714.

³¹⁸ A. P. RUBIN, *The Law of Piracy*, Naval War College Press Newport, Rhode Island, 1988, 90.

³¹⁹ *Ibid.*

statelessness and independence makes it possible for each state to capture and try him under its own municipal laws³²⁰.

87. Practice tells us that judicial reasoning kept reverting back to piracy as a crime under municipal law and thus submissive to the jurisdiction of Admiral Courts³²¹. Piracy was often reinterpreted under an already existing category of crime that fell under the Admiral Court's jurisdiction, namely: robbery at sea *animo furandi*³²² (meaning: acting with private motives³²³), surpassing the extent of one's commission or the failure to submit captured goods under commission to *in rem* proceedings³²⁴. It becomes clear that according to 16th-17th century practice, piracy is viewed more in terms of its transgression against the right of property³²⁵, which were seen as violations of natural law³²⁶ yet the act of piracy *in se* was not seen as a violation of international law or the law of nations. English criminal law considered piracy to fall under the category of petit treason. Piracy was seen as a defiance of one's obligations towards authority and a neglect of one's obligations towards any other member of the community³²⁷. This implied that all members of society are in some relative way in a position of authority towards pirates, which is why it can be defined as treason³²⁸.
88. In 1927 the Court of International Justice had confirmed that piracy is indeed a crime against the law of nations, yet the crime was continually prosecuted under municipal law³²⁹. The same year, a subcommittee of the League of Nations had found that, although there was agreement on the necessity of suppression of piracy³³⁰, there was a lack of unification of piracy as a crime under international law and piracy as described under municipal law³³¹. There was a need for a universal definition on piracy in order to establish equal rights and obligations for every state on this subject³³². As stated above, international law doesn't have the means to administer punishment to those who are guilty of piracy, but merely provides a legal definition on the basis of which states are able to administer punishment under their municipal law, without condemnation of other nations³³³.

³²⁰ T. PAIGE, "Piracy and Universal Jurisdiction", *Macquarie Law Journal* Vol. 12, 2013, 137.

³²¹ A. P. RUBIN, *The Law of Piracy*, Naval War College Press Newport, Rhode Island, 1988, 80.

³²² *Ibid*, 98.

³²³ *Ibid*, 82.

³²⁴ *Ibid*, 100.

³²⁵ M. WACHSPRESS, "Pirates, Highwaymen, and the Origins of the Criminal in Seventeenth-Century English Thought", *Yale Journal of Law & the Humanities* Vol. 26 Iss. 2, 2015, 322.

³²⁶ *Ibid*, 323.

³²⁷ *Ibid*, 316.

³²⁸ *Ibid*, 316.

³²⁹ ICJ, *Lotus Case*, Publications of the Permanent Court of Justice (1927), Series A, No. 10; B.A. ELLEMAN, A. FORBERS and D. ROSENBERG, *Piracy and Maritime Crime – Historical and Modern Case Studies*, Naval War College Newport Papers, Newport, 20.

³³⁰ League of Nations, "Report to the Council of the League of Nations on the Questions which Appear Ripe for International Regulation", *The American Journal of International Law*, Vol. 22 No. 1, 1928, 26.

³³¹ League of Nations, "Report to the Council of the League of Nations on the Questions which Appear Ripe for International Regulation", *The American Journal of International Law*, Vol. 22 No. 1, 1928, 37.

³³² B.A. ELLEMAN, A. FORBERS and D. ROSENBERG, *Piracy and Maritime Crime – Historical and Modern Case Studies*, Naval War College Newport Papers, Newport, 21.

³³³ B.A. ELLEMAN, A. FORBERS and D. ROSENBERG, *Piracy and Maritime Crime – Historical and Modern Case Studies*, Naval War College Newport Papers, Newport, 21.

89. This was followed up by the Harvard Draft, a document addressing the issues concerning piracy and which was later used as the basis for the UN Convention on the Law of the Sea (UNCLOS) of 1982³³⁴. Most notably it establishes, among other things, that jurisdiction states have over piracy is founded on the basis of international law³³⁵. Eventually, a sound definition was legally embedded in article 101 of the UNCLOS:

“Piracy consists of any of the following acts:

(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed: (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft; (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

(c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b)”

The importance of the legal understanding of the term “high seas” lies in the fact that when falling under the territorial jurisdiction of coastal states, the piratical act becomes a civil or criminal transgression under municipal law³³⁶. The extension of this territorial jurisdiction is reversely proportionate to the diminishing high seas which are subject to universal jurisdiction³³⁷. With a near universal ratification of the treaty, it can now be accepted that these provisions on jurisdiction and on the meaning of piracy have become customary law³³⁸.

