FOREWORD

Title

United States v. Klintock: Reconsideration of *United States v. Palmer* as to General Piracy as Defined by the Law of Nations through the Applicable Standards of Political Action of Acknowledgement and Recognition and the Status of Statelessness.

Author

Justin L. Sieffert

Document Type

Article

Publication Date

December 2016

Keywords

1820, Piracy, General Piracy, "Law of Nations," Privateer, Pardon.

Abstract

During the February 1820 Term, the Supreme Court of the United States decided four significant piracy cases, beginning with *United States v. Klintock*. Political, economic, and social pressures enhanced the problem of piracy affecting the interests of the United States. Responding to the criticism of his decision in *United States v. Palmer* and the passage of the Act of 1819 state Congressional intent for defining piracy by the "law of nations," Marshall authored the decision in *Klintock* distinguishing *Palmer* and, upon reconsideration, interpreting the Act of 1790 to include general piracy as defined by the "law of nations." With a broader interpretation, federal courts had the jurisdiction to consider cases of general piracy regardless of the character of the vessel or nationality of the offender if the vessel operated under the flag of an unacknowledged foreign entity and if an American interest was at issue. While serving as the foundation for the final three piracy cases to endure broad enforcement authority over piracy, the story of *Klintock* did not end with the decision. An internal controversy over missing evidence in the case due to an alleged conspiracy implicated other parties in the piracy and demonstrated the internal policies and political considerations Monroe administration in the aftermath of the piracy cases. Following an investigation, internal correspondence, lobbying efforts on behalf of Ralph Clintock, and other outside pressures, the Monroe administration was not convinced that Clintock was innocent, but did find that the totality of the circumstances favored a pardon for Clintock.

Disciplines

United States Supreme Court History, Maritime Law, International Law, United States History, United States Judicial Statutory Interpretation, United States Government

I. Introduction

On April 11, 1818, Ralph Clintock[1] served as the second lieutenant of the *Young Spartan*, a privateering vessel sailing under a foreign commission from a revolutionary government seeking independence from Spain.[2] The *Young Spartan* engaged and seized a prize in the form of the Danish vessel *Norberg*.[3] At the direction of written instructions of James S. Bulloch, the *Young Spartan* committed fraud utilizing false Spanish papers to legitimate the seizure. Abandoning the crew of the *Norberg*[4] on an island, the *Young Spartan* sailed back to the port at Savannah, Georgia, with the *Norberg* and impersonated the proper owners of the *Norberg*, entered the port unmolested by the Collector, Archibald Bulloch, and sold the cargo accordingly.[5] The federal government deemed the seizure of the *Norberg* to be an act of piracy and prosecuted Clintock for his involvement.[6] Piracy was a significant problem for the United States, and prosecuting piratical acts was one method used to address the problem.

---

[1] *See* United States v. Klintock, 18 U.S. 144 (1820). The reporter, Wheaton, incorrectly spelled the last of name of Ralph Clintock beginning with a "K" instead of a "C" when identifying the case in his reports, resulting in *United States v. Klintock* instead of "United States v. Clintock." In all court documents and significant sources, the last name of Clintock is spelled "Clintock."

[2] The United States National Archives and Records Administration, Appellate Case Files of the U.S. Supreme Court, 1792-1831, Records of the Supreme Court of the United States, RG 267.3.2, M214, Roll 53, *United States v. Klintock*, Case No. 1029, 4 (viewed at the National Archives Building - Archives I in Washington, D.C. on microfilm). Hereinafter "Appellate Case File." The Appellate Case File consists of seven pages in total. *See also Klintock*, 18 U.S. at 149.

[3] Appellate Case File, RG 267.3.2, M214, Roll 53, *United States v. Klintock*, Case No. 1029, 1, 4.

[4] In some sources consulted for this research endeavor, the ship *Norberg* is spelled on occasion in the following manner: "*Nordberg.*" Throughout this article, the researcher has chosen to utilize the spelling provided in the Appellate Case record and decision of the Supreme Court, *Norberg*, except when directly quoting from a source that utilizes the alternate spelling. *See* Appellate Case File, RG 267.3.2, M214, Roll 53, *United States v. Klintock*, Case No. 1029 1 - 7. The definitive answer for the source of the discrepancy was not uncovered.

[5] *See* Appellate Case File, RG 267.3.2, M214, Roll 53, *United States v. Klintock*, Case No. 1029, 1-4; Ralph Clintock, *Letter of Ralph Clintock to John Quincy Adams dated April 24, 1820*, The Adams Family Papers, *Letters Received and Other Loose Papers*, January-June 1820, Roll 449, Library of Congress, Manuscript Division, Washington, D.C. (viewed on microfilm) (Hereto after "Clintock, *Letter to Adams dated April 24, 1820*, Roll 449").

[6] Appellate Case File, RG 267.3.2, M214, Roll 53, *United States v. Klintock*, Case No. 1029, 1-4.

During the February 1820 term of the Supreme Court of the United States, the Court decided four cases involving piracy,[7] with *United States v. Klintock* as the first case decided.[8] Partly as a reaction to Congressional action and criticism of its decision to narrowly construe the Crimes of Act of 1790[9] in *United States v. Palmer*,[10] the Court found in *Klintock* that the definition of piracy in the Act of 1790 includes general piracy as defined by the law of nations, any vessel that operates under the flag of an unrecognized nation was deemed to have a piratical character under the law of nations, and the federal courts have the jurisdiction to adjudicate acts of piracy as defined by the law of nations regardless of the national character of the offender of offending vessel.[11] The Court decided the other piracy cases following the guidance put forth in *Klintock*.[12] However, the Supreme Court decision was only part of the story. Allegations of missing evidence in the case and an investigation into the circumstances complicated the resolution of the sentence for Clintock, providing an intriguing narrative of the internal debate and investigation of the Monroe administration, ultimately concluding that Clintock warranted mercy based on the circumstances. Furthermore, the political ramifications of the piracy cases, domestic and foreign, demonstrated the various interests that the Monroe administration had to consider while attempting to solve the significant problem of piracy. Ultimately, the Monroe administration did not discover the overall solution for piracy, but *Klintock* provided an excellent study for the numerous considerations that an administration had to face when addressing a significant issue with domestic and international interests at stake.

II. The Narrative of the Case

[7] *See generally* United States v. Klintock, 18 U.S. 144 (1820); United States v. Smith, 18 U.S. 153 (1820); United States v. Furlong, 18 U.S. 184 (1820); United States v. Holmes, 18 U.S. 412 (1820).
[8] *Klintock*, 18 U.S. at 144 (1820).
[9] Act of Apr. 30, 1790, "An Act for the Punishment of certain Crimes against the United States," ch. 9, § 8, 1 Stat. 112 (1790).
[10] United States v. Palmer, 16 U.S. 610 (1818).
[11] *Klintock*, 18 U.S. at 150–52.
[12] *See generally Smith*, 18 U.S. at 153- 163; *Furlong*, 18 U.S. at 184-205; *Holmes*, 18 U.S. at 412–20.

A. Context of *United States v. Klintock* - Historic and Political Background

Understanding the decision reached in *United States v. Klintock* by the Supreme Court during the February 1820 term required an examination of the context of the case. Through examining the historic, political, and economic background impacting the development and prosecution of the case, the challenges, issues, and considerations facing the Supreme Court at the time of arguments became pronounced and provided great insight into and explained how the Supreme Court ultimately decided the case as it did.

1. Neutrality Acts of 1794, 1797, 1817 and 1818

On April 22, 1793, President George Washington issued the Proclamation of Neutrality in response to the ongoing war between Great Britain and France to keep the United States out of the conflict to "exhort and warn the citizens of the United States carefully to avoid all acts and proceedings whatsoever, which may in any manner tend to contravene such disposition."[13] Following soon thereafter, Congress passed the Neutrality Act of 1794 entitled "An Act in addition to the act for punishment of certain crimes against the United States" on June 5, 1794, that prohibited United States citizens from participating in hostile expeditions against foreign nations, accepting foreign commissions**,** enlisting in foreign forces, and arming or issuing a vessel under a commission for that purpose against a nation at peace with the United States.[14] It was extended on March 2, 1797[15], and quickly followed on June 14, 1797, with "An Act to prevent citizens of the United States from privateering against nations in amity with, or against citizens of the United States" which prohibited citizens of the United States from using private

[13] George Washington, *The Writings of George Washington from the Original Manuscript Sources: 1745-1799*, Vol. 32, March 10, 1792 - June 30, 1793, "The Proclamation of Neutrality," 430 (John C. Fitzpatrick, ed. 1939); *See also* George Washington, "*The Proclamation of Neutrality of 1793" issued and signed April 22, 1793*, Yale Law School, Lillian Goldman Law Library, http://avalon.law.yale.edu/18th_century/neutra93.asp (last viewed Nov. 27, 2016).
[14] Act of Jun. 5, 1794, "An Act in addition to the act for punishment of certain crimes against the United States" ch. 50, 1 Stat. 381 (1794); *See also* Charles G. Fenwick, *The Neutrality Laws of the United States*, 26–27 (The Endowment 1913).
[15] *See* Fenwick, *The Neutrality Laws of the United States*, 27.

vessels or vessels of war to "cruise or commit hostilities" against United States citizens or nations at peace with the United States.[16] On March 3, 1817, Congress supplemented the Neutrality Act of 1794 with "An Act more effectually to preserve the neutral relations of the United States" that amended the language of Neutrality Act of 1794 in relevant sections to prohibit United States citizens from providing aid "against the subjects, citizens, or property, of any prince or state, or of any colony, district or people, with whom the United States are at peace."[17] Parties previously took advantage of the ambiguity in the statutory language for what constitutes a "foreign prince or state" to avoid punishment for providing aid or services to insurgent colonies in war with their European colonizers.[18] On April 20, 1818, Congress repealed the three previous neutrality acts and then compiled all three acts into one law while maintaining the updated language from the Act of March 3, 1817.[19] These acts demonstrated the clear intent of Congress for the United States and its citizens to remain neutral in conflicts between European nations and colonies and prohibited foreign commissions.[20]

2. Privateering in the War of 1812

At the commencement of the War of 1812, the United States Navy, consisting of only 16 navy vessels,[21] was not equipped or prepared to battle the British Navy of 600 vessels.[22] To

---

[16] Act of Jun. 14, 1797, "An Act to prevent citizens of the United States from privateering against nations in amity with, or against citizens of the United States," ch. 1, 1 Stat. 520 (1797); *See also* Fenwick, *The Neutrality Laws of the United States*, 30–31, 176.
[17] An Act of Mar. 3, 1817, "An Act more effectually to preserve the neutral relations of the United States" ch. 58, 3 Stat. 370 (1817). *See also* Fenwick, *The Neutrality Laws of the United States*, 39–40.
[18] Fenwick, *The Neutrality Laws of the United States*, 39–40.
[19] An Act of April 20, 1818, "An Act in addition to the "Act for the punishment of certain crimes against the United States," and to repeal the acts therein mentioned" ch. 88, 3 Stat. 447 (1818); *See also* Fenwick, *The Neutrality Laws of the United States*, 39–41, 176–177.
[20] *Id.*
[21] William H. Thiesen, *United States Coast Guard War of 1812: Cementing Coast Guard Core Missions: Revenue Cutter Operations in the War of 1812*, 3 (United States Coast Guard Historian's Office), https://www.uscg.mil/lantarea/docs/WAROF1812DOC.pdf (last viewed Nov. 27, 2016).
[22] *Id.*; *See* also Jerome R. Garitee, *The Republic's Private Navy*: *The American Privateering Business as practiced by Baltimore during the War of 1812*, 47 (Wesleyan University Press for Mystic Seaport, Inc. 1977).

solve this problem, Congress passed "An Act concerning Letters of Marque, Prizes, and Prize Goods" on June 26, 1812 authorizing the President to issue "letters of marque" to privateers to assist the United States Navy with the defense of the country and war effort.[23] Privateers were entrepreneurs and merchants with privately owned vessels encouraged by the potential profits from lawfully taking prizes that operated under the legal authority of a government during a time of war to "subdue, seize, and take" enemy vessels and interrupt enemy commerce. [24] As the outbreak of the War of 1812 interrupted trade in the Atlantic and Caribbean, privateers viewed assisting the war effort as a profit-making opportunity.[25] Through either building ships or transforming currently operating ships, privateers entered the industry as an alternative revenue source after the disruption of trade.[26] The ships used by privateers, called schooners, were designed to be fast and agile.[27] Over 600 private vessels sailed under "letters of marque and reprisal" during the War of 1812.[28] It was an expensive and risky endeavor[29] as approximately two thirds of the vessels commissioned in 1812 did not capture a prize.[30] However, privateers were essential to the war effort, capturing nearly 2,000 vessels compared to the 250 vessels by the United States Navy and grossing over 10 million dollars in value of prizes seized.[31]

After the end of the War of 1812, the Federal Government discontinued the issuance of "letters of marque," leaving privateers searching for a new means of revenue.[32] Ships built specifically for privateering during the War of 1812 were not designed to be merchant ships

[23] Act of Jun. 26, 1812, "An Act concerning Letters of Marque, Prizes, and Prize Goods," ch. 107, 2 Stat. 759 (1812).
[24] Faye M. Kert, *The Routledge Handbook of the War of 1812*, "Chapter 5: Privateering, Prizes, and Profits: The Private War of 1812," 55 (Donald R. Hickey and Connie D. Clark, eds. Taylor & Francis 2016).
[25] Garitee, *The Republic's Private Navy*, 48–50, 57.
[26] *Id.* at 48–50.
[27] *Id.* at 114–116.
[28] Kert, *The Routledge Handbook of the War of 1812*, 55.
[29] *Id.* at 61; Garitee, *The Republic's Private Navy*, 60–63.
[30] Kert, *The Routledge Handbook of the War of 1812*, 61.
[31] *Id.* at 67.
[32] Garitee, *The Republic's Private Navy*, 218–19, 224–28.

because of limited cargo space.[33] Rather than let the ship rot into disrepair, enterprising privateers began to offer their services to European colonies in Latin and South America fighting to obtain their independence through revolution.[34] Sailing under foreign commissions, these privateers operated without the approval of the United States.[35] With Congress passing the Neutrality Acts of 1817 and 1818, accepting and operating under a foreign commission became illegal, rendering such activity susceptible to piracy charges and prosecution.[36]

3. Panic of 1819

The Panic of 1819 stemmed from a combination of factors converging to create a significant economic depression only four years after the end of the War of 1812. From 1815 to 1817, the American market was inundated with cheap, imported goods from Europe, primarily Great Britain.[37] While the presence of cheap, imported goods benefited consumers, American manufacturers did not perform well in the face of increased foreign competition.[38] On the other hand, American agricultural exports such as cotton, tobacco, wheat, and flour were in high demand in Europe.[39] From 1815 to 1818, the number of banks grew along with the number of bank notes in circulation.[40] Banks were issuing notes without the backing of sufficient specie, causing instability for the market on bank notes.[41] These banking practices and the absence of a

[33] *Id.* at 219.
[34] *Id.* at 224–28.
[35] *Id.*
[36] *See* Act of Mar. 3, 1817, "An Act more effectually to preserve the neutral relations of the United States" ch. 58, 3 Stat. 370 (1817); An Act of April 20, 1818, "An Act in addition to the "Act for the punishment of certain crimes against the United States," and to repeal the acts therein mentioned" ch. 88, 3 Stat. 447 (1818).
[37] Murray Newton Rothbard, *The Panic of 1819: Reactions and Policies*, 6–7 (Ludwig von Mises Institute, 1962); *See also* Cathy D. Matson, *The Economy of Early America: Historical Perspectives and New Directions*, 269–70 (Penn State Press, 2006).
[38] Rothbard , *The Panic of 1819: Reactions and Policies*, 7.
[39] *Id.* at 7–9, 14–15.
[40] *Id.* at 9–10.
[41] *Id.*

uniform national currency spurred the creation of the Second Bank of the United States with the hope of stabilizing the currency.[42]

By 1819, however, poor banking practices, overextension of credit, real estate and land speculation, and shortage of specie caused a severe liquidity crisis and large numbers of bankruptcies when the Second Bank of the United States decided to put a halt to the expansionist monetary policies, contract the extension of credit and money supply, and call in bank notes from state banks.[43] At the same time as the country was experiencing financial panic, prices for American exports to Europe fell significantly, exacerbating the liquidity crisis.[44] With dropping property values and continued decline in manufacturing, unemployment became a significant problem in urban areas.[45] During to the Panic of 1819, any interruption in commerce mattered that much more for the troubled American economy. As piracy was one of those interruptions, the Federal government took measures to combat piracy, including prosecuting offenders.[46]

4. Instability from Colonial Wars in the Latin America and South America

Beginning from 1808 to 1810, colonies of European nations began to engage in revolutionary war to obtain their independence.[47] In the wake of the War of 1812, the end of government-sanctioned privateering meant that privateers in America needed to adapt their activities.[48] Unfortunately, ships built for specifically for privateering during war did not possess the cargo space to profitably serve as merchant ships to transport large quantities of cargo.[49] The

[42] *Id.* at 9–12.
[43] *Id.* at 14–19.
[44] *Id.* at 19–24.
[45] *Id.*
[46] *See, e.g.*, *Palmer*, 16 U.S. at 610–635; *Klintock*, 18 U.S. 144–52.
[47] Charles W. Arnade, Arthur P. Whitaker and Bailey W. Diffie *Causes of Spanish-American Wars of Independence,* Journal of Inter-American Studies Vol. 2, No. 2, 125, 129 (Apr., 1960).
[48] Garitee, *The Republic's Private Navy* 218–19, 224–28.
[49] *Id.*

rise of revolutionary war in Latin and South America offered privateers another opportunity to utilize their ships as they were designed. Some privateers sold their ships to the colonies.[50] Others resumed the same activities they had undertaken on behalf of the United States, but instead did so in the service of Latin American and South American colonies under commission from the revolutionary governments.[51] While some privateers operated in good faith believing they were truly helping Latin and South American colonies achieve independence, others chose to utilize the circumstances to their advantage and commit piracy under the guise of a foreign commission.[52] As a result, the revolutionary wars in Latin and South America provided privateers with an excellent opportunity to fill the void left by the end of the War of 1812.

