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The Legal Status of Piracy in Medieval Europe

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Abstract

This article discusses the history of maritime theft, or piracy, in medieval Europe, not so much as a crime but rather as a case study in legal pluralism: the operation of competing systems of law across a common region. Although scholarship has often interpreted sources for medieval European piracy through the filter of early modern conditions, the parameters of how disputes over piracy were settled within the conflicting legal systems of medieval Europe may have heuristic implications for understanding twenty-first century piracy. On the one hand, statutes of royal and civic polities across medieval Europe uniformly adhered to Roman legal precedents in condemning piracy as a capital crime. On the other hand, selective campaigns of maritime predation, referred to in the Latin sources as sailing ad piraticam or in cursum, (hence the term corsair), were sanctioned by medieval European polities when directed against political and economic rivals. Legal and narrative sources for maritime theft nevertheless indicate that piracy was often conflated with the operation of enemy corsairs in a manner that carried implications for the imposition of capital penalties on maritime marauders as well as for merchants who attempted to obtain compensation, or restitution, for cargo seized in a corsair raid from polities charged with authorizing their operations. Attempts to obtain restitution could also be complicated by commercial patterns subtly interwoven with maritime theft.

The recent resurgence of maritime theft off the coast of Somalia has revived popular interest in piracy's so-called ''Golden Age.''[1] Indeed, Secretary of State Hillary Clinton termed such raiding ''a seventeenth-century crime'' requiring ''twenty-first century solutions.''[2] Clinton's conceptualization of piracy as little more than waterborne larceny affirms the legal definition of piracy established by the United Nations Convention on the High Seas,[3] as well as the classic formulation in Roman law, which denounced any maritime venture launched in the 'Mediterranean lake' (*mare nostrum*) without imperial sanction as piracy.[4] The pirate, with no legitimate sanction, was thus justly subject to a system of universal law, exerted over an extra-territorial, maritime space.

From the era of the Latin Crusades to the mid-nineteenth-century Treaty of Paris, however, numbers of Europeans practiced a legitimate form of maritime assault explicitly in order to further collective, political, objectives. Empowered to varying degrees as *admirals*, *corsairs* in the Mediterranean; *zeeraubers* (sea-rovers) in the Germanic-language sources; or *privateers*, in seventeenth-century English admiralty records, these adventurers received official sanction to intercept and appropriate cargo aboard ships flying the flag of political and economic rivals.[5] During and between periods of belligerence, politically-sanctioned maritime interruption functioned as a 'substitute', in Braudel's phrase, 'for declared war' amongst the peer polities of medieval and early modern Europe and the Middle East—Muslim and Christian alike.

In a process said to have begun over the fourteenth and fifteenth centuries, European polities elaborated a legal definition of piracy as the capital crime of conducting maritime raids—whether coastal or on the 'high seas'—without political sanction. Such a definition

was critical to European polities' articulations of sovereignty, over maritime space, and over persons.[6] In the standard narrative, early modern European states moved from distinguishing between sanctioned and unsanctioned maritime theft to substituting standing navies for corsairs, effectively suppressing unsanctioned piracy and protecting trade.[7] This article contends, however, that one gains a better understanding of this crystallization period when the conditions of medieval Europe are studied through the lens of what legal anthropologists have termed *legal pluralism*: the operation of competing systems of law throughout a common region.[8] Although scholars have long acknowledged that medieval Europe was governed by a variety of overlapping and incongruent legal systems, discussions of conflict between them has centered, most often, upon friction between secular and ecclesiastical systems of law within the *ius comune*.[9] Competitive claims advanced by secular jurisdictions over open, maritime space could, nevertheless, engender significant conflict over the identification of pirates, and the resolution of disputes over maritime seizure, even where correspondences of legal practice, or *norms*, could be discerned across discrete jurisdictions.[10] Subjective assignment of terms like 'pirate', 'corsair', and '*zeerauber*', accordingly furnish evidence of the simultaneous operation of competing systems of law that allowed medieval piracy to lie in the eye—or, rather, with the law—of the beholder.

