

5 Privateering, Colonialism and Empires On the Forgotten Origins of International Order

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1 Introduction

Studying IR historically has a number of implications, ranging from methods and methodologies to ontological questions and theoretical perspectives. Historical IR, then, broadly speaking, invites a rethinking of the fundamental assumptions so long taken for granted in IR. For as we have argued elsewhere, stories about the past are constitutive of how we see both the discipline and ourselves (Leira & de Carvalho, 2018). This is especially true in a discipline, which hitherto has remained largely ahistorical. Yet, approaches in IR – for example, constructivism and post-colonialism – which to some extent have emphasized the importance of the past to our current predicament have nevertheless tended towards an overly Manichean world-view which ‘oversimplifies and politicizes the distinction between Orientalizers and Orientalized’ (see the chapter by Schlichte and Stetter, in this volume). This, in turn, contributes to levelling differences between different colonial and post-colonial settings and overlooking differences between different *situations coloniales*.

Taking historicity and the associated notions of *longue durée* and eventful history seriously should logically imply questioning such *facile* dichotomies. While post-colonial scholarship has provided path-breaking and important analyses of how imperial and colonial apparatuses continue to structure our modern world, these imperial and colonial apparatuses themselves need to be the analytically unpacked and scrutinized. One way of doing that, as Schlichte and Stetter suggest, is to shift the analytical gaze from units like the modern state (or even empire) to processes, practices, and institutions and associated modes of historicity. This has the potential to uncover complex temporalities as well as heterogeneity in both causes and outcomes. Focusing on processes over the course of a *longue durée*, we believe, offers yet another type of engagement with the historicity of empires and states, as it promises to uncover different aspects of their engagements than if one were to focus on their apparatuses of government and their development alone. Not least does our

engagement with privateering allow for a more legally nuanced historicity – one that showcases how the delimitation between legal (state) and illicit (non-state) activities is drawn up and eventually dichotomized. In fact, these dichotomies, which we today take for granted, are largely the product of specific historical contingencies rather than a unilinear drive towards the modern state. As Heyman and Smart have argued, zones of ambiguity or even illegality are deeply intertwined with state law:

they do not stand apart from the state, nor the state from them. Having grown in necessary connection, state law and evasion of state law must be studied together. Often, governments tolerate ostensibly forbidden activities; even, [...] ‘deviated pieces of the state’ ally with, or ‘condition’ illegal networks. Certainly the state does not always conspire with crime, but it is intriguing to inquire after the conditions under which governments and illegal practices enjoy some variety of symbiosis and those which result in greater or lesser degrees of conflict. (Heyman & Smart, 1999, 1)

Our argument here, then, largely revolves around a largely forgotten history of state and empire formation, which seeks to go beyond rectifying the historical record in order to bear on current debates about ‘failed states’ and illicit practices of (Heyman, 1999).

In this chapter, we seek to go even further, shifting the focus away from units, anchoring our analysis instead in international institutions. We do so by focusing on the institution of privateering, and how it developed in and around processes of trade, imperial expansion, and state-formation over a period of more than 600 years.¹ For the purpose of this chapter, privateering can be broadly defined as maritime predation authorized by someone with recognized legitimate (sovereign) authority. Focusing on privateering allows us to highlight both the persistence of past institutions and the extent to which the present breaks with the past.

Historicizing international relations through the lens of privateering, immediately gives lie to both standard periodization and dichotomous post-colonial understandings of the world. From a *longue durée* or ‘eventful history’ perspective, privateering indicates that rather than periodizing through breaks between mediaeval, renaissance, early modern, and modern periods, one central ‘event’ was the growth of maritime trade from the twelfth century and onwards, enabling various forms of marine predation, and another such ‘event’ was the emergence of naval

¹ Our understanding of institutions here springs from the English School, cf. Colas (2016) on privateering as a ‘derivative master institution’.

hegemony in the nineteenth century.² Privateering also belies neat static categorizations of ‘public’ and ‘private’, and the notion of a tidy development of state control over legitimate violence, as it continuously involved a plethora of different actors and was characterized by cooperation rather than gradual replacement. Likewise, privateering fits awkwardly within a standard post-colonial narrative. It emerged as petty squabbling between individuals of city-states, developed as a survival-strategy and a politico-religious tool for fledgling states in north-western Europe and quickly morphed into an empire-building strategy and a more regular institution of naval warfare. In this form, it was also adapted by hybrid actors in what would now be defined as the Global South, most prominently the so-called ‘Barbary’ regencies of North Africa, but also the American colonies fighting for independence from England and Spain. When it was formally ‘outlawed’ in 1856 by the Treaty of Paris, this was as a result of intra-European power dynamics, and not of relations between Europe and the wider world.