The connection between privateering and piracy was prevalent prior to 1820, and enhanced the instability of the region already experiencing revolutionary wars. For example, in 1816, United States Consuls for St. Thomas and Cap Haitien contacted then-Secretary of State James Monroe to request the dispatch of naval forces to the region to protect American interests and citizens from piracy.[53] In 1817, Elias Glenn, the United States Attorney for the District of Maryland, informed Monroe that Spanish officials complained consistently about the lack of legal action against privateers from Baltimore for illegal activity, but he needed to see more proof before he would prosecute privateers.[54] As a consequence, the revolutionary wars in Latin

[50] *Id.* at 224–30.
[51] *Id.*
[52] *Id.*
[53] The United States National Archives and Records Administration, *Letter from James McLane to James Monroe dated July 14, 1816*, Despatches from U.S. Consuls in St. Thomas, Virgin Is., 1804-1906, Sept. 28, 1804 - Nov. 19, 1821, Records of Department of States, RG 59, T350, Roll 1, (viewed at the National Archives Building - Archives II in College Park, MD on microfilm); The United States National Archives and Records Administration, *Letter from William Taylor to James Monroe dated September 29, 1816*, Despatches from U.S. Consuls in Cap Haitien, Haiti, 1797-1906, Jan. 9, 1814 - Aug 20, 1826, Records of Department of States, RG 59, M9, Roll 5, (viewed at the National Archives Building - Archives II in College Park, MD on microfilm).
[54] The United States National Archives and Records Administration, *Letter from Elias Glenn to James Monroe dated January 15, 1817*, Miscellaneous Letters of the Department of State, 1789-1906 Jan. 1, 1817 - Apr. 30, 1817, Records of the Department of State, RG 59, M179, Roll 36, (viewed at the National Archives Building - Archives II in College Park, MD on microfilm); The United States National Archives and Records Administration, *Letter from*

and South America created the perfect forum for piracy to thrive and disrupt the free flow of trade in the Atlantic Ocean, endanger the interests of the United States and its citizens, and strain the relations between the United States and European nations for addressing the problem. As a result, the circumstance of a privateer claiming to act under a foreign commission when accused of piracy created challenging issues for the Supreme Court to consider because of questions of whether the actions were part of the war or constituted piracy under the guise of fighting a war.

5. Rise in Piracy and Piracy Related Prosecutions

The combination of the economic impact of the Panic of 1819, instability in Latin and South America created by revolutionary war, and the need for American privateers to find employment in the wake of the end of the War of 1812 produced a perfect storm of circumstances leading to the rise of piracy and need to combat the disruptive practice. As one method of addressing the problem, the Monroe administration prosecuted alleged acts of piracy as a means of deterrence.[55] As a result, the Supreme Court remained very busy considering criminal cases of piracy between 1818 and 1827,[56] handling four cases alone in 1820.[57]

B. The "Facts" of *United States v. Klintock* leading up to Trial

An objective observer reviewing the official record of the case proceedings would have a difficult time identifying any controversy that warrants a case study of *United States v. Klintock*.

Elias Glenn to James Monroe dated February 25, 1817, Miscellaneous Letters of the Department of State, 1789-1906 Jan. 1, 1817 - Apr. 30, 1817, Records of the Department of State, RG 59, M179, Roll 36, (viewed at the National Archives Building - Archives II in College Park, MD on microfilm). Glenn was referred to himself as "District Attorney" in the letters.

[55] *supra* note 7.

[56] G. Edward White, G. Edward White, *The Oliver Wendell Holmes Devise, History of the Supreme Court of the United States: The Marshall Court and Cultural Change, Volumes III-IV, 1815-35*, 878–79 (Macmillan Publishing Company, 1988).

[57] *supra* note 7.

The transcript of the official records from the trial court and appellate court proceedings forwarded to the Supreme Court consisted of seven pages total.[58] Notably absent from the record were any documents, witness depositions, or witness testimony transcripts.[59] The only statements of the facts of the case were found in the Grand Jury Indictment of Clintock and a brief narrative in the appellate court opinion forwarding the case to the Supreme Court.[60] The minimalism of the lower court record did not give the Supreme Court much to consider.

However, the official record forwarded to the Supreme Court did not tell the whole story. After the Supreme Court rendered its decision on February 24, 1820,[61] the accused, Ralph Clintock, asserted in a letter dated April 24, 1820, to John Quincy Adams, Secretary of State of the United States under President Monroe, that prominent members of the Savannah, Georgia, community played a significant role in the seizure of the *Norberg*.[62] These individuals were Archibald S. Bulloch and James S. Bulloch.[63] According to Clintock, the Bullochs colluded with the captain of the *Young Spartan*, John Smith, to engage in piracy and facilitate the distribution of the stolen cargo in Savannah.[64] Clintock asserted that James Bulloch, provided written instructions to Captain Smith for the voyage and how to return a captured prize to Savannah.[65] Clintock further claimed that he submitted these written instructions to the Court as part of his

---

[58] Appellate Case File, RG 267.3.2, M214, Roll 53, *United States v. Klintock*, Case No. 1029, 1–7.
[59] *Id.*
[60] *Id.* at 1–2, 4.
[61] *Id.* at 1–7.
[62] Clintock, *Letter to Adams dated April 24, 1820,* Roll 449; *See generally* John Quincy Adams, , *"Diary Entry dated June 14, 1820"*, in *Memoirs of John Quincy Adams: Comprising Portions of his Diary from 1795-1848*, Vol. V., 150–52 (Charles Francis Adams, ed., J.B Lippincott & Co. 1875); John Quincy Adams, *"Letter to James Monroe dated June 15, 1820"* in *Writings of John Quincy Adams*, Vol. VII, 1820-1823, 45-46, (Worthington Chauncey Ford, ed., The Macmillian Company 1917); John Quincy Adams, *"Letter to James Monroe dated August 21, 1820"* in *Writings of John Quincy Adams*, Vol. VII, 1820-1823, 61–64, (Worthington Chauncey Ford, ed., The Macmillian Company 1917).
[63] *Id.*
[64] Clintock, *Letter to Adams dated April 24, 1820,* Roll 449; Adams, *Memoirs*, at 150-151; Adams, *Writings*, at 45–46, 61–62.
[65] *Id.*

case at trial.[66] Adams did not doubt the veracity of the claims of Clintock.[67] However, these written instructions were not part of the official record sent to the Supreme Court.[68]

An examination of the mystery and circumstances of the alleged missing document from the record provided the necessary framework to fully understand the entire context of *Klintock.* This examination demonstrated significant differences between the facts in the record and the facts as alleged when considering all sources. Recognizing these differences was essential to understanding the ultimate aftermath the case: the granting of a pardon to Ralph Clintock by President James Madison.[69] Below is a collection of the facts as alleged in the case from the official record and other sources, including the assertions made by Clintock to Adams, to create a full picture of the entire chain of events.

Ralph Clintock was a United States citizen for Georgia who served as the first lieutenant of the *Young Spartan* sailing "under a commission from Aury, styling himself brigadier of the Mexican republic, Generalissimo of the Floridas, granted at Fernandinia" as claimed once "the American government took possession of it."[70] Fernandinia was a town on Amelia Island located on the eastern coast of Spanish Florida in very close proximity to Georgia.[71] On June 29, 1817, Gregor MacGregor led a small army that captured the Spanish fort at Fernandinia, declaring the "Free Floridas" independent.[72] MacGregor attempted to establish a legitimate government on Amelia Island, with the ambition of conquering mainland Florida.[73] Part of the

---

[66] *Id.*
[67] *Id.*
[68] *Id.*; *see also* Appellate Case File, RG 267.3.2, M214, Roll 53, *United States v. Klintock*, Case No. 1029, 1–7.
[69] "Ralph Clintock," New-Bedford Mercury, Vol. XIV, Issue 52, page 3 (July 13, 1821, New Bedford, Mass.).
[70] Appellate Case File, RG 267.3.2, M214, Roll 53, *United States v. Klintock*, Case No. 1029, 1–2, 4.
[71] David Head, *Privateers of the Americas: Spanish American Privateering from the United States in the Early Republic*, 103–04 (University of Georgia Press, 2015). Notably, Head does not reference the *Klintock* case during in his research regarding Amelia Island.
[72] *Id.* at 104.
[73] *Id.*

legitimate government included issuing privateering commissions.[74] However, MacGregor had trouble maintaining control over Amelia Island, choosing to abandon his pursuits in early September 1817 rather than face a pending Spanish counter-attack.[75] On September 17, 1817, Commodore Louis-Michel Aury sailed to Fernandinia, taking control of Amelia Island three days later.[76] Aury claimed Amelia Island for the Mexican Republic and established a government that also issued privateering commissions.[77] As part of Spanish Florida, Amelia Island enjoyed some measure of protection from attack by the United States due to its efforts at maintaining neutrality.[78] The proximity of Amelia Island to Georgia allowed Amelia Island to become a privateering and smuggling haven for goods and the slave trade into the United States.[79] Aury maintained his control over Amelia Island until December 1817 when the United States took control through force to halt the harm and threat posed by the slave trade and privateering and reject recognition of the legitimacy of the government of Aury.[80] Adams considered the Aury and the privateers out of Amelia Island to be pirates.[81] As a consequence of these circumstances, the *Young Spartan* was not considered an American vessel and Clintock sailed under a suspect, disfavored commission from an unrecognized entity.[82]

Before departing out of the port at Savannah, Clintock, based on the explanation of Captain Smith, claimed that James S. Bulloch, the "managing agent" of the *Young Spartan* charged with selling seized cargo,[83] gave written, but unsigned, instructions to Captain Smith

[74] *Id.*
[75] *Id.* at 105.
[76] *Id.* at 49, 106.
[77] *Id.* at 106.
[78] *Id.* at 107.
[79] *Id.* at 106–07.
[80] *Id.* at 108, 111–12.
[81] *Id.* at 112–13.
[82] *Id.* at 111–13; Appellate Case File, RG 267.3.2, M214, Roll 53, *United States v. Klintock*, Case No. 1029, 1–2, 4.
[83] Clintock claimed that Captain Smith described James S. Bulloch as the "managing agent" and Archibald S. Bulloch as a part-owner of the *Young Spartan*. *See* Clintock, *Letter to Adams dated April 24, 1820,* Roll 449.

before departing for how to return any prize obtained into the port at Savannah.[84] According to Clintock and the deposition of one crew member, William Blythe, taken incident to the arrest of Clintock but not submitted as part of the court record,[85] these instructions were read aloud to the crew of the ship by Captain Smith.[86] The *Young Spartan* followed these instructions during its encounter with the *Norberg*, a ship owned and flying under the flag of Denmark.[87] On April 11, 1818,[88] Clintock followed orders to board the *Norberg*, finding that "the Brig was Danish [and] her papers clear [and] correct."[89] Then, Captain Smith ordered the Second Lieutenant of the *Young Spartan* named Ferguson to board the ship along with a crew member named Flanigan for further investigation. Flanigan was sent with "false Spanish papers ... and put them in such a place in the cabin as Ferguson might find them."[90] Ferguson did find them "in the Starboard locker"[91] and brought them to the deck calling out "Spanish papers - good prize"[92] as cover due to the commission coming from a revolutionary government opposing Spain.[93]

Having found the fraudulent Spanish papers, Captain Smith planned to "dispose of the crew so that none should be left to tell the news."[94] Clintock protested this plan, threatening mutiny should Captain Smith follow through.[95] Captain Smith relented, deciding to leave the

---

[84] Clintock, *Letter to Adams dated April 24, 1820,* Roll 449.
[85] John Lillebridge, *Deposition of William Blythe*, in The Adams Family Papers, *Letters Received and Other Loose Papers*, January-June 1820, Roll 449, Library of Congress, Manuscript Division, Washington, D.C. (viewed on microfilm). William Blythe also testified at the trial of Clintock. *See also* Appellate Case File, RG 267.3.2, M214, Roll 53, *United States v. Klintock*, Case No. 1029, 3.
[86] *Id.*; *See also* Clintock, *Letter to Adams dated April 24, 1820,* Roll 449.
[87] *Id.*
[88] In his letter dated April 24, 1820, Clintock claims that the encounter with the *Norberg* occurred on or about May 10, 1818. *See* Clintock, *Letter to Adams dated April 24, 1820,* Roll 449. The indictment lists that the act of piracy occurred on April 11, 1818. The deposition of Blythe conforms to the time frame announced in the indictment. *See* Appellate Case File, RG 267.3.2, M214, Roll 53, *United States v. Klintock*, Case No. 1029, 1–2, 4.
[89] Clintock, *Letter to Adams dated April 24, 1820,* Roll 449.
[90] *Id.*
[91] John Lillebridge, *Deposition of William Blythe*, in The Adams Family Papers, *Letters Received and Other Loose Papers*, January-June 1820, Roll 449.
[92] Clintock, *Letter to Adams dated April 24, 1820,* Roll 449.
[93] Head, *Privateers of the Americas*, at 106–13.
[94] *Id.*
[95] *Id.*

mariners on the *Norberg* on an island off the coast of Cuba.[96] However, one of the members of the crew of the *Norberg* named Cosler wrote a note to Smith referring to him as a "pirate."[97] As a consequence, Smith wanted the entire crew killed, especially "that damned rascal Cosler."[98] Rather than seeing the entire crew be "sacrificed," Clintock volunteered to go ashore under those orders from Smith, but instead gave an order for his men of the *Young Spartan* to "fire over the heads of the crew[.]"[99] The men followed the orders of Clintock, and "no one was hurt."[100]

In control of the *Norberg*, Captain Smith read the instructions from James S. Bulloch for taking the prize into Savannah, and ordered Ferguson to take command of the Danish ship after Clintock refused to do so.[101] Ferguson was to sail the *Norberg* into Savannah impersonating the Danish captain and utilizing the real papers of the ship when docking and take measures to put the ship in a distressed condition.[102] Once in port, Ferguson was to call for James S. Bulloch as the "managing agent of the business."[103] Clintock found the practices ordered "incorrect" and feared seizure by the Collector and the whole crew "probably hanged as pirates."[104] Smith revealed that the Collector of import duties for the port of Savannah, Archibald S. Bulloch,[105] was related to James S. Bulloch[106] and part owner of the *Young Spartan* who would see to it

[96] *Id.*
[97] *Id.*
[98] *Id.*
[99] *Id.*
[100] *Id.*
[101] *Id.*; *see also* Adams, *Writings*, at 61.
[102] Clintock, *Letter to Adams dated April 24, 1820*, Roll 449; *see also* Adams, *Memoirs*, at 151.
[103] Clintock, *Letter to Adams dated April 24, 1820*, Roll 449.
[104] *Id.*
[105] Adams, *Writings*, at 45; Clintock also noted that Archibald S. Bulloch was married to the sister of George Glen, Clerk of the District Court. *See* Clintock, *Letter to Adams dated April 24, 1820*, Roll 449.
[106] Clintock also noted that James S. Bulloch was married to the daughter of John Elliott, United States Senator from Georgia. *See* Clintock, *Letter to Adams dated April 24, 1820*, Roll 449.

there would be "no difficulties."[107] Despite this revelation, Clintock still refused to participate.[108]

Per the unsigned written instruction from James S. Bulloch, Ferguson sailed the *Norberg* back to Savannah impersonating the Danish captain, arriving on or about April 25, 1818.[109] The *Young Spartan* followed behind into a port in the vicinity of Savannah.[110] Archibald Bulloch allowed the *Norberg* into Savannah without issue, but only one tenth of the cargo of the *Norberg* actually made it on shore.[111] Instead, most of it was "reshipped in other vessels and sent to different ports in the United States."[112] After serving its purpose and selling the cargo, the plan was for Ferguson to take the *Norberg* back to sea and sink it.[113] For their part, Smith and Ferguson received compensation of $17,000 from the *Norberg* cargo and "ran away."[114] Clintock and the rest of the crew of the *Young Spartan* received nothing.[115] Including the ship itself, the value of all assets involved in the seizure of the *Norberg* totaled $53,000.[116]

While his letter implicated other parties in the activity of the *Young Spartan*, Clintock did not claim innocence of the crime of piracy at any point in the letter.[117] Rather, he focused on the noble actions of his defiance of the captain's orders not to murder the crew of *Norberg* and

---

[107] *Id*.
[108] *Id*.
[109] John Lillebridge, *Deposition of William Blythe*, in The Adams Family Papers, *Letters Received and Other Loose Papers*, January-June 1820, Roll 449. Clintock, *Letter to Adams dated April 24, 1820*, Roll 449.
[110] Appellate Case File, RG 267.3.2, M214, Roll 53, *United States v. Klintock*, Case No. 1029, 4.
[111] Clintock, *Letter to Adams dated April 24, 1820*, Roll 449.
[112] *Id*.
[113] *Id*.
[114] *Id*. Clintock did not describe how Ferguson and Smith "ran away" with the $17,000 in proceeds from the *Norberg*. It is unclear how they managed escape with the proceeds. William Blythe provided in his deposition that Ferguson did travel into the town of Savannah, but did not mention Smith. *See* John Lillebridge, *Deposition of William Blythe*, in The Adams Family Papers, *Letters Received and Other Loose Papers*, January-June 1820, Roll 449.
[115] *Id*.
[116] Appellate Case File, RG 267.3.2, M214, Roll 53, *United States v. Klintock*, Case No. 1029, 1-2; *see also* Adams, *Writings*, at 62.
[117] *Id*.

