

**Life, Liberty, and the Pursuit of Rum:  
The Phenomenon of Liberalism in British Pirate Law**

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Defended: April 1, 2020

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## Introduction

Pirates enamor Western society. Films and mass media have catapulted pirates into a part of pop culture. They were already popular in fiction novels for centuries. Before, they were alluring antagonists and villains, like in *Peter Pan* and *Treasure Island*.<sup>1</sup> Today, they have become antiheroic protagonists. Jack Sparrow, from the *Pirates of the Caribbean* films, is a well-known icon of the morally dubious but good-hearted pirate hero.<sup>2</sup> Other pirate protagonists are abundant in the modern age. Even the old classics are getting retellings to have pirate heroes. There was the STARZ period-piece drama *Black Sails*, a pirate-focused prequel to *Treasure Island*, presenting a tale of adventure, sex, and intrigue.<sup>3</sup> Even Disney made a cartoon entitled *Jake and the Never Land Pirates*, which focused on a band of child pirates who act as ‘good’ rivals to *Peter Pan*’s Captain Hook.<sup>4</sup> These fictitious adaptations of pirates take a number of artistic liberties. They often portray pirates as men of morals, with strong traditions and beliefs in ideas of liberty and freedom. Certainly, fictional pirates are often highly romanticized. However, the portrayal of pirates as foul, cruel anarchists, who raped and pillaged and led lives of greed is even more inaccurate.

Pirate communities were well organized. They varied in size from individual ships to the Flying Gang’s republic of pirates, a confederacy of numerous crews. Unlike their popular depictions, pirates did not live as anarchists or savage mobs. Even the Flying Gang, despite its

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<sup>1</sup> J.M. Barrie, *Peter & Wendy* (London: Hodder & Stoughton, 1911); Robert Louis Stevenson, *Treasure Island* (London: Cassell & Co., 1883).

<sup>2</sup> *Pirates of the Caribbean: The Curse of the Black Pearl*, Directed by Gore Verbinski (United States: Buena Vista Pictures Distribution, 2003).

<sup>3</sup> *Black Sails*, Created by Jonathan E. Steinberg and Robert Levine (Platinum Dunes, 2014-2017).

<sup>4</sup> *Jake and the Never Land Pirates*, Created by Bobs Gannaway, Directed by Howy Parkins, Jeff Gordon, and Broni Likomanov (United States: Disney Television Animation, 2011-2016).

size, maintained structure and cohesion; the Flying Gang was a massive fleet, but every ship remained coordinated and followed the command structure as they raided numerous vessels and garnered international infamy.<sup>5</sup> The Flying Gang's membership, which included Benjamin Hornigold, Charles Vane, Edward Thatch, Jack Rackham, and numerous other pirate captains, founded their own republic in the pirate haven of Nassau in 1706.<sup>6</sup> This level of organization was certainly not unique; many, if not all, pirate crews established legal articles that defined the operations of the ship. Some rules in these articles were procedural, laying out exact shares for dividing rations and loot. Others were for behavior, prohibiting things like rape and murder, or limiting gambling and dueling. The significance of these codes is that they prove that pirates had power structures, guiding philosophies, and laws. The very term "pirate law" seems oxymoronic because we think of "pirate" as being synonymous with "criminal." Nonetheless pirate law was a fact of life for these supposedly lawless men.

Most pirate captains had a code of law for the crew, often referred to as their articles. Beyond those codes that have survived the ages, testimonies and reports attest that most pirates possessed them. Crewmembers would sign these articles, agreeing to abide by them. They were not mere transcriptions of existing, standard operating procedures from legitimate navies either, but original documents. Unfortunately, we have lost most pirate codes. Many were either never recovered from wreckages, were actively destroyed during the capture of ships, or were never recorded on a surviving document. Some codes were preserved, acquired by courts during the arrest of the pirates who wrote them, or were recorded from testimonies provided during legal

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<sup>5</sup> Colin Woodard, *The Republic of Pirates: Being the True and Surprising Story of the Caribbean Pirates and the Man Who Brought Them Down* (London: Pan Books, 2016), 125-127.

<sup>6</sup> *Ibid.*, 7-9.

proceedings, or written about by third party sources, such as survivors of attacks, former captives, or former crewmembers. This paper examines ten different pirate codes from Bartholomew “Black Bart” Roberts, George Lowther, Edward Low, John Gow, John Phillips, John Taylor, and Thomas Anstis, all of which have survived from the eighteenth century, and the codes of William Kidd, George Cusack, and Nicholas Clough, which survived from the seventeenth century. All of these codes were from British pirates, and they contained concepts of remarkably liberal ideas. Of course, scholars have debated the nature of those ideas, and how strongly pirates upheld these codes of law. G.F. Dow and J.H. Edmonds characterized pirate society as an “ideal commonwealth where everything [was] held in common and where everyone [had] an equal voice in public affairs,” but later historians like Patrick Pringle fiercely rejected this claim, instead claiming that pirates had “no sentimental feeling for their ship and no love of piracy,” and that quite plainly, “their motive was gain.”<sup>7</sup>

The time period that these pirate codes were developed in was not very long. In 1897, the historian John Fiske popularized the idea of a “Golden Age of Piracy” lasting from around the year 1650, until around 1720.<sup>8</sup> This paper generally accepts that time period as valid, but every surviving pirate code was written much later than 1650. For the purposes of this paper, the earliest document being examined shall be the Articles of War from 1661. The Articles were a major piece of legislation that outlined the conduct and discipline of English sailors until 1749, and so were the basis for the legal system that British pirates broke away from. The 1720s

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<sup>7</sup> George Dow and John Edmonds, *Pirates of the New England Coast 1630-1730* (Mineola: Dover Publications, 1999) 353; Patrick Pringle, *Jolly Roger: the Story of the Golden Age of Piracy* (Mineola: Dover Publications, 2001), 273. As with all sources in this paper, any and all quotations will be left in their original spelling unless clarification is needed.

<sup>8</sup> John Fiske, *Old Virginia and Her Neighbors* (Boston: Houghton, Mifflin and Company, 1897), 336-338.

remain a valid end date, with the publication of *A General History of the Robberies and Murders of the Most Notorious Pyrates* by Captain Charles Johnson in 1724, which popularized the stories of a number of pirates after their capture or arrest.<sup>9</sup>

The terms “liberal” and “progressive” are anachronistic terms used herein. However, liberalism summarizes the ideals of popular consent, equality, and anti-traditionalism present in pirate communities that were progressive when compared to contemporary naval law. An alternative term might be to describe pirate law as proto-liberal, but this incorrectly implicates pirates as an inspiration for modern liberalism. It is for the sake of brevity, discussion, and in an attempt to provoke critical thinking of pirates by directly labelling them with a philosophy seen as positive and just by Western society.

Pirate legal philosophy deviated from the status quo of their time in their desire to establish legal systems that they felt were fairer than those of the Royal Navy. But some pirates wanted to be seen as legitimate actors, not immoral criminals. Most began as privateers, and likely did not want their governments declaring them “enemies of all mankind” (*hostis humani generis*). They likely wished to continue the plundering lifestyle that sustained them during the various European wars in the late seventeenth and early eighteenth centuries. Such conflicts included the Second and Third Anglo-Dutch Wars, the Dutch War of Independence, the Nine Years’ War, Queen Anne’s War, and the War of the Spanish Succession. And throughout all of these wars there was a constant flow of goods between Europe, Africa, and the Americas, from gold and silver bullion to sugar and tobacco to slave labor. If one had the skill and charisma to be a privateer, then they could tap veins of trade, pulsating with goods. Such temptation and

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<sup>9</sup> Charles Johnson [Daniel Defoe], *A General History of the Robberies and Murders of the Most Notorious Pyrates* (Urbana, Illinois: Project Gutenberg, 2012 [1724]).

theoretical riches were an immense opportunity, an opportunity taken away the moment a war ended. Once privateering was gone, upward mobility was pulled out from under hopeful sailors, leading many to consider piracy. But some pirates refused to attack vessels belonging to their mother country, only resuming their privateering actions rather than completely betraying their government.<sup>10</sup>

In attempting to reclaim the lifestyle they had achieved as privateers, pirates were not conscious revolutionaries, but men attempting to create just social structures outside of a traditional society that seemed to be wronging them. Pirates created remarkable legal codes and social structures, and it is the primary goal of this paper to assert that pirates did more than create a criminal organization, but a social one, with their own flourishing legal tradition. When examined not through the lens of criminality and social deviancy, but through the lens of an evolving society, the legal codes of British pirates in the Caribbean during the late seventeenth and early eighteenth centuries can be seen as liberal and progressive for their time. This paper shall conclude by asserting that this reexamination of pirates ought to be embraced by academia for further study.