Privateering played an important role in the making and breaking of empires, and thus in the establishment of many of the macro-structures of the present (linking it thus to power, as suggested by mode 5). However, we will argue that privateering is perhaps most obviously present through its absence, and that the central mode of historicity, which connects the privateering past with our present is that of forgetting. In global politics, the Treaty of Paris of 1856 helped normalizing the idea of a modern state with a monopoly on legitimate violence and the oceans as a global common under the control of benign hegemonies. Ambiguities between private and public violence at sea were forgotten, and the pirate remembered as the evil Other to the ordered ocean. Also forgotten was the extensive ‘peripheral’ agency, obvious in how privateering was used time and again to oppose the leading powers of the day. In academia, forgetting privateering has been essential to establishing and maintaining a state-centric and land-based understanding of the world and political developments in it. In the following pages, we hope to challenge this forgetting.

Thus, in terms of engaging with historicity, we do so along three of the modes outlined by Schlichte and Stetter in the introduction. While we do engage with their first two modes to some extent, by showing how a specific form of history, which largely omits privateering from its core contributes to structure our understanding of European overseas expansion (first mode) and how a phenomenon over time is given new meanings, tweaked and changed while retaining elements from different

² Thus, privateering matches well with other recent foci of naval history, such as marine insurance (Leonard, 2016).

temporalities (second mode), and obviously with the sixth mode through our emphasis on contingency and transformations along non-linear pathways, this chapter is perhaps more important in terms of dealing with historicity in that it probes the possibility of a seventh (or a subset of the first) mode, namely that of ‘forgotten pasts’. This mode dovetails nicely with the chapters by George Lawson and Thomas Müller, which both deal with hidden histories, and how specific (key) aspects of past experience disappear from the core of how phenomena are historicized. This discussion is also relevant for the chapter by George Steinmetz. The question that becomes all the more pressing, then, is the role played by these forgotten or hidden histories. While giving a definitive answer is beyond the scope of the present chapter, we could nevertheless hypothesize that the extent to which certain aspects are successfully hidden or forgotten from our narratives about the past may be the condition of possibility of linear or progressive histories. Could it be, then, that only through forgetting can we project a specific progressive future, grounded in a ‘progressive’ past?

We will proceed as follows. First, we will provide a brief overview of the practice of privateering, its origins and changes. Second, we will show how privateering provided the impetus to colonize the American Atlantic coast and became a driver of imperial competition in the Americas, before it was used by colonies against their respective centres in their fight for independence. Finally, we will discuss how a focus on privateering forces us to question not only the state-centric ontology of IR, but also key post-colonial assumptions, through a discussion of the practice of privateering in the broader Mediterranean – the Barbary Corsairs. By way of conclusion, we draw attention to the historicity or *Geschichtlichkeit* of our focus on the *longue durée*, questioning not only periodizations and their aims, but also, through privateering, drawing attention to the extent to which the past still informs how we handle current problems and how the forgetting of privateering is central to how states and oceans are conceived of today.

2 Privateering: The Historical Trajectory of an International Institution

Despite being a common violent practice for around 600 years (from the thirteenth century to 1856), what we here refer to as ‘privateering’ is a woefully little understood phenomenon.³ While ‘piracy’ has been

³ The term is a partial anachronism, apparently emerging first in the middle of the seventeenth century (Rodger, 2014: 12), we use it hesitatingly for our entire investigation,

studied and celebrated in academe as well as in popular culture, privateering, which was a much more significant phenomenon, has been left largely alone, and even presumed to be simply a variety of the former, namely ‘legalized piracy’. While the term ‘privateer’ and ‘private-man-of-war’ are terms, which emerge only in the late 1600s (Pennell, 2001: 70), the activity and legal foundation of the activity dates back to the thirteenth century and the custom of reprisal. Maritime predation was by no means a case of well-defined and clear-cut legal boundaries. In fact, as Cheyette (1970: 54) has argued, ‘*prisias, reprisilias, marchas* – prizes, reprisals, and marques. To the men of the later Middle Ages, these terms all referred to the same thing’. As Rodger (2014: 6) points out, violence at sea was prevalent and largely ungoverned, and while there may have been pockets of authority governing some parts of the sea, there was yet no conception of right or wrong at sea, and ‘robbery under arms was a normal aspect of seaborne trade’.