refusal to captain the *Norberg* back to Savannah.[118] His goal seemed to be to put the blame on others for his actions, request the opportunity to prove his assertions through examining evidence, and hopefully mitigate his role in the transaction, possibly with the hope of obtaining leniency.[119] However, the apparent strategy of Clintock faced one major roadblock: it did not absolve him of piratical conduct under the Section Eight of the Act of 1790[120] because he admitted to following the orders of the Captain Smith to board the *Norberg*, being part of the crew for at least participating in the seizure, and sounding the order to fire upon on the crew of the *Norberg* even though the instruction was to fire over the heads of the crew.[121]

Based on newspaper accounts, the fraud perpetrated on the *Norberg* was not uncovered until a later date.[122] On June 17, 1818, Captain John Jackson of the Revenue cutter *Dallas*, the same captain and ship involved in *The Antelope*,[123] captured the *Young Spartan* while it was claiming a different prize, *The Pastora*.[124] Newspaper accounts identified Clintock as the captain of the *Young Spartan* at the time of the capture of the *Young Spartan*, where he was brought into Savannah and subsequently jailed.[125] From all sources available, it was unclear how the seizure of the *Norberg* came to the attention of the Federal government to allow for an indictment. One distinct possibility could be the aforementioned deposition of William Blythe,

---

[118] *Id*.
[119] *Id*.
[120] Act of Apr. 30, 1790, "An Act for the Punishment of certain Crimes against the United States," ch. 9, § 8, 1 Stat. 112 (1790) which provides in relevant part: "...or if any captain or mariner of any ship shall piratically and feloniously run away with such ship or vessel, or any goods or merchandise to the value of fifty dollars..."
[121] Clintock, *Letter to Adams dated April 24, 1820*, Roll 449.
[122] United States Coast Guard, *Dallas, 1816*, https://www.uscg.mil/history/webcutters/Dallas1816.pdf, (last viewed Nov. 27, 2016).
[123] *See* 22 U.S. 66 (1825).
[124] United States Coast Guard, *Dallas, 1816*, https://www.uscg.mil/history/webcutters/Dallas1816.pdf, (last viewed Nov. 27, 2016) referencing an article from *The Charleston Courier* dated June 24, 1818.
[125] United States Coast Guard, *Dallas, 1816*, https://www.uscg.mil/history/webcutters/Dallas1816.pdf, (last viewed Nov. 27, 2016) referencing an articles from *The New York Evening Post* dated July 3, 1818 and July 10, 1818.

recorded during the month of June 1818 at the time of the arrest of Clintock.[126] Additionally, at some point, Cosler from the *Norberg* made it to shore from the island he was left on by the *Young Spartan*.[127] Once the seizure of the *Norberg* became known, the recipients of the cargo of the *Norberg* faced legal action from Cosler through his lawyer for their involvement, which resulted in a compromise settlement of $45,000 from James Bullock to Cosler.[128] For his part in the seizure of the *Norberg*,[129] Clintock faced indictment for piracy, where the indictment alleged that he "with force and arms upon the High Seas out of the Jurisdiction of any particular State" did "piratically and feloniously" board the *Norberg*, commit assault against the mariners on the *Norberg*, place the mariners of the *Norberg* in fear of harm, and "steal, take, and carry away" the ship *Norberg* and its cargo of 1000 boxes of Sugar valued at $53,000 total.[130] Based on this indictment, he stood trial for the charge of piracy.[131] Since Captain Smith and Ferguson previously "ran away" according to Clintock,[132] that left Clintock as the highest ranking officer remaining on the *Young Spartan*, a status that may have factored into the decision to prosecute.

The written instructions from James S. Bulloch were not part of the official record submitted to the Supreme Court.[133] The absence of the documents did not become known until after the Supreme Court rendered its decision, prompting a futile search for the missing

---

[126] *See* John Lillebridge, *Deposition of William Blythe*, in The Adams Family Papers, *Letters Received and Other Loose Papers*, January-June 1820, Roll 449; Richard Habersham, *Letter of Richard Habersham to John Quincy Adams dated May 20, 1820*, in The Adams Family Papers, *Letters Received and Other Loose Papers*, January-June 1820, Roll 449 Library of Congress, Manuscript Division, Washington, D.C. (viewed on microfilm).
[127] Hugh McCall, *Letter of Hugh McCall to Colonel Constant Freeman dated April 23, 1820*, in The Adams Family Papers, *Letters Received and Other Loose Papers*, January-June 1820, Roll 449 Library of Congress, Manuscript Division, Washington, D.C. (viewed on microfilm). It is unknown when Cosler returned to Savannah.
[128] *Id*. *See also* Adams, *Writings*, at 62. The researcher was unable to locate court documents regarding the alleged suit of Cosler against Bulloch that resulted in the compromise of $45,000 referenced by McCall and Adams.
[129] The researcher was unable to determine whether Clintock also faced prosecution for the seizure of *The Pastora*.
[130] Appellate Case File, RG 267.3.2, M214, Roll 53, *United States v. Klintock*, Case No. 1029, 1–2.
[131] *Id*.
[132] Clintock, *Letter to Adams dated April 24, 1820*, Roll 449.
[133] Appellate Case File, RG 267.3.2, M214, Roll 53, *United States v. Klintock*, Case No. 1029, 1–7.

documents.[134] The relationship between that turn of events, the Bullochs, and the ultimate result of the case for Clintock constituted a significant dilemma for President Monroe in the aftermath of the case,[135] and will be addressed later in this case note.

C. The District Court Trial

In accordance with Section Eight of the Act of 1790, Clintock stood trial for the crime of piracy in the District of Georgia.[136] The record of the District Court trial consists of the Grand Jury indictment, arraignment proceeding, and trial docket entry with a witness list, jury list, and jury verdict, totaling thee pages.[137] The minimalistic nature of the record did not offer insight into the content of witness testimony and arguments made by either party.[138]

1. The Indictment

On December 17, 1818, the accused, Ralph Clintock, was indicted for the crime of Piracy in the Sixth Circuit Court of the United State for the District of Georgia at a regular meeting of the Court held at the Exchange in Savannah, Georgia.[139] Present at the indictment was the Honourable William Johnson, Judge of the Sixth Circuit of the United States for the District of Georgia.[140] At this time, Justice Johnson was a member of the Supreme Court of the United

---

[134] *See generally* Adams, *Writings*, at 45; Hugh McCall, *Letter of Hugh McCall to Colonel Constance Freeman dated April 24, 1820*, in The Adams Family Papers, *Letters Received and Other Loose Papers*, January-June 1820, Roll 449 Library of Congress, Manuscript Division, Washington, D.C. (viewed on microfilm); Richard Habersham, *Letter of Richard Habersham to John Quincy Adams dated April 26, 1820* in The Adams Family Papers, *Letters Received and Other Loose Papers*, January-June 1820, Roll 449 Library of Congress, Manuscript Division, Washington, D.C. (viewed on microfilm); Richard Habersham, *Letter of Richard Habersham to John Quincy Adams dated May 20, 1820* in The Adams Family Papers, *Letters Received and Other Loose Papers*, January-June 1820, Roll 449.

[135] Adams, *Memoirs*, at 150–51.

[136] Act of Apr. 30, 1790, "An Act for the Punishment of certain Crimes against the United States," ch. 9, § 8, 1 Stat. 112 (1790).

[137] Appellate Case File, RG 267.3.2, M214, Roll 53, *United States v. Klintock*, Case No. 1029, 1–7.

[138] *Id.*

[139] *Id.* at 3.

[140] *Id.*

States assigned to the Sixth Circuit when appointed by Thomas Jefferson and confirmed by the Senate in 1804.[141]

Based on the evidence presented, the Grand Jury produced a true bill of indictment for the crime of Piracy against Ralph Clintock.[142] The indictment approved by the Grand Jury begins with listing the names of the juror who sat on the Grand Jury.[143] The indictment separated the alleged act of Piracy of Clintock into four distinct actions. Before describing these actions, the Grand Jury identified important elements of the crime of Piracy. The Grand Jury described Clintock as a "mariner" who was "late of the District of Georgia," meaning that he was a citizen of Georgia as indicated later in the indictment and confirmed in Appellate decision for the case.[144] It provided that Clintock used "force and arms upon the High Seas out of the Jurisdiction of any particular State on the Eleventh Day of April in the aforesaid year of our Lord one thousand and eight hundred and eighteen."[145] The Grand Jury labeled the actions as "piratically and feloniously" committed against the "...peace and dignity of the said United States of America and the form of the Statute of the United States of America in such easy made and provided."[146] The indictment did not provide the specific name of statute at issue, but on appeal the eighth section of "Act of the Thirtieth of April 1790," also known as the Act of 1790, was identified as the statute at issue.[147] Furthermore, the Grand Jury identified the District of

[141] Donald Morgan, *William Johnson*, in *The Justices of the United States Supreme Court: Their Lives and Major Opinions, Volume I*, 205–06 (Leon Friedman and Fred L. Israel, eds., Chelsea House Publishers 1969).
[142] *Id.* at 1–3.
[143] *Id.* at 1–2.
[144] *Id.*
[145] *Id.*
[146] *Id.*
[147] *Id.* at 4; *see also* Act of Apr. 30, 1790, "An Act for the Punishment of certain Crimes against the United States," ch. 9, § 8, 1 Stat. 112 (1790).

Georgia as the District "where the offender was first apprehended for the said offense" as to affirm the jurisdiction of the Court to handle the case.[148]

In the first distinct action, the indictment asserted that Clintock "did piratically and feloniously **set upon, board, break, and enter** a certain ship called or vessel called the *Norberg* then and there being a ship or vessel of certain person to the Jurors aforesaid unknown[.]" (emphasis added).[149] Second, after having boarded the ship, the accused "piratically and feloniously did make **an assault in and upon certain persons** being mariner subjects of the King of Denmark whose names to the Jurors aforesaid are unknown in the peace of God and of the United States of America[.]" (emphasis added).[150] Third, this assault on the subject of the King of Denmark "piratical and feloniously did put the aforesaid persons mariners of the same ship or vessel in the ship or vessel aforesaid then being **corporal fear and danger of their lives** then and there in the ship or vessel" while on the "High Seas[.]" (emphasis added).[151] Lastly, the accused did "piratically and feloniously did then and there **steal, take and carry away** the said ship or vessel called the *Norberg* of the value of Three Thousand dollars of lawful money of the United States of America and one thousand Boxes of Sugar, of the value of Fifty Thousand Dollars of like lawful money of the United States of America" (emphasis added)[152] totaling fifty three thousand dollars in "goods and chattels" of the subjects of the King of Denmark.[153] William Davies, the District Attorney of the United States of America for the District of Georgia,[154] signed the indictment before it was presented to the Court.[155]

---

[148] Appellate Case File, RG 267.3.2, M214, Roll 53, *United States v. Klintock*, Case No. 1029, at 1–2.
[149] *Id.*
[150] *Id.*
[151] *Id.*
[152] *Id.*
[153] *Id.*
[154] The position held by William Davies is now known as the United States Attorney for the Southern District of Georgia. William Davies was the seventh United States Attorney for the Southern District of Georgia. *See* United

Based on this indictment, Clintock pled "not guilty" to charge of Piracy on December 19, 1818.[156] At the presentment of the indictment and entrance of the plea, James M. Wayne represented Clintock.[157] Wayne was considered one of the leading lawyers in Savannah, Georgia.[158] In 1835, President Andrew Jackson appointed Wayne as an Associate Justice to the Supreme Court of the United States.[159] Davies represented the United States as the prosecutor.[160]

2. The Trial Court Verdict

After securing the indictment against Clintock on December 17, 1818, it took over one year before the trial occurred.[161] The trial did not occur until December 21, 1819.[162] While not provided in the Court documents, one possibility for the delay may have been the appointment of William Davies as United States District Court Judge for the District of Georgia on January 11, 1819, by President James Monroe and confirmed by the Senate on January 14, 1819.[163] With the appointment of Davies to the bench, Richard W. Habersham filled the vacancy of United States Attorney for the District of Georgia.[164]

On December 21, 1819, the Honourable William Johnson presided of over the trial "at a regular meeting of the Sixth Circuit Court of the United States of America for the District of

---

States Department of Justice, Southern District of Georgia, *Meet the U.S. Attorney*, https://www.justice.gov/usao-sdga/former-us-attorneys, (last viewed Nov. 27, 2016).

[155] Appellate Case File, RG 267.3.2, M214, Roll 53, *United States v. Klintock*, Case No. 1029, at 1–2.

[156] *Id.* at 3.

[157] *Id.*

[158] Savannah Bar Association, *History of the SBA*, http://savannahbar.org/page-1830304 (last viewed Nov. 27, 2016).

[159] *See* George Gordon Battle, *James Moore Wayne - Southern Unionist,* 13 FORDHAM L. REV. 42, 45 (1944); Frank Gatell, *James Moore Wayne*, in *The Justices of the United States Supreme Court, Volume 1*, 329-336 (Leon Friedman and Fred L. Israel, eds., Chelsea House Publishers 1969).

[160] Appellate Case File, RG 267.3.2, M214, Roll 53, *United States v. Klintock*, Case No. 1029, 3

[161] *Id.* The court records for the proceeding and other commentaries consulted for this case note did not reveal a reason for the gap in time between the indictment and the trial.

[162] *Id.*

[163] Federal Judicial Center, *History of the Federal Judiciary - William Davies*, http://www.fjc.gov/servlet/nGetInfo?jid=569&cid=999&ctype=na&instate=na (last viewed Nov. 27, 2016).

[164] United States Department of Justice, Southern District of Georgia, *Meet the U.S. Attorney*, https://www.justice.gov/usao-sdga/former-us-attorneys (last viewed Nov. 27, 2016).

Georgia held at the Court House in the City of Savannah[.]"[165] The court records for the proceedings do not indicate how long the trial lasted.[166] Additionally, the records do not identify the lawyers trying the case before Justice Johnson.[167] Most likely, Habersham represented the United States to prosecute the accused. However, while it is unclear whether James Moore Wayne was counsel of record for Clintock at trial, the court records also do not indicate any mention of Clintock changing counsel.[168] After hearing testimony from nine witnesses including William Blythe, the jury, found "the Prisoner Guilty."[169] Counsel for Clintock appealed.[170]

D. Appellate Review in the Sixth Circuit Court of the United States

After an adjournment, the Sixth Circuit Court of the United States met on December 31, 1819, to consider the appeal of Clintock requesting the judgment against him for Piracy "be arrested."[171] Once again, Justice William Johnson presided over the case. Justice Johnson was joined by District Court Judge for the District of Georgia, William Davies, the aforementioned former District Attorney prosecuting the case who had been appointed to the bench during the interlude between the indictment and trial of Clintock, on the panel to consider the appeal.[172] Once again, the court record for the proceeding does not indicate who the attorneys were for each party during the proceeding.[173] Given that the appeal took place only ten days after the trial,[174] it is very likely that both parties were represented by the same counsel from trial.

1. Facts of the Case on Appeal to the Sixth Circuit Court of the United States

[165] Appellate Case File, RG 267.3.2, M214, Roll 53, *United States v. Klintock*, Case No. 1029, 3.
[166] *Id*.
[167] *Id*.
[168] *Id*.
[169] *Id*.
[170] *Id.* at 4.
[171] *Id*.
[172] *Id. See also supra* note 159.
[173] Appellate Case File, RG 267.3.2, M214, Roll 53, *United States v. Klintock*, Case No. 1029, 4.
[174] *Id*.