## **Chapter I: Historiography**

When analyzing pirate codes, the general *appearance* of progressive thinking is undeniable: pensions for the injured, democratic voting, fair distribution of wealth, trials of one's peers, and numerous other rights uncommon for a military organization, let alone a criminal one. The primary question historians argue over and seek to answer is why pirates wrote their codes

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<sup>10</sup> Anonymous, *The Grand Pyrate: or, the Life and Death of Capt. George Cusack* (London, 1675), 5-7.

as they did. This topic has been the focus of the bulk of existing academia on Caribbean pirates. Over the years many authors have attempted to tackle the issue, but the reality is that without documents that explicitly outline the rationale and philosophical beliefs of the men who wrote a particular pirate code, it is all guesswork. The amount of available evidence to explain the motivations behind certain pirate codes is limited and in many circumstances, pirates borrowed aspects of their codes from one another. Pirates were not prolific authors, and many pirate articles were never recovered, and the ones that have survived were mostly fragmented.

Analyzing the surviving codes only offers a small sample size. This lack of substantial evidence has inevitably resulted in rifts among historians. There are roughly three assumptions in regard to pirate motivations that have formed among academia and that require address. There was an early view of pirates as highly egalitarian and anti-authoritarian rebels; a view that pirates were just greedy and pragmatic criminals; and a view that pirates were criminals who were bitter about injustices they faced in traditional society. All three of these views have some degree of merit, but operate on a framework which treats pirate ships as criminal organizations, and attempt to explain progressive aspects of pirate codes with one answer. Ultimately, pirate codes developed over time for a number of reasons, beginning as pragmatic stopgap measures before becoming genuinely progressive legal traditions.

Early on there was the stereotype of pirates as exciting but vile criminals in fictitious works. Many early sources on piracy aggrandized heinous actions, and not only fueled portrayals of pirates as villainous, but also as men of action and adventure. These works often had questionable sources, treating rumors and unsubstantiated claims as evidence, and thus the

claims made in these works are dubious.<sup>11</sup> The most famous source of unvalidated evidence is the *General History of the Pyrates* by Charles Johnson, which is also a major source for surviving pirate articles. However, Johnson only included three codes in his work — that of Bartholomew Roberts, the code shared by George Lowther and Ned Low, and that of John Phillips — and aspects of Roberts’s code and Lowther’s match up with accounts from witnesses and court cases. It is unlikely that Johnson made up any of the codes in the *General History*, especially when he could have done so for every pirate in the work if he wanted to seem more knowledgeable and informed. Early books on pirates treated Johnson as a reliable source, or even as their only source. There was an orthodoxy that developed of treating the *General History* as the definitive source for Golden Age pirates. Over the course of the twentieth century, more and more historians began to strive away from using the *General History*, trying instead to compile a diverse list of primary sources, and in doing so they developed different ideas of what motivated pirates. While they still drew from Johnson’s *General History*, trial records, memoirs of captives and victims, contemporary newspapers, and unpublished manuscripts began to supplement it.<sup>12</sup>

G.F. Dow and J.H. Edmonds were among the first to begin this expansion of academic thinking on pirates in 1923 with their work *Pirates of the New England Coast*, in which they argued that pirates were true-believing progressive egalitarians. Dow and Edmonds were joined

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<sup>11</sup> The two most prominent sources under such accusations are: Charles Johnson [Daniel Defoe], *A General History of the Robberies and Murders of the Most Notorious Pyrates* (Urbana, Illinois: Project Gutenberg, 2012 [1724]); Alexandre O. Exquemelin, *The Buccaneers of America: Comprising a Pertinent and Truthful Description of the Principal Acts of Depredation and Inhuman Cruelty Committed by the English and French Buccaneers against the Spaniards in America*, trans. Alexis Brown (Mineola: Dover Publications, 2000 [1678]).

<sup>12</sup> These works include, but are not limited to: Dow and Edmonds, *Pirates of the New England Coast 1630-1730*; Philip Gosse, *The Pirates’ Who’s Who* (New York: Burt Franklin, 1924); Charles Grey, *Pirates of the Eastern Seas 1618-1723: a Lurid Page of History* (London: Sampson Low, Marston & Co, 1933); Jan Rogozinski, *Honor Among Thieves: Captain Kidd, Henry Every, and the Pirate Democracy in the Indian Ocean* (Mechanicsburg: Stackpole Books, 2000).



by Charles Grey. While Johnson's *General History* influenced Grey as it did most early historians of piracy, Grey utilized methodology akin to Dow and Edmonds.<sup>13</sup> These historians held that pirate communities were where all men were equal and where orderly, structured societies were established amidst ideals of egalitarianism and democracy.<sup>14</sup> Pirates were certainly criminals, but ones with ideals and dreams of a better system. The early historiography of pirates believed that pirate ideals of egalitarianism were sincere, and that codes were based on what pirates genuinely believed. Liberal ideas present in codes were intentional; although pirates were criminals, they used their newfound freedom to test new philosophies. Some modern historians still defend that pirates were sincerely egalitarian.<sup>15</sup> The reemergence of this view can be considered responsible for the glamorizing of pirates in modern media. Dow, Edmond, Grey, and other historians should not be misrepresented as believing pirates were laudable or necessarily heroic. Grey, in *Pirates of the Eastern Seas*, made his stance clear even in his foreword, admitting that "Distance lends enchantment... these men were but sea robbers and their history a record of crime."<sup>16</sup> However, as with Robin Hood, their ideals made pirates sympathetic; while they were in clear violation of the law, they consciously chose to be better (from a politico-philosophical perspective of the twenty-first century) than their own governments.

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<sup>13</sup> Edward Theophilus Fox, "'Piratical Schemes and Contracts': Pirate Articles and their Society, 1660-1730," PhD dissertation (University of Exeter, 2013) 20.

<sup>14</sup> Dow and Edmonds, *Pirates of the New England Coast 1630-1730*, 353; Grey, *Pirates of the Eastern Seas*, 19.

<sup>15</sup> Works include, but are not limited to: Peter K. Kemp, and Christopher Lloyd, *The Brethren of the Coast: the British and French Buccaneers in the South Seas* (London: Heineman, 1960); Christopher Hill, "Radical Pirates?," in *The Origins of Anglo-American Radicalism*, eds. Margaret C. Jacob and James R. Jacob (New York: Humanities Books), 27; Gary Chartier, "Pirate Constitutions and Workplace Democracy," *Jahrbuch Für Recht Und Ethik / Annual Review of Law and Ethics* 18 (2010): 449-467; Cole Edick, "The Golden Age of Piracy: Can Open-Source Democracy Redefine Citizenship for the Internet Age?" *Harvard International Review* 36, no. 4 (2015): 7-9.

<sup>16</sup> Grey, *Pirates of the Eastern Seas*, vii.

By 1953, Patrick Pringle challenged the idea that pirates were in any way motivated by anti-authoritarian revolutionary ideals in how they governed themselves. Pirates were merely, in his view, out for personal gain.<sup>17</sup> The legal and social structures captains created were intended to secure their own authority, influenced not by any philosophy but by internal power struggles. Other historians, both contemporaries of Pringle and beyond, have furthered his interpretation, taking a combative stance against romanticizing pirates.<sup>18</sup> Pirate societies seemed egalitarian only due to the need to justify power and placate dissent. While it had the appearance of liberalism, pirates were in a free-for-all, seeking the authority and hierarchical domination they could not achieve in legitimate society. With every man out for himself, captains had to allow certain privileges to even keep a crew, but held tight whatever tyrannical power they could achieve.