Rodger (2014: 6) doubles down on this point when he underlines that ‘in the Middle Ages and the early-modern period, there were few non-combatants at sea’. The problem was thus how to govern maritime violence, how to allow for a limited form of reprisal in times of peace without disrupting the truces or peaces between princes. The solution became the application of the rules or reprisals, devised to deal with terrestrial violence, to violence at sea. The rules and laws governing seaborne violence became a way to regulate a certain amount of violence at sea also in times of peace, without disrupting truces negotiated on land.

As Neff (2005: 123) explains, the essence of reprisals was ‘the seizing of property belonging to the fellow nationals of an original wrongdoer’. Reprisals were thus a way for a wronged party to ‘obtain compensation for injuries or hostile acts, done by aliens who could not be brought to justice’. The authorization to undertake reprisals was granted through a letter of marque or reprisals.

Cheyette made the case that the distinction between privateering and piracy – between right or wrong at sea, so to speak, developed with the consolidation of monarchical power. In fact, he claims that they played a great part in helping about this consolidation. For monarchs increasingly saw their situation on land disrupted by violence at sea. Yet, as shown above, there was a need to allow for some degree of violence at sea as it allowed for the administration of a modicum of justice in a space in which monarchs were not yet attempting to monopolize force, in the way they were on land. The key became the monopolization of justice at

particularly since it could be argued that this specific term was coined to cover a new practice at the time.

sea. For where different lords and jurisdictions had claimed the right to address injustices and redresses in the past, during the fourteenth century monarchs sought to make it their sole prerogative to administer letters of reprisal and marque and adjudicate in matters of prizes (Cheyette, 1970). The fourteenth century thus saw the increasing codification of rules for violence at sea, rules which were to become central in the making of international law, and which were to govern maritime predation until 1856.

At any rate, the rules and practices of privateering remained relatively stable until the end of the sixteenth century, as the activity of French and English seafarers was still on the whole contained to the seas surrounding Europe. Thus, both the activity of privateering and the rules governing it survived the discovery of the New World, and even the first voyages beyond European waters by Iberian powers. What came to dramatically change this was thus not the fact that the European horizon had opened up, but the fact that powers who had been denied taking part in the spoils of colonial expansion by the Treaties of Tordesillas came to demand their share of it. In so doing, they were met with strong resistance from both Spanish and Portuguese ships. As French, English and Dutch seafarers ventured beyond European waters, the practices of privateering would change dramatically, even though the medieval rules governing it remained relatively unchanged.

3 New Worlds, New Religions and a Changing Medieval Institution

One of the reasons why privateering – after having been a relatively stable practice in European waters – came to change in character was that the practice no longer worked in favour of consolidating princes or ‘states’. Until the 1550s, as Cheyette (1970) has emphasized, the increasing rule-making and regulation of ‘privateering’ worked in favour of monarchs. It not only gave monarchs authority over the seas, but it also worked to increase their projection of sovereignty on land. Now, this had changed. France, England and the Dutch – the three European powers with arguably the most experience in ‘privateering’ – had been excluded from the New World by the Treaty of Tordesillas. In order to make it into distant waters, relatively weak financially after prolonged religious conflicts, these states turned to privateering.

Privateering allowed them many advantages over building up their own navies. Firstly, it was relatively inexpensive, as the main burden lay in private hands. Secondly, it allowed these endeavours to venture into forbidden seas – how else were they to capture Iberian prizes? Thirdly,

it allowed these states plausible deniability, as the state was not directly involved. Finally, and perhaps most importantly, in spite of all this, it was controlled by the state – albeit at a distance.

This was an age that was characterized by emerging seaborne empires, a globalizing balance of power and still ‘intermediate relationships between war and peace, and between public and private initiative’ (Grewe, 2000: 312; de Carvalho, 2015). We would go further and argue that privateering demonstrates how our contemporary understanding of public and private is itself a product of processes, which were not concluded until the nineteenth century. In their colonial endeavours, most states did not have the resources to project their military and political ambitions at sea. They therefore routinely relied on merchant shipping for advancing these: ‘Private merchant ships were recruited to participate temporarily in naval operations, just as warships were sometimes temporarily assigned to serve the privateers’ (Grewe, 2000). This reliance on private enterprise continued long into the nineteenth century – in spite of state navies having grown considerably stronger.