Absent from the records of the trial court proceedings were depositions of witnesses, transcripts of witness testimony, and other documents and evidence presented at trial.[175] The indictment did provide some specific facts related to the elements of the crime of Piracy and the items taken during the robbery, but did not provide a narrative the sequence of events.[176] On appeal, the decision of the Sixth Circuit supplemented the record available from the trial court proceedings with a narrative statement of the facts.[177]

The narrative statement of facts described Clintock as an "American" who sailed "as first lieutenant" on the "*Young Spartan*."[178] The *Young Spartan* was "owned without the United States and cruised under a commission from Aury, styling himself brigadier of the Mexican republic, Generalissimo of the Floridas, granted at Fernandinia" as claimed once "the American government took possession of it."[179] Clintock was convicted of "piracy" upon the Danish vessel *Norberg* by "practicing the following fraud upon her [:] the second officer of the privateer brought on board some Spanish papers, which he concealed in a locker and then affected to have found them on board."[180] As a consequence, the *Young Spartan* took possession of the *Norberg*, decided to have "the whole original ship company left on an island on the coast of Cuba," and placed the Second Officer of the *Young Spartan* in command of the *Norberg* and sailed the into Savannah "personating the Danish captain and crew" with the *Young Spartan* following behind "put into port in the vicinity."[181] Due to the absence of other documents, depositions, or

[175] *Id*. at 1–7.
[176] *Id.* at 1–2.
[177] *Id* at 4.
[178] *Id*.
[179] *Id*.
[180] *Id*.
[181] *Id*.

transcripts of witness testimony, the indictment and the narrative statement of facts of the Sixth Circuit constituted the record of the facts adduced at trial available to the Supreme Court.[182]

In comparison to the alleged facts from Clintock described in his communications with Adams, it was striking that the Court did not mention the written instructions from Bulloch as part of the narrative of facts. One possibility could be that the panel of judges did not believe that it was a pertinent fact relevant to the questions they were asked to consider on appeal. However, the absence of any mention of the instructions effectively cut off the Supreme Court from considering the issue because it was not part of the appellate opinion and, as discovered later, not included in the transcript of the record forwarded to the Supreme Court.[183]

2. Grounds for Appeal

Once completing the narrative of facts, the Court considered the four grounds for appeal that the movant, Clintock, submitted through counsel as the basis that the "judgment be arrested."[184] As recorded by the Court, Clintock first argued that "Aury's commission [does][185] exempt the prisoner from the charge of piracy."[186] Second, Clintock contended "that the fraud practised on the Dane does not [support][187] the charge of piracy as an act piratically done, and not in the exercise of belligerent rights."[188] Third, Clintock took aim at the basis for the indictment such "that the prisoner is not punishable under the provisions of the eighth section of

[182] *Id*; *see also* United States v. Klintock, 18 U.S. 144–52 (1820).
[183] Appellate Case File, RG 267.3.2, M214, Roll 53, *United States v. Klintock*, Case No. 1029, 4.
[184] *Id*.
[185] *Id*. In the appellate decision, the word "does" is followed by writing that is illegible for the purposes of determining whether it is a word or an ink mark on the page.
[186] *Id*.
[187] *Id*. In the appellate decision, the word "exempt" appears to be included between "not" and "support." The Supreme Court understood the issue as arguing that the fraud practiced "may not itself constitute piracy," indicating that the word "exempt" was not given any weight in the consideration of the question. In addition, the reporter, Wheaton, deleted the word "exempt" from his notes. *See Klintock*, 18 U.S. at 144, 150 (1820).
[188] Appellate Case File, RG 267.3.2, M214, Roll 53, *United States v. Klintock*, Case No. 1029, 4.

the act of 1790."[189] Lastly, Clintock argued "that the act of thirtieth April 1790 eighth section entitled 'an act for the preservation of certain crimes against the United States' does not extend to an American citizen entering on board of a foreign vessel in a foreign port, and that vessel committing piracy upon a vessel exclusively owned by foreigners."[190]

3. The Appellate Decision

Upon consideration of the grounds for arrest of judgment moved by counsel for Clintock, Justice Johnson and Judge Davies were divided in their opinion.[191] The court decision did not identify how the panel of judges ruled on each ground submitted by Counsel for Clintock.[192] The decision only announced that the judges were "divided in opinion upon the request of the counsel for the prisoner."[193] The Court proceeded to order that the "indictment and prisoner charges therein, together with the grounds of the defendant's motion in arrest of judgment be transcribed by the clerk of this court, certified by him under the seal of this court, and sent to the Supreme Court for their decision."[194] As a result, the Court did not unanimously affirm or reverse the jury verdict after considering the grounds expressed by counsel for Clintock.[195] Due to the disagreement between judges on the panel, the Court forwarded the case to the Supreme Court of the United States for final decision pursuant to Section 6 of the Judiciary Act of 1802.[196]

---

[189] *Id.*
[190] *Id.*
[191] *Id.*
[192] *Id.*
[193] *Id.*
[194] *Id.*
[195] *See id.*
[196] *See* The Judiciary Act of 1802, "An Act to amend the Judicial System of the United States" 2 Stat. 156, Ch. 31, § 6, (April 29, 1802). "And be it further enacted, That whenever any question shall occur before a circuit court, upon which the opinions of the judges shall be opposed, the point upon which the disagreement shall happen, shall, during the same term, upon the request of either party, or their counsel, be stated under the direction of the judges, and certified under the seal of the court, to the supreme court, at their next session to be held thereafter; and shall, by the said court, be finally decided. And the decision of the supreme court, and their order in the premises, shall be remitted to the circuit court, and be there entered of record, and shall have effect according to the nature of the said judgment and order: Provided, that nothing herein contained shall prevent the cause from proceeding, if, in the opinion of the court, farther proceedings can be had without prejudice to the merits: and provided also, that

On January 21, 1820, the Clerk of the District Court and Sixth Circuit Court of the United States for the District of Georgia, George Glen, certified that the record sent to the Supreme Court with "contains a true copy of the record and proceedings" filed with his office.[197] By this time, John Bullock, brother of Archibald Bulloch,[198] had been removed as Clerk of the Court at the behest of Justice Johnson.[199] The Supreme Court received and filed the record on February 5, 1820.[200]

III. The Decision - Supreme Court of the United States of America

On appeal from the Sixth Circuit Court for the District of Georgia[201], the Supreme Court of the United States heard the case of *United States v. Klintock*[202], 18 U.S. 144 (1820), on a "Certificate of Opinion from the Circuit Court of Georgia"[203] based on the "Transcript of Record"[204] considered by the Circuit Court of the United States for the District of Georgia "For Indictment of Piracy of ship *Norberg*" during the February 1820 term of the Court, deciding the case on February 24, 1820.[205] The Supreme Court did not note what day arguments took place

---

imprisonment shall not be allowed, nor punishment in any case be inflicted, where the judges of the said court are divided in opinion upon the question touching the said imprisonment or punishment." The court records do not indicate which party requested that the case be sent to the Supreme Court.

[197] Appellate Case File, RG 267.3.2, M214, Roll 53, *United States v. Klintock*, Case No. 1029, 6.

[198] Adams, *Writings*, at 62.

[199] *Id.*; Hugh McCall, *Letter of Hugh McCall to Colonel Constance Freeman dated April 24, 1820*, in The Adams Family Papers, *Letters Received and Other Loose Papers*, January-June 1820, Roll 4.

[200] The United States National Archives and Records Administration, Dockets of The Supreme Court of the United States, Roll #1, 1791-1834, Original 1791-1801 and Appellate, 1792-1834, Records of the Supreme Court of the United States, RG 267.3.1, M216, Roll 1, *United States v. Klintock*, Case No. 1029 (viewed at the National Archives Building - Archives I in Washington, D.C. on microfilm).

[201] The reporter, Wheaton, incorrectly identifies the Virginia is jurisdiction of origination. *See Klintock*, 18 U.S. at 144.

[202] The reporter, Wheaton, incorrectly spelled the last of name of Ralph Clintock beginning with a "K" instead of a "C." *See Klintock*, 18 U.S. at 144.

[203] Dockets of The Supreme Court of the United States, Roll #1, 1791-1834, Original 1791-1801 and Appellate, 1792-1834, Records of the Supreme Court of the United States, RG 267.3.1, M216, Roll 1, *United States v. Klintock*, Case No. 1029. The docket sheet also identifies this case as case number 1029 before the Supreme Court.

[204] The United States National Archives and Records Administration, Minutes of the Supreme Court of the United States, Volume # A-D, Feb. 1, 1790 - Aug. 4, 1828, Records of the Supreme Court of the United States, RG 267.3.1, M215, Roll 1, *United States v. Klintock*, Case No. 1029 (viewed at the National Archives Building - Archives I in Washington, D.C. on microfilm).

[205] United States v. Klintock, 18 U.S. 144 (1820).

for the case on the docket sheet for the case.[206] The Supreme Court adopted the narrative of facts from the appellate court opinion and focused only on the "Transcript of Record" submitted to the Court, which consisted of seven pages total.[207] Absent from the case decision was any discussion of the alleged problems concerning missing documents from the record discussed in the writings of Secretary of State John Quincy Adams, President James Monroe, Attorney General William Wirt, and Ralph Clintock produced after the conclusion of the case.[208]

A. The Legal Background

Under the "Define and Punish Clause" of Article I, Section 8, Clause 10, of the Constitution of the United States of America, "The Congress shall have the Power … To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations."[209] Pursuant to this authority, Congress enacted the Crimes Act of 1790 (Act of 1790), "An Act of the Punishment of **Certain Crimes** against the United States."[210] At issue in *Klintock* was Section 8 of the Act of 1790 which read as follows:

> That if any person or persons shall commit, upon the high seas, or in any river, haven, basin, or bay, out of the jurisdiction of any particular State, murder or robbery, or any other offence, which, if committed within the body of a county, would by the laws of the United States, be punishable with death; or if any captain or mariner of any ship or other vessel, shall piratically and feloniously run away with such ship or vessel, or any goods or merchandize to the value of fifth dollars, or yield up such ship or vessel voluntarily to any pirate; or if any seaman shall lay violent hands upon his commander, thereby to hinder and prevent his fighting in defence of his ship, or goods committed to his trust, or

---

[206] Dockets of The Supreme Court of the United States, Roll #1, 1791-1834, Original 1791-1801 and Appellate, 1792-1834, Records of the Supreme Court of the United States, RG 267.3.1, M216, Roll 1, *United States v. Klintock*, Case No. 1029; However, reviewing the case in the hardbound copy version of the United States Reporter (Wheaton, Volume 5) and the online database Westlaw indicated that oral arguments were held on February 14, 1820. *See Klintock*, 18 U.S. at 146–47.

[207] Appellate Case File, RG 267.3.2, M214, Roll 53, *United States v. Klintock*, Case No. 1029, 1-7; Dockets of The Supreme Court of the United States, Roll #1, 1791-1834, Original 1791-1801 and Appellate, 1792-1834, Records of the Supreme Court of the United States, RG 267.3.1, M216, Roll 1, *United States v. Klintock*, Case No. 1029; Minutes of the Supreme Court of the United States, Volume # A-D, Feb. 1, 1790 - Aug. 4, 1828, Records of the Supreme Court of the United States, RG 267.3.1, M215, Roll 1, *United States v. Klintock*, Case No. 1029.

[208] *Id.*

[209] U.S. CONST. art. I, § 8, cl. 10.

[210] Act of Apr. 30, 1790, "An Act for the Punishment of certain Crimes against the United States," ch. 9, § 8, 1 Stat. 112 (1790).

> shall make a revolt in the ship; every such offender shall be deemed, taken, and adjudged to be a pirate and felon, and being thereof convicted, shall suffer death: and the trial of crimes committed on the high seas, or in any place out of the jurisdiction of any particular State, shall be in the district where the offender is apprehended, or into which he may be first brought.[211]

Notable in the Act of 1790 was the frame of reference employed in the act to define piracy as "murder or robbery, or any other offence, which, if committed within the body of a county, would by the laws of the United States, be punishable with death."[212] Congress did not invoke the "law of nations," but rather utilized United States law as the guiding principle. This distinction proved significant in *United States v. Palmer*.[213]

In *United States v. Palmer*, [214]Chief Justice John Marshall for the Court made two significant findings on the crime of piracy as defined by Section 8 of the Act of 1790: (1) All robberies on the High Seas are considered piracy as defined by the Act of 1790 and (2) the United States does not have jurisdiction under the Act of 1790 punish robbery on the High Seas of foreign subjects on a ship or vessel belonging exclusively to subjects of a foreign state by person of unknown citizenship.[215] The Court followed a narrow construction of the phrase "any person or person" in the act of 1790 such that it determined that Congress did not intend to allow the Court to assert jurisdiction over a matter that falls within the judgment of a foreign government when the nexus to specific American citizen or interest was absent and the incident only involved foreign subjects on a foreign ship.[216] The effect of the holding created the perception that the United States did not have jurisdiction to punish piracy unless an American citizen was the offender or an American ship was involved, a strict statutory interpretation of the

[211] *Id*.
[212] *Id.*
[213] 16 U.S. at 610–35 (1818).
[214] *Id.*
[215] *Id.* at 628–34.
[216] *Id.*

definition of piracy based on municipal law of the United States.[217] This was not a unanimous decision by Marshall. Associate Justice William Johnson, the same justice who presided over the trial and Circuit Court appeal of Clintock, dissented from the majority decision, arguing primarily that the interpreting all robberies on the high seas as piracy and punishable by death was inconsistent with the language of the statute given that robbery on land did not result in a death sentence.[218]

This decision was roundly criticized, most notably by Secretary of State, John Quincy Adams. He called the decision "abhorrent" claiming the Court's "reasoning [was] a sample of judicial logic—disingenuous, false, and hollow" such it dissuaded him from ever accepting a judgeship.[219] He argued that the Act of 1790 had been utilized to prosecute piracy in the past and detested the interpretation of the law set forth by the Court.[220] Furthermore, if "human language means anything," as argued by Adams, "Congress had made general piracy by whomever and wheresoever committed on the high seas cognizable by the Circuit Courts."[221]

In response to the exception perceived in *Palmer*, Congress passed an "Act to Protect the Commerce of the United States and Punish the Crime of Piracy" on March 3, 1819[222] (Act of 1819).[223] In Section 5 of the statute, Congress addressed the perceived exception as follows: "if any person or persons *whatsoever*, shall, on the high seas, commit the crime of piracy, *as defined by the law of nations*, and . . . shall afterwards be brought into or found in the United States, every such offender . . . shall, upon conviction . . . , be punished with death." (emphasis

[217] John Quincy Adams, "*Diary entry for May 11, 1819"*, in *The Memoirs of John Quincy Adams: 1795-1848*, Vol. IV, 363 (Charles Francis Adams, ed., J.B Lippincott & Co. 1875); *see also* Edwin D. Dickinson, *Is the Crime of Piracy Obsolete?*, 38 HARV. L. REV. 334, 345 (1924-1925).
[218] *Palmer*, 16 U.S. at 636–43 (Johnson, J. dissenting).
[219] Adams, "*Diary entry for May 11, 1819"*, *Memoirs*, at 363.
[220] *Id.*
[221] *Id.*
[222] Act of Mar. 3, 1819, "An Act to Protect the Commerce of the United States and Punish the Crime of Piracy," ch. 77, 3 Stat. 510 (1819).
[223] Dickinson, *Is the Crime of Piracy Obsolete*, at 345–46.

added).[224] In effect, the Act of 1819 aimed to close the loophole of needing a nexus to an American interest in the Act of 1790 as interpreted in *Palmer* by adding the phrase "whatsoever" and defining piracy by the "law of nations" such that the Court may exercise jurisdiction over piratical acts without an American nexus that any other nation could prosecute under international law.[225] This showed Congress intended for the definition of piracy to include general piracy as argued by Adams and rejected the narrow construction of Marshall in *Palmer*.

B. The Lawyers and Opinion Writer

William Wirt, Attorney General of the United States of America, represented the United States of America before the Supreme Court.[226] A native of Maryland, Wirt became the Ninth Attorney General of the United States with his appointment by President James Monroe in 1817.[227] He continued as Attorney General until 1829, also serving under John Quincy Adams during his presidency, enjoying the longest tenure as the Attorney General of the United States in history.[228] Prior to his appointment as Attorney General, William Wirt served in the House Delegates for Virginia and as the United States Attorney for the District of Virginia.[229] Wirt argued numerous cases before the Supreme Court, with the most famous cases including *McCulloch v. Maryland* and *Gibbons v. Ogden*.[230] After his time as the Attorney General, Wirt settled into a successful practice in Baltimore.[231] Wirt even made a run at the presidency as the

---

[224] Act of Mar. 3, 1819, "An Act to Protect the Commerce of the United States and Punish the Crime of Piracy," ch. 77, §5, 3 Stat. 510 (1819).
[225] *Id.*; *compare with Palmer*, 16 U.S. at 628–34.
[226] *Klintock*, 18 U.S. at 147.
[227] John Pendleton Kennedy, *Memoirs of the life of William Wirt: Attorney General of the United States, Vol. II*, 52 (GP. Putnam and Sons, 1872); U.S. Dep't of Justice, *Attorney General: William Wirt*, https://www.justice.gov/ag/bio/wirt-william (last viewed Nov. 8, 2016).
[228] U.S. Dep't of Justice, *Attorney General: William Wirt*, https://www.justice.gov/ag/bio/wirt-william, (last viewed Nov. 8, 2016); Kennedy, *Memoirs of the life of William Wirt*, at 166, 223–26
[229] Kennedy, *Memoirs of the life of William Wirt* at 235, 353; F.A. Richardson and W.A. Bennett, *Baltimore: Past and Present. With Biographical Sketches of Its Representative Men*, 547 (Richardson & Bennett, eds. 1871).
[230] McCulloch v. Maryland, 17 U.S. 316 (1819); Gibbons v. Ogden, 22 U.S. 1 (1824).
[231] Kennedy, *Memoirs of the life of William Wirt*, at 223–26. Richardson and Bennett, *Baltimore: Past and Present*, at 548–49.

candidate for the Anti-Masonic Party for the Election of 1832, becoming the first third party candidate to win a State in the Electoral College with his victory in Vermont.[232]

William H. Winder, represented the Appellant, Clintock. Winder regularly appeared before the Supreme Court, including representing clients involved in privateering.[233] He completed his law studies at the Law Offices of Gabriel Duval while Roger Taney was completing his studies at the Office of Samuel Chase, becoming good friends in the process. He was elected to the House of Delegate of Maryland in 1798.[234] He proudly served in the United States Army during the War of 1812, but suffered a famous defeat as the commander of the Army at the Battle of Bladensburg in 1814 that led to the sacking of Washington, D.C.[235] Despite this result, he managed after the war to build one of the biggest practices in Baltimore and the Supreme Court and got elected twice to serve in the Maryland Senate.[236]

Chief Justice John Marshall delivered the opinion of the Supreme Court.[237] As a Federalist and proponent of national power, he used a pragmatic approach to balance competing interests in rendering decisions to secure the Court as an equal Branch of the Federal Government, interpret the Constitution to allow the federal government to have the tools necessary to govern as the true sovereign power under the Constitution, and acceptably manage the wrath of opposing parties such that the country will still enforce the decrees of the Court

---

[232]John Pendleton Kennedy, *Memoirs of the life of William Wirt*, at 303, 331–32.
[233] Griffin, "*Privateering from Baltimore during the Spanish American Wars of Independence*" at 6 (March, 1940), viewed at http://msa.maryland.gov/megafile/msa/speccol/sc5800/sc5881/000001/000000/000137/pdf/msa_sc_5881_1_137.pdf. *See also* Richardson and Bennett, *Baltimore: Past and Present*, at 541–44.
[234] Maryland State Archives, *Archives of Maryland Biographical Series*, http://msa.maryland.gov/megafile/msa/speccol/sc3500/sc3520/014000/014074/html/14074bio.html (last viewed Nov. 27, 2016); *See also* Richardson and Bennett, *Baltimore: Past and Present*, at 541–44.
[235] *Id.*
[236] Richardson and Bennett, *Baltimore: Past and Present*, at 541–44.
[237] *Klintock*, 18 U.S. at 147–52. There were no dissenting opinions in this case.

despite disagreement.[238] In private prior to the February 1820 term, Chief Justice Marshall offered in a letter to Justice Bushrod Washington that he had had doubts about "whether there is any such thing as Piracy as 'defined by the law of nations.'"[239] This view contrasted with his view while serving in Congress before his appointment to the Supreme Court of the existence of general piracy and its status as "an offence against all and every nation" that was "punishable by all."[240] Whatever doubts he expressed in private, he recognized the need for "reconsideration of the opinion" in light of Congress passing the Act of 1819 defining the piracy by the law of nations and the facts of the cases before him, thereby implicitly acknowledging the criticisms leveled against his holding in *United States v. Palmer* and the intentions of Congress expressed through the Act of 1819.[241] As a result, he took the opportunity to do just that in this opinion.