Piracy in law and practice

To be sure, certain aspects of Roman practice exerted a profound influence upon the legal traditions that developed to regulate maritime theft in the Middle Ages.[11] Still, statutes redacted in the medieval maritime republics of Venice, Genoa, and Pisa, as well as the monarchies of Catalonia-Aragon, England, and France, all distinguished between a sanctioned admiral and a criminal pirate by considering whether the commander of a sea-voyage *ad piraticam* or *in cursum* had received authorization to sail from the polity claiming sovereignty over the port from which his ship had launched.[12] In the monarchies of England, Catalonia-Aragon, and Castile-Léon, admirals and other corsair captains who had received such authorization enjoyed varying degrees of judicial authority.[13] Pirates, who lacked such authorization, meanwhile faced capital penalties. Indeed, medieval narrative sources indicate that sanctioned corsairs might well assert their judicial prerogatives to execute any 'pirates' they encountered.[14] But the neat distinction between legal 'admirals' and illegal 'pirates' was not always maintained in practice. The *Jutgamen de la Mar* or *Les Costumes de Oléron*, which scholars believe guided practice along the French Atlantic coast between the twelfth and seventeenth centuries, for example, equated the quality of 'being a pirate' with religious and/or political enmity—a justification for corsairing—when it indicated that the looting of a shipwreck, ordinarily forbidden, could be permitted in two instances: '…if the said ship exercised pillaging, or [if]…they were pirates, or sea-rovers, or Turks, or enemies to our sacred Catholic faith…'.[15] The thirteenth-century Catalan *Consolat de mar* similarly conflated enmity and piracy, calling maritime thieves '*almiralls', 'males gents' and 'lenys armats de enemichs'*.[16] The fourteenth- and fifteenth-century maritime code of the Hanseatic League, meanwhile anticipated piratical aggression from enemy corsairs, whom it named as '*zeerovere*'.[17] Flexible and subjective views of piracy could also configure royal proclamations. In 1324, for example, Edward II of England appointed John Crombwell as an '..admiral of our coasts..' but characterized counterparts with whom Crombwell would contend as 'admirals and pirates...'.[18]

In practice, the appointment of an admiral sometimes assumed the parameters of a feudal office, but at other times took on more mercenary overtones. The *Siete Partidas*

likened an admiral's investiture to the solemnities of knighthood, stipulating a ritual that involved receipt of a ring, a sword, and a standard.[19] The *Crònica* of the former Catalan corsair Ramon Muntaner (1270–1336), describes a similar ceremony in which Roger de Lauria received 'an admiral's baton' from Pere III, monarch of Castile's rival kingdom of Catalonia-Aragon in 1283.[20] Despite these allusions to feudal commendation, captains with aspirations to act as admirals were equally likely to behave as mercenary free agents. Muntaner's *Crònica* also describes how the corsair Roger de Flor outfitted a galley with the financial backing of the Genoese Ticino Doria before receiving a baton as an independent captain from Frederic III of Sicily, the second monarch de Flor approached as a potential employer, in 1291.[21] De Flor's later service to the Byzantine Empire would be undertaken on similar terms. Byzantine Emperors and kings of France, Naples, and Sicily would also engage members of the Genoese Doria and Grimaldi clans as 'mercenary' corsairs in this manner during the late thirteenth and early fourteenth centuries.[22]

This amalgam of the feudal and the mercenary continued to inform the bonds between corsairs and their patrons during the early fifteenth century. The fifteenth-century chronicler Gutierre Diaz de Gamez, for example, described the corsarial exploits of Pero Niño, Count of Buelna, on behalf of king Enrique III of Castile as 'feats of chivalry', but indicated that Count of Buelna was fully compensated in advance, 'according to the usage of Castile', for serving the king by hunting enemy corsairs.[23]