Privateering became the principal means of challenging the Catholic construction of the sea as a different kind of space, where control was granted by the Pope. Where the treaties of Tordesillas established Iberian empire through religious papal authority, a more secular conception of empire based on the emerging law of nations (*ex iure gentium*) provided challengers such as the French, Dutch and English with legal backing for their ambitions to trade freely where legal claims grounded in papal authority were not backed by effective occupation. Privateering was the weapon of choice of the challengers and came to reinforce both their ambitions for overseas influence, their penetration of the colonial trade, and their own colonial ambitions.

Huguenot privateering was temporally the first, but it lasted for a shorter time, and was different by virtue of being part of a civil war as well as the broader struggle (de Carvalho & Paras, 2015). However, the Huguenots were crucial both in providing harbour for Dutch and English privateers, and, perhaps even more importantly, teaching them the trade about sailing and plundering on the high seas and in the Americas.

4 Privateering in the Americas: Imperialism, Colonialism and Independence

Whereas the early English privateers soon looked to the Atlantic and the Caribbean, the early Dutch privateers were engaged in the immediate struggle for survival in and around the Dutch provinces, and later

in the European theatre of war. The lack of overseas engagement was due to the domination of the Dutch in European maritime trade. Apart from an interlude in 1585–88, when Spain was preparing the Armada, Dutch intra-European trade on the Iberian continued largely unabated between 1568 and 1598. The main turn towards offensive privateering came when Phillip III issued a trade ban against Dutch commerce in 1598, leading the States-General to systematically start issuing privateering commissions (‘t Hart, 2014: 136). Early privateering thus came under different guises, and different actors seem to have sought out different ways to ply this medieval institution.

English privateering, having emerged as an ad hoc tool to help co-religionaries in their continental challenges to Catholic Spain, had by 1600 become the main tool of maritime engagement of England. In the process, England had also turned from a polity focused mainly on securing the domestic strengthening of its reformation to a power that challenged Catholic supremacy wherever its ships would carry it (de Carvalho, 2014; 2016). This had happened without any serious ideological engagement. Granted, a number of writers and pamphleteers had engaged themselves in favour of a more sustained and ideological challenge to Spain. However, there had been little response from a queen and her council aware of the limitations of their military power. The importance of the practice of privateering cannot be overstated in the case of England. While promoters of overseas ventures lacked the means to launch large colonial ventures in the 1580s, two decades of privateering war against Catholic shipping had provided these means at the turn of the century. While English seamen lacked experience of the Atlantic in 1580s, that knowledge, including local knowledge of the West Indies, was common two decades later. While the English merchant fleet was modest before the war, it had experienced a boom over two decades (cf. Davis, 1962).

While the English saw to the Americas, the Dutch went east, with the most important colonial privateering ground being in Asia (cf. Borschberg, 2003; Phillips & Sharman, 2015). This was where most booty could be found, and where Dutch organization was strongest, with the East India Company (VOC) being funded in 1602. In its heyday, the VOC was the worlds’ biggest company, but, as noted by Emmer (2003: 7), ‘the commercial success of the VOC has obliterated the fact that, between its foundation in 1602 and the truce with Spain in 1609, the Company was much more an instrument of war than one of commerce’. The gains made from privateering then came to be essential for setting up the economic and military infrastructure, which allowed for further expansion in the ensuing periods (Borschberg, 2013: 52).

Privateering, which had only a century before been a largely atomistic practice, with little relevance for overall warfare and characterized by a number of related more or less institutionalized practices, was by the early seventeenth century not only a much more coherent institution with developing rules and regulations, it had proved to be a vital weapon in wars of survival and global reconfiguration. In the ensuing period, the institution would become further established, and spread to even more states, but it would not have the same transformative effects.