CHAPTER III. PIRACY AS A TOOL OF INTERNATIONAL LAW

“Right now, good men is not what the moment requires. Right now, the time calls for dark men to do dark things” – Captain Berringer (Black Sails – Season 4, Episode 3)

90. Throughout the ages legal and illegal forms of piracy have been used by sovereign states to further their own political agenda. Although piracy was deemed illegal long before the “Offences at Sea Act” of 1536, the Crown was rather willing to look the other way well into the 17th century, as long as these buccaneers and pirates caused more damage to England’s rival empires than England itself.

³³⁴ B.A. ELLEMAN, A. FORBERS and D. ROSENBERG, *Piracy and Maritime Crime – Historical and Modern Case Studies*, Naval War College Newport Papers, Newport, 23.

³³⁵ R. AGO, “First Report on State Responsibility”, A/CN.4/217 and ADD.1, *Yearbook of the International Law Commission*, 1969 Vol. II, article 1.

³³⁶ B.A. ELLEMAN, A. FORBERS and D. ROSENBERG, *Piracy and Maritime Crime – Historical and Modern Case Studies*, Naval War College Newport Papers, Newport, 29.

³³⁷ *Ibid*, 28.

³³⁸ *Ibid*, 29.

91. Now that the second chapter has offered insight in the legal international policy on piracy, it is time to move on to more practical territory and discuss how piracy has played a role in the power-play between nations. The first section discusses the instruments which were used to keep the “sea dogs” in line and goes into more detail about the infamous letters of marque. This chapter will discuss on the basis of which legal instruments and to what extent piracy was used as a tool in international politics.

SECTION I. INSTRUMENTS

92. In historical and legal literature, the terms “commission”, “letter of marque” and “letter of reprisal” are used interchangeably, causing quite some confusion. However, these terms all mean the same thing and were used consistently as defensive measures in times of war³³⁹. This section will shortly discuss the relevance of general reprisals and their impact on the development of the letters of marque, followed by a theoretical description of these specific commissions. The relevance of these instruments lies in the fact that they are the sole formal distinction between the legality and illegality of piratical acts, making them indispensable to our research question.

§1. Reprisals

93. To mark its resemblance to the usage of letters of marque more clearly, it'd be interesting to take a closer look at the original use of reprisals. In the narrowest sense, reprisals (or special reprisals³⁴⁰) were to be exercised immediately after the damage had been done or the victim had been wronged³⁴¹. The victim's rights could be exercised only with respect to the perpetrator, which meant that, unlike the letters of marque, reprisals couldn't be exercised on the basis of collective responsibility³⁴². If the victim missed his chance for justice and was unable to receive satisfaction through (foreign) courts, he could petition to receive a letter of reprisal from his sovereign, allowing him to exercise his rights upon any fellow-national of the wrong-doer on the sovereign's territory³⁴³. Just as letters of marque, these letters of reprisals entailed the subject's limitations in his search for reparations³⁴⁴. It was meant solely for the retrieval of property value, yet reprisals offered no prerogative to administer bodily harm to persons³⁴⁵. Reprisals were meant as an instrument to cope with injuries which were deemed not large or relevant enough to justify an entire war³⁴⁶.
94. General reprisals entailed a general permission to all nationals to plunder the merchants or ordinary citizens of the belligerent state, without the condition of any personally suffered

³³⁹ D. CONLIN, “A Private War in the Caribbean: Nova Scotia Privateering, 1793-1805”, *The Northern Mariner* VI No. 4, October 1996, 30.

³⁴⁰ S. C. NEFF, *War and the Law of Nations*, Cambridge, Cambridge University Press, 2005, 108.

³⁴¹ *Ibid*, 77.

³⁴² *Ibid*, 77.

³⁴³ *Ibid*, 78.

³⁴⁴ *Ibid*, 78.

³⁴⁵ *Ibid*, 79.

³⁴⁶ *Ibid*, 76.

damage³⁴⁷. This kind of reprisal was meant to mobilize the entire country against the belligerent and there was no limitation to the amount of property that could be seized³⁴⁸. Because of the massive scale on which these general reprisals took place, they were perceived as being equal to a declaration of war³⁴⁹.

95. This form of reprisal formed the legal inspiration for privateering³⁵⁰, as letters of marque were issued typically during wartime and on a large scale, together with general reprisals³⁵¹.