The mercenary aspects of an admiral's appointment further complicated the admiral's legal status as he migrated between varying jurisdictions. The possibility was ever-present that a corsair's loyalties—and affiliation—might shift, altering his treatment of other captains—and theirs, of him—as pirates—in war, and in law. The career of Eustace the Monk, a captain active in the Northern Atlantic during the early thirteenth century, illustrates such flexible applications of the term 'pirate' across competing systems of law. Thirteenth-century narrative sources describe Eustace as a former monk, a member of the Boulognais nobility, who turned against his first lord, Count Renaut of Boulogne, when Renaut failed to punish the murderer of Eustace's father. Eustace was drawn then into the service of John I of England, for whom Eustace attacked and occupied the Channel Islands between 1205 and 1215. When Renaut of Boulogne allied with John against his own French lord, Philip Augustus of France, however, Eustace returned to French allegiance. It was in the context of these reversed loyalties that Eustace was executed on 24 August 1217 in the Battle of Sandwich, or Dover, after an English fleet triumphed over a French fleet in the midst of John's wars with Philip Augustus and his son, the future Louis VIII.[24]

Sources for this period represent Eustace the Monk ambiguously. Matthew of Paris terms him *pirata nequissimus* (most depraved pirate) and *piratarum magister* (master of pirates) for his acts of maritime depredation, which King John protested he was powerless to control.[25] Accounts of the Battle of Sandwich describe Eustace's execution by decapitation on board his own ship, after Eustace attempted to bargain for his life (see Fig. 1).[26] Yet Eustace's career also inspired the thirteenth-century Old French *Li Romans de Witasse le Moine* (*The Romance of Eustace the Monk*), in which the former monk and sea-raider is portrayed as a sympathetic trickster figure.[27]

Still, the label pirate was more than just a negative epithet. Studying such episodes through the lens of legal pluralism enables us to see that naming an enemy corsair a 'pirate' could carry a substantive purpose. When a corsair's services had been enlisted by a political actor (or actors) who sought to wrest sovereignty from those they named as rivals, treating 'corsairs' engaged by rebels as 'pirates' represented an assertion of one law's legitimacy over another. The execution, in 1391, of forty-two *zeerovere* enlisted by

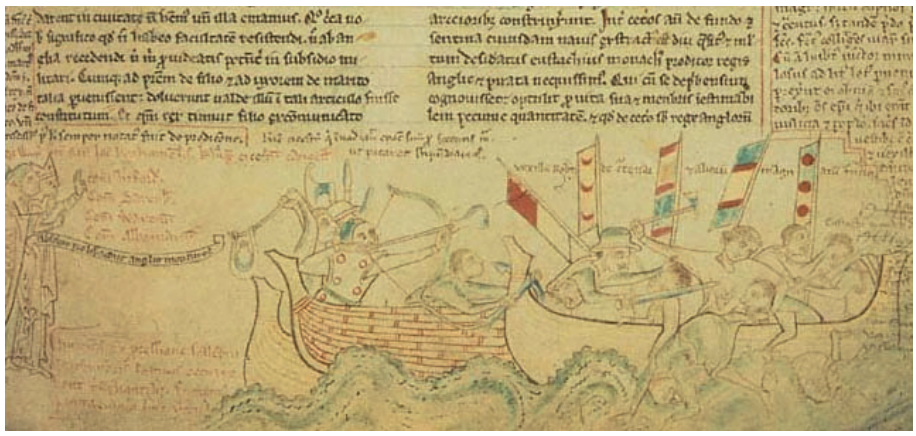

Fig. 1. Matthew Paris, Manuscript Illustration. Eustace the Monk, Captured and Beheaded by the English, 1217.

Albrecht von Mecklenburg to challenge his political rival Queen Margaret of Denmark as 'pirates' by Margaret's Hanseatic League allies, for example, constituted a rebuke to von Mecklenburg's political aspirations in the Baltic.[28] A few decades earlier, in 1369, officers of the Crown of Catalonia-Aragon had driven home a similar point when they tortured and executed the Provençal corsair Jean de Bourguignon, who had been engaged by rebel nobility specifically to challenge royal authority on the island of Sardinia.[29]

Treaties and their breach

Nothing reveals the workings of legal pluralism in late medieval Europe more clearly than agreements, forged across jurisdictions, that addressed the prerogative of corsairs to search and seize cargo designated as 'enemy', or *contraband*, even aboard allied, or 'friendly'-ships.[30] Documentary evidence shows that such prerogatives, unencumbered by any elaboration of what would come to be known as 'neutrality', were guaranteed by the texts of peace agreements, *treaties* or *truces*. These treaties functioned as the earliest instruments of an 'international' law redacted to mediate across the competing jurisdictions of medieval Europe's peer polities.

The texts of these treaties elaborated new distinctions between legitimate and illegitimate maritime theft. Corsairs who inappropriately interrupted 'friendly' shipping and seized cargo shipped by individuals subject to a polity with whom the corsair's polity maintained a peace agreement were now subject to legitimate censure.[31] Treaty protocols, reinforced by statute, imposed specifications that all departing corsairs tender a security-payment (*idoneus, ydoneus, securitas, cautio*) to royal or municipal authorities as a guarantee that ships and cargo subject to allied, or 'friendly', polities would be spared seizure.[32] These funds could furnish the means to compensate plaintiffs who might claim that a particular captain attacked their ship *in more piratico*–'in a piratical manner', that is, with disregard for the presence of a treaty and therefore pre-existing conditions of alliance, or 'friendship'.

Much of the archival documentation for maritime predation in the Middle Ages is preserved in notarial instruments that present these accusations, asserting that the merchant plaintiffs named in them are accordingly owed *restitution*: the value of whatever cargo might have been seized from their ship or whatever damages were imposed by the attack.[33] Some petitions were resolved in treaties and trade agreements that have been

edited and discussed by scholars.[34] Uncompensated plaintiffs might, meanwhile, seek *letters of marque* or *reprisal* from their own polities, awarding them rights to recoup their losses through retaliatory piracy.[35] Where the responsibility for a maritime attack lay not with a corsair, but with a 'pirate' who had acted for entirely private ends, plaintiffs might engage in a phenomenon legal anthropologists have termed 'forum shopping': that is, appealing, simultaneously or sequentially, to several systems of justice, in the hope that one might yield acceptable redress.[36] In 1399, for example, a group of Catalan merchants who had been attacked by the Genoese pirate, Sologrus de Nigro, petitioned, variously, the Republic of Genoa; the bailiff of Montpellier (off whose coast they had been attacked); the King of France (overlord to Montpellier and the Genoese Republic); and, finally, the Grand Master of the Knights of Saint John of the Hospital at Rhodes, to whom de Nigro had rumored ties.[37]

Situated between statute and narrative, the instruments in which such damages were sought describe incidents of maritime interruption in minute detail. Such particulars suggest that plaintiffs sought to construct a legal argument for their right to receive restitution, based upon three conditions: the corsair's prior authorization by a sovereign authority; the existence of a truce between that authority and the one to which the plaintiff was subject; and finally, the plaintiff's ability to prove that none of the seized cargo originated from an enemy jurisdiction.[38]

A close analysis of petitions from the archives of Venice, Genoa, and the Crown of Catalonia-Aragon nonetheless suggest that at least some of the merchants who accused corsairs of seizure 'in a piratical manner' were, in fact, conducting trade in violation of restrictions on commerce with the enemy of an ally.[39] Such circumstances, explicitly foreseen in Alfonso X's *Siete Partidas*, appear to have forfeited merchants access to restitution in the adjudication of cases across European jurisdictions.[40] Corsair patrol thus functioned as a form of surveillance, undertaken to enforce adherence to written agreements between jurisdictions, by extending political sovereignty over the open space of the sea, and the commercial space of the ship, in a manner that paralleled the way in which sovereign polities might lay claim to territory. Both the act of maritime interruption, and the award of restitution, could be accounted incidents through which a merchant's conduct became subject to the scrutiny of a corsair claiming political authority on behalf of a prince or polity.[41]