This fairly pessimistic view of pirates grew in prominence among historians of piracy until 1981, when Marcus Rediker published, “‘Under the Banner of King Death’: The Social World of Anglo-American Pirates, 1716-1726.” This article, and later writings by Rediker, argued that pirates had grown defiant of injustices and oppression in their societies.<sup>19</sup> Pirate power structures and legal codes were intentionally egalitarian, not because pirates were philosophers and believers in radical ideas of liberty, but because their codes contradicted unfair legal systems of legitimate society. Rediker asserted that pirates were contrarians, turning to

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<sup>17</sup> Patrick Pringle, *Jolly Roger: the Story of the Golden Age of Piracy* (Mineola: Dover Publications, 2001), 272-273.

<sup>18</sup> Works include, but are not limited to: B.R. Burg. “Legitimacy and Authority: A Case Study of Pirate Commanders in the Seventeenth and Eighteenth Centuries,” *American Neptune*, 37 (1977), 40-51; Fox, “Piratical Schemes and Contracts”; Benerson Little, *The Golden Age of Piracy: the Truth Behind Pirate Myths* (New York: Skyhorse Publishing, 2016); Kevin Rushby, *Hunting Pirate Heaven: in Search of Lost Pirate Utopias* (New York: Walker Pub., 2007).

<sup>19</sup> Marcus Rediker, *Villains of All Nations: Atlantic Pirates in the Golden Age* (Boston: Beacon Press, 2004).

criminality and new ideas of government because they felt the old ways had failed and wronged them. Blatant rejection of European norms resulted in a common bond among pirates, developing into legal traditions that spread to other pirate ships and pirate communities like Nassau. Rediker's view has become increasingly dominant in academia, and for good reason, as his theories answer both why pirates were so liberal in some of their legal ideas and why they were still power hungry and pragmatic.<sup>20</sup> In not being the idealists that Dow, Edmonds, and Grey present, pirates would have every reason to selfishly accrue power, while still adhering to radical ideas like total democratic rule and near-equal distribution of wealth. Rediker's view offers a way to compromise pirates as both greedy and egalitarian. However, neither Rediker nor Pringle nor Dow and Edmonds were entirely correct.

The existing historiography offers all the components of what created pirate law. Pirates were men who initially lived with minimal restriction as privateers, and when their lifestyle was threatened, their greed led them to become criminals. However, once upon the path of piracy, pragmatism demanded that pirate captains create a system of self-governance that would entice their sailors to stay on-board. The means to do so was to create a legal system that defied perceived injustices in the Royal Navy's Articles of War; but in attempting to defy a hierarchical system based on the monopolization of force, pirates codes became what we today recognize as philosophically liberal and progressive. Pirates then shared their new codes between one another, and as their codes were passed from captain to captain, as crews grew to expect and demand certain rights from any man they served under, it is inaccurate to continue to categorize the

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<sup>20</sup> Works include, but are not limited to: Erin Mackie, "Welcome the Outlaw: Pirates, Maroons, and Caribbean Countercultures," *Cultural Critique*, no. 59 (2005): 24-62; J.S. Bromley, *Corsairs and Navies, 1660-1760* (London: Hambledon Press, 1987); Christopher Hill, *Liberty Against the Law* (London: Verso Books, 1997).

liberalism in pirate codes as merely pragmatic. Pirates built a legal tradition, a culture that was progressive in its focus on fairness and the recognition of the rights of individual crewmembers, granting them a say in the ship's political system.

## **Chapter II: Pirates as Socio-Political Groups**

At the most basic level, pirates engaged not in a criminal or corporate enterprise, but in a social contract, in which both captain and crew ceded some rights and power to ensure collective interest. The systems they set up were progressive in that they regulated work and created egalitarian social structures on-board ships. Pirate codes were constitutions, not company by-laws. In examining pirates purely as criminals, be they with a heart of gold or a lust for gold, academia has limited our understanding of pirates. Instead, historians must see them as socio-political groups, as communities breaking away from one society and forming another. Pirates were not forming gangs, they were forming microstates, tiny nations at the scale of hundreds of men.

Pirates possessed a clear desire not to have others see them as lawless criminals. Multiple pirates, like William Kidd and Stede Bonnet, presented themselves as cultured and well-mannered to others, while the founders of the Republic of Pirates acted like they were gentlemen of legitimate and non-criminal society. Captains could have promised supporters more shares, and then used violence and cruelty to enforce their will like kings. It was not as though their crews had the ability to leave whenever they wanted while at sea, and most pirate codes even stipulated that one could not legally leave, with some offering caveats only for leaving once crippled, once the entire crew had accrued enough wealth, or once the king offered a pardon.

And rather than promise injured and useless crewmembers indefinite lodgings and monetary compensation, the captain could have tossed these men aside.<sup>21</sup> In many respects, the crew was at their captain's mercy so long as he had enough men to fight off a mutiny. But when they theoretically ought to have acted like hedonistic criminals, the best captains seem to have abided by the aforementioned agreement. Even when circumstances did not make honoring the code the most pragmatic option, pirates often adhered. Pirate legal culture was based on expectations that conditions would be at a certain level, that there were certain inherent and guaranteed freedoms, and this legal culture emerged from the use of pirate codes with liberal ideas. The progressive pirate tradition formed over time and evolved away from mere selfish greed and criminality.

If pirates were not acting as disorganized agents of chaos or as heartless opportunists, then they cannot be examined like typical criminals. In the history of criminality, rather than highwaymen and bandit clans, it may be better to draw parallels to intricate, organized criminal enterprises like the Italian Mafia or Yakuza clans of Japan. These groups elude the normal definitions of criminal enterprises, operating with unique rules and traditions that, like pirates, seem more like the cultural and legal traditions of a non-criminal society. But unlike either the Mafia or Yakuza, pirates had no strong ethnic ties or a long, shared history to draw upon. They were only, in theory, united by their status as criminals of all mankind and the pursuit of gold and glory. If they were only criminals, there was next to nothing that should have held them to treat each other so fairly. At most, pirate crews had a need to cooperate just enough to prevent their own capture and execution.

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<sup>21</sup> Johnson, *General History*, 352.

The Caribbean was a place where various cultures interacted, due to voluntary and involuntary migrations. Nicholas Clough, had it stated in his ship's articles that their "intent [was] to trade with the Spaniards, meddling nor make no resistances with no nation that [they] do fall with all upon the Sea."<sup>22</sup> Clough and other pirates were independent actors, who needed to trade with foreign merchants and avoid becoming involved in conflicts between countries. They were men from various backgrounds who had to interact with other pirate crews that were similarly diverse, while also trading and going ashore in foreign ports once wanted for crimes by their own governments. They may not have been political revolutionaries who intended to craft new societies, but persecution by legitimate governments, the conscious decision to embrace criminality, and cultural intermingling resulted in a loss of national identity all the same. Some, like Cusack, still felt that they were English subjects, but with English sailors hunting them, pirates became men without nations. It was not coincidental that when some tried to create a more intricate coalition of crews and establish the port of Nassau as sovereign from any empire, pirates called their experiment a republic, as if it were a nation itself.

In some ways, pirates were not the only group undergoing asymmetrical changes to legal philosophy and cultural identity. Similarities can be drawn to other parts of the Caribbean, wherein identity and socio-political philosophy emerged in unorthodox fashion, due in large part, according to Lawrence Bamikole, to how slavery and colonialism "created a situation in which attention [was] shifted from traditional philosophical discourse."<sup>23</sup> Caribbean cultural identities formed as various groups of many ethnicities and backgrounds were "hybridized by the

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<sup>22</sup> *Abstracts of wills on file in the Surrogate's Office, City of New York, vol. 1 (1665-1707)* (New York, 1892), 83-87.

