“Nature, we see, teaches the most Illiterate the necessary Prudence for their Preservation, and Fear works Changes which Religion has lost the Power of doing.”

–Captain Charles Johnson (1726-1728, p. 527)

# Pirate Law

The Caribbean pirates of the early eighteenth century (c.1716-1726) are history’s most notorious criminals. Their ranks included Blackbeard, whose real name was Edward Teach, Black Bart Roberts, who seized more prizes than any other pirate of the golden age, and Calico Jack Rackam, who inspired Johnny Depp’s character, Jack Sparrow, in Walt Disney’s *Pirates of the Caribbean* movie franchise. Only the Mafia approaches Caribbean pirates’ criminal celebrity, but large numbers of children do not dress up as mobsters to collect candy on Halloween.

Caribbean piracy was jointly produced. A one-man pirate ship would have had difficulty undocking, let alone overwhelming an armed merchant vessel. Successful piracy required the cooperation of a sizeable pirate crew. The average Caribbean pirate ship was crewed by 80 men, and the largest crews consisted of several hundred. This raises the question of how pirates, who, as criminals, could not rely on government to provide their crews law and order and had no compunction about murdering and stealing for private gain, managed to cooperate with one another to engage in piracy.[[1]](#footnote-1)

## A Word on Sources

The chief historical source for early eighteenth-century Caribbean piracy is Captain Charles Johnson’s *A General History of the Pyrates*, published in two volumes, the first in 1724 (revised in 1726) and the second in 1728. At one point, Johnson was widely believed to be the *non de plume* of none other than Daniel Defoe, author of *Robinson Crusoe*. In the 1980s, literary scholars thoroughly demolished the Defoe theory, leaving Johnson’s identity a mystery.[[2]](#footnote-2)

Some think Johnson may have been a maritime worker, others a journalist, still others a pirate. Whoever he was, no one doubts that he “had extensive first-hand knowledge of piracy” (Konstam 2007, p. 12), and while *A General History of the Pyrates* contains several errors and apocryphal accounts, “Johnson is widely regarded as a highly reliable source for factual information” on Caribbean pirates (Rediker 2004, p. 180).

Several other historical sources, which corroborate and expand on Johnson’s information, furnish additional insight into early eighteenth-century Caribbean piracy. These include works published by released pirate captives; published accounts of pirate trials; contemporary newspaper reports relating to piracy; and correspondence from colonial governors and other government officials dealing with pirates.

## Piratical Problems

Pirates were outlaws. Governments branded them *hostes humani generis*–enemies of all mankind–and denied them the legal protections of life and property that legitimate citizens enjoyed. A pirate “can claim the Protection of no Prince, the privilege of no Country, the benefit of no Law,” one British colonial official declared. “He is denied common humanity, and the very rights of Nature, with whom no Faith, Promise nor Oath is to be observed, nor is he to be otherwise dealt with, than a wild & savage Beast, which every Man may lawfully destroy” (*The Trials of Eight Persons* 1718, p. 6).

Pirates’ inability to rely on government-created law posed a crucial problem for their crews, whose ability to plunder merchant vessels depended on their members’ ability to live and work together for extended periods at sea. If pirates’ proclivity for theft and violence extended to their interactions with one another, cooperation within their crews would be impossible, making successful piracy impossible too.

The nature of pirates’ living and work spaces–pirate ships–exacerbated this problem. Pirate ships were converted merchant ships, which differed from their previous incarnations in two important respects: they carried about six times more men and vastly larger quantities of guns and gunpowder. Thus, pirate ships were highly explosive, inside of which seadogs were packed more like sardines. In this environment, a shipboard conflict between two pirates that ended in banging blunderbusses or even clashing cutlasses posed a risk to the ship and other members of the crew.

Piracy was dangerous business. Pirates’ prey were armed, and although most surrendered peacefully, not every victim submitted without a fight. Merchant crews had fewer men, but their swords and guns were just as lethal.

A pirate could avoid much danger personally by staying back in violent confrontations between his crew and its victims. If a pirate ran screaming below deck at the sight of his crew’s adversaries, his colleagues would probably notice. But if he evaded riskier situations in close-range combat, they probably would not; in close-range combat, his colleagues were preoccupied with avoiding their adversaries’ swords and shots themselves.

This posed another problem for pirate-crew cooperation. Apart from the captain, who directed battle, the success or failure of a pirate crew in confrontations with merchantmen did not depend significantly on the participation of any individual crewmember, who therefore expected to earn the same sum whether he fought bravely or barely fought. This gave individual crewmembers an incentive to stay back in confrontations. But if many crewmembers did that, pirate crews could not take prizes.