C. Arguments of the Lawyers

As counsel for the United States, Attorney General William Wirt focused on two arguments before the Court. With regard to the Court holding *Palmer*, he contended that it only stood for the proposition that robbery on board a ship belonging to subjects of foreign power by another subject of foreign power was not piracy within Section Eight of the Act of 1790.[242] What *Palmer* did not decide, as argued by Wirt, was that the exact same offense committed by an American Citizen on board a vessel not belonging to the subject of a foreign power was not piracy within Section Eight of the Act of 1790. Moving on to his second argument, Wirt contended that ship or vessel at issue in this case did not belong the subject of any nation or state,

---

[238] *See, e.g.*, Marshall's majority decisions in *Marbury v. Madison*, 5 U.S. 137 (1803), *McCulloch v. Maryland*, 17 U.S. 316 (1819), and *Gibbons v. Ogden*, 22 U.S. 1 (1824).
[239] John Marshall, *Letter of John Marshall to Bushrod Washington dated October 31, 1819*, in *The Papers of John Marshall: Correspondence, Papers, and Selected Judicial Opinions, March 1814 - December 1819, Vol. VIII*, 374 (Charles F. Hobson ed., The University of North Carolina Press 1995).
[240] John Marshall, *Annals of Congress*, 6th Congress, First Session, 600 (March 7, 1800).
[241] *See Klintock*, 18 U.S. at 150–52.
[242] *Klintock*, 18 U.S. at 147–48.

rendering it a pirate vessel. Since pirates are *hostis humani genreis*,[243] they and the vessel on which they sail are of "no nation or state" and "outcasts of society of nations."[244] As a result, "an offence committed by them against "any individual nation is an offence against all" and punishable by all Courts.[245] Since the Mexican Republic was not an acknowledged state and Denmark was not at war with Mexican Republic or Spain, the commission under which the vessel at issue sailed was not attached to a recognized nation.[246] While the fraud perpetrated did not constitute piracy on its own, the entire transaction including the seizure amounted to a piratical act.[247] Therefore, as shown in the present case, "an offence committed on board or by a piratical vessel, by a Pirate, on a subject of Denmark, is an offence against the United States, for which the courts of this country are authorized and bound to punish."[248]

William H. Winder, on behalf of Clintock, argued that *Palmer* controlled the decision of the Court in this case.[249] Since Section 8 of the Act of 1790 was the law at issue and the vessel did not belong to an American citizen, the only distinction between this case and *Palmer* was that Clintock was an American citizen.[250] Winder contended that the distinction did not matter because *Palmer* had resolved issue that for an action to be proscribed under Section Eight of the Act of 1790, "it is indispensably necessary, not that the party should be a citizen, but that the vessel against which, and the vessel on board of which the offence is committed, should belong to citizens."[251] Since the character of the vessel was what mattered for analysis under the Act of

[243] Latin for "Enemy of mankind."
[244] *Klintock*, 18 U.S. at 147–48.
[245] *Id.*
[246] *Id.*
[247] *Id.*
[248] *Id.* at 148.
[249] *Id.*
[250] *Id.*
[251] *Id.*

1790, *Palmer* properly disposed of this case in favor of Clintock.[252] Winder attacked the argument from Wirt regarding the statelessness of the vessel, acknowledging it may succeed under the Act of 1819 where piracy is defined by the law of nations, but does not fall within the authority to punish piracies under the Act of 1790.[253] Since only the Act of 1790 is at issue and the entire purpose Act of 1819 was to cure the defect of the Act of 1790 as interpreted by *Palmer*, Winder concluded that "it is impossible, consistently with the authority of that case, to bring the present case within the statute, which was the only law in force, on the subject, at the time when this offence was committed."[254]

D. Decision of the Court

Chief Justice Marshall addressed all four grounds submitted to the Circuit Court. Marshall noted early in the opinion that "judgment can be only arrested for errors apparent on the record," and based on the record, the Court sufficient basis to certify "our opinion on the insufficiency of these on that ground."[255] However, the Court suspected an error part of the clerk for capturing these grounds as an arrest for judgment when most likely they were designed as the grounds for a motion for a new trial under which the Court thought properly before the Court in this case.[256] Rather than rule on technicality in a criminal case, the Court decided it was "proper to decide the question on its real, as well as technical merits."[257]

First, Marshall focused on ground submitted by appellate counsel that the commission from Aury exempted Clintock from the charge of piracy. The Court rejected that assertion, finding that Aury had no authority as "the Brigadier of the Mexican Republic, a republic of

[252] *Id.*
[253] *Id.*
[254] *Id.* at 149.
[255] *Id.*
[256] *Id.*
[257] *Id.*

whose existence we know nothing, or as Generalissimo of the Floridas, a province in the possession of Spain, to issue commissions to authorize private or public vessels to make captures at sea."[258] Without generating from an acknowledged state, the Court rejected any notion that acting on good faith under such a foreign commission could excuse an act of piracy by finding "that the commission can be no justification of the fact stated in this case" because "the whole transaction taken together demonstrates that the Norberg was not captured *jure belli*, but seized and carried into Savannah *animo furandi*."[259] As a result, the entire transaction was "not a belligerent capture, but a robbery on the high seas."[260]

Next, the Court entertained the assertion of appellate counsel that the fraud, as described in the appellate decision of planting Spanish papers on board the ship, perpetrated on the *Norberg* did not support the charge of piracy as a piratical act committed against the *Norberg*. Marshall agreed that the fraud itself "may not constitute piracy," but "yet it is an ingredient in the transaction which has no tendency to mitigate the character of the offence."[261] As a result, the entire transaction negated any argument that the fraud was the only offense committed, but rather was part of a much larger activity.

Lastly, the Court considered the third and fourth grounds submitted by appellate counsel together. Marshall reframed the third ground into the following question, noting the question:

> Whether the crime of robbery, committed by persons who are not citizens of the United States, on the high seas, on board of any ship or vessel belonging exclusively to the subjects of any foreign State or sovereignty, or upon the person of any subject of any foreign State or sovereignty, not on board of any ship or vessel belonging to any subject or citizen of the United States, be a robbery or piracy within the true intent and meaning of the said 8th section of the act of Congress, aforesaid, and of which the Circuit Court of the United States hath cognizance, to hear, try, determine, and punish the same?[262]

---

[258] *Id.*
[259] *Id.* at 149–50.
[260] *Id.*
[261] *Id.* at 150.
[262] *Id.*

The Court then noted the fourth ground was the same question, with a slight variation for comprehending "the offence if committed by American citizens in a vessel belonging to foreigners."[263] In consideration of these grounds, the Court recognized that the grounds at issue in this case "require a reconsideration of the opinion given by the Court in Palmer's case."[264]

Rather than overrule the heavily criticized holding in *Palmer* that pushed Congress to pass the Act of 1819, Marshall distinguished *Palmer* from the case at hand. The Court reaffirmed *Palmer* as follows:

> The Court is of opinion, that the crime of robbery, committed by a person on the high seas, on board of any ship or vessel belonging exclusively to subjects of a foreign State, on persons within a vessel belonging exclusively to subjects of a foreign State, is not a piracy within the true intent and meaning of the act for the punishment of certain crimes against the United States.[265]

However, the Court then distinguished *Palmer* by finding it applies "exclusively to a robbery or murder committed by a person on board of any ship or vessel belonging exclusively to subjects of a foreign State" such that the piratical act occurred on a vessel subject to foreign control flying under the flag of a foreign state acknowledged by the United States.[266]

Having clarified the extent to which *Palmer* reaches, the Court then proceeded to announce the holding the case. The Court changed its reading of Section Eight of the Act of 1790 in *Palmer* by holding that general piracy falls within the scope of the definition of piracy found in Section Eight of the Act of 1790:

> general piracy, or murder, or robbery, committed in the places described in the 8th section, by persons on board of a vessel not at the time belonging to the subjects of any foreign power, but in possession of a crew acting in defiance of all law, and

[263] *Id.* at 150–51.
[264] *Id.* at 150.
[265] *Id.* at 151.
[266] *Id.*

> acknowledging obedience to no government whatever, is within the true meaning of this act, and is punishable in the Courts of the United States.[267]

Such offenders committing general piracy, in the eyes of the Court, "are proper objects for the penal code of all nations."[268] The Court cautioned that the "general words" of Section Eight of the Act of 1790 "ought not to be construed as to extend to persons under the acknowledged authority of a foreign State" as found in *Palmer*, but the Court asserted that the general words of Section Eight of the Act of 1790 "ought to be so construed as to comprehend those who acknowledge the authority of no State."[269] As a result, the Court determined that Section Eight of the Act of 1790 properly applies to "offences committed against all nations, including the United States, by persons who by common consent are equally amenable to the laws of all nations" by not acknowledging the authority of any state such that United States, like any nation, has the jurisdiction to prosecute for piracy in such circumstances under the Act of 1790.[270]

E. Analysis and Effects of the Decision

In composing the opinion, Chief Justice Marshall essentially adopted the main argument of Attorney General William Wirt.[271] Rather than completely overrule *Palmer*, the Court distinguished *Palmer* in a manner that rendered it more an exception than a general rule. His penchant for pragmatism was on full display as Marshall managed to save part of the holding in *Palmer* while satisfying the criticisms leveled at *Palmer* and incorporating the obvious intent of Congress displayed in the Act of 1819 for the definition of piracy to include general piracy, now defined as murder or robbery on the high seas with the requisite intent and statelessness.[272]

---

[267] *Id.* at 152.
[268] *Id.*
[269] *Id.*
[270] *Id.*
[271] *Id.* at 147–48.
[272] *Id.* at 149–52; *See also* White, *History of the Supreme Court of the United States*, at 877–78.

Under the holding in *Klintock*, any assertion that the Act of 1790 only applied if the transaction involved an American citizen or American vessel was rendered obsolete. *Klintock* affirmed the inclusion of general piracy into the definition of piracy in the Section Eight of the Act of 1790.[273] The key elements that the Court focused on were recognition of the existence of a State and the character of the vessel to construe the definition of piracy in the Act of 1790 to include general piracy.[274] While United States did not have jurisdiction over piratical action against foreign subjects occurring on a vessel under the control of a recognized foreign state, all nations had the jurisdiction to prosecute piratical activity committed by vessels that flew under the flag of an unrecognized state or no state at all.[275] The Court did not assign itself as the authority on whether a state is recognized, wanting to avoid acknowledging revolutionary governments because it would grant legitimacy to activities that would otherwise constitute piracy[276] and believing such a determination went beyond the scope of authority granted to the judiciary.[277] Instead, the Court left such determinations for the other branches of government as the Court had determined in *Palmer*,[278] following the position Marshall exhibited as a Congressman that such a decision was best handled by "the department whose duty it is to understand precisely the state of the political intercourse and connexion between the United States and foreign nations."[279] By focusing on the elements of recognition and the character of the vessel, the Court managed to step back from the narrow and strict statutory construction it originally offered in *Palmer* and incorporate the intent of Congress expressed in the Act of 1819

[273] *Id.* at 149–52.
[274] *Id.* at 149–52.
[275] *Id.* at 152.
[276] White, *History of the Supreme Court of the United States*, at 894.
[277] *Palmer*, 18 U.S. 634–35.
[278] *Id.*; *see also* Edward Dumbauld, *John Marshall and the Law of Nations*, 104 U. PA. L. REV. 38, 47–49 (1955-1956).
[279] John Marshall, *Annals of Congress*, 6th Congress, First Session, 614–15 (March 7, 1800).

to prosecute general piracy into the Act of 1790 with an expanded interpretation of the definition of piracy that more closely resembles that true intent of Congress.

Additionally, the Court managed to draw easier standards by which to decide this case, analyze future cases that come to the Court on similar issues, and administration of jurisdiction over cases in consideration of the instability caused by the colonial wars in Latin and South America. With the elements of recognition and the character of the vessel, the Court rejected the commission given to Clintock as unauthorized because it was given by an unacknowledged state.[280] Without recognition, the vessel on which Clintock sailed was stateless "owing obedience to no government whatever" such that any violation of the Act of 1790 would be punishable under the concept of general piracy included in the Act of 1790 as interpreted by the Court. [281]In doing so, the Court created easily applicable standards to control the administration of its jurisdiction moving forward to discern actions allegedly committed during colonial wars.[282]

Furthermore, with the measurable standards of recognition and the character of the vessel, the Court clarified the relationship between general piracy and statutory piracy in the Act of 1790. Since general piracy now falls under the Act of 1790, general piracy may be punished in federal courts regardless of the nationality of the assailants or the vessel, unless the situation falls into the exception laid out in *Palmer*.[283] If the action does not constitute general piracy, the action may be punished in federal courts if there is an American nexus.[284] As a result, the Court eliminated concerns that the scope of the Act of 1790 was limited only to American citizens.

Since Clintock sailed under a commission from an unacknowledged government and participated in a robbery on the high seas, those actions constituted piracy because the act was

[280] *Klintock,* 18 U.S. at 150–52.
[281] *Id*.
[282] *See generally* White, *History of the Supreme Court,* at 870–71, 877–78.
[283] *Klintock,*18 U.S at 151–52*; See also* White, *History of the Supreme Court,* at 875.
[284] *Id.*

committed by a vessel that did not acknowledge that authority of any recognized nation in defiance of all law and subject to punishment under any jurisdiction.[285] As a member of the crew, he was liable for those acts and subject to punishment under Section Eight of the Act of 1790.[286] Therefore, the Court certified the Opinion in favor of the Plaintiff, affirming the verdict of the trial court and remanded the case to the trial court for disposition in accordance its opinion.[287]

F. Immediate Implication of the Decision

In certifying the opinion in *Klintock* in favor of the United States, the Court affirmed the verdict of the trial court. The case returned to the original trial court for sentencing. Judge William Davies of the United States District Court for the District of Georgia imposed the sentence of death by hanging upon Clintock for the crime of Piracy.[288] He was set to be executed on April 28, 1820, in Chatham County, Georgia. In a bit of good fortune, President James Monroe intervened, issuing a two month reprieve from execution on April 10, 1820.[289]

IV. Aftermath of the Decision

The aftermath of the decision in *Klintock* demonstrated the impact a decision can have on the individual parties themselves and the legal, political, and economic landscape of society. For Clintock himself, political considerations ultimately saved him from the gallows. The Court followed *Klintock* with three more decisions involving piracy, upholding the interpretation of the Act of 1790 to include general piracy and the constitutionality of the Act of 1819 in defining

---

[285] *Id.* at 151–52.
[286] *Id.*; *see also* Act of Apr. 30, 1790, "An Act for the Punishment of certain Crimes against the United States," ch. 9, § 8, 1 Stat. 112 (1790).
[287] *Klintock*, 18 U.S. at 152.
[288] "Ralph Clintock," *Museum and Gazette* by Kappel and Bartlett, Monday, April 17, 1820, from the *Georgian* on Saturday, April 15, 1820; "More pirates sentenced to be hanged," Rhode-Island Republican, Vol. 12, Issue 2, Page 3 (Wednesday April 12, 1820, Newport, Rhode Island).
[289] The United States National Archives and Records Administration, James Monroe, *Two Month Reprieve for Ralph Clintock from James Monroe dated April 10, 1820*, Presidential Pardons & Remissions, Apr. 15, 1794-Feb. 25, 1836, Records of the Department of State RG 59, T967, Roll 1 (viewed at the National Archives Building - Archives II in College Park, MD on microfilm).

piracy by the law of nations. With an abundance of piracy cases upheld in a short time frame, the Monroe administration faced tough political choices regarding punishment for convicted pirates. Despite the piracy trials, piracy remained a problem for the United States in its relations with European nations either attempting to put down unrest in Latin America and South America or participating in trade with the United States, Latin America, or South America.