<sup>23</sup> Lawrence O. Bamikole, "Creolization and the Search for Identity in Caribbean Philosophy," *Caribbean Quarterly* 53, no. 3 (2007): 70.

phenomena of slavery and colonialism,” in a process that produced unique circumstance and traditions.<sup>24</sup> Over time, the populace became less attached to an Old World identity, and instead gained a Creole identity, one that “is an intermediary category, defined primarily by its relationship to [an] other, rather than an essence.”<sup>25</sup> Close interaction with other cultures, autonomous adaptation of law to suit the needs of society, unique social and cultural philosophy, and rejection of older, more traditional cultural identities: pirates were more akin to a creole population than a typical criminal syndicate.

Pirate ships were multicultural and involved in the processes of creolization. Ships and fleets were a mixture of people originating from different places, coming from Europe, Africa and the Caribbean itself. In terms of the British empire, many pirates on any given ship were Welsh, Irish, Scottish, and English, a fact detailed repeatedly in Charles Johnson’s *General History*. The list of executed men from Bartholomew Roberts’s crew noted their place of origin, with pirates in that crew alone hailing from Plymouth and Lancaster to Bristol and Liverpool, to Aberdeen and the Isle of Man.<sup>26</sup> Others were listed as being from “Ireland” or just “Wales,” and one man, James Philips, being from the Caribbean island of Antigua, which indicates he was born in the Americas and a creole.<sup>27</sup> The crew also possessed two Dutchmen, Michael Maer from Ghent and Agge Jacobson from Holland, and one Marcus Johnson was listed as being from “Smyrna,” though it is unclear if that meant the actual Ottoman-controlled city in Anatolia, or a colonial settlement named for the ancient Greek ruin.<sup>28</sup> Regardless, he was either creole or

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<sup>24</sup> Bamikole, “Creolization and the Search for Identity in Caribbean Philosophy,” 76.

<sup>25</sup> *Ibid.*

<sup>26</sup> Johnson, *General History*, 322-323.

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*

foreign. Beyond whites (presuming that James Philips of Antigua was indeed white), historian Arne Bialuschewski discovered in his research several reports from witnesses that confirm the presence of blacks among Roberts's crew.<sup>29</sup> He noted that one report claimed to have seen "250" white men and around "50" black, while the other report from a few weeks later claimed there were "180" white men and "48 French Creole negroes."<sup>30</sup> While it is impossible to know if any of these men were free sailors or slaves made to work in the crew, either case results in a close interaction between Europeans and Africans aboard Roberts's ship, not unlike in plantation colonies on Caribbean islands. Roberts was not the only pirate with reports of black crewmembers, as Johnson noted that Blackbeard had in his crew a "Negroe whom he had bred up," a figure that has been theorized to be Black Caesar, a legendary pirate whose existence has never been confirmed, but whose mythos includes serving with Blackbeard.<sup>31</sup>

The development of a separate identity and increased isolation from legitimate society transformed pirate ships into socio-political communities. This idea is not inherently new or never before proposed. Marcus Rediker skeptically noted that pirate ships, "might be considered multiracial maroon communities, in which rebels used the high seas as others used the mountains and the jungles."<sup>32</sup> Much like other creole identities that were developing contemporaneously in the Caribbean, pirates were isolated, traveling for weeks and months without contact with anyone outside the crew or other pirates. As multiracial, or at least multiethnic communities that developed their own identity, pirates cannot be examined in the same way we examine other

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<sup>29</sup> Arne Bialuschewski, "Pirates, Black Sailors and Seafaring Slaves in the Anglo-American Maritime World, 1716-1726," *The Journal of Caribbean History* 45, no. 2 (2011): 150.

<sup>30</sup> *Ibid.*

<sup>31</sup> Johnson, *General History*, 85.

<sup>32</sup> Rediker, *Villains of All Nations*, 56.



criminal organizations. On land, criminals could reenter traditional society, while pirates stayed secluded for long periods, hunted not just by their own country's authorities, but as men at war with all the nations of the world.

### **Chapter III: Pirate Codes of Law**

As socio-political communities, pirate ships did not operate in anarchy. It would have been impossible to do so. Presuming that pirates abandoned all forms of order and hierarchy fails to account for the difficulty in sailing large vessels in the late seventeenth and early eighteenth centuries. Beyond the established positions, procedures, and ranks within a ship's crew, pirates wrote out their legal codes, also known as piratical articles. Codes differed from ship to ship in their content. Generally, they laid out the intentions of the crew as pirates, set up the ratio of loot shares among the crew, and set rules for everyone aboard to follow. It can be difficult to make strong assumptions from the codes alone, given how the exact thinking of the author is impossible to fully ascertain. However, upon analyzing surviving pirate codes from British pirates and comparing them to contemporary British naval law, known as the Articles of War, pirates clearly created legal codes that were progressive for their time. The codes possessed concessions of power and populist ideals that go beyond what was logical for raw pragmatism, a fact strengthened further by the creation of inherited legal tradition among pirate crews.

Eight pirate codes and one privateer-turned-pirate code still exist in a somewhat complete state. Johnson's *General History* preserved the codes of Bartholomew "Black Bart" Roberts, George Lowther, and John Phillips.<sup>33</sup> Edward "Ned" Low used the same code as Lowther with

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<sup>33</sup> Johnson, *General History*, 230-233, 352, 398-399.

minor alterations. Johnson published the articles of John Gow as well, in a separate book published in 1725, but the information was acquired prior to then.<sup>34</sup> The articles of Thomas Anstis have survived thanks to the testimony of a former crew member seeking pardon, William Whelks, in 1722.<sup>35</sup> Similarly, the code of John Taylor has survived via the testimony of Jacob du Bucquoy, a captive from Taylor's time raiding near Madagascar.<sup>36</sup> After George Cusack's arrest in 1674, an unknown author published a pamphlet detailing his life, including Cusack's "obligations," as he titled the simplistic articles of his ship.<sup>37</sup> The British government tried Nicholas Clough, commander of the *Camelion*, with his crew in New York in 1683, and found the articles that the crew had signed aboard, outlining share sizes and acting as an oath of loyalty.<sup>38</sup> William Kidd, while a privateer, engaged in acts of piracy and was effectively an independent actor whose crew included numerous pirates. The crew forced him to revise their privateer articles and they began to turn to piracy in 1696. The Governor of New York, Richard Coote, 1st Earl of Bellomont, confiscated Kidd's articles upon the crew's return from the Indian Ocean.<sup>39</sup>

Every single one of these men wrote their articles as an alternative source of law to that of a traditional, legitimate ship of the English and later British Royal Navy. Their experiences as British subjects meant they were rejecting the Articles of War (1661) as their code of conduct. Parliament issued this disciplinary code first in 1653 as instructions for application by the Lords

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<sup>34</sup> Charles Johnson [Daniel Defoe], *An Account of the Conduct and Proceedings of the Late John Gow* (London, 1725), 54.

<sup>35</sup> E.T. Fox, *Pirates in Their Own Words* (Morisville, North Carolina: Lulu Press, Inc., 2014), 215-216.

<sup>36</sup> Alfred Grandidier and Guillaume Grandidier, *Collection des Ouvrages Anciens concernant Madagascar, vol. 5* (London: Forgotten Books, 2018 [1907]), 114-117.

<sup>37</sup> Anonymous, *The Grand Pyrate*, 5-7.

<sup>38</sup> *Abstracts of wills*, 83-87.

<sup>39</sup> Graham Harris, *Treasure and Intrigue: The legacy of Captain Kidd* (Toronto: Dundurn Press, 2002), 313-316; *The Arraignment, Tryal, and Condemnation of Captain William Kidd, for Murder and Piracy, upon Six Several Indictments* (London: Printed for J. Nutt, 1701).