§2. Letters of Marque

96. Letters of marque, originally called “letters of reprisals”³⁵² or interchangeably referred to as “commissions”³⁵³, are considered to be a derived form of reprisals. They were commissions³⁵⁴ granted by a King to his subjects and originally issued by the Admiralty Courts³⁵⁵, through which these subjects were entitled to capture targeted ships and cargoes on the high seas³⁵⁶ and to obtain prizes which amounted to the total which was stated in the commission³⁵⁷.
97. Originally, the letter of marque was used as a last resort in case of unlawful theft or destruction of property from a national by a subject of a different state³⁵⁸. The victim would first need to seek direct restitution through the legal system of the offending state³⁵⁹. If the results were unsatisfying or unjust, the subject could then petition for help with its own government, which

³⁴⁷ H.A. ORMEROD, *Piracy in the Ancient World – An Essay in Mediterranean History*, Hodor and Stoughton Ltd., 1924, 63; R. LESAFFER, “Too much history. From war as a sanction to the sanctioning of war” in M. WELLER (ed.), *The Oxford Handbook of the Use of Force in International Law*, Oxford, Oxford University Press, 47; S. C. NEFF, *War and the Law of Nations*, Cambridge, Cambridge University Press, 2005, 108.

³⁴⁸ S. C. NEFF, *War and the Law of Nations*, Cambridge, Cambridge University Press, 2005, 108.

³⁴⁹ S. C. NEFF, *War and the Law of Nations*, Cambridge, Cambridge University Press, 2005, 108.

³⁵⁰ R. LESAFFER, “Too much history. From war as a sanction to the sanctioning of war” in M. WELLER (ed.), *The Oxford Handbook of the Use of Force in International Law*, Oxford, Oxford University Press, 47.

³⁵¹ S. C. NEFF, *War and the Law of Nations*, Cambridge, Cambridge University Press, 2005, 109.

³⁵² J. NEUFELD, “The Evolution of the Legal Concept of Piracy in Early Modern England”, *Journal of World History*, 2011, 3; S. C. NEFF, *War and the Law of Nations*, Cambridge, Cambridge University Press, 2005, 81.

³⁵³ G. ROMMELSE, “Political agendas and the contestable legality of privateering: the case of the Dutch-Portuguese War (1657-1662)”, *Journal for Maritime Research* Vol. 17 Iss. 2, 2015, 183; J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 10; V. BARBOUR, “Privateers and Pirates of the West-Indies”, *The American Historical Review* Vol. 16, No. 4, April 1911, 537; V. W. LUNSFORD, *Piracy and Privateering in the Golden Age Netherlands*, Palgrave Macmillan, New York, 2005, 10.

³⁵⁴ G. ROMMELSE, “Political agendas and the contestable legality of privateering: the case of the Dutch-Portuguese War (1657-1662)”, *Journal for Maritime Research* Vol. 17 Iss. 2, 2015, 193.

³⁵⁵ J. NEUFELD, “The Evolution of the Legal Concept of Piracy in Early Modern England”, *Journal of World History*, 2011, 3; P. T. LEESON, “Rationality, Pirates and the Law: A Retrospective”, *American University Law Review* Vol. 59 Iss. 5, 2010, 1222.

³⁵⁶ S. C. NEFF, *War and the Law of Nations*, Cambridge, Cambridge University Press, 2005, 80.

³⁵⁷ B.A. ELLEMAN, A. FORBERS and D. ROSENBERG, *Piracy and Maritime Crime – Historical and Modern Case Studies*, Naval War College Newport Papers, Newport, 3.

³⁵⁸ J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 3; V. BARBOUR, “Privateers and Pirates of the West-Indies”, *The American Historical Review* Vol. 16, No. 4, April 1911, 530; B.A. ELLEMAN, A. FORBERS and D. ROSENBERG, *Piracy and Maritime Crime – Historical and Modern Case Studies*, Naval War College Newport Papers, Newport, 3.

³⁵⁹ B.A. ELLEMAN, A. FORBERS and D. ROSENBERG, *Piracy and Maritime Crime – Historical and Modern Case Studies*, Naval War College Newport Papers, Newport, 3.

would try to resolve the issue through diplomatic means³⁶⁰. Only if this would fail, the state could issue a letter of marque, allowing the subject to forcibly obtain restitution by attacking the commerce of the offending state³⁶¹. This practice was founded in the usage of special reprisals, which stressed that only if justice was denied to the victim, he could resort to self-help³⁶². Although it was meant to establish a system of justice, it was almost always impossible to define the exact amount of damages suffered and the demanded restitution was often largely exaggerated³⁶³, resulting in abuse of the system. However, over time, the role of righteousness lost its weight and the Crown started using the letters of marque as a tool in clandestine warfare³⁶⁴.