A. The Remainder of the Piracy Cases: *Smith*, *Furlong*, and *Holmes*

After the decision in *Klintock*, the Court decided three more major piracy cases within a matter of three weeks. The first of these cases was *United States v. Smith*, decided on February 25, 1820.[290] In the *United States v. Smith*, a majority opinion for Justice Story upheld the constitutionality of the Act of 1819 in defining piracy by the law of nations finding that robbery on the high seas was piracy under the law of nations because it was an offense against all nations as pirates are "the enemy of the human race," that such a definition was reasonably certain given the settled and determinate nature of scholarship that robbery on the high seas was piracy as defined by the law of nations, and it was permissible for Congress to define piracy by the law of nations in a statute.[291] Justice Livingston dissented arguing that the Act of 1819 was unconstitutional because it did not sufficiently define the crime of piracy to put the potential violators on notice for what actions would be volatile of the statute.[292]

On March 1, 1820, Justice William Johnson, the same Justice who served as the trial judge for Clintock and dissented in *Palmer*, delivered the opinion in *United States v. Furlong*, also known as *United States v. Pirates*.[293] The Court affirmed that the Act of 1819 did not repeal

[290] 18 U.S. 153 (1820).
[291] *Smith*, 18 U.S. at 158–63.
[292] *Id.* at 180–83 (Livingston, J., dissenting).
[293] 18 U.S. 184 (1820).

the Act of 1790, leaving both statutes in force.[294] As murder on the high seas was once of the crimes defined as piracy under the law of nations in the statutes, a vessel that assumes "a piratical character [is] no longer included in the description of a foreign vessel" covered by the exception in *Palmer*.[295] For a charge of general piracy, the national character of the offender or vessel did not matter when the purpose was to commit piracy.[296] The Court had the authority to punish general piracy against an American ship, regardless of the nationality of the offender, and acts of general piracy committed against an American on a foreign ship.[297]

Completing the major piracy cases in 1820, Justice Bushrod Washington handed down the opinion in *Unites States v. Holmes* on March 15, 1820.[298] In *Holmes*, the Court affirmed *Klintock* holding that murder or robbery committed on the high seas fell within the Act of 1790 when the vessel had no American nexus but sailed with no national character "by pirates, or persons not lawfully sailing under the flag of any foreign nation."[299] When the vessel has a recognized national character, the laws of that nation control the commission of a piratical act.[300] However, if the vessel is piratical, "the offense is equally cognizable by the Courts of the United States" under the Act of 1790 regardless of citizenship of the offender.[301]

Along *Palmer* and *Klintock*, the Court upheld in these five cases the constitutionality of two Congressional Acts, interpreted both acts to include general piracy with the definition of piracy found within in both acts, established that Congress may define a crime by the law of nations, and developed applicable standards regarding the citizenship of an offender and the national character of a vessel for determining when the courts of the United States had

[294] *Id.* at 192–93.
[295] *Id.* at 195–99.
[296] *Id.* at 193.
[297] *Id.* at 195–98.
[298] 18 U.S. 412 (1820).
[299] *Id.* at 416–17
[300] *Id.* at 417–18.
[301] *Id.*

jurisdiction in a particular case or controversy involving piracy.[302] Having four justices write five opinions demonstrated the certainty and unity of the Court regarding piracy. After these five cases, the Court continued to decide piracy cases,[303] but those cases did not result in any substantive changes to the standards already in place. As a result, the holding of the Court in these cases remained unchanged, eventually codified in 1948 and stands as good law today.[304]

B. The Political Aftermath of *Klintock*

The political aftermath in the wake of *Klintock* was felt on two different levels: personal and national. On the personal front, Ralph Clintock was the beneficiary of the political controversy surrounding his conviction and the suspected conspiracy behind missing documents in his court case. On the national front, Secretary of States John Adams, Attorney General William Wirt, and President James Monroe faced the political challenge of handling the conviction of a significant number of pirates in a short time. With remedies such as reprieves and pardons, the administration worked to develop a plan for managing the situations.

1. The Path to a Pardon for Ralph Clintock

On April 28, 1820, Ralph Clintock was scheduled to be executed in Chatham County, Georgia.[305] With large number of piracy cases adjudicated during the February 1820 term of the Supreme Court, President James Monroe discussed how to handle the punishment of the 45 convicted pirates set to be put to death during a cabinet meeting on March 13, 1820.[306] On March 31, 1820, Adams noted that President Monroe ultimately determined that 10 pirates would be executed, two each in the cities of Baltimore, Richmond, Charleston, New Orleans, and

[302] *See* White, *The History of the Supreme Court*, at 878–79.
[303] *See generally* White, *The History of the Supreme Court*, at 878.
[304] 18 U.S.C. Ch. 81, §§ 1651-1661 (2012).
[305] *supra* note 293.
[306] John Quincy Adams, *"Diary Entry dated March 13, 1820"*, in *Memoirs of John Quincy Adams: Comprising Portions of his Diary from 1795-1848*, Vol. V., 19–22 (Charles Francis Adams, ed., J.B Lippincott & Co. 1875).

Savannah where the prosecutions were held, with the remainder receiving a two month reprieve except for one pirate in New Orleans.[307] Clintock fell into the latter category. On April 10, 1820, President James Monroe issued a two month reprieve from execution for Clintock.[308] This small amount of good luck was only the beginning of the post-conviction appeal process for Clintock.

On April 24, 1820, as already referenced when describing the "facts" of the case, Clintock composed a letter to Secretary of State Adams detailing his recollection of the events surrounding the encounter of the *Norberg*, the submission of the written instructions from James S. Bulloch as evidence in his criminal trial, and a request to review the written instructions to prove that had been written by James S. Bulloch.[309] The realization that the written instructions from James Bulloch were not part of the court record and could not be found led to an investigation into their disappearance that included formal declarations, a witness deposition, and accusations of a conspiracy to protect the Bulloch family from criminal charges. As the investigation commenced and ultimately proved futile, Clintock began to look more like a victim than a pirate, and the Bulloch family as the true perpetrators of the piratical acts.

On April 23, 1820, the jailor for Savannah, Hugh McCall, wrote to Colonel Constant Freeman, who served as the Fourth Auditor of the Department of the Treasury relating to matters of Naval Affairs,[310] in a confidential communication regarding the situation of Clintock describing the controversy over the instructions, the Bulloch settlement over the *Norberg*, and

---

[307] John Quincy Adams, *"Diary Entry dated March 31, 1820"*, in *Memoirs of John Quincy Adams: Comprising Portions of his Diary from 1795-1848*, Vol. V., 55–56 (Charles Francis Adams, ed., J.B Lippincott & Co. 1875).
[308] James Monroe, *Two Month Reprieve for Ralph Clintock from James Monroe dated April 10, 1820*, Presidential Pardons & Remissions, Apr. 15, 1794-Feb. 25, 1836, Records of the Department of State, RG 59, T967, Roll 1.
[309] Clintock, *Letter to Adams dated April 24, 1820*, Roll 449.
[310] "Naval Hospital Fund No. 179", *American State Papers: Documents, Legislative and Executive of the Congress of the United States, From the First Session of the First to the Second Session of the Eighteenth Congress,* Vol. 1, 16th Congress, First Session, 645 (Gales and Seaton, 1834).

forwarding the request of Clintock to see the written instructions to Habersham.[311] McCall claimed that Habersham promised to search for the documents and submit it to Adams, without allowing Clintock to review them.[312] McCall also noted that James Bulloch was married to the daughter of John Elliott, United States Senator from Georgia, and Archibald Bulloch was married to sister of George Glen, Clerk of the Court for the District of Georgia, prompting a statement of "hope that the instructions have not been lost or mislaid."[313]

On April 24, 1820, McCall wrote to Colonel Freeman again with an update that Habersham was unable to find the written instructions requested by Clintock describing them as "lost or mislaid."[314] McCall claimed he "predicted this" because John J. Bulloch, brother to Archibald Bulloch,[315] had been the Clerk of the Court prior to Glen, but "was removed by Justice Johnson on account of his interference and neglect of duty."[316] However, McCall did not know which clerk, Bullock or Glen, was in charge at the time that the instructions went missing.[317] Looking at the totality of the circumstances, McCall worried that Clintock was a victim such that "the genius of villainy has been brought to action to conceal the Tigers and sacrifice the mice" for this case "has but few parallels upon Record."[318] Based on his communication with Freeman, McCall saw Clintock as a victim of conspiracy committed by parties with more power, influence, and willingness to use an official government position to make damaging evidence disappear to save themselves and believed his circumstances deserved consideration from Adams.

---

[311] Hugh McCall, *Letter of Hugh McCall to Colonel Constant Freeman dated April 23, 1820*, in The Adams Family Papers, *Letters Received and Other Loose Papers*, January-June 1820, Roll 449.
[312] *Id*.
[313] *Id*.
[314] Hugh McCall, *Letter of Hugh McCall to Colonel Constant Freeman dated April 24, 1820*, in The Adams Family Papers, *Letters Received and Other Loose Papers*, January-June 1820, Roll 449.
[315] Adams, *Writings*, at 62 .
[316] Hugh McCall, *Letter of Hugh McCall to Colonel Constant Freeman dated April 24, 1820*, in The Adams Family Papers, *Letters Received and Other Loose Papers*, January-June 1820, Roll 449.
[317] *Id*.
[318] *Id*.

On April 26, 1820, Habersham attested in a written declaration to Adams that he had "no doubt" about the existence of the written instructions referenced by Clintock or their inclusion in the court documents at trial, but "by what means it has been lost I cannot undertake to say."[319] On May 20, 1820, Habersham supplemented his communications to Adams in a letter claiming to include an undated deposition from William Blythe, one of the crew members of the *Young Spartan*, taken at the time of arrest of Clintock and a letter from Judge Davies regarding the instructions.[320] A letter dated May 10, 1820, from Judge Davies to Habersham described the instructions from memory that if the *Young Spartan* should come across a vessel from a nation other than Spain, it should be captured, sailed to Savannah reporting of distress while impersonating the original captain of the vessel, and sell the cargo.[321] In the undated deposition of William Blythe, Blythe confirmed the presence of the instructions on board the *Norberg*.[322]

On June 8, 1820, Clintock received another reprieve from President Monroe, only this time the reprieve was open-ended ordering the federal marshal at Savannah to keep Clintock in "safe custody until you receive such further order and directions."[323] Previously on March 30, 1820, William Wirt provided an opinion to Monroe that the president had the power to issue

---

[319] Richard Habersham, *"Letter of Richard Habersham to John Quincy Adams dated April 26, 1820* in The Adams Family Papers, *Letters Received and Other Loose Papers*, January-June 1820, Roll 449.
[320] Richard Habersham, *"Letter of Richard Habersham to John Quincy Adams dated May 20, 1820* in The Adams Family Papers, *Letters Received and Other Loose Papers*, January-June 1820, Roll 449; *see also* John Lillebridge, *Deposition of William Blythe*, in The Adams Family Papers, *Letters Received and Other Loose Papers*, January-June 1820, Roll 449.
[321] William Davies, "*Letter of William Davies to Richard Habersham dated May 10, 1820*" in The Adams Family Papers, *Letters Received and Other Loose Papers*, January-June 1820, Roll 449, Library of Congress, Manuscript Division, Washington, D.C. (viewed on microfilm).
[322] John Lillebridge, *Deposition of William Blythe*, in The Adams Family Papers, *Letters Received and Other Loose Papers*, January-June 1820, Roll 449. Of note for the Blythe Deposition, Blythe believed the instructions came from a William Bulloch of Savannah.
[323] The United States National Archives and Records Administration, James Monroe, *Open Ended Reprieve for Ralph Clintock from James Monroe dated June 8, 1820*, Presidential Pardons & Remissions, Apr. 15, 1794-Feb. 25, 1836, Records of the Department of State RG 59, T967, Roll 1 (viewed at the National Archives Building - Archives II in College Park, MD on microfilm).

indeterminate pardons.[324] Additionally, on June 2, 1820, Monroe requested the opinion of Adams and Wirt on the issuance on pardons for piracy, seeking their guidance on petitions for pardons came to him.[325] In his diary, Adams noted on June 14, 1820, that President Monroe was "perplexed" of what action to take against the Bullochs given the connection to a United States Senator, but surmised "it is, in theory, one of the duties of a President of the United States to superintend in some degree the moral character of the public officers...But the difficulty of carrying it into practice is great" increasing the number of instances of corruption that go unpunished.[326] Based on these actions, Monroe seemed to take a cautious approach with the remaining convicted pirates, with the case of Clintock posing additional considerations.

From receiving the original letter from Clintock, Adams afforded great credibility to assertions made by Clintock and put forth his best efforts to see the Bullochs punished and seek mercy for Clintock. In a series of three letters to Monroe, Adams put on his case for the James Bulloch, Archibald Bulloch, and John J. Bulloch to face consequences for their actions and for Ralph Clintock to receive a pardon. On June 15, 1820, Adams reiterated the charges against James Bulloch of providing written instructions to the *Young Spartan* to engage in piratical and fraudulent behavior and the assistance of Archibald Bulloch, the Collector at Savannah, to facilitate those activities upon bringing in a prize to Savannah and the mystery of the missing written instructions from the Court record.[327] On August 9, 1820, Adams added to and strengthened his argument that James Bulloch authored the missing instructions and the

[324]The United States National Archives and Records Administration, William Wirt, *Opinion dated March 30, 1820*, Opinion of the Attorney General, 1817-32 (Vol. A, Nov. 17, 1817-June 19, 1821), General Records of the Dep't of Justice, RG 60, T412, Roll 1 (viewed at the National Archives Building - Archives II in College Park, MD on microfilm).
[325] James Monroe, "*Letter of James Monroe to John Quincy Adams dated June 2, 1820*", The Adams Family Papers, *Letters Received and Other Loose Papers*, January-June 1820, Roll 449, Library of Congress, Manuscript Division, Washington, D.C. (viewed on microfilm).
[326] Adams, *Memoirs*, at 150–51.
[327] Adams, *Writings*, at 45–46.

dereliction of duty committed by Archibald Bulloch by connecting the mystery of the loss of the written instructions from James Bulloch to John Bulloch, brother of Archibald Bulloch and Clerk of the District Court at the time of the case, and the evidence provided by William Blythe in his deposition of the written instructions from James Bulloch while calling attention to the disclosures of Clintock found in the confidential communications between McCall and Colonel Freeman.[328] Additionally, Adams formally recommended a pardon for Ralph Clintock "immediately" after receiving letters from the mother of Ralph Clintock and the marshal for the District of Georgia regarding the poor health of Clintock and the conditions of his confinement.[329] Furthermore, on August 21, 1820, Adams concluded his argument that James Bulloch and Archibald Bulloch should be charged as accessories to piracy and John Bulloch with misprision of piracy.[330] In conjunction with the assertions of Clintock, the loss of the court documents by John Bulloch, the brother to Archibald Bulloch, and the compromise of $45,000 paid by James Bulloch to Cosler of the *Norberg*, Adams believed that the assertions of Clintock gained greater credibility and generated enough evidence to bring piracy charges against James Bulloch specifically, which Adams thought "would do more to put down piracy than the execution of a whole navy of common sailors."[331] Through all three correspondences to Monroe, Adams laid a foundation and added layers through each letter to establish his case for levying charges against the Bullochs and granting a pardon to Ralph Clintock.

While Adams supported granting a pardon for Clintock, he did not believe Clintock to be innocent of the charges of piracy.[332] He concluded specifically that "I have no doubt that the

[328] John Quincy Adams, "*Letter of John Quincy Adams to James Monroe dated August 9, 1820*", The Adams Family Papers, *Letterbook*, 28 September 1817- 19 May 1831 "Public", Roll 146, Library of Congress, Manuscript Division, Washington, D.C. (viewed on microfilm).
[329] *Id.*
[330] Adams, *Writings*, 62.
[331] *Id.*
[332] *Id.* at 61.

sentence of death passed upon him was just" while noting the admissions of Clintock to giving the order to shoot on the crew of the *Norberg* but to do so in a manner to avoid harm and refusing to sail the *Norberg* back to Savannah.[333] Adams found the assertions of Clintock to stand "uncontradicted" and credible when considering with the other connecting circumstances involving the Bulloch family to the piratical enterprise.[334] While he may have found Clintock to be sympathetic character and a pawn in much larger scheme, Adams also seemed to view him as a means to end to prosecute James Bulloch and strike a much larger victory against piracy than "the execution of a whole navy of common sailors."[335] Monroe affirmed this view of Clintock by suggesting to Adams to obtain a deposition from Clintock before he departs from jail due to the failing health or the receipt of a pardon as evidence in a potential criminal proceeding against the James Bulloch since the letter of April 24, 1820, may not be enough in court.[336] Whether he was a sympathetic character or a means to an end, Clintock had a supporter in Adams.

With Adams supporting Clintock and recommending a pardon, other parties expressed their concern for Clintock. On July 31, 1820, the marshal for the District of Georgia, John Morel, wrote a letter to Adams describing that the "detention of Ralph Clintock is truly deplorable for some months past."[337] Morel called the "state of [Clintock's] health as present is intimately bad, and I am fearful he cannot survive the summer."[338] While Clintock "entered prison a healthy

[333] *Id.*
[334] *Id.* at 61–62.
[335] *Id.* at 62.
[336] James Monroe, "*Letter of James Monroe to John Quincy Adams dated September 1, 1820*", The Adams Family Papers, *Letters Received and Other Loose Papers*, July-December 1820, Roll 450, Library of Congress, Manuscript Division, Washington, D.C. (viewed on microfilm).
[337] The United States National Archives and Records Administration, John Morel, *Letter from John Morel to John Quincy Adams dated July 31, 1820*, Miscellaneous Letters of the Department of State, 1789-1906 Apr.. 1 - July. 30, 1820, Records of the Department of State, RG 59, M179, Roll 48 (viewed at the National Archives Building - Archives II in College Park, MD on microfilm).
[338] *Id.*

man," Morel described Clintock now "as a mere skeleton."[339] In addition to Morel, the mother of Ralph Clintock, Elizabeth Clintock, wrote to Adams on multiple occasions.[340] On August 4, 1820, Elizabeth Clintock wrote to Adams expressing her gratitude for updating her about the sharing of her "mercy wish" for her son with the President in the hopes that President Monroe will spare his life so that her son may "evince by his future conduct that he is not wholly unworthy of the freedom which he has thus far received."[341] She took another opportunity to seek clemency on behalf of her son from the President through the "kind and feeling" communications of Adams stating that her son had been "reformed by the humanity of the President from an ignomious death" but worried that confinement was so injurious that it was "extremely doubtful whether he will survive."[342] As a result, she requested for her "miserable son" to be released believing that her son had already suffered enough under the "deplorable conditions" in prison such that it was "sufficient to deter others from the perpetration of crimes."[343] Both John Morel and Elizabeth Clintock expressed concern for the poor health of Clintock while in prison, adding another issue for Monroe to consider for a pardon.