Commissioners of the Admiralty, who applied the document to the entirety of the navy at all times under the English Naval Discipline Act of 1661. The Articles of War were harsh and draconian in many ways, and naval discipline grew crueler with amendments in 1749. The case of Admiral John Byng is an infamous example of the kind of harsh mentality that shaped these rules.<sup>40</sup> Byng led a mission to prevent the fall of Minorca to French forces during the Seven Years' War, which was a conflict between two coalitions of European powers, one British-led and the other French-led, that spanned the globe. Rather than let the French destroy his fleet, Byng ended the engagement to retreat and repair his ships at Gibraltar, likely to allow for a more decisive and secure victory later. However, for failing to “do his utmost” and not fighting to the last man against the French, the British government executed Byng by firing squad in 1757.<sup>41</sup> Voltaire would mock Byng's execution in his novel *Candide*, where he stated the English believed killing an admiral was good from time to time “to encourage the others.”<sup>42</sup> While the particular debacle of Byng's execution occurred in the 1750s, it exemplified the harsh punishments of the British Royal Navy.

Comparison to the Articles of War provides evidence for how liberal and progressive the rules and punishments detailed in pirate articles are. Additionally, the similarities between these legitimate and criminal legal systems demonstrate how pirates did not just break away from their native society, but in fact attempted to institute their own. The Articles of War were effectively a list of thirty-five rules with punishments.<sup>43</sup> They tackled a number of offenses, and often

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<sup>40</sup> “Information Sheet No. 099,” *National Museum of the Royal Navy* (Portsmouth, 2014).

<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.*

<sup>43</sup> “Charles II, 1661: An Act for the Establishing Articles and Orders for the regulateing and better Government of His Majesties Navies Ships of Warr & Forces by Sea.,” in *Statutes of the Realm: Volume 5, 1628-80*, ed. John Raithby (Great Britain Record Commission, 1819), 311-314.

provided the same solution to all of them. Out of thirty-five rules, twenty-two made a point to state firmly that offenders would be put to death. Those rules and more also state that punishments could be changed to whatever the “Court Martiall shall thinke fitt,” meaning that death was a possible punishment for twenty-nine of these rules if the courts saw fit.<sup>44</sup> Of course, the Royal Navy was not deranged and bloodthirsty. If they had executed every rulebreaker, they would have culled a sizable portion of their manpower. But the mentality of the Articles of War was simple: fear would keep people in line. From a philosophical standpoint, within the Articles of War, power flowed down from the top, with the naval hierarchy blessed with the authority of the Crown. Sailors handed up any punishment, trial, or legal process for their superiors to decide.

Pirate articles were radically different from the laws of the Royal Navy. The earliest known articles were the “obligations” of George Cusack. Far simpler than most pirate articles, it is important to remember that it was also the oldest. Cusack’s men signed the obligations that stated that they all agreed to band together, “taking or sinking all Ships or Vessels they should meet” with the important exception of English vessels.<sup>45</sup> The obligations, while short, did two very important things. First, they establishes Cusack as Captain and a man named Parslow as Lieutenant, meaning that anyone signing the obligation recognized Cusack’s authority. Rather than outlining the captain’s position as absolute, the obligations were effectively a social contract, with the signer agreeing to consent to Cusack’s rule as captain, a position which implicitly laid responsibility on Cusack to ensure the rest of the obligations were upheld. It was, after all, a contract, and so violation of any clause would void it. The obligations also stated that the crew used the “Lawes of Oleron” to measure all “proportion and shares of... Ship and

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<sup>44</sup> *Ibid.*

<sup>45</sup> Anonymous, *The Grand Pyrate*, 5-7.

Cargo.”<sup>46</sup> Said shares were “promised” to all men who signed on, and so, tying back to the responsibilities of the captain, Cusack had their loyalty and obedience only so long as he ensured the men received their shares fairly. The Laws of Oleron referenced by Cusack were the traditional maritime laws of western Europe, issued by Eleanor of Aquitaine in 1160.<sup>47</sup> The Laws of Oleron, even as nations adopted their own differing legislation, defined medieval maritime law.<sup>48</sup> Cusack’s call back to them demonstrates that he and his crew viewed the Articles of War as a newer, unjust system of maritime law.

Nicholas Clough’s code from June 30th, 1683, much like Cusack’s obligations, defied the Articles of War by codifying that every man in the crew was owed a share of loot and certain rights. Clough’s “Articles of Agreement” found by the British authorities contained not just the contents of the code, but the signatures of the crew. The signatures make the document irrefutable in being the full code of Clough and his crew, a certainty that other surviving codes lack due to having survived only from testimony or in fragments. The Articles of Agreement named Nicholas Clough as commander before laying out that the position entitled him to “two shares,” with “a half a share for the Ship” and “a share and a half” for the Quartermaster of his choosing.<sup>49</sup> The ship’s doctor received “a Share and half” but beyond these exceptions, every man had an equal share, and was entitled to that share as his “full due.”<sup>50</sup> Clough and his men disallowed shares to be alterable or determined by anyone other than themselves, a decision that was in direct disagreement with the Articles of War, which stipulated that the government was to

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<sup>46</sup> *Ibid.*

<sup>47</sup> Timothy J. Runyan, “The Rolls of Oleron and the Admiralty Court in Fourteenth Century England,” *The American Journal of Legal History* 19, no. 2 (1975): 95-111.

<sup>48</sup> *Ibid.*

<sup>49</sup> *Abstracts of wills*, 83-87.

<sup>50</sup> *Ibid.*

divvy out loot after an audit by the naval command, only allowing sailors to take a certain amount of loot from the ship.<sup>51</sup> Like many pirates, Clough's men established that they would not harm any ship that surrendered to them peacefully. Clough and his men were not savage or rabid buccaneers, but instead had clear disagreement with the way by which the Royal Navy withheld and controlled the amount of wealth a sailor or privateer could earn from their labor.

The code of John Taylor was one of the cruelest, and the most comparable to British naval rules and regulations. His code was direct and harsh, though not nearly as harsh as the Articles of War, but regardless Taylor may be seen as possessing one of the least progressive codes that survive. It is important to note that while William Snelgrave validated the general description of Taylor's code given by Jacob du Bucquoy, the direct wording and language of the code did not survive.<sup>52</sup> Taylor may have had the sway to wield more authority than the articles themselves granted him; du Bucquoy and Snelgrave both described Taylor as a strong leader. Bucquoy described that Taylor's code gave the penalty of death for harming captives and for not remaining absolutely loyal to the captain and crew, with "severe punishment" issued for cases of rape.<sup>53</sup> Furthermore, the crew handed over all loot and goods to the quartermaster, who divided it up and handed each sailor his fair share. Keeping any loot for yourself was punishable by floggings and forfeiture of all shares.<sup>54</sup> Such rules were similar to the Articles of War, with commanders auditing all loot themselves before handing it back out. Given descriptions by Snelgrave and Bocquoy that Taylor was efficient and firm, his philosophy in drafting his code

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<sup>51</sup> *Statutes of the Realm*, 311-314.

<sup>52</sup> William Snelgrave, *A New Account of Some Parts of Guinea, and the Slave Trade* (London, 1734).

<sup>53</sup> Grandidier and Grandidier, *Collection des Ouvrages Anciens*, 114.

<sup>54</sup> *Ibid.*

was probably not to correct an inherent unfairness in the Articles of War, but instead to create his own simpler form of the Articles for his own use.

Bartholomew Roberts's code was unlike the Articles of War in his vast concession of power to his crew. The code demonstrated an idea of what was "fair" among some pirates. Roberts wrote the code some time during his career as a pirate captain (1719–1722), having succeeded Captain Howell Davis, who had once been his captor.<sup>55</sup> The code opened with an establishment of rights for every crewmember, promising them an equal vote in decision making, and to fresh food and liquor. In offering an equal vote not just in punishments, but in major decisions, Roberts's code was perhaps one of the *most* progressive, giving power to the crew far beyond what would have been necessary to keep their loyalty. The captain's powers were also restricted; for instance, he could restrict provision during times of scarcity, but only upon a vote by the crew to allow it.<sup>56</sup> However, in exchange for this immense say in the actions of the ship, Roberts imposed strict conduct. There was to be no gambling, an eight o'clock lights out, maroonings were issued for theft, fraud, and fleeing combat, and fighting between crewmembers was forbidden on-board, though conflicts could be settled with a duel on shore.<sup>57</sup> There was to be "no... talk of breaking up their way of living," until every member of the crew had at least one thousand pounds sterling. In exchange, anyone crippled in the line of duty received "eight hundred dollars," (meaning Spanish currency) as a stipend.<sup>58</sup> Roberts's code was a give and take, featuring strict restrictions but also turning the ship into an actual democracy. Other pirates, while offering more personal freedoms, ran their ships as a hierarchical autocracy. Some might

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<sup>55</sup> Johnson, *General History*, 225-230.

<sup>56</sup> *Ibid.*, 230-233.

<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid.*

view Roberts as a disciplinarian, but that does not detract from the liberal ideas that were in his code. Roberts still had to be fair, had to concede his own power over control of the ship as the price to impose order.

Thomas Anstis's code conceded large amounts of power to the crew, while demonstrating an attempt to uphold moral values. The code was written during his career (1721-1723) raiding the Caribbean and eastern North America.<sup>59</sup> Anstis began as a captive of Roberts, before joining his crew, and eventually Roberts gave Anstis a ship of his own. It opened by outlining that the Captain, Quartermaster, Gunner, Carpenter, and Boatswain would all receive "one share [more] as the rest of the Company."<sup>60</sup> This laid out a more egalitarian structure compared to other crews, specifically in the number of positions entitled to a bonus, and with how they all received the same bonus, rather than tiered bonuses. The remaining eleven rules all spoke of permitted actions and punishments. Thieves were marooned with a gun and water, and rapists were executed, a fact that highlights how Anstis's crew were not allowed to act like the hedonistic scoundrels pirates were often thought to be. Additionally, anyone who brandished their weapons in the hold (and thus near the gunpowder) or cheated crewmates of money was to receive forty lashes of a whip. A harsh punishment, and not one the crew would have taken lightly unless they felt the captain and the code was fair in other respects. Anstis did seem like a fair captain, as aside from these aforementioned exceptions, all punishments were whatever "the Company and Capt. [thought] fit."<sup>61</sup> This language paralleled language found in the Articles of War, but notably granted the entire crew the ability to determine punishments. It

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<sup>59</sup> Fox, *Pirates in Their Own Words*, 215.

<sup>60</sup> *Ibid.*

<sup>61</sup> *Ibid.*



was an effective jury of peers, which can be explained cynically by the fact that it ensured that the captain would never have an issue with the crew finding his punishments unjust or too harsh as they would have to agree to it. However, Anstis did not need to go so far as to give the entire crew equal authority as himself in such matters, nor did he need to add the process of the trial to so many rules.

The codes of George Lowther (active 1721-1723) and Edward “Ned” Low (active 1722-1724), were almost identical, which is significant in showing how pirates developed legal traditions; additionally, their crews enjoyed large concessions of power, unlike the hierarchical system of the Articles of War. Lowther utilized a code which outlined all punishments as being what “the Captain and the Majority of the Company... think fit.”<sup>62</sup> This clause applied to assault, theft, and cowardice. Those crippled in the line of duty also received “one hundred and fifty Pounds Sterling,” and could leave the crew whenever they chose, though this language implied that non-injured crewmembers could not leave the crew when they pleased.<sup>63</sup> Regardless, with all punishment decided by jury, Lowther was a pirate who again offered his crew rights not found in legitimate navies. Like Anstis’s crew, Lowther’s men held legal power among themselves. Low had served under Lowther as a lieutenant. Lowther, as captain, gave Low a 6-gun brigantine to captain himself. Once a captain in his own right, Ned Low made use of the same code as Lowther, with two additional rules added: prohibiting drunkenness during combat, and prohibiting the discharge of weapons in the ship’s hold.<sup>64</sup> The captain could have added these rules due to experience, Low possibly suffering from drunken crewmen during engagements

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<sup>62</sup> Johnson, *General History*, 352.

<sup>63</sup> *Ibid.*

<sup>64</sup> Fox, “Piratical Schemes and Contracts,” 322.

and/or pistols nearly igniting gunpowder barrels. Regardless, not only did these new rules utilize the same democratically decided punishment clause, but the fact that Low reused Lowther's rules demonstrates how he and his crew viewed Lowther's code as fair and just. They were no longer in Lowther's employ, and much as Lowther made a code separate from the Articles of War, Low and his crew could have made their own, entirely new code to solve any issues they had with Lowther's. This act would make sense if pirates like Low were anarchic and greedy for power. Instead Low was content with the system he had operated under, and upheld it.

John Phillips's code offered his crew more rights than what they would have had under the Articles of War. Phillips's code also indicated that Phillips held a certain belief in morals, and was willing to impose that on his crew, not unlike Bartholomew Roberts and Thomas Anstis. He had a brief career as a pirate, lasting only eight months in command. He had served as a carpenter for Thomas Anstis, and became a pirate captain in his own right in 1723.<sup>65</sup> His code was strict; of the nine sections, only two provide "Punishment as the Captain and Company shall think fit," as the consequence for violation. Those sections were: (1) accepting a man into the crew that another crew had marooned without the full consent of the ship, and (2) becoming neglectful of duties and leaving one's own equipment unprepared for an engagement.<sup>66</sup> The five other sections of the code set marooning, death, and forty lashes of the whip as punishments.<sup>67</sup> Phillips's code also opened not by outlining rights, but instead by stating that "Every man shall obey civil Command."<sup>68</sup> Compared to Anstis, Roberts, Low, and Lowther, this seems rather authoritarian, but this code must remain contextualized within the eighteenth century and against

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<sup>65</sup> Johnson, *General History*, 397.

<sup>66</sup> *Ibid.*, 397-399.

<sup>67</sup> *Ibid.*

<sup>68</sup> *Ibid.*

the Articles of War. In some ways, discussion of the earlier codes spoils us, offering again and again an articulation of the populism found in most pirate codes. Even Phillips, in the same section demanding obedience, still promised set shares of loot, with the captain only receiving a half share more than other members of the crew. Additionally, Phillips's own morals were seen in how the only rule in the code that had death by execution as its punishment was the prohibition of rape. Phillips felt the need to explicitly state that rapists (at least of "prudent" women and thus not prostitutes) deserved a worse punishment than any other violator of the ship's articles.

John Gow's code was supposedly seized from his ship in 1725 upon his arrest, and was written while the ship was grounded; for this reason it must be assumed that his code was harsher than what the crew normally sailed under.<sup>69</sup> The articles directly referenced the ship being grounded, and this means that they had to have been drawn up during the few days that Gow and his men were stuck in the Calf of Eday, a region of the Orkney Islands, as authorities were closing in. With capture imminent, the rules within Gow's pirate code were strict, but cannot be assumed as applying in general to how Gow operated his ship as such dire conditions were not typical. When analyzing this emergency code, it is thus important to look at what liberties were still permitted even in such conditions. Of the six sections in the articles, the second and fifth sections were the most important in this regard.<sup>70</sup> Section II dealt with rationing of provisions, and guaranteed everyone an equal share.<sup>71</sup> Section V established night and day watch for enemies approaching the ship, but made explicit mention that "Gaming and Drinking," was to

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<sup>69</sup> Johnson, *The Late John Gow*, 54.

<sup>70</sup> *Ibid.*

<sup>71</sup> *Ibid.*

end at the “Hour of Eight,” which meant that these recreational activities were allowed even in a time of emergency.<sup>72</sup> It is fair to say that some amount of entertainment and freedom had to be allowed for Gow’s men to agree to a stricter code. But what matters more is that these caveats are proof that Gow’s crew did not usually operate under such harsh rules. While death was the penalty for violating the code’s rules, the application of a death penalty was still less excessive than in the Articles of War.