98. So it happened that the issuing of letters of marque during times of warfare, but not during times of peace, became part of state practice³⁶⁵. During the Golden Age, these commissions allowed privateers to attack foreign ships, seize their goods and, most importantly, inspire fear in the hearts of the belligerent nationals³⁶⁶. These captured goods were then to be divided between the government, the captain, the investors and the crew³⁶⁷. The possible victims of privateering missions varied with each letter of marque and with the political interests of the national authority³⁶⁸.
99. All privateers were supposed to carry these letters of marque as a way to legitimize their actions³⁶⁹. Unsurprisingly though, as times progressed and the intent behind the letter of marque had evolved away from its search for justice, many saw these letters as licenses to commit crimes of piracy under the King's protection and states became cynical towards the legitimacy of these commissions³⁷⁰. With the decline of the justified, original use of letters of marque, it became also more apparent that the English Crown remained reluctant to take action against illegal piracy³⁷¹. With Spain being the main target of both pirates and privateers, it became increasingly aggressive and paranoid with regard to English ships, denouncing England as a

³⁶⁰ B.A. ELLEMAN, A. FORBERS and D. ROSENBERG, *Piracy and Maritime Crime – Historical and Modern Case Studies*, Naval War College Newport Papers, Newport, 3; G. MATTINGLY, “No Peace Beyond What Line?”, *Transactions of the Royal Historical Society*, Vol. 13, 1963, 145.

³⁶¹ B.A. ELLEMAN, A. FORBERS and D. ROSENBERG, *Piracy and Maritime Crime – Historical and Modern Case Studies*, Naval War College Newport Papers, Newport, 3; G. MATTINGLY, “No Peace Beyond What Line?”, *Transactions of the Royal Historical Society*, Vol. 13, 1963, 145.

³⁶² S. C. NEFF, *War and the Law of Nations*, Cambridge, Cambridge University Press, 2005, 77.

³⁶³ V. BARBOUR, “Privateers and Pirates of the West-Indies”, *The American Historical Review* Vol. 16, No. 4, April 1911, 530.

³⁶⁴ V. BARBOUR, “Privateers and Pirates of the West-Indies”, *The American Historical Review* Vol. 16, No. 4, April 1911, 530.

³⁶⁵ S. C. NEFF, *War and the Law of Nations*, Cambridge, Cambridge University Press, 2005, 109.

³⁶⁶ V. W. LUNSFORD, *Piracy and Privateering in the Golden Age Netherlands*, Palgrave Macmillan, New York, 2005, 4; R.J. ANTHONY, *Pirates in the Age of Sail*, W.W. Norton & Company, 2007, 6.

³⁶⁷ G. ROMMELSE, “Political agendas and the contestable legality of privateering: the case of the Dutch-Portuguese War (1657-1662)”, *Journal for Maritime Research* Vol. 17 Iss. 2, 2015, 183; R.J. ANTHONY, *Pirates in the Age of Sail*, W.W. Norton & Company, 2007, 6.

³⁶⁸ V. W. LUNSFORD, *Piracy and Privateering in the Golden Age Netherlands*, Palgrave Macmillan, New York, 2005, 11.

³⁶⁹ V. W. LUNSFORD, *Piracy and Privateering in the Golden Age Netherlands*, Palgrave Macmillan, New York, 2005, 10.

³⁷⁰ G. MATTINGLY, “No Peace Beyond What Line?”, *Transactions of the Royal Historical Society*, Vol. 13, 1963, 145.

³⁷¹ J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 4.

“nation of pirates”³⁷² and treating every English ship as a pirate ship³⁷³. In the meantime, these letters of marque were peddled freely in the West-Indies, between the French, English, Dutch and Portuguese; mostly to the disadvantage of Spain³⁷⁴.

100. It was logical that Spain had become increasingly reluctant to recognize the legitimacy of letters of marque. In case of Dutch privateers, the Spanish considered their letters of marque to be invalid and illegal since the Dutch were considered to be a (rebellious) part of the Spanish empire³⁷⁵. Whenever they captured privateers, the Spanish tended to treat them like common pirates³⁷⁶. It wasn't unlikely for them to hang their capture privateers with the letters of marque around their necks³⁷⁷, illustrating their true feelings about these commissions. English pirates or privateers were also known to falsify letters of marque to legitimize their actions and prevent prosecution³⁷⁸.