One obvious consequence of the intensification of privateering was that it became associated primarily with war. ‘Private’ use of force at sea would increasingly be seen as piracy. And, indeed, ends of wars would typically lead to privateers turning pirates. The first major example of this took place when the English made peace with Spain in 1604 and the Dutch and Spanish started negotiations about a truce in 1607. A number of former privateers (such as Peter Easton) then set up shop in Ireland and/or on Newfoundland and continued taking ships (Hanna, 2015: 64–67). Others took what must have seemed an even more radical route, taking their talents to ‘Barbary’, and setting in motion the Atlantic raiding of the Barbary corsairs (see below).

Even though some turned pirate or corsair, there was also plenty of room for regular privateering during much of the seventeenth century, with the Netherlands, France and England engaged in wars with others or with one another time and again through the century. Generalized privateering provided relatively cheap naval power, which could be mobilized and demobilized with much more ease than more regular naval forces. It should also be remembered that regular permanent ‘battlefleets’ were not established until the second half of the seventeenth century (Harding, 1999; Glete, 2000). And even when more regular navies were established, privateers continued to play an important role alongside them – during the first Anglo-Dutch war (1665–67), Dutch privateers captured roughly three times as many enemy ships as Dutch warships did, and during the second such war (1672–74) the capture rate was more than nine times higher (Harding, 1999: 104).

With such stunning success rates, it was possible to conclude that privateering was the most cost-efficient way of conducting naval warfare. This was at least what the French decided around 1700. During the reign as naval secretaries of Colbert (1669–83) and his son, the Marquis de Seignelay (1683–90), France tried, and partly succeeded, to establish the foundations of a navy to rival the English. However, there was no clear strategy for its use, and from 1695 onwards, Louis XIV decided to de-emphasize the navy. The opponents of the regular navy were not only the ones who would favour the army, but also those who favoured

a *guerre de course* (a privateer war) rather than regular naval operations. Thus, during the remainder of the Nine Years' War as well as the war of the Spanish Succession (1701–13/14), France relied to a large extent on privateers for their naval presence. The sheer number of prizes taken (more than 5300 during the first of these wars, and more than 7200 during the second) suggests that the effort was successful, and during the 1690s there was indeed a heavy strain put on English trade (Harding, 1999: 157–58, 176–77). After 1700, however, the English were able to bear the loss. Even though their numbers were significantly lower, English prizes taken also offset some of the losses. These wars mark the apogee of French privateering, which then subsided during the wars of the mid-eighteenth century, only to reappear at a reduced level during the revolutionary wars.

Even if privateering was the strategy of choice, the French state was heavily involved. At the outbreak of war in 1688, the secretary of the navy, Seignelay, for example, commissioned four frigates for privateering, and persuaded the king and several members of the court and the naval administration to partake in the endeavour (Pilgrim, 1975: 258; Bromley, 1987: 187). Furthermore, as Bromley (1987: 187–212, 215–20) has discussed in detail, the French navy regularly lent ships, sometimes with crews, to privateers, at least in the Nine Years' War and the War of the Spanish Succession. Detailed regulations were also put in place, most famously the seminal *Ordonnance de la marine* of August 1681, better known as the *Ordonnance Colbert*, which among a host of other issues specifies both regulations for privateering and consular affairs, and continuously updated. Official regulations were coupled with prize courts, which in the colonies were often the first regular institutions, and consular networks. The French were pioneers in developing both regulations and networks, but the Dutch and English soon followed suit (Leira & de Carvalho, 2010).

During the eighteenth century, privateering took on a somewhat more subordinate role in the naval wars, even though they remained an important supplement to the regular navies. However, the growth of the British navy, and the increased emphasis on the navy as a standing force, implied both a reduced scope for British privateers, and increased risks for the privateers of other states. Whereas privateering had been highly profitable for many French outfitters and captains in the wars around 1700 and on aggregate an activity where the rewards outweighed the risks, in the wars of the second half of the eighteenth century, it is not clear that French privateering created an overall surplus. During the Revolutionary and Napoleonic Wars, however, French privateering again seems to have been a surplus activity. On the British side, privateering remained highly

profitable in the wars of the middle eighteenth century, but decreasingly so thereafter.

On the other hand, when part of the British Empire revolted in 1775–76, privateering proved to be a key tool for the American colonists. A regular navy was way beyond the scope of the rebels, but privateering proved to be both efficient and effective. The same pattern was repeated in 1812, when US privateering also benefited from the already present French privateers, which had been a regular feature of the Napoleonic wars. Privateers were also engaged in the Latin American wars of independence, and again during the American Civil War. The use of privateering during the anti-colonial struggles warrants specific mention. Throughout the Americas, rebel authorities were issuing privateering-commissions to harm the trade of the imperial centre and bring in much-needed goods. The outfitters, captains and crews were sometimes locals, but particularly during the Latin-American revolts, foreigners were taking active part. Much like for the protestant polities of the sixteenth century, privateering was a weapon of the weak, and a remarkably effective one, at that (Starkey & McCarthy, 2014: 135).