Litigation over maritime interruption extended the competition between peer polities over control of maritime exchange to the equally fluid and amorphous realm of legal jurisdiction. Here, too, the legal pluralism of medieval Europe, where multiple systems of law flourished alongside one another, complicated the resolution process. Between 1323 and 1333, for example, a suit advanced before Edward II of England (1284–1327), by the curia of Jaime II of Catalonia-Aragon (1264–1327), on behalf of the merchant Berenguer Leçois, became cause for reprisal when English authorities refused to resolve the matter unless Leçois appeared before them to support his accusation that English captains had seized his cargo of Flemish goods aboard two Majorcan ships between Sandwich and Calais.[42]

Conclusion: Traders, Raiders, and Law

Numerous studies have discussed the way in which piracy could become a source of merchant wealth as easily as a disruption. Notarial contracts recorded on behalf of thirteenth- and fourteenth-century Genoese, Venetian, and Catalan captains document merchant investment in expeditions *in cursum* through fiscal arrangements that duplicated those utilized to capitalize regular commercial ventures, but for their reliance upon loot

as a return.[43] The *Siete Partidas* specified divisions of loot between Crown and private investors in the kingdom of Castile.[44] Narrative sources and works of fiction attest this norm among commercial actors across Christian Europe.[45] Goitein's discussion of Jabbāra, amir of Barqua, moreover suggests that both Eustace the Monk, and the merchant corsairs of the Italian and Iberian peninsulas, had Muslim counterparts, as Jabbāra alternately engaged in commerce; attacked Byzantine and Tunisian ships; and swore allegiance, after 1051, to the Tunisian ruler.[46] Intersections between trade and maritime predation could even widen to encompass entire local economies.[47]

Contemporary Somalia presents similar confluences between trading and raiding, as the rise in piracy has been attributed, in part, to destabilization of the local fishing industry.[48] Taken together with the documented connection between merchants, corsairs, and pirates across the maritime societies of medieval Europe, such evidence supports Horden and Purcell's contention that maritime theft should be imagined as a form of economic 'redistribution', one which may sustain commerce that skates along the edges of moral legitimacy and political sanction.[49]

The dual status of medieval maritime theft as simultaneously legal and illegal certainly created markets, enriched merchants, and enabled emerging polities to vie for economic dominance. Economic competition remains only half the story, however. While Benton, Greene, and others have begun to consider legal pluralism as a factor in shaping the practice of maritime theft in early modern Europe, a review of the sources for medieval piracy suggests that these conditions may be traced to an earlier period.[50] Contention between medieval European legal systems transformed both merchant plaintiffs and the corsairs whose actions they lamented into agents of competition for political as well as economic capital. Corsairs vied for prerogatives of surveillance; plaintiffs for *justicia*: the settlement or redress of their particular grievance.

This legal competition, reflected in subjective, partisan application of maritime customary codes and statutory law, requires deeper examination. The twenty-first century struggle to assert the UN Convention suggests that it is never easy to identify pirates in the context of multiple jurisdictions and overlapping legal systems; and that attempts to do so may create opportunities for stakeholders invested in naming maritime marauders differently.[51] Perhaps, in seeking to better understand the impediments to the establishment of a common order on the modern seas, political analysts, historians, and students should look, not to the seventeenth century, but to the legal pluralism of medieval Europe.

Short Biography

Emily Sohmer Tai's research focuses upon the interaction between piracy, law, and commerce in the medieval and early modern Mediterranean. Tai's articles, reviews, and book chapters on medieval and early modern piracy have appeared in *Medieval Encounters, Mediterranean Historical Review, Itinerario, Medieval Trade, Travel, and Exploration: An Encyclopedia*, John B. Friedman and Kristen Figg (eds.), (Garland Press, 2000); and in *Seascapes, Littoral Cultures, and Trans-Oceanic Exchanges*, Jerry Bentley, Renate Bridenthal, and Karen Wigen (eds.) (Honolulu: University of Hawaii Press, 2007), also available in an on-line version at http://www.historycooperative.org/proceedings/seascapes/tai.html. She has been the recipient of grants from the National Endowment for the Humanities, the Ford Foundation, the Gladys Krieble Delmas Foundation, and the PSC-CUNY Research Award Program. Tai is an associate professor of History at Queensborough Community College of the City University of New York. She holds a BA in History and Classics

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Notes

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