SECTION II. THEIR STRATEGICAL AND POLITICAL USE

101. England was often, quite bitterly so, referred to as the pirate's nation by its belligerents³⁷⁹. This reproach can hardly be called unjust, since the Crown did rely on a combination of acts of piracy and acts of privateering to benefit its national security³⁸⁰. Because of its political and economic dependence, it was quite reluctant to adapt strict and severe rules on traditional piracy and illegal conduct of privateers or to even enforce its existing laws with firmness³⁸¹. Beside this unwillingness it was also extremely challenging to enforce a strict application of the law because of the massive scale on which piracy and privateering was conducted³⁸².
102. A state's resort to privateering was often based on its lacking resources to support the establishment of a grand and fully operative Royal Navy³⁸³. Letters of marque were thus issued to enlarge the state's naval capacities in a short period of time³⁸⁴. The issuing of letters of marque was a great financial advantage to states, since it required no investment on their behalf

³⁷² J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 2; J. NEUFELD, “The Evolution of the Legal Concept of Piracy in Early Modern England”, *Journal of World History*, 2011, 9.

³⁷³ G. KUHN, *Life Under the Jolly Roger – Reflections on Golden Age Piracy*, PM Press, 2010, 7.

³⁷⁴ V. BARBOUR, “Privateers and Pirates of the West-Indies”, *The American Historical Review* Vol. 16, No. 4, April 1911, 530.

³⁷⁵ V. W. LUNSFORD, *Piracy and Privateering in the Golden Age Netherlands*, Palgrave Macmillan, New York, 2005, 10.

³⁷⁶ J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 3.

³⁷⁷ *Ibid*, 11.

³⁷⁸ J. NEUFELD, “The Evolution of the Legal Concept of Piracy in Early Modern England”, *Journal of World History*, 2011, 8.

³⁷⁹ J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 2; J. NEUFELD, “The Evolution of the Legal Concept of Piracy in Early Modern England”, *Journal of World History*, 2011, 9.

³⁸⁰ J. NEUFELD, “The Evolution of the Legal Concept of Piracy in Early Modern England”, *Journal of World History*, 2011, 3

³⁸¹ *Ibid*, 6.

³⁸² J. NEUFELD, “The Evolution of the Legal Concept of Piracy in Early Modern England”, *Journal of World History*, 2011, 6.

³⁸³ J. NEUFELD, “The Evolution of the Legal Concept of Piracy in Early Modern England”, *Journal of World History*, 2011, 3

³⁸⁴ G. ROMMELSE, “Political agendas and the contestable legality of privateering: the case of the Dutch-Portuguese War (1657-1662)”, *Journal for Maritime Research* Vol. 17 Iss. 2, 2015, 183; S. C. NEFF, *War and the Law of Nations*, Cambridge, Cambridge University Press, 2005, 109.

whatsoever, yet it supplemented their forces and the crown received a percentage of the profit³⁸⁵. In times of war, these commissions were issued to almost anyone who expressed their wish to hunt belligerent ships³⁸⁶ with no more pretence that one needed to establish his suffered casualties first.

103. As stated above, privateers were only used in times of warfare with another country and were not allowed during times of peace³⁸⁷. A small yet important nuance to this statement is the fact that there was no legal obligation for the country to make a formal declaration of war in order to make use of privateers³⁸⁸. The only important factor was that the government considered itself to have hostile relations with the nation whose ships were being attacked³⁸⁹. Issuing letters of marque implied that the subjects were authorized to capture foreign goods on the high seas, an act which was equated to an act of war³⁹⁰. The simple act would thus already constitute a clear enough indication of intent³⁹¹ and would suffice as an informal declaration of war³⁹². Because of the lack of a formal declaration of war in this case³⁹³, this was deemed to be an imperfect war³⁹⁴. During these times of warfare, the privateering missions could forcefully come to an end by a withdrawal of the letter of marque by the national authority³⁹⁵. Those who looted ships or subjects beyond the scope of what the letter of marque allowed, were subjected to disciplinary measures³⁹⁶ and would, if they continued their actions from then on, be treated as pirates³⁹⁷.
104. When taking a step back, it becomes clear that the difference between an act of piracy in the high seas and a full-blown war between two sovereign nations depends on a single piece of paper³⁹⁸. This seems to be an awfully big responsibility for a delicate document which was subjected to falsification and trade, and was prone to abuse in order to cover up acts of piracy³⁹⁹. Dutch privateering ships, for example, were regulated quite vigorously and this strict discipline barely slacked throughout the decades⁴⁰⁰. Privateers were supposed to prove that the captured ship was indeed an enemy vessel⁴⁰¹. However, if the owner of the captured vessel felt that he

³⁸⁵ G. ROMMELSE, "Political agendas and the contestable legality of privateering: the case of the Dutch-Portuguese War (1657-1662)", *Journal for Maritime Research* Vol. 17 Iss. 2, 2015, 183

³⁸⁶ V. BARBOUR, "Privateers and Pirates of the West-Indies", *The American Historical Review* Vol. 16, No. 4, April 1911, 529.