However, the many parallel developments of state power, international law, steam propulsion, specialized warships and so forth made privateering less attractive both for states and for investors and captains. There was little protest when the treaty of Paris in 1856 simply declared that privateering was to be considered outlawed. The many practices, which had sustained the institution from the thirteenth century and provided it with the flexibility to change and adapt with the times, were no longer relevant.

5 The ‘Barbary’ Corsairs: Challenging Post-colonial Narratives

The final instalments of privateering in the Americas illustrate how peripheral aspiring states could turn the institution against the central powers of the international system. A more long-term example of the same, which further muddles the post-colonial dichotomy between centre and periphery, can be found in North Africa.

The history of Muslim/Christian hostility in the Mediterranean goes back to the ninth century, and for centuries ‘the Saracens’ were feared across southern Europe (Heers, 2003: 46), even establishing control over the alpine passes for half a century (Wenner, 1980). Around 1500, the term ‘Barbary’ was taken up in Italy, gradually coming to signify North Africa (Heers, 2003: 21). In the years around 1500, the Spanish and Ottoman polities were also both expanding their power

in the Mediterranean, leading to the establishment of different groups of 'corsairs',⁴ Maltese corsairs fighting for Christendom and Barbary corsairs fighting for Islam. Unlike most other maritime predators in history, for both parties the booty desired was primary humans to be sold or used as slaves. Apart from the occasional raid, piracy in North Africa had largely been littoral and a part-time income for a handful of men. With the Ottoman arrival, privateering/piracy became a polity-sanctioned major business (Heers, 2003: 31). In the sixteenth century, these men, under the Babarossas and their successors, doubled as (part of) the official Ottoman navy, and their leaders were Ottoman governors and admirals (Heers, 2003: 63). Gradually, through the seventeenth century, the cities (Algiers, Tripoli and Tunis chief among them, Sallee in Morocco was never under Ottoman control), became more and more independent, from the middle of the seventeenth century, Algiers was, for example, under Ottoman rule *de jure*, but the *de facto* power rested locally, with the leaders of the Janissaries and the corsair captains.

The corsairs have often been seen to occupy an ambiguous position in naval warfare, being something between pirates and a regular navy. Such an analysis, though, suffers from blatant orientalism. On the one hand, the corsairs were clearly the naval arm of the North-African regencies, often partaking in regular naval activities with the rest of the Ottoman fleet. On the other hand, within the political structures of the regencies, the captains had their own power-base, and acted more or less as they wished. This is a situation, which bears a strong resemblance to how the English organized their naval presence in the latter half of the sixteenth century, and it would seem as if it has been their exoticness rather than their practice which has branded them as pirates. This is not to say that the Barbary (or for that matter, Maltese) corsairs were just as other privateers. The legal system was quite different, with no element of reprisal, and no goal of weakening an opponent through crippling their trade. The main interest was capture of slaves, to be sold or ransomed.

Until the early seventeenth century, the corsairs relied largely on galleys, but with an influx of European privateers and pirates, some who turned renegado, others who remained Christian, larger sailing ships were incorporated into the corsair fleets. The corsairs then promptly cast their nets wider, raiding for slaves as far away as in Ireland and on Iceland in the 1620s and 1630s. As the navies of the large European

⁴ In English, the term 'corsair' is more or less synonymous with 'pirate'; but in French, it signifies a privateer.

powers grew in strength, these states were able to make treaties with the Barbary regencies, ensuring the relative security of their own trade and population. The weaker states, unable to enforce treaties if need be, had to pay regular tribute to ensure the same freedoms, and, as the regencies depended on a steady influx of slaves and booty, it would be their policy to break treaties or declare tribute insufficient at irregular intervals, so as to always be at war with at least some European state, and thus rightfully be able to attack their shipping (Earle, 2003: 82–85). Interspersed with occasional smaller wars and bombardments, the situation remained stable until France invaded Algeria in 1830, gradually colonizing the countryside, and leading the other regencies to renounce their corsairing activities.