Certain decisions on a pirate ship, such as when the vessel should chase or run, how to maneuver when approaching a quarry, and when to fire a broadside, required snap decision making and unilateral directive. A pirate with the power to make such decisions on behalf of the crew was indispensable. Other important decisions on a pirate ship were less time sensitive but also benefited from having a pirate-in-charge. Provisions, for example, which were extremely important to men who spent months at sea, had to be rationed and distributed; someone needed to divide the spoils of seized prizes among the crew; and if rules were created to regulate crewmember conduct, pirates would require an authority to enforce them.

The need for such administrators created a further problem for pirates. A crewmember endowed with authority over important tasks could abuse his power, using it against other crewmembers for personal benefit. The consequences of officer abuse were more than hypothetical for pirates, many of whom had formerly sailed in the employ of merchantmen whose captains, pirates claimed, cheated them in payment, skimmed their victuals, and used disciplinary power to settle personal scores. If pirates could not control the officers who wielded authority over similar decisions on their ships, it would not pay to combine their efforts for piracy.

### Piratical Solutions, Part I: The “Pirate Code”

Unable to rely on government-created law to regulate their behavior but in at least as much need of regulation as legitimate citizens, pirates created their own law “for the better Conservation of their Society, and doing Justice to one another” (Johnson 1726-1728, p. 210). Hollywood pirates call this the “pirate code;” actual pirates called it their “articles.”

Each crew drew up and assented to its own set of articles, but since the problems that pirate crews confronted were similar, their articles were similar too. The following articles, which governed the pirate crew aboard the *Royal Fortune*, captained by Bartholomew Roberts, exemplify the key elements of pirate law:

I. Every Man has a Vote in the Affairs of Moment; has equal Title to the fresh Provisions, or strong Liquors, at any Time seized, and may use them at Pleasure, unless a Scarcity make it necessary, for the Good of all, to vote a Retrenchment.

II. Every Man to be called fairly in Turn, by List, on board of Prizes, because, (over and above their proper Share) they were on these Occasions allowed a Shift of Cloaths: But if they defrauded the Company to the Value of a Dollar, in Plate, Jewels, or Money, Marooning was their Punishment. If the Robbery was only betwixt one another, they contented themselves with slitting the Ears and Nose of him that was Guilty, and set him on Shore, not in an uninhabited Place, but somewhere, where he was sure to encounter Hardships.

III. No person to Game at Cards or Dice for Money.

IV. The Lights and Candles to be put out at eight a-Clock at Night: If any of the Crew, after that Hour, still remained enclined for Drinking, they were to do it on the open Deck.

V. To keep their Piece, Pistols, and Cutlash clean, and fit for Service.

VI. No Boy or Woman to be allowed amongst them. If any Man were found seducing any of the latter Sex, and carry’d her to Sea, disguised, he was to suffer Death.

VII. To Desert the Ship, or their Quarters in Battle, was punished with Death or Marooning.

VIII. No striking one another on board, but every Man’s Quarrels to be ended on Shore, at Sword and Pistol.

IX. No Man to talk of breaking up their Way of Living, till each shared a 1000 l.[[3]](#footnote-3) If in order to this, any Man should lose a Limb, or become a Cripple in their Service, he was to have 800 Dollars, out of the publick Stock, and for lesser Hurts, proportionately.

X. The Captain and Quarter-Master to receive two Shares of a Prize; the Master, Boatswain, and Gunner, one Share and a half, and other Officers one and a Quarter.

XI. The Musicians to have Rest on the Sabbath Day, but the other six Days and Nights, none without special Favour (Johnson 1726-1728, pp. 211-212).

Evidently, pirate ships were not the chaotic messes depicted in popular pirate fiction. Far from it: pirate ships were highly regulated, and the laws their crews designed to provide such regulation were a strange brew of the progressive and the puritanical.

Article I establishes democracy as the crew’s collective decision-making rule for important affairs; more about this below. All crewmembers were permitted to participate in pirate democracy, including black pirates, who composed a substantial part of many crews. One pirate, one vote.

Articles II and VIII prohibit theft and regulate violence between crewmembers. Article VIII also provides for the resolution of crewmember disputes. When a conflict could not be resolved peacefully, the quarreling parties were to duel on shore, protecting the rest of the crew and its ship. Johnson elaborates:

when the Parties will not come to any Reconciliation, [a crewmember] accompanies them on Shore with what Assistance he thinks proper, and turns the Disputants Back to Back, at so many paces Distance: At the Word of Command, they turn and fire immediately . . . If both miss, they come to their Cutlashes, and then he is declared Victor who draws the first blood (Johnson 1726-1728, p. 212).