³⁸⁷ S. C. NEFF, *War and the Law of Nations*, Cambridge, Cambridge University Press, 2005, 109.

³⁸⁸ S. C. NEFF, *War and the Law of Nations*, Cambridge, Cambridge University Press, 2005, 109; V. W. LUNSFORD, *Piracy and Privateering in the Golden Age Netherlands*, Palgrave Macmillan, New York, 2005, 10.

³⁸⁹ V. W. LUNSFORD, *Piracy and Privateering in the Golden Age Netherlands*, Palgrave Macmillan, New York, 2005, 10.

³⁹⁰ S. C. NEFF, *War and the Law of Nations*, Cambridge, Cambridge University Press, 2005, 80.

³⁹¹ *Ibid*, 109.

³⁹² *Ibid*, 109.

³⁹³ *Ibid*, 109.

³⁹⁴ *Ibid*, 119.

³⁹⁵ V. W. LUNSFORD, *Piracy and Privateering in the Golden Age Netherlands*, Palgrave Macmillan, New York, 2005, 10.

³⁹⁶ *Ibid*, 11.

³⁹⁷ *Ibid*, 14.

³⁹⁸ S. C. NEFF, *War and the Law of Nations*, Cambridge, Cambridge University Press, 2005, 81.

³⁹⁹ S. C. NEFF, *War and the Law of Nations*, Cambridge, Cambridge University Press, 2005, 81.

⁴⁰⁰ V. W. LUNSFORD, *Piracy and Privateering in the Golden Age Netherlands*, Palgrave Macmillan, New York, 2005, 13.

⁴⁰¹ D. CONLIN, "A Private War in the Caribbean: Nova Scotia Privateering, 1793-1805", *The Northern Mariner* VI No. 4, October 1996, 35.

was wronged and disputed that the vessel was either belligerent or carried anything in favour of the belligerent state, he could file a complaint before the national court⁴⁰².

105. Warring parties wouldn't issue letters of marque exclusively to their own states, but also involve subjects of third and neutral states, drawing this state, at the very least *de facto*, into the conflict⁴⁰³. To avoid conflict of interests at all cost the Dutch government forbade their privateers to hold letters of marque for two different countries⁴⁰⁴. When caught they would be subjected to punishment and their ships would be destroyed. However, many were still tempted to carry multiple letters, since this meant that they could "legally" invade more ships and thus would be able to claim more prizes⁴⁰⁵. This led to a huge influx of Dutch pirates in the 17th century, because Dutch privateers were more and more inclined to take up English commissions as well⁴⁰⁶. This was a crime that wasn't well received by the Dutch government since both countries were at war with each other during these times⁴⁰⁷. Especially near the end of the 17th century the Dutch government faced increasingly serious problems with Dutch privateers who simply abused their power and kept attacking neutral or even allied ships⁴⁰⁸. These men tried to reap advantages of both the dutiful and criminal lifestyle⁴⁰⁹. They tried to cover as many of their acts as possible under the veil of legality granted by their commissions, enjoying the status they received as heroes and warriors for their country, while also still engaging in illegal and cruel behaviour that their country clearly disapproved of⁴¹⁰. As stated in the previous section, this wasn't without consequences⁴¹¹. As time passed, England followed the Dutch and also forbade its privateers to take up letters of marque from foreign governments⁴¹².
106. Both English privateering and piracy caused quite some damage to the Spanish economic and military power⁴¹³ and were thus considered to be an effective reaction to Spanish imperialism⁴¹⁴. Its colonies were considerably wealthy and were prohibited from conducting international trade, which caused Spain's economy to enjoy prosperity that couldn't be matched by the English, who tried to disrupt Spanish colonial trade through calculated attacks in the high seas⁴¹⁵.

⁴⁰² D. CONLIN, "A Private War in the Caribbean: Nova Scotia Privateering, 1793-1805", *The Northern Mariner* VI No. 4, October 1996, 36.

⁴⁰³ G. ROMMELSE, "Political agendas and the contestable legality of privateering: the case of the Dutch-Portuguese War (1657-1662)", *Journal for Maritime Research* Vol. 17 Iss. 2, 2015, 184.

⁴⁰⁴ V. W. LUNSFORD, *Piracy and Privateering in the Golden Age Netherlands*, Palgrave Macmillan, New York, 2005, 14.

⁴⁰⁵ *Ibid*, 39.

⁴⁰⁶ *Ibid*, 39.

⁴⁰⁷ V. W. LUNSFORD, *Piracy and Privateering in the Golden Age Netherlands*, Palgrave Macmillan, New York, 2005, 39.

⁴⁰⁸ *Ibid*, 41.

⁴⁰⁹ *Ibid*, 41.