The code of William Kidd, written in 1696, demonstrates that the idea of pirates as a social group where power and greed were all that mattered is false. That idea of greed is better applied to their privateer cousins, who had fewer concerns on fairness, equality, and personal freedom in their legal codes. Kidd was a privateer in the Caribbean, not a pirate. The “pirate” articles that we have from him were written during a voyage to the Indian Ocean.<sup>73</sup> Many men Kidd had hired were unhappy with his privateer articles, and demanded that the captain revise the articles to meet their demands. For these reasons, his code ought to be examined on its own, separate from other surviving pirate codes. Once they arrived in the Indian Ocean, Kidd and his crew became pirates. Due to the temporary nature of the voyage in a distant region from their homes, the crew did not have to worry about being constantly hunted, like full-time pirates in the Caribbean did. And despite being pirates in the Indian Ocean, the fact remained that Kidd’s pirate articles were a revision of his existing privateer articles, and there were noticeable differences between Kidd’s code and those of other pirates. On the matter of shares of loot, a topic most codes touch, Kidd as captain received five full shares, while his quartermaster gained

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<sup>72</sup> *Ibid.*

<sup>73</sup> Harris, *Treasure and Intrigue*, 312-313.

two.<sup>74</sup> This apportionment was radically higher than other codes, which gave the captain two shares or a share and a half. Kidd treated himself with far more privilege than captains who were willfully full-time pirates. Punishment was determined to be either a loss of shares or “corporall punishment as the Capt and major part of the company... think fit.”<sup>75</sup> Kidd, as a privateer, still lent the crew power in determining punishments, but primarily relied on the threat of share loss. Given that privateering was not a business that left men pursued by the law and under threat of execution if captured by their own government, Kidd used monetary greed to keep people in line. Kidd also demanded that his men offer him money, equivalent to “one gun, one pistell, one cartouche box and one cutlass,” as compensation for the weapons and ammunition he provided them.<sup>76</sup> Unlike a pirate crew, who had to hang together or all be hanged separately, Kidd’s revised articles show that privateering was a business venture with profit as the primary incentive.

As mentioned prior, several pirate codes had elements passed down between captains, in doing so, pirates established a legal tradition of their own. Low and Lowther were the most clear and obvious case, with only two rules added by Low forming the difference between their two codes. When Low took on Lowther’s code, it formed a legal tradition between their crews, and any other pirate who came into power from those crews would have had cause to do the same. Pragmatically speaking, greatly altering the rules used by two prior, popular captains would have been harmful to a new captain’s legitimacy. Any changes would have to be argued as bringing about a fairer system, which inherently made the Lowther-Low legal tradition a progressive one.

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<sup>74</sup> *Ibid.*, 313-316.

<sup>75</sup> *Ibid.*

<sup>76</sup> *Ibid.*

It was focused on fairness, not belief in conserving power structures or appealing to hierarchical thinking. Beyond the Lowther-Low tradition, three other surviving codes come from a shared lineage of pirates: Bartholomew Roberts captured Thomas Anstis and made him a part of his crew before Anstis gained his own command, and Anstis did the same to John Phillips. Roberts had himself been the captive of the pirate Howell Davis, who was the captive of Edward England. At any point in this long “line” of pirates, certain ideas of what was proper conduct for a pirate ship may have been created and inherited.

Roberts, Anstis, and Phillips together had some of the *most* progressive codes that survived to modern day, and their shared legal tradition showed a progression and evolution of ideas. Roberts and Anstis shared a prohibition on rape, though Roberts’s only forbade the seduction of women and/or forcing them aboard the ship, enforced by execution. They both enforced that all weapons be kept ready and clean, and promised their crews a democratic say in affairs, though Anstis limited democracy to trials for violations of the code. Roberts and Anstis both allowed members of the crew to leave upon certain conditions. Anstis’s code detailed that “if any time” there was word of a pardon from the crown, and a member of the crew was “amind to receive it,” then the crew would allow him to leave with his gathered shares and belongings without issue.<sup>77</sup> While Roberts was less giving, authorizing the ability to leave the crew after each man had earned one thousand pounds meant that he gave the crew the power to abandon the ship if conditions on the ship did not feel worth the risk of living as a criminal. That level of concession pressed beyond self-serving interest and placed additional responsibility on the captain to keep the crew happy and loyal.

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<sup>77</sup> *Ibid.*

While Phillips did not allow men to leave the crew on a whim, the prohibition on rape carried through into his code, as did prohibition of fighting between the crew or neglect of one's weaponry. From Anstis, Phillips inherited the use of lashings to punish reckless behavior, that no marooned man could be accepted into the crew without a vote, and the offering of a sizable monetary compensation to those injured in the line of duty. The practice of injury compensation was highly significant, and indicated that these men were trying to create a legal code that felt more fair than what the Royal Navy had to offer them. Among Anstis's crew, anyone who became critically injured, losing a limb or part of a limb, was to receive monetary compensation ranging from 200 Spanish reals in the case of an injury up to a joint (Phillips would up the sum to 400), and up to 800 for the loss of an entire limb.<sup>78</sup> The significance was that at the time, a sailor in the Royal Navy would pay a thirtieth of his pay to the so-called "Chatham Chest," which would pay an annual pension to injured sailors on top of an upfront fee, and said fee only came up to 180 shillings or 335 Spanish reals, and that was only in the case of the loss of two limbs.<sup>79</sup> Anstis and Phillips gave their injured crew an injury compensation that was more than double the amount paid by the navy, for half the amount of injury, taken straight from the ship's shares. This pay was on top of the shares the member of the crew received so long as they were still capable in fulfilling their basic duties on the ship. The Roberts-Anstis-Phillips legal tradition was marked by a generosity of power and wealth that proves that they wanted to do more than appease the crew in order to stay powerful and rich. They created a tradition of fairness and

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<sup>78</sup> Fox, *Pirates in Their Own Words*, 215; Johnson, *General History*, 398.

<sup>79</sup> Peter Kemp, *The British Sailor: A Social History of the Lower Deck* (London: JM Dent & Sons, 1970), 22-25.

compensation, where strict expectations from the captain were only imposed after a magnanimous concession of power and privilege.

The evidence found within these sources would indicate that various pirate codes were progressive. Rejecting the authority of captains as absolute, most pirates regarded the opinion of the crew more than traditional navies. The crew, as a democratic mass, had control over punishments and changes in power structure. Rules ended often not with a specified punishment for violations, but that violators would “suffer what Punishment the Captain and Majority of the Company shall think fit,” or some variation on this phrase.<sup>80</sup> Even rules with specified punishments often utilized marooning and loss of shares, with death reserved for rule violations that endangered the crew as a whole, or acts seen as heinous. Such mercy was quite unlike the naval law found in the Articles of War, where the British codified punishments as harsh and subject to the decision of the captain, and often done purely “as an example and warning...to deter others.”<sup>81</sup> In many ways, the ideas found in pirate codes were similar to Lockean concepts of the consent of the governed. In his *Essay Concerning Human Understanding* (1689), Locke stated that, “[Civic power] can have no right except as...derived from the individual right of each man to protect himself.”<sup>82</sup> In having the power to determine their own punishments, the legal system of pirates like Low and Lowther were deriving their legitimacy by the consent of the crew. Granting continuous authority to the collective will in every respective trial for violations of the legal code was in fact a greater act of populism than even Locke’s proposal. Those pirate codes that ceded power to the captain to give harsh punishments like lashings are also

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<sup>80</sup> Johnson, *General History*, 352.

<sup>81</sup> John D. Byrn Jr, “Crime and Punishment in the Royal Navy: Discipline on the Leeward Islands Station, 1784-1812 (England),” (PhD dissertation, Louisiana State University, 1987), 100.

<sup>82</sup> John Locke, *An Essay Concerning Human Understanding* (Oxford University Press, 1689).



demonstrations of faith in the fairness of that captain. Pirates loathed cruel punishment, and stories of walking the plank and strapping men to cannons are unsubstantiated. To grant the captain the power to punish them shows an exchange of power in return for fair treatment, making even the most conservative and draconian pirates codes to be no less liberal than the sociopolitical developments occurring in Britain contemporaneously.