Articles III and VI prohibit gambling and bringing aboard sexual companions–behaviors likely to lead to crewmember conflicts.

Articles IV, V, VII, and IX regulate externality generating behaviors, which, left unregulated, would negatively affect the entire crew. Thus, late-night drinking was permissible only above deck, allowing tired pirates to get their sleep; proper maintenance of one’s weapons was mandatory, rendering crewmembers continually ready for combat; and exit from the company was prohibited until the crew had seized booty of sufficient value, preventing pirates who had a change of heart mid-cruise from depleting their crew of manpower.

In a similar spirit, one of the articles that governed the pirate crew aboard the *Revenge*, captained by John Phillips, regulated smoking: “*That Man that shall . . . smoak Tobacco in the Hold without a Cap to his Pipe . . . shall suffer the same Punishment as in the former Article*” (Johnson 1726-1728, pp. 342-343). The *Revenge*’s crew did not create this law to spare its non-smoking members from the currently imagined effects of second-hand smoke; it did so to prevent its members from being blown to smithereens. The hold was the part of their ships where pirates stored gunpowder.

Articles IX, X, and XI stipulate the material terms of crewmembers’ piratical employment. Article X addresses pay: apart from the crew’s officers, who were paid a bit more, each member was entitled to a single share of seized booty. Article XI addresses vacation days: the crew’s musicians, who provided pirates entertainment at sea, were entitled to one day off per week.

Article IX addresses employment insurance. Pirates were not unionized. Nevertheless, they managed to establish a policy for which labor unions commonly claim credit: workers’ compensation. Pirates compensated crewmembers injured on the job out of the “publick stock.” After seizing a prize, but before paying shares, the specified sums were taken off the top and distributed to injured pirates according to the damages they sustained. Losing his right arm, for example, might entitle a pirate to more compensation than losing his left, reflecting the former’s higher value to pirates, most of whom were presumably right-handed. Such insurance reduced crewmembers’ incentive to stay back in violent confrontations with prey.

Pirate articles stipulated punishments for crewmembers who broke their crew’s laws. Punishments were usually corporal and ranged from highly undesirable to extraordinarily so. Marooning, bodily mutilation, and execution were common penalties for legal infractions, each of which is found in the *Royal Fortune*’s articles. Other pirate crews penalized legal offenses with lashing, or “Moses’ law,” as the *Revenge*’s articles called it; “keel-hauling,” which involved dragging a lawbreaker across the sharply barnacled hull of the ship; and the loss of one’s share of booty.

A crew’s articles did not and could not anticipate or unambiguously address every legal issue it might encounter. Pirates’ solution to this problem was judicial interpretation: “in Case any Doubt should arise concerning the Construction of these Laws, and it should remain a Dispute whether the Party had infringed them or no, a Jury was appointed to explain them, and bring in a Verdict upon the Case in Doubt” (Johnson 1726-1728, p. 213). Similarly, for legal infractions whose punishments their articles did not specify, pirate crews invoked a rule their articles did specify–democratic decision making, the lawbreaker “suffer[ing] what Punishment the Captain and Majority of the Company shall think fit” (*Boston News-Letter* August 1-August 8, 1723).

### Piratical Solutions, Part II: Pirate Democracy and Divided Power

Laws that cannot be enforced are of little use for regulating behavior. To enforce the laws their articles contained, pirates created the office of quartermaster. As Johnson described that office:

For the Punishment of small Offences . . . there is a principal Officer among the Pyrates, called the Quarter-Master, of the Men’s own choosing, who claims all Authority this Way, (excepting in Time of Battle:) If they disobey his Command, are quarrelsome and mutinous with one another, misuse Prisoners, plunder beyond his Order, and in particular, if they be negligent of their Arms, which he musters at Discretion, he punishes at his own dare without incurring the Lash from all the Ship’s Company: In short, this Officer is Trustee for the whole, is the first on board any Prize, separating for the Company’s Use, what he pleases, and returning what he thinks fit to the Owners, excepting Gold and Silver, which they have voted not returnable (Johnson 1724-1728, p. 213).

Additionally, the quartermaster distributed booty and provisions per the terms of his crew’s articles and mediated conflicts between quarreling crewmembers, acting as “a Sort of civil Magistrate on board a Pyrate Ship” (Johnson 1726-1728, p. 213).

Under pirate law, the quartermaster was democratically elected by his crