

An-*arrgh*-chy: The Law and Economics of Pirate Organization

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This article investigates the internal governance institutions of violent criminal enterprise by examining the law, economics, and organization of pirates. To effectively organize their banditry, pirates required mechanisms to prevent internal predation, minimize crew conflict, and maximize piratical profit. Pirates devised two institutions for this purpose. First, I analyze the system of piratical checks and balances crews used to constrain captain predation. Second, I examine how pirates used democratic constitutions to minimize conflict and create piratical law and order. Pirate governance created sufficient order and cooperation to make pirates one of the most sophisticated and successful criminal organizations in history.

Nature, we see, teaches the most Illiterate the necessary Prudence for their Preservation . . . these Men whom we term, and not without Reason, the Scandal of human Nature, who were abandoned to all Vice, and lived by Rapine; when they judged it for their Interest . . . were strictly just . . . among themselves. (Captain Charles Johnson 1726–28, 527)

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I. Introduction

Pirates are known for raucousness, recklessness, and chaotic rapine. Pirate reality, however, is quite another picture. Real-life pirates were highly organized criminals. Unlike the swashbuckling psychopaths of fiction, historical pirates displayed sophisticated organization and coordination.

Pirates could not use government to enforce or otherwise support cooperative arrangements between them. Despite this, they successfully cooperated with hundreds of other rogues. Amidst ubiquitous potential for conflict, they rarely fought, stole from, or deceived one another. In fact, piratical harmony was as common as harmony among their lawful contemporaries who relied on government for social cooperation. How did “these men whom we term . . . the Scandal of human Nature, who were abandoned to all Vice, and lived by Rapine” (Johnson [1726–28] 1999, 527)¹ accomplish this impressive level of order?

Becker (1968) was the first to apply the logic of rational-choice decision making to criminals. Following him, a number of others extended this logic to decision making in the context of organized outlaws. Fiorentini and Peltzman (1995) provide the best and most comprehensive collection of essays that consider the economics of criminal organization. In addition, a large literature discusses the economic impact of organized crime, activities of criminal organizations, optimal strategies for preventing organized crime, and reasons for its emergence (see also, e.g., Anderson 1979; Reuter 1983, 1987; Jennings 1984; Arlacchi 1986; Jankowski 1991; Dick 1995; Konrad and Skaperdas 1998; Garoupa 2000; Skaperdas 2001; Chang, Lu, and Chen 2005).

Unlike these topics, the internal governance institutions of violent criminal organizations have received relatively little attention.² The difficulty of “getting inside” criminal organizations is largely responsible for this. Levitt and Venkatesh’s important work on street gangs (Levitt and Venkatesh 2000; Venkatesh and Levitt 2000) is an exception to this rule, as are Gambetta’s (1993) and Reuter’s (1983) superb studies of the Mafia. However, Levitt and Venkatesh focus on the financial organization of gangs rather than on their governance structures. Gambetta’s and Reuter’s studies are primarily concerned with the Mafia’s provision of protection to outsiders and the organization of the illegal markets it serves.

¹ All page references to Johnson refer to the 1999 reprint. Page references to other early sources also refer to reprint editions if available.

² Anderson (1979), Reuter (1983), and Gambetta (1993) are the closest exceptions in this regard. Their excellent work considers some internal governance aspects of the Mafia but tends to focus primarily on the Mafia’s relationship to protection and other markets. Important research by Polo (1995) examines governance institutions of criminal organizations, but does so theoretically.

This article investigates the internal governance institutions of violent criminal enterprise by examining the law, economics, and organization of pirates.³ These “most treacherous rogues” terrorized the Caribbean, Atlantic Ocean, and Indian Ocean during the seventeenth and eighteenth centuries. Pirates formed a loose confederation of maritime bandits outside the law of any government.

To effectively organize their banditry, pirates required mechanisms to prevent internal predation, minimize crew conflict, and maximize piratical profit. I argue that pirates devised two institutions for this purpose. First, I analyze the system of piratical checks and balances that crews used to constrain captain predation. Second, I examine how pirates used democratic constitutions to minimize conflict and create piratical law and order. Pirates adopted both of these institutions before seventeenth- and eighteenth-century governments.

Their governance institutions were self-enforcing by necessity. Appealing to the formal enforcement mechanisms of the state is not an option for criminal organizations, including pirates. Although the maritime nature of piratical expeditions makes certain aspects of their internal organization and governance specific to pirates, my analysis highlights important problems that any form of organized criminal enterprise faces, as well as the institutional solutions such organizations employ to overcome these problems.

The literature that addresses the economics of organized crime focuses on the criminal organization as a supplier of some service, usually protection, to other actors inside and outside the criminal world. Schelling (1971), for instance, who was among the first to conduct this research, identifies the provision of enforcement services to other agents and, in line with this function, a monopoly on coercion as the distinguishing features of organized crime.

While this definition is perhaps appropriate for the Mafia, it neglects equally important organized criminal activities that do not provide useful services to others and do not involve a monopoly on coercion. An army of thieves, for instance, that coordinates its activities, requires internal mechanisms of governance, and combines in a long-term arrangement for concerted plunder is as much a criminal organization as the Mafia.

Pirates were clearly organized criminals and yet were not primarily in the business of providing services to anyone other than their members.⁴ Nor did they have a monopoly on force. Because of this, unlike

³ This article is also closely connected to the literature that examines the private emergence of law and governance institutions. See, e.g., Friedman (1979), Benson (1988, 1989, 1990), Anderson and McChesney (2002), Anderson and Hill (2004), Anderson, Benson, and Flanagan (2006), and Leeson (2007*a*, 2007*b*, forthcoming).