The social contract of pirates was reinforced through fear, power flowing from the bottom up. The authority of a captain was purely in his own charisma and the personal trust of the crew; pirates often came to power through mutiny or overthrow of a ship's captain. With that precedent set, captains were bound to uphold their agreements with their crews, willingly or not. Thus, many rules which offer more freedom and input than legitimate navies may have existed solely for the popularity of the captain. But this does not lessen the amount of liberalism within pirate articles. Quite the opposite; it is not unlike the idea presented by Thomas Jefferson in the American Declaration of Independence. Jefferson wrote that "whenever any Form of Government becomes destructive" of the rights and privileges guaranteed to its people, then "it is the Right of the People to alter or to abolish it, and to institute new Government." It has been said that in a liberal democracy, a government should fear its people, and in the same way, a pirate captain was fearful of his crew rebelling. What distinguished pirate captains from other men paranoid about mutiny was that rather than use harsh discipline and restriction of liberties, like the Articles of War, pirates appeased their crews with rights. For the late seventeenth and early eighteenth centuries, this was a remarkably liberal idea.

The presence of such liberal ideas does not prove that pirates were necessarily 'revolutionary' in their thinking. Pirates did not think of themselves as consciously seceding

from an unjust society in order to form their own. They were not proudly libertine anarchists and were not reveling in being dissidents and defying norms. There were rules which indicate an established, strict chain of command for critical matters like general safety and combat, and so rights outside of these critical matters were simply beyond the care of the captain.<sup>83</sup> Conservative ideals were also seen in codes, and encouraged notions of civility and honor, such as how some codes prohibited unconsented sex with women, gambling (or specifically cheating at gambling), or ensured that duels were fair and done on land. Furthermore, men like Cusack still displayed loyalty to their country. While progressive in some ways, these rules seem to imply that pirates wanted to instead style themselves as being gentlemen rather than ruffians. While they were rejecting legitimate society, they were not entirely against aspects of it, which makes characterizing pirate societies as purely criminal organizations inaccurate.

The collected evidence from pirate codes would indicate that Marcus Rediker was the most correct in assessing the motivations behind writing those codes, but not entirely. The motivations of pirates were obviously more pragmatic, as Pringle asserts, than idealistic, a fact inherent even in the decision to turn to piracy. Sailors, as privateers, enjoyed a great deal of freedom during conflicts between European powers. They had full authority to attack ships and plunder loot for their own gain, and those not officially part of the navy had the ability to organize themselves as they saw fit. When conflicts ended, sailors were expected to return to life as civilians or in the navy. The flow of wealth from their prizes was gone, and their power and authority removed. This offer was not, of course, tempting to these men. Work in legitimate society would inherently pay less, and require reintegration into traditional social hierarchy.

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<sup>83</sup> Johnson, *General History*, 397-398.

Instead of submitting, sailors turned to piracy. They were able to continue their way of life, regaining access to the money and power they craved. It is doubtful that any pirates looked at the Articles of War and thought to themselves, “That’s a violation of my rights! I ought to become a criminal and make my own legal system!” The very motivation in choosing to become a criminal requires an immoral desire for wealth and power. Such a desire is not progressive. However, it laid the groundwork for why pirates made the decision to reject legitimate society and stop operating under the Articles of War. Their greed was the impetus for becoming pirates, but it did not define how they governed themselves. With so many rules about keeping weapons well maintained, with preventing fighting or cheating among the crew, it is clear that concerns of pirate captains were first and foremost on keeping their ships functional and battle-ready. But in having rules to enforce morality, in offering more power to the crew than needed, in showing care for fairness and due reward, it is clear that once the basics were well established, pirate codes experimented with philosophical ideas that can be safely called progressive for their time.

## **Conclusion**

The surviving legal codes of British pirates both have the appearance of being written with liberal philosophy and developed into genuinely progressive documents, and this development stems from the fact that pirates were more than criminals. Pirates were not “more” in the sense that they were heroes, or men to be lauded and respected as icons of liberty. They committed criminal acts, knowingly and intentionally, and had to their names a number of atrocities and heinous acts. But pirates built communities, rooted in an inherited legal culture that was borrowed between ships, one that began pragmatically but became part of a new identity

separate from their British roots. It is impossible to recognize this change, and impossible to properly analyze pirate activities and laws, if pirates are treated as a purely criminal organization.

Privateers would have not looked to piracy unless they felt that being a sailor in a legitimate navy was unpalatable. The Articles of War were cruel and excessive, and so were an injustice that future pirates had not wished to suffer once the promised freedoms of privateering were stripped away. Then, in throwing themselves into the realm of illegality, the traditional authority provided by naval hierarchy was gone. Who would enforce the command of a captain once a crew was no longer a part of the navy? No court could be appealed to for grievances, no naval officers could assist in reigning in the crew, no government enforcers could arrive to punish breaches of conduct. Popular consent was not strictly necessary, not with the fear of capture and promise of wealth in the life of a pirate. But it was both pragmatic and a very different system than the rule by fear in the Articles of War. Popularity became the means for many captains to maintain power, and they utilized their own charismatic authority to sway their followers. In appeasing their men, the captain stayed popular, and would have the crew's support in attacking other ships and preventing mutiny. It was done for selfish reasons, but pirate captains chose to go past what was necessary and offered more freedom to their crews because pirates rejected the Articles of War and, by proxy, legitimate British society.

Patrick Pringle was wrong to claim that greed was all there was to pirate legal philosophy. By putting into practice radical ideas like the consent of the governed and universal suffrage decades before liberalism was widely embraced, captains set legal precedent and developed a culture aboard ships that was liberal in nature. In recognizing the say of each crewmember, then the fair treatment and the happiness of each pirate had weight. And if every

man was of some worth, then there had to be a degree of communal ownership, and the captain owed shares of plundered wealth to everyone. With their men feeling entitled to a certain amount of profits, those higher in the ship hierarchy, like captains and quartermasters, were only able to increase the size of their shares so much before the crew would see it as unjust. Pirates may not have been radical revolutionaries, but they were still adhering to liberal, egalitarian *concepts* that then became liberal, egalitarian *traditions*. As previously discussed, certain rules and even entire pirate codes were passed on from one pirate captain to another. What may have begun as selfish solidification of authority was being passed on as a working system, and violating it was seen as an injustice.

The similarities between the liberal legal philosophy developed by pirates and the emergence of cultural groups and liberal philosophy in the New World may be due to shared isolation. Criminal organizations based on land in Europe were never going too far from a town or city or monastery, and were always within a land and region associated with, controlled by, and/or culturally dominated by one nation or another. This phenomenon is not true at sea. The high seas were without a controller, without a hegemon, and national laws did not apply to them. Furthermore, especially if a pirate raided slave ships or evaded authorities by staying away from land, the crew was cut off from all civilization and human existence sans themselves. They were together, interacting daily, without any foreign presence, and survived on their rations in a time when travel was not nearly so quick. And within the Caribbean, moving from island to island meant they experienced an entirely different culture in each port, depending on the controlling nation, the amount of settlement, the presence of slaves and natives, and numerous other factors. Much like those ships, New World colonies were distant physically from their mother country,

months passing between contact, and daily interactions were more often with fellow colonials (who were of numerous social and ethnic backgrounds) or foreign merchants and explorers. This isolation and distance from traditional society may be the common cause for similarities in the development of creole socio-political groups and pirate socio-political groups. Of course, to have any true certainty, it would require a thorough and in-depth study into not just Caribbean and pirate history, but the cultural anthropology of the Caribbean, studying reports on the daily activities on pirate ships, tracing surviving ship logs of pirates to see how much time was at sea in isolation, and so on.

To properly examine pirates and pirate legal philosophy as creole communities and as a new emerging culture within their contemporary time period would be a massive undertaking beyond the scope of this paper. But what has been proven is that such a study ought to be conducted. Approaching pirates not as simply rejecting legitimate society, but as developing their own, equally legitimate society is vital to understanding what makes them different from other criminal groups in history. It is quite possible that pirates and their codes are microcosmic representations of contemporary trends in the New World, and may unlock new understanding of how isolation and the creation of tradition play a role in the creation of cultures in the Early Modern context.

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