⁴¹⁰ *Ibid*, 41.

⁴¹¹ D. CONLIN, "A Private War in the Caribbean: Nova Scotia Privateering, 1793-1805", *The Northern Mariner* VI No. 4, October 1996, 35.

⁴¹² COURT OF KING'S BENCH, *Rex v Vaughan*, 13 How St Tr 485, 1696; J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 26; T. PAIGE, "Piracy and Universal Jurisdiction", *Macquarie Law Journal* Vol. 12, 2013, 135.

⁴¹³ J. NEUFELD, "The Evolution of the Legal Concept of Piracy in Early Modern England", *Journal of World History*, 2011, 5.

⁴¹⁴ *Ibid*, 4.

⁴¹⁵ *Ibid*, 5.

107. Beside their function as extension of naval powers, English privateers often also presumed the role of “aggressive merchants”⁴¹⁶, which caused them to force commercial transactions which were rather beneficial for the English Crown and not necessarily supported by existing trading norms⁴¹⁷. Their interventions opened up new (illicit) markets for the English in the new world, more specifically with Spain’s colonies, and evaded the expenses of trading through the world’s most dominant trading partner: Spain itself⁴¹⁸.
108. Additionally, privateers were also used as explorers and informed their state of new possible commercial routes or lands that were free for exploitation or colonial expansion⁴¹⁹ and England used them as a weapon against Spanish colonization and economic expansion⁴²⁰. This was of high importance because pirates would often prey upon existing and known commercial routes – first mostly on Spanish ships, but in time also attacking English commerce – which were commonly used because of the navigational limitations at that time⁴²¹.
109. At the end of the 17th century, together with the initiative to abolish piracy, came severe restrictions on privateers and their actions⁴²². This was motivated firstly through the technological development in naval warfare, which led to it being more cost-efficient for the state to invest in own fully equipped warships⁴²³. Although privateers remained relevant alternatives for quite some time, they eventually had to admit defeat against the cost-efficiency of the Royal Navy⁴²⁴. A second motivation to drastically lessen the reliance on privateering lay in the centralisation of the state⁴²⁵. With the issuing of letters of marque, came also the abuse of colonial governors who issued these commissions on their own during peacetime – even against the explicit order of their government at home⁴²⁶. The centralisation of power, however, made it far more difficult for Lords to hand out letters of marque with illicit intentions or for egoistical purposes and it became nearly impossible for privateers to keep on practicing piratical acts as a source of additional income⁴²⁷. Their reputation had suffered heavily because of their transgressions and their abuse of power, resulting in increasing animosity towards them⁴²⁸. This movement against privateering in the Golden Age reached its height with the Piracy Act of 1698

⁴¹⁶ J. NEUFELD, “The Evolution of the Legal Concept of Piracy in Early Modern England”, *Journal of World History*, 2011, 5.

⁴¹⁷ Ibid.

⁴¹⁸ Ibid.

⁴¹⁹ J. NEUFELD, “The Evolution of the Legal Concept of Piracy in Early Modern England”, *Journal of World History*, 2011, 6.

⁴²⁰ B. FUCHS, “Faithless Empires: Pirates, Renegadoes, and the English Nation, *ELH* Vol. 67 No. 1, 2000, 45.

⁴²¹ R. ADAMSON, “The Fading Gleam of a Golden Age: Britain’s Battle Against Piracy in the Americas in the Early 18th Century”, *Honors Projects*, 2004, Paper 21, 5.

⁴²² J. NEUFELD, “The Evolution of the Legal Concept of Piracy in Early Modern England”, *Journal of World History*, 2011, 10.

⁴²³ Ibid, 11.

⁴²⁴ Ibid, 11.

⁴²⁵ Ibid, 10.

⁴²⁶ J. A. WOMBWELL, *The Long War Against Piracy: Historical Trends*, Combat Studies Institute Press, 10; V. BARBOUR, “Privateers and Pirates of the West-Indies”, *The American Historical Review* Vol. 16, No. 4, April 1911, 565.

⁴²⁷ J. NEUFELD, “The Evolution of the Legal Concept of Piracy in Early Modern England”, *Journal of World History*, 2011, 10.

⁴²⁸ Ibid, 10.

which limited the privateer's conduct to a specific set of actions in article XIV, making sure that they wouldn't commit piratical transgressions against their commissions⁴²⁹.

⁴²⁹ J. NEUFELD, "The Evolution of the Legal Concept of Piracy in Early Modern England", *Journal of World History*, 2011, 12.