⁴ However, pirates did trade with European colonists.

most discussions of criminal organization, mine takes a broader view of organized crime. This view encompasses any long-term arrangement between multiple criminals that requires coordination and involves agreements that, owing to their illicit status, cannot be enforced by the state.⁵ The emphasis of my analysis therefore shifts from the organization of criminal markets (the focus of existing research on the economics of organized crime) to the internal predation problem that criminal organizations face and the institutions that emerge in response to it.

To examine these features for pirates, I draw on a series of historical documents that provide a firsthand glimpse into their organization. The first of these is Captain Charles Johnson's *General History of the Pyrates* (1726–28), which contains reports on a number of history's most infamous pirates related by a pirate contemporary.⁶ I also draw on Alexander Exquemelin's (1678) invaluable account of the seventeenth-century buccaneers. Exquemelin was a surgeon who sailed with the buccaneers and provides a detailed, firsthand account of their raids, system of rules, and social organization. The buccaneer William Dampier (1697–1707) also published a journal relating to his maritime exploits, which I make use of as well.

Buccaneers differ from "pure" pirates in that they frequently plundered ships with government sanction. However, many other times they plundered without official permission, as full-blown pirates. These protopirates, many of whom turned to pure piracy when governments stopped issuing licenses for plunder, influenced and anticipated the organization of pure pirates in the late seventeenth and early eighteenth centuries. Buccaneer records are therefore important for understanding the institutions and organization of seventeenth- and eighteenth-century pirates.

In addition to these sources, correspondence from colonial governors relating to piracy and records from the trials of various pirates, such as testimony from individuals taken prisoner by pirate ships and the tes-

⁵ My definition of a criminal organization is therefore similar to Polo's as "one that cannot rely on the external enforcement of the judicial institutions and whose behaviour and possibilities are not constrained by the law" (1995, 87).

⁶ "Captain Johnson" is a pen name used by the author of *A General History of the Pyrates*. His true identity remains unknown. In 1932, John R. Moore claimed that Johnson was in fact Daniel Defoe. In the late 1980s, however, this view was overturned (see Furbank and Owens 1988), and today many pirate historians do not believe that Defoe is the author of this important book (see, e.g., Rediker 2004; Cordingly 2006; Woodard 2007; for the opposing view, see Rogozinski 2000). Whatever Johnson's true identity, it is agreed that he "had extensive first-hand knowledge of piracy" (Konstam 2007, 12). While it is widely acknowledged that Johnson's work contains some errors and apocryphal accounts (such as the community of Libertalia), "Johnson is widely regarded as a highly reliable source for factual information" on pirates (Rediker 2004, 180) and remains a definitive source historians rely on in constructing their accounts of seventeenth- and eighteenth-century piracy. As eminent pirate historian David Cordingly puts it, this book "is the prime source for the lives of many pirates of what is often called the Golden Age of Piracy" (2006, xx).

timony of pirates themselves, form an important part of the historical record this article relies on.⁷ Finally, a few pirate captives, such as William Snelgrave (1734), whose captors ultimately released them, published longer works describing their harrowing captivity by pirate crews.⁸ I also draw on these accounts, which provide important firsthand records describing piratical governance and organization.⁹

II. A “Nest of Rogues”

Seventeenth- and eighteenth-century pirates occupied the waterways that formed major trading routes.¹⁰ These included the waters surrounding the Bahamas that stood between ships traveling from Central America to Spain; the waters connecting Europe and the North American seacoast; those between Cuba and Haiti, which separated ships traveling from Europe and the west coast of Africa to Jamaica; and the waters around Madagascar traveled by ships sailing to and from India (Cordingly 2006, 88). These areas encompass major portions of the Atlantic and Indian Oceans, Caribbean Sea, and Gulf of Mexico. The trade routes connecting the Caribbean, North America’s Atlantic seacoast, and Madagascar consequently formed a loop called the “pirate round” that many pirates traveled in search of prey.

The “golden age” of piracy, when pirates were at their strongest, extended from 1690 to 1730 (Konstam 2002, 94).¹¹ The years from 1716 to 1722 mark the height of the golden age. “This was at a Time that the Pyrates had obtained such an Acquisition of Strength, that they were in no Concern about preserving themselves from the Justice of Laws” (Johnson 1726–28, 87). The pirates of this era include many well-known

⁷ Jameson (1923) has edited an excellent collection of such records. Unless otherwise noted, all depositions and examinations quoted here are contained in his collection.

⁸ Importantly, drawing on the historical episode of pirates helps overcome the problem of “getting inside” criminal organizations, noted above. Records from individuals who had direct experiences with pirates, as well as those that shed light on piratical governance mechanisms from pirates themselves, allow me to view pirates’ criminal organization “from the inside.”

⁹ Additionally, this article relies on and is greatly indebted to a voluminous modern literature covering all aspects of piracy, including those considered here, written by contemporary historians. Some of the best discussions belong to Gosse (1946), Pringle (1953), Rankin (1969), Rediker (1981, 1987), Cordingly (1996, 2006), Rogozinski (2000), and Konstam (2002).

¹⁰ The “nest of rogues” terminology in this section’s heading comes from Governor William Spotswood, who, in a letter to the British Lords of the Admiralty, complained of the growing pirate problem in New Providence (July 3, 1716 [1882, 2:168]).

¹¹ The dates given by historians to mark the golden age of piracy vary. Cordingly (2006) provides a slightly larger range, from about 1650 to 1725. Still others, such as Rankin (1969), date the great age of piracy as encompassing the years between 1630 and 1720. The further back in this range one goes, the more one is dealing with buccaneers as opposed to pure pirates.