On August 14, 1820, Monroe concluded his review of the case, agreeing that the evidence provided to him implicated the Bullochs in the criminal activity and warranted review for potential charges.[344] Based on all of the evidence presented to him, Monroe found them to create "a map of evidence, so unfavorable to them brothers, the Bullochs, of Savannah" such that

---

[339] *Id.*
[340] *See, e.g.*, Adams, *Writings*, at 45; Adams, *Letter of John Quincy Adams to James Monroe dated August 9, 1820*, The Adams Family Papers, *Letterbook*, Roll 146.
[341] Elizabeth Clintock, "*Letter of Elizabeth Clintock to John Quincy Adams dated August 4, 1820,*" Miscellaneous Letters of the Department of State, 1789-1906 Apr. 1 - July. 30, 1820, Records of the Department of State, RG 59, M179, Roll 48 (viewed at the National Archives Building - Archives II in College Park, MD on microfilm).
[342] *Id.*
[343] *Id.*
[344] James Monroe, "*Letter of James Monroe to John Quincy Adams dated August 14, 1820*", in The Adams Family Papers, *Letters Received and Other Loose Papers*, July-December 1820, Roll 450, Library of Congress, Manuscript Division, Washington, D.C. (viewed on microfilm).

it "[incited] a suspicion that the instructions to the command of the 'Young Spartan' privateers was drawn by James S. Bulloch" to bring the cargo into Savannah.[345] Monroe also acknowledged the connection of James Bulloch to a United States Senator, indicating his awareness of the political implication of the situation calling the senator a man he was "personally acquainted [and] entertained for him great consideration."[346] He then referred the case and sent all case documents to Attorney General William Wirt for a report for the proper action to take, if any, against James Bulloch, Archibald Bulloch, and John Bulloch.[347] Reflecting of the task for Wirt, Monroe believed that "nothing should be attempted but on great considerations under a just sense of what is due to the character of government...when it involves men who have enjoyed the public confidence."[348] Given the connection of Bulloch to a United States Senator, it made sense that Monroe wanted to Wirt to make sure the evidence was sufficient before moving forward.[349] Furthermore, Monroe opined that Archibald Bulloch should be removed as Collector based on the evidence.[350] Monroe had "no objection" to a pardon for Clintock provided that at least two of Adams, Vice President Calhoun, and Wirt agree on it and suggested the taking of deposition of Clintock before his health or pardon caused him to leave the jail, ultimately leaving the action in the hands of Adams.[351] On September 1, 1820, Monroe replied to another letter from Adams allowing that the marshal in Savannah "to extend every degree of indulgence practicable" towards Clintock given the state of his health.[352] Additionally, he once again promised that he would issue a pardon if Adams and Wirt agree, or

[345] *Id*.
[346] *Id*.
[347] *Id*.
[348] *Id*.
[349] *Id*.
[350] *Id*.
[351] *Id*.
[352] James Monroe, "*Letter of James Monroe to John Quincy Adams dated September 1, 1820*", The Adams Family Papers, *Letters Received and Other Loose Papers*, July-December 1820, Roll 450.

if Wirt being absent, Adams thought it best to do so.[353] With Monroe convinced, all Clintock needed now was for Wirt to offer an opinion or Adams to move forward unilaterally.

Unfortunately for Clintock, William Wirt did not act swiftly on the request of the President for an opinion on a pardon. Wirt also exhibited this same deliberateness with regards to pursing charges against the Bullochs. On the issue of charges against Bullochs, Wirt issued an opinion on November 28, 1820, that Habersham provided proper notice to Archibald Bulloch.[354] However, the opinion did not explicitly mention whether criminal charges would be pursued against either James Bulloch or Archibald Bulloch.[355] Wirt did not issue another written opinion regarding the Bullochs related to piracy committed on the *Norberg*.[356]

Wirt did not address the pardon of Clintock until February 24, 1821.[357] He only did so after a prompt from President Monroe.[358] Monroe received a letter dated January 29, 1821, from George Baillie in support of relief for Clintock.[359] Baillie described the confinement "for nearly three years" as being "chained down to the floor ... like a wild beast or an infuriated maniac 23 months" of those almost three years.[360] According to Baillie, Hugh McCall informed him "that

---

[353] *Id*.
[354] United States National Archives and Records Administration, William Wirt, *Opinion on "Nordberg" dated November 28, 1820*, Opinions of the Attorney General, 1817-32 (Vol. A, Nov. 17, 1817-June 19, 1821), General Records of the Dep't of Justice, RG 60, T412, Roll 1 (viewed at the National Archives Building - Archives II in College Park, MD on microfilm).
[355] *Id.* Evidence of criminal proceedings against James Bulloch did not surface during the course of research for this case note.
[356] *Id.* Further evidence of the pursuit of charges did not surface during the course of research for this case note.
[357] The United States National Archives and Records Administration, William Wirt, *Letter of William Wirt to James Monroe dated February 24, 1821*, Petitions for Pardons 1789-1860, Monroe Administration, 1817-1823 Nos. 525-579, General Records of the Dep't of State, RG 59, Box 9, Case No. 543 (viewed at the National Archives Building - Archives II in College Park, MD).
[358] The United States National Archives and Records Administration, James Monroe, *Note of James Monroe to William Wirt dated February 1821*, Petitions for Pardons 1789-1860, Monroe Administration, 1817-1823 Nos. 525-579, General Records of the Dep't of State, RG 59, Box 9, Case No. 543 (viewed at the National Archives Building - Archives II in College Park, MD).
[359] The United States National Archives and Records Administration, George Baillie, *Letter of George Baillie to James Monroe dated January 29, 1821*, Petitions for Pardons 1789-1860, Monroe Administration, 1817-1823 Nos. 525-579, General Records of the Dep't of State, RG 59, Box 9, Case No. 543 (viewed at the National Archives Building - Archives II in College Park, MD).
[360] *Id.*

the Judges of the Supreme Court unanimously agreed to recommend his pardon, but by some strange fatality it has been neglected," identifying Justice Livingston as the source of the Supreme Court recommendation as a postscript to the letter.[361] Baillie lamented the existence and the suffering Clintock has endured in prison and hoped his affidavit on behalf of Clintock would reach President Monroe.[362] Baillie succeeded, convincing Monroe to contact Wirt for his opinion on a pardon.[363] Unfortunately, Wirt responded on February 24, 1821, that he "was not in possession of the papers relative to the question of Clintock's pardon."[364] However, if "the Judges of the Supreme Court have agreed, unanimously, in recommending Clintock mercy ... I presume his case can form a fair exception to the general rule adopted with regard to pirates condemned in the course of last year."[365] As a result, Wirt did not object to a pardon.

Despite apparently having the approval of all parties for a pardon, Clintock remained in jail for at least an addition three to four and a half months. Monroe wrote to Adams on June 25, 1821, commenting that "I think that you have already sent a pardon in favor of Clintock with one in favor of many others."[366] By July 13, 1821, Clintock received a pardon for his conviction for the crime of piracy.[367] It is unknown what happened to Clintock after he received his pardon.[368]

---

[361] *Id.*; According to Adams, President Monroe previously requested that William Wirt consult John Marshall regarding a pardon for Clintock. *See* Adams, *Memoirs*, at 19-20. Most likely, this explains the how McCall, from Justice Livingston, was in a position to provide Baillie the viewpoint of the Supreme Court on a pardon.
[362] *Id.*
[363] *Id.*
[364] William Wirt, *Letter of William Wirt to James Monroe dated February 24, 1821*, Petitions for Pardons 1789-1860, Monroe Administration, 1817-1823 Nos. 525-579, General Records of the Dep't of State, RG 59, Box 9, Case No. 543.
[365] *Id.*
[366] James Monroe, "*Letter of James Monroe to John Quincy Adams dated June 25, 1821*", in The Adams Family Papers, *Letters Received and Other Loose Papers*, June-August1821, Roll 452, Library of Congress, Manuscript Division, Washington, D.C. (viewed on microfilm).
[367] "Ralph Clintock," New-Bedford Mercury, Vol. XIV, Issue 52, page 3 (July 13, 1821, New Bedford, Mass.).
[368] The researcher was unable locate information pertaining to his life after prison

After over three years in jail beginning with his arrest in June 1818,[369] Clintock managed to survive a trial, conviction, failed appeal, sentence of death, and poor health while awaiting his fate in jail before finally receiving mercy from the Monroe administration. The communications between Monroe, Adams, and Wirt demonstrated the difficulty of communication when hand written letters carried by messengers on horses served as best means of long-distance communication. Based on the records available, it is unknown exactly why this process took so long. Given that Adams received permission from Monroe to go ahead without Wirt if he was absent[370] and Monroe delegated the responsibility to Adams to produce pardons,[371] it seemed that Adams had the means and opportunity to grant a pardon back in September 1820. However, without more information, it is difficult to discern whether Adams wanted to wait for an opinion for Wirt or received other instructions from Monroe. It was curious that Monroe seemed to remind Adams on June 25, 1821, that he had produced the pardon.[372] The entire situation regarding the process of the pardon for Clintock seemed to indicate a breakdown in communication or duty somewhere that led to a significant delay between Monroe coming on board and the pardon being given. Clintock benefited greatly from timely support from family and observers at the jail on his behalf to Adams and Monroe, without whom Clintock may have become a forgotten man and died in jail, and an interesting claim of conspiracy involving the loss of documents in his case. By being able to connect James Bulloch, Archibald Bulloch, and John Bulloch as the Clerk of the Court to the loss of the documents in his case along with supportive letters and evidence from other parties and sources adding credibility to his claims,

---

[369] *See* United States Coast Guard, *Dallas, 1816*, https://www.uscg.mil/history/webcutters/Dallas1816.pdf (last viewed Nov. 27, 2016) referencing an article from *The Charleston Courier* dated June 24, 1818.
[370] James Monroe, *Letter of James Monroe to John Quincy Adams dated September 1, 1820*, in The Adams Family Papers, *Letters Received and Other Loose Papers*, July-December 1820, Roll 450.
[371] James Monroe, *Letter of James Monroe to John Quincy Adams dated June 25, 1821*, in The Adams Family Papers, *Letters Received and Other Loose Papers*, June-August 1821, Roll 452.
[372] *Id.*

Clintock generated a perfect storm of controversy and provided the administration with a potential avenue to pursue charges against James Bulloch and gain a major victory against piracy. When factoring in the deterioration of his health and his usefulness to the administration, he was the perfect candidate for a pardon for Monroe, and eventually benefited accordingly.

2. Politics of handling the piracy convictions

In the wake of piracy cases of the February 1820 term of the Supreme Court, President James Monroe addressed the problem of 45 convicted pirates at a cabinet meeting on March 13, 1820.[373] At the meeting, all present held the unanimous opinion that "some of them must be executed, but that a large portion should be reprieved."[374] The cabinet reviewed papers submitted on behalf of convicted pirates to determine which pirates "might have claim to be fit subjects for mercy," which included recommendations of judges who handled the trials of some of the convicted. In addition, Monroe requested that Attorney General Wirt seek the guidance of John Marshall on how to proceed with punishment of the convicted to pirates.[375]

On March 31, 1820, President Monroe decided upon a plan of executing 10 pirates while granting the remainder a two month reprieve except for one pirate in New Orleans.[376] Monroe advocated a cautious approach, seeking the deterrent effect of executions while allowing flexibility to consider petitions for pardon when the situation warranted such consideration. However, Monroe wanted piracy suppressed, arguing that "too much lenity will be cruelty" where "[a] long imprisonment, with some examples of capital punishment, may have the desired effect of suppressing it, and therefore should I think be tried, being the mildest expedient."[377]

---

[373] Adams, *Memoirs*, at 19.
[374] *Id*, at 19–20.
[375] *Id*.
[376] Adams, *Memoirs*, at 55–56.
[377] James, Monroe, *Letter of James Monroe to John Quincy Adams dated June 26,* 1820, in *The Writings of James Monroe, Vol. VI, 1817-1823*, 136–37 (Stanislaus Murray Hamilton, ed. G.P. Putnam's Sons,1902).

Eventually, Monroe settled on issuing "reprieves till further order"[378] for convicted pirates while considering and seeking advice on requests for pardons[379] as an administrative measure to avoid having to issue a reprieve every two months based in part on a March 30, 1820, opinion from Wirt that the president had the power to issue indeterminate pardons.[380]

Madison issued over 30 pardons for individuals convicted of piracy, either personally or through delegation to Adams, from 1820 to 1825.[381] The proliferation of a divided public opinion over capital punishment complicated the approach of the administration, pushing the administration more towards leniency than capital punishment.[382] Noting the divide, Monroe affirmed the prudence of his earlier decision to grant reprieves to a significant number of convicted pirates contending that the policy of reprieves allowed his administration "time to fully consider" the best way to punish pirates.[383] Adams also found that the issue of executing convicted pirates divided the American public in a letter dated July 22, 1820, reviewing the extensive efforts of the public to petition for clemency for criminals under penalty of death including a petition signed by over 100 women in Richmond[384] for pirates imprisoned in Richmond, ultimately drawing the conclusion that "the country male and female is against

[378] Adams, *Writings*, at 44.
[379] Monroe, *Letter of James Monroe to John Quincy Adams dated June 2, 1820*, The Adams Family Papers, *Letters Received and Other Loose Papers*, January-June 1820, Roll 449.
[380] Wirt, *Opinion dated March 30, 1820*, Roll 1.
[381] *See generally* The United States National Archives and Records Administration, *Pardons of James Monroe from 1820 -1825*, Presidential Pardons & Remissions, Apr. 15, 1794-Feb. 25, 1836, Records of the Department of State RG 59, T967, Roll 1 (viewed at the National Archives Building - Archives II in College Park, MD on microfilm).
[382] James Monroe, *Letter of James Monroe to John Quincy Adams dated July 17, 1820*, The Adams Family Papers, *Letters Received and Other Loose Papers*, July-December 1820, Roll 450, Library of Congress, Manuscript Division, Washington, D.C. (viewed on microfilm).
[383] *Id*.
[384] The United States National Archives and Records Administration, James Monroe, *Petition for Release of Prisoners in Richmond dated June 9 1820*, Petitions for Pardons 1789-1860, Monroe Administration, 1817-1823 Nos. 525-579, General Records of the Dep't of State, RG 59, Box 9, Case No. 538 (viewed at the National Archives Building - Archives II in College Park, MD).

capital punishments."[385] With the presence of public opposition to the executions, the prudence of Monroe in the beginning to execute a finite number of pirates while granting reprieves to the remainder gave his administrations the flexibility to adjust its policies as public opinion changed.

While the administration made concerted efforts to combat piracy, the problem of piracy continued through the remainder of the Monroe administration. On January 2, 1821, President Monroe submitted a ten page report detailing American naval efforts to protect American commerce form the threat of piracy in the West Indies in compliance with House resolution on the exact issue.[386] Also, on December 6, 1822, President Monroe delivered a message to the House of Representative requesting a special naval force to combat and suppress piracy in the West Indies and Gulf of Mexico in the wake of reports of "multiplied outrages and depredations" committed on Americans by pirates.[387] Furthermore, on January 10, 1825, the Senate Committee on Foreign Relations submits a report on piracy derived form a message from President Monroe that blames the piracy in the West Indies on the colonies of Spain, forcing the United States to station naval forces where piracy was prevalent.[388] According to the report, despite the best efforts of naval forces, the piratical "atrocities" continued to occur, concluding that Spain was unable to control the actions of her colonies rather than willfully allowing them to occur.[389] Based on these reports, piracy remained a significant problem for the United States to deal with even after the significant number the large number of piracy convictions achieved.

C. International Relations continued to be affected by Piracy

[385] John Quincy Adams, *Letter of John Quincy Adams to James Monroe dated July 22, 1820*, The Adams Family Papers, *Letterbook*, 28 September 1817- 19 May 1831 "Public", Roll 146, Library of Congress, Manuscript Division, Washington, D.C. (viewed on microfilm).
[386] H.R. Doc. No. 38, Volume 49, 16th Congress, Session 2 (49 H.Doc. 38) (1821)
[387] H.R. Doc. No. 8, Volume 76, 17th Congress, Session 1 (76 H.Doc. 8) (1822).
[388] S.R. Doc. No. 9, Volume 108, 18th Congress, Session 2 (108 S.doc.9) (1825).
[389] *Id.*

While the Monroe administration addressed the domestic ramifications of the piracy cases of the February 1820 term of the Supreme Court, piracy remained an ever-present reality and complication for American interests. Uncertain if the prosecution of pirates would sufficiently deter piracy, the Monroe administration implemented additional policies such as passing the Acts of 1820 and 1823, refusing access to American ports for South American privateers, and deploying American naval forces to address piracy problems. Despite these efforts, piracy remained a problem for the American merchants shipping cargo and European nations addressing revolutionary uprising in their colonies in Latin and South America.

Congress worked diligently to renew the updated language of the Act of 1819 to define piracy by the law of nations in order to give the federal court wide jurisdiction to punish piratical acts that constitute general piracy regardless of national character of the offender of offending vessel by passing the Act of 1820.[390] The problem with the Act of 1819 was that Congress passed the measure with an expiration date such that it was only in effect until at the beginning of the next session of that Congress.[391] To save the measure, Congress scrambled to pass the Act of 1820 on May 15, 1820, entitled "An Act to continue in force 'An act to protect the commerce of the United States, and punish the crime of piracy,' and also to make further provisions for punishing the crime of piracy" where Section 1 of the Act of 1820 ordered that Sections 1 through 4 of the Act of 1819 remained in effect for another two years while Section 2 of the Act of 1820 allowed Section 5 of the Act of 1819 to continue in force as if the duration of the said section had been without limitation."[392] Notable changes in the Act of 1820 included Sections 3

[390] Act of Mar. 3, 1819, "An Act to Protect the Commerce of the United States and Punish the Crime of Piracy," ch. 77, 3 Stat. 510 (1819).
[391] Act of Mar. 3, 1819, "An Act to Protect the Commerce of the United States and Punish the Crime of Piracy," ch. 77, §6, 3 Stat. 510 (1819).
[392] Act of May 15, 1820, "An Act to continue in force "An act to protect the commerce of the United States, and punish the crime of piracy," ch. 113, Section 1-2, 3 Stat. 600 (1820)

through 5 which added the slave trade to the list of crimes that constitute piracy on the high seas along with robbery and murder.[393] On January 30, 1823, Congress renewed the Act of 1820 to "continue in force as if the said sections had been enacted without limitation."[394] Combined with the Neutrality Acts of 1817 and 1818 prohibition on American privateers assisting revolutionary governments fighting nations at peace with the United States,[395] Congress displayed a clear intent to combat the problem of piracy.