And how did the European states react against the corsairs? The sixteenth century witnessed repeated Spanish attempts at invasion and conquest, with little lasting result. During the next centuries, we see very little of the attempts at domination, discipline and eradication which became so commonplace elsewhere. Almost from the outset, diplomatic interaction was seen as a possibility, with the Franco-Ottoman alliance established in the 1530s as the first, shocking, example. This alliance led to joint naval expeditions, and a Barbary fleet wintering in Toulouse in 1544–45 (Heers, 2003: 83–87). The good relations between France and the Ottoman empire, including the regencies, lasted for several centuries, and French ships generally could trade unmolested with the North African cities from the second half of the sixteenth century (Heers, 2003: 115). The French were not alone; the English were entering into diplomatic negotiations with Salée as early as in the 1620s (Ekin, 2006: 53), and from roughly the same time, the European states started appointing consuls to the Barbary ports. Being formally vassals of the Ottoman empire, the regencies could not receive diplomats in the name, but these consuls were generally considered to be more like diplomats than consuls, the French even being titled as *chargé d'affaires* in addition to the consular title (Windler, 2001a: 80). Once in a while, both the larger and the smaller European polities saw the need to redress the balance with the regencies, by bombarding the cities or even landing troops. By and large, however, the larger powers relied on treaties and diplomacy, and the smaller on the yearly bribes.

Even though some consuls suffered repeated indignities, the interaction between consuls and local authorities gradually became regularized. The interactions followed a pattern of repeated accommodation, with new and creative judicial spaces being created, allowing both parties to see the results as in line with their legal system (Pennell, 1994; Windler, 2001a; 2001b). Creative interaction and fluid judicial

practices were possible until the end of the eighteenth century, since 'the diversity of the legal situations that characterized relations between Europeans and Maghrebis, but also between Europeans residing in Tunis corresponded to the plurality of status and jurisdictions in Europe' (Windler, 2001a: 93). Furthermore, since the development of 'international' law during the eighteenth century happened through the gradual expansion of positive law, through treaties, rather than through application of 'the universalist principles of a natural law of nations', a distinct set of norms for interaction could emerge in the Mediterranean (Windler, 2001b: 274). Towards the end of the eighteenth century, with the gradual rise of nations, the turn to Enlightenment rationalism and rapidly increasing European power, plurality was no longer accepted in the same way.

Increasing European power, combined with the political shifts that took place and the changes in the episteme that brought the modern political vocabulary to the fore and established the possibility of a general history marked by steady progress, spelled doom for 'backwards' and 'uncivilized' areas across the globe. A sign of things to come can be found in North American discourse. As Sutton (2009) demonstrates, as late as in the 1760s, newspaper descriptions were neutral, discussing corsairs and implying both equality and the possibility of friendship. From the mid-1780s, the protagonists were increasingly called pirates: 'The shift in terminology reflected a transformation in the American's view of the Barbary pirates, from men that had to be treated honourably to men that could be violently terminated' (Sutton, 2009: 61). Increasingly, the Barbary pirates were also compared with the Native Americans, as threatening progress and prosperity: 'in the American mind, the corsairs no longer belonged to states that could be diplomatically reasoned with, but to a menace to be exterminated through warfare in the name of American freedoms' (Sutton, 2009: 61). Thus, the eradication of privateering based in North Africa following the French conquest of Algiers in 1830, can easily be read as part of the establishment of a dichotomous world of Self and Other, of civilization vs. barbarism.⁵

Overall however, the privateering originating in North Africa provides a three-century counterpoint to any tidy dichotomous telling of the story of Western ascendancy.⁶ The Ottoman Empire might, particularly around the outset of corsairing, have been considered Europe's 'demonic Other', but this Other was still a recognizable polity, which did

⁵ Cf. Keene's (2007) analysis of anti-slavery treaties in the same period.