CONCLUSION

110. In theory, the very essence of the distinction between illegal piracy and legal privateering can be boiled down to a piece of paper, signed by the King⁴³⁰. And yet practice shows that there's a massive grey area which is riddled with the reality of political opportunism, corruption and (the lack of) effective control. This is complicated even further through the interchangeable use of terms like buccaneers and pirates, reprisals and letters of marque, privateering and piracy, by various sources, despite the fact that these terms are, in fact, distinct. There have also been remarkably little sources which have gone in-depth about the procedural reality, although JOHNSON's book, despite the criticism of biasness, offered some insight.
111. This thesis was an attempt to answer the question on whether or not the theoretical legal representation of pirates and privateers in pop culture was correct. In searching for an answer, the main question was divided in three sub-questions:
- 1) What was the legal and political significance of the difference between privateers, buccaneers and pirates?
 - 2) What was the existing international legal policy on piracy and privateering in the 17th century?
 - 3) On the basis which legal instruments and to what extent was piracy used as a tool in international politics?
112. The first question has been answered quite clearly. Privateer's conduct was legitimized in so far it was covered by the letter of marque he carried, yet from the moment his conduct superseded that commission, the unauthorized behaviour was seen as an act of piracy. Buccaneers had no legal title to justify their conduct, yet from a political point of view they were most advantageous to the English crown as they mainly targeted Spanish ships, which resulted in a lenient policy towards them. Pirates had an equal lack in legal status and, since they were a burden to the English economy, received no political support either.
113. Providing an answer to the second question appears to be more complicated, since the Early Modern Age doesn't have the developed international legal system we have today. The primary sources are domestic policy and the writings of international legal theorists like GROTIUS and GENTILI. From a political perspective, we see that the Crown's once lacking motivation in law enforcement had rapidly turned when the destruction of piracy appeared to be in its best interest. It led to a war against pirates, which was deemed to be an imperfect or unjust war according to legal theorists, and the proclamation of pirates as *hostis humani generis*. Legal theories in order to justify universal jurisdiction appear left and right, yet in practice states seem to stick to municipal law and piracy is yet to be treated as a separate crime against international law.

⁴³⁰ M. WACHSPRESS, "Pirates, Highwaymen, and the Origins of the Criminal in Seventeenth-Century English Thought, *Yale Journal of Law & the Humanities* Vol. 26 Iss. 2, 2015, 313.

114. The third question has appeared to be the most challenging one, since it enters into a sphere clouded by dubious political power play. Theory had not translated well into reality and because of corruption, peddling of letters and falsification, the letter of marque could no longer be considered as proof for someone's legitimacy according to some, albeit frustrated, states. Its original purpose, a self-help system for victims of wrongful conduct by a national from a different state, had made way for the usage of letters of marque as a tool of warfare, while states kept up the pretence that the justified cause was still there and blamed any transgressions on out-of-control pirates.
115. When comparing historical reality to Hollywood's depiction of piracy during the Golden Age, one thing can be said with certainty: no-one can blame Hollywood for not trying. Although some will state that pop culture has completely dropped the ball with regard to the characterization of pirates⁴³¹, this thesis has shown that certain depictions have undoubtedly been inspired by true events. It can't be said that pop culture has failed completely in its portrayal of Golden Age piracy, but it can be stated that it has failed in a complete portrayal of Golden Age piracy.
116. When comparing the historical reality to pop culture, it is remarkable that bits and pieces of history do coincide with certain elements of the story, yet the grand picture is never shown. It's as if Hollywood is aware of the gaping holes in its historical and legal knowledge on the topic, and has consciously decided to submerge its storyline in as much fiction as possible, leaving the watcher with little, but mostly truthful, facts. Whenever the storyline does coincide or is meant to coincide with historical reality, it can almost never be concluded that the depiction is entirely false. It rather leaves the legal historian in a frustrated state of "Yes, but ...". Yes, piracy was illegal by law, but the Crown's relationship with pirates was far more complicated than depicted. Yes, pirates were declared *hostis humani generis*, but there were various legal theories on the legality of the war that was proclaimed upon. Yes, privateers had letters of marque to justify their actions, but that doesn't mean that all their actions were legally justified.
117. Again, it can't be said that Hollywood didn't try, yet it must be pointed out that screenwriters have gone out of their way to avoid as many legal and political complexities as possible, resulting in a rather superficial portrayal of piracy and privateering. Hollywood has been cherry-picking the historical accurate elements that can be used for the storyline and has reinterpreted those in order to add to the dramatic effect. This has caused a distorted portrayal which is somehow supported by facts, but can't be considered factual.

⁴³¹ R. ADAMSON, "The Fading Gleam of a Golden Age: Britain's Battle Against Piracy in the Americas in the Early 18th Century", *Honors Projects*, 2004, Paper 21, 20.

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