With the Act of 1820 reaffirming the prohibition on privateering under foreign commissions in service of revolutionary governments, the Monroe administration tried to deter piracy through denial of access to American ports and use of naval forces. On July 11, 1820, Adams addressed President Monroe in a letter decrying the continued problems with piracy committed by privateers urging strict penalties such that "privately armed vessels" of "imposter South American flags [be] excluded from our ports" defining "imposter flags" as "vessels with South American commissions, Baltimore captains, and not a South American on their crew."[396] On July 17, 1820, President Monroe expressed a similar view requesting that Adams instruct United States government officials working in South America to inform revolutionary governments that they will be excluded from using the ports of the United States unless they reduce the issuance of foreign commissions to privateers like an American citizen such as Clintock because such "conduct disgraces the provinces, and tends to disgrace the [United

[393] Act of May 15, 1820, An Act to continue in force "An act to protect the commerce of the United States, and punish the crime of piracy" ch. 113, Section 3-5, 3 Stat. 600 (1820).
[394] Act of January 30, 1823, "An Act in addition to "An act to continue in force 'An act to protect the commerce of the United States, and punish the crime of piracy,' and, also, to make further provision for punishing the crime of piracy" ch. 7, 3 Stat. 721 (1823).
[395] Act of Mar. 3, 1817, "An Act more effectually to preserve the neutral relations of the United States" ch. 58, 3 Stat. 370 (1817); An Act of April 20, 1818, "An Act in addition to the "Act for the punishment of certain crimes against the United States," and to repeal the acts therein mentioned" ch. 88, 3 Stat. 447 (1818).
[396] John Quincy Adams, "*Letter of John Quincy Adams to James Monroe dated July 11, 1820*", The Adams Family Papers, *Letterbook*, 28 September 1817- 19 May 1831 "Public", Roll 146, Library of Congress, Manuscript Division, Washington, D.C. (viewed on microfilm).

States]."[397] In addition, Monroe dispatched naval forces to Latin and South America to further combat the problem of piracy and provided reports to Congress on these activities.[398] Despite these ongoing efforts to combat piracy, European governments, in particular Spain and Portugal, struck back against the United States claiming that privateers operated out of American ports, levied charges of American naval officer serving on privateers, and accused of American judges of misconduct.[399] While Monroe denounced the allegations as unwarranted,[400] such allegations exemplified the continued foreign relations problems caused by piracy.

V. Application Today

At present, the crime of piracy remains a threat to marine vessels. For the United States, recent attacks by Somali pirates on American vessels from 2008 to 2010 reminded the American public that piracy was not relic of the past, but a living enterprise affecting commerce today.[401] Codified under the United States Code[402] and utilized by the United Stated Courts for the Eastern District of Virginia and the District of Columbia to adjudicate the Somali Pirates cases,[403] piracy as defined by the law of nations remains good law.[404] *Klintock* played a significant role in that

---

[397] James Monroe, "*Letter of James Monroe to John Quincy Adams dated July 17, 1820*", in The Adams Family Papers, *Letters Received and Other Loose Papers*, July-December 1820, Roll 450, Library of Congress, Manuscript Division, Washington, D.C. (viewed on microfilm).
[398] James Monroe, "*Letter of James Monroe to John Quincy Adams dated August 11, 1820*", in The Adams Family Papers, *Letters Received and Other Loose Papers*, July-December 1820, Roll 450, Library of Congress, Manuscript Division, Washington, D.C. (viewed on microfilm); H.R. Doc. No. 38, Volume 49, 16th Congress, Session 2 (49 H.Doc. 38) (1821); H.R. Doc. No. 8, Volume 76, 17th Congress, Session 1 (76 H.Doc. 8) (1822); S.R. Doc. No. 9, Volume 108, 18th Congress, Session 2 (108 S.doc.9) (1825).
[399] John Quincy Adams, "*Letter of John Quincy Adams to James Monroe dated August 9, 1820*", The Adams Family Papers, *Letterbook*, 28 September 1817- 19 May 1831 "Public", Roll 146; Adams, *Writings*, at 63; James, Monroe, *Letter of James Monroe to John Quincy Adams dated September 4, 1820*, in *The Writings of James Monroe, Vol. VI, 1817-1823*, 152-155 (Stanislaus Murray Hamilton, ed. G.P. Putnam's Sons,1902); David Head, *Privateers of the Americas: Spanish American Privateering from the United States in the Early Republic*, 89 (University of Georgia Press, 2015).
[400] Monroe, *Writings*, at 152–55.
[401] *See generally* U.S. Dep't of Justice, Office of the United States Attorneys, *Major Achievements in the Courtroom: Piracy Cases*, https://www.justice.gov/usao/priority-areas/national-security/major-achievements-courtroom-piracy-cases (last viewed Nov. 27, 2016).
[402] 18 U.S.C. Ch. 81, §§ 1651-1661 (2012).
[403] *supra* note 413.
[404] 18 U.S.C. Ch. 81, § 1651 (2012).

process giving the Court the chance to address the criticisms of *Palmer* and recognize the intent of Congress expressed in the Act of 1819 for federal courts to have jurisdiction to adjudicate crimes of general piracy as defined by the law of nations. *Klintock* remains good law today as courts generally cite it as precedent for the concepts of statelessness of vessels and formal recognition required by executive department of a government for an entity to be recognized.[405]

A. Codification of Piracy and Citizenship

In 1948, the crime of piracy was codified in Title 18 of the United States Code in Chapter 18 from Sections 1651 through 1661.[406] Section 1651 defines the crime of piracy as "[w]hoever, on the high seas, commits the crime of piracy as defined by the law of nations, and is afterwards brought into or found in the United States, shall be imprisoned for life."[407] This is definition essentially mirrored the language from Section 5 of the Act of 1819.[408] The only change was the crime for piracy was now life imprisonment as opposed to death.[409] Additionally, Section 1652 declared American citizens acting under a foreign commission a pirate for "[w]hoever, being a citizen of the United States, commits any murder or robbery, or any act of hostility against the United States, or against any citizen thereof, on the high seas, under color of any commission from any foreign prince, or state, or on pretense of authority from any person, is a pirate, and shall be imprisoned for life."[410] This section specifically refers American citizens. Furthermore, in Section 1653, any foreign citizen who attempts "making war on the sea" against the United

[405] *See*, *e.g.*, United States v, Furlong, 18 U.S. 184, 192–95 (1820); United States v. Holmes, 18 U.S. 412, 416–17 (1820); Baker v. Carr, 396 U.S. 186 (1962); United States v. Reid-Vargas, 2015 U.S District LEXIS 60735 (D.P.R. May 6, 2015); United States v. Marion-Garcia, 679 F.2d 1373, 1382 (2d Cir. 1982); *The Ambrose Light*, 25 F. 408, 415 (D.N.Y. 1885).
[406] 18 U.S.C. §§ 1651-1661 (2012).
[407] 18 U.S.C. § 1651 (2012).
[408] Act of Mar. 3, 1819, "An Act to Protect the Commerce of the United States and Punish the Crime of Piracy," ch. 77, §5, 3 Stat. 510 (1819).
[409] *Id.*; 18 U.S.C. § 1651 (2012).
[410] 18 U.S.C. § 1652 (2012).

States in violation of a treaty was also a pirate.[411] *Klintock* encompassed the definition of piracy as codified today, demonstrating the longevity and precedential effect of *Klintock*.[412]

B. Recent Events: The "Somali Pirates" cases

From 2008 to 2010, there were at least five significant seizures of American vessels off the coast of Somalia by piratical vessels operating in those waters.[413] The Department of Justice prosecuted these five cases in three different jurisdictions, one in the United States District Court for the District of Columbia, one in the United States District Court for the Southern District of New York, and three in the United States District Court for the Eastern District of Virginia.[414] In the *Unites States v. Ibrahim* in the United States District Court for the District of Columbia, the Defendant pled guilty to conspiracy to commit piracy under the law of nations and conspiracy to use a firearm in relation to a crime of violence.[415] In the *United States v. Muse* in the Southern District of New York, the Defendant pled guilty to the charges of hijacking and hostage taking.[416] This case was immortalized on movie screens through the film *Captain Phillips* that debuted in 2013.[417] In the *United State v. Hasan, et al.*, all defendants were found guilty on all counts in the United States District Court for the Eastern District of Virginia.[418] In *United States v. Said, et al.*, the Department of Justice obtained convictions for five defendants in the Eastern District of Virginia, including on the charge of piracy, all which were upheld on appeal to Court

---

[411] 18 U.S.C. § 1653 (2012).
[412] *See Klintock*, 18 U.S. at 149–52.
[413] U.S. Dep't of Justice, Office of the United States Attorneys, *Major Achievements in the Courtroom: Piracy Cases*, https://www.justice.gov/usao/priority-areas/national-security/major-achievements-courtroom-piracy-cases (last viewed Nov. 27, 2016); *See also* James Kraska, *Contemporary Maritime Piracy: International Law Strategy and Diplomacy at Sea*, 113–14 (2011).
[414] *Id.*; *see also* Lauren Hahn, *Juvenile Justice and Piracy: Prosecutions of Juvenile Pirates in the United States*, 20 GEO. MASON L. REV. 241, 254, n.15 (2012).
[415] Kraska, *Maritime* at 113.
[416] *See* Lauren Hahn, *Juvenile Justice and Piracy: Prosecutions of Juvenile Pirates in the United States*, at 254, n.15.
[417] Manola Dargis, *A Thriller Armed with Thought*, N.Y. TIMES, Oct. 11, 2013, at C1, http://www.nytimes.com/2013/10/11/movies/captain-phillips-stars-tom-hanks-as-a-high-seas-hostage.html.
[418] Kraska, *Maritime* at 114; U.S. Dep't of Justice, Office of the United States Attorneys, *Major Achievements in the Courtroom: Piracy Cases*, https://www.justice.gov/usao/priority-areas/national-security/major-achievements-courtroom-piracy-cases (last viewed Nov. 27, 2016).

of Appeals for the Fourth Circuit.[419] Lastly, in *United States v. Salad, et al.* and *United States v. Shibin*, eleven of the fifteen defendants in both cases pled guilty in the Eastern District of Virginia.[420] The convictions of two defendants in *United States v. Salad, et al.* were upheld on appeal.[421] The conviction of the Defendant in *United States v. Shibin* was also affirmed on appeal.[422] These convictions for piracy were the first successful piracy cases prosecuted in almost 100 years, possibly even longer depending on the source.[423]

C. Klintock remains good law

At present, Klintock has only been cited as precedent in 35 or 36 decisions so far depending on the service utilized[424], with only two decisions, *Doe v. Exxon Mobil Corp.* and *Neufield v. United States*, having expressed any negative treatment of *Klintock*.[425] In both cases, the deciding court did not call into question *Klintock*, but chose to distinguish instead.[426] Generally, cases cite *Klintock* regarding the concept of statelessness of vessels and formal recognition needed by executive department of a government for an entity to be recognized.[427]

IV. Conclusion

When the Marshall Court decided *Klintock*, a perfect storm of historic, political, and economic factors gathered to place the Court under great pressure to adjust its interpretation of

---

[419] United States v. Said, 798 F. 3d 182, 185–86 (4th Cir. 2015).
[420] U.S. Dep't of Justice, Office of the United States Attorneys, *Major Achievements in the Courtroom: Piracy Cases*, https://www.justice.gov/usao/priority-areas/national-security/major-achievements-courtroom-piracy-cases (last viewed Nov. 27, 2016).
[421] United States v. Beyle, 782 F.3d 159, 161–62 (4th Cir. 2015).
[422] United States v. Shibin, 722 F.3d 233, 235–36 (4th Cir. 2013).
[423] Kristen E. Boon, Aziz Huq, Douglas C. Lovelace Jr., *Terrorism: Commentary on Security* Documents, Vol. 25: Piracy and International Maritime Security: Developments Through 2011, 536, n.3 (2012).
[424] *Klintock*, 18 U.S. at 144–52. For Lexis Nexis, *Klintock* has been cited by 36 decisions. For Westlaw, *Klintock* has been cited in 35 decisions.
[425] 654 F.3d 11 (D.C. Cir. 2001); 118 F.2d 375 (D.C. Cir. 1941).
[426] *Id.*
[427] *See, e.g.*, United States v, Furlong, 18 U.S. 184, 192–95 (1820); United States v. Holmes, 18 U.S. 412, 416–17 (1820); Baker v. Carr, 396 U.S. 186 (1962); United States v. Reid-Vargas, 2015 U.S District LEXIS 60735 (D.P.R. May 6, 2015); United States v. Marion-Garcia, 679 F.2d 1373, 1382 (2d Cir. 1982); The Ambrose Light, 25 F. 408, 415 (D.N.Y. 1885).

the definition of piracy in *Palmer* under the Act of 1790. Facing clear Congressional intent with the Act of 1819 for piracy to be defined by the law of nations such that federal courts may adjudicate general piracy, Marshall managed to silence the criticism with a decision that interpreted the Act of 1790 to include general piracy and create applicable standards based on the concepts of statelessness and formal recognition to determine whether specific conduct constituted piracy as defined by the law of nations.[428] It was the first domino of four piracy cases during the February 1820 term, each building upon the foundation laid in *Klintock* such that Acts of 1790 and 1819 and defining piracy by the law of nations were constitutional.[429] While the Court did not receive a complete lower court record to render the opinion, it did not matter given the task before the Court. The ensuing controversy surrounding the missing evidence provided excellent theater for a historian reviewing the case, but most likely would not have swayed the Supreme Court to reach a different conclusion. Piracy was a problem, and the Court followed the example of Congress by utilizing a broad interpretation of the Acts of 1790 and 1819 to ensure wider federal jurisdiction.[430] While the missing evidence may have implicated other parties, it did not exculpate Clintock given his admission of participating in the seizure of *Norberg*, however noble his actions were.[431] With public opinion divided on the executions of convicted pirates, the mitigating circumstances of his involvement, and perception of being a victim due to missing evidence, Clintock was the ideal candidate for a pardon, which he ultimately received. Presently, *Klintock* remains good law, contributing significantly to the

[428] *Klintock*, 18 U.S. at 150–52.
[429] *Id.*; *see also* White, *The History of the Supreme Court*, at 878–79.
[430] Act of Apr. 30, 1790, "An Act for the Punishment of certain Crimes against the United States," ch. 9, § 8, 1 Stat. 112 (1790); Act of Mar. 3, 1819, "An Act to Protect the Commerce of the United States and Punish the Crime of Piracy," ch. 77, 3 Stat. 510 (1819).
[431] Clintock, *Letter to Adams dated April 24, 1820*, Roll 449.

eventual codification of the crime of piracy, which closely resembles the Court interpretation of piracy under the Act of 1790 and mirrors the definition of piracy from the Act of 1819.[432]

APPENDIX

James Stephens Bulloch

James Stephens Bulloch was born in 1793. He was the grandson of Archibald Bulloch, a member of the Continental Congress and the first president and commander in chief of the state of Georgia and namesake for Bulloch County, Georgia. Coming form a planter's family, Bulloch engaged in and invested in various businesses ventures and opportunities throughout his life. Most notably, he partnered with his brother-in-law John Dunwoody to operate the Bulloch & Dunwoody brokerage firm in Savannah, Georgia, invested in a speculative real estate venture and as a stockholder in Roswell Manufacturing Company with Roswell King in Roswell, Georgia, and built his own small plantation at Bulloch Hall in Roswell, Georgia. Bulloch Hall is listed on the National Register of Historic places. Bulloch was active in politically and socially in Savannah, serving as a Savannah alderman for two terms, founding member and first Chairman of the Savannah Temperance Society, member of the Union Party, and volunteered for military service in the local Chatham Artillery rising to the rank of Major. Bulloch was married on twice. First, he married Hettie Hester Amarintha Elliott, the daughter of United States Senator John Elliott, Jr. of Georgia, in 1817. They had one son, James Dunwoody Bulloch, who served in the United States Navy but would later become best known for his service in the Confederate Navy during the Civil War while operating out of Europe. Hettie passed away in 1831. After the death of John Elliott, Jr., Bulloch served as the executor of the estate. During

[432] 18 U.S.C. § 1651 (2012).

this time, he rekindled his courtship of Martha Stewart Elliott, the widow of John Elliot and his step-mother-in-law, who he had pursued as prior to marrying Hettie. They married in 1832. Bulloch and Martha had four children. Notably, their daughter Martha (Mittie) Bulloch would marry Theodore Roosevelt, Sr. and give birth to Theodore (Teddy) Roosevelt, Jr., the 26th President of the United States, and become grandmother of Eleanor Roosevelt, the wife of President Franklin D. Roosevelt. Bulloch and Martha moved to Connecticut in 1835, managing to become embroiled in a court case regarding the status of a slave that worked for the family who desired to be free, before returning to Georgia and beginning construction on Bulloch Hall in 1839. Bullock continued to work as an estate broker in Savannah after the construction of Bulloch Hall. On February 18, 1849, Bulloch died of heart attack while teaching Sunday school at the Roswell Presbyterian Church.

Sources:

- Bulloch Hall, *A Family History*, http://www.bullochhall.org/family-history.html
- Walter E. Wilson, *The Bulloch Belles: Three First Ladies, a Spy, a President's Mother and Other Women of a 19th Century Georgia Family*, 18-75, 115 (McFarland & Company, Inc., 2015).
- United States Congress, *Biographical Directory of the United States Congress, 1774-Present, Archibald Bulloch*, http://bioguide.congress.gov/scripts/biodisplay.pl?index=B001050
- David McCullough, *Mornings on Horseback: The Story of an Extraordinary Family, a Vanished Way of Life and the Unique Child Who Became Theodore Roosevelt*, 19, 41-44 (Simon & Schuster, 1981).
- Rebecca Nash Paden and Joe McTyre, *Image of America: Historic Roswell Georgia*, 27-29 (Arcadia Publishing, 2001).