⁶ Here we agree with Colas (2016), although we put somewhat less emphasis on economics and more on law and politics.

not represent a rejection of social order and discipline. Furthermore, as the centuries passed, the Otherness of the Ottoman Empire receded as regularized interaction replaced continuous war. The interaction with the regencies also demonstrates well the capacity for multiple forms of interaction in the classical age. Even though they were formally vassals of the Ottoman Empire, and polities of a radically different sort than many European ones, they could be treated as more or less equal in a ‘tabulated order of states’. Likewise, even if the treaties and diplomatic interactions with the regencies were different than the ones found between European states, they were still regularized and institutionalized. As Colas (2016: 855–56) argues, privateering in the Mediterranean helped create a local international society, and the practices associated with the ‘barbarians’ were crucial in defining what later became known as the ‘standard of civilization’. Barbary privateering should for centuries be seen as a partial producer of international society. However, when the epistemic shift around 1800 led to a re-conceptualization of an international society consisting of formally equal sovereign states bound by natural international law and engaged in linear progress and development, the Barbary regencies were in trouble.

6 Conclusion

The social institution we have referred to as privateering obviously changed dramatically during the six centuries covered in this chapter, particularly in content. Nevertheless, there was an obvious continuity in many of the forms of the institution. Although the legitimate right to approve privateers could be contested, at an overall level privateering remained a legitimate international institution. And in many ways, it became interwoven in an ever-tighter web of legal regulations, starting with letters of marque and reprisal, but expanding to practises of ransom and parole, regularized prize courts, detailed privateering regulations, expanding consular networks to handle prizes taken to foreign ports and regularized prisoner exchange.

Furthermore, change tended to be incremental, based on gradual development of new practices, which sometimes changed the existing practise (such as with letters of marque and reprisal), sometimes added a new layer to the overall institution. We do find one major period of change in privateering practice, in the decades around 1600. Two changes in particular, which were to have lasting effect on privateering, stand out. The first was the change from individual privateering commissions to a generalized sanction of privateering. This change increased the states’ direct interest in privateering and made it more exclusively an institution

of war. The second change was from privateering as a relatively local phenomenon, to a truly global one. Both of these changes were directly related to how the aspiring powers of North-Western Europe sought to break the Iberian imperial duopoly; privateering proved to be the key both to weakening the Spanish and Portuguese grip on the Indies, but it also provided the financial muscle which would make further imperial expansion by particularly the Dutch and English possible.

As we have suggested in the preceding pages, the legacy of privateering, how our present is historicized by this institution, has less to do with any appropriation of terms, than with the macro-structures and historicity of international society. Privateering is one of the key institutions through which the modern world and modern international society found its form, and its history demonstrates well the malleability of institutions over the *longue durée*, the importance of key events for institutional change, the heterogeneity of both causes and effects associated with one institution and the necessity of unpacking the institutions associated with empire and colonialism.

Still, as mentioned in the introduction, privateering is primarily present today through its absence, and the key mode of historicity, which connects privateering to our present, is that of forgetting. At a basic level, this forgetting concerns 600 years of the history of maritime violence and how it continues to influence our current world. More importantly, the forgetting of privateering, which was enabled by the Treaty of Paris has enabled the perpetuation of two central myths of current international relations. The first is the statist myth, which considers states with a monopoly on legitimate violence to be the key actors in international politics, and the controllers of the world's oceans. Forgetting privateering has enabled the construction of a dichotomy between legitimate state-controlled naval force and illegitimate piracy, with no grey-zones. Thus, all private use of maritime violence is considered piracy. The Somali example is instructive. In 2010, it was asked whether Somalia was becoming 'a new Barbary' (Murphy, 2011). In an ironic twist, a current misinterpretation of the situation in Somalia was historicized through reference to a 'Barbary' that owes more to triumphalist civilizational myths than the three centuries of Barbary privateering (cf. Leira, 2017). Closely connected to the statist myth, is the landed myth. This holds that political authority is built and maintained on land and that the world ocean, outside of periods of outright war, can be considered a peaceful common. Forgotten in this narrative is how the end of privateering was intertwined with the rise of the naval hegemony, which has regulated the sea for almost two centuries.

Tying together the threads, we can conclude with a double, and in some sense mirroring, irony of forgetfulness. On the one hand, forgetting privateering comes with the obvious cost of negating ‘peripheral’ agency. Taking privateering seriously makes facile post-colonial arguments much harder. On the other hand, forgetting privateering serves to obscure the origins of naval hegemony, and to naturalize what is historically an extremely uncommon phenomenon, namely the freedom to travel the high sea without fear of predation. Taking privateering seriously thus also makes facile arguments about the freedom of the seas much harder. Privateering has shaped our world, and that it is present primarily through absence makes for inadequate analysis of the past and insufficient creativity in imagining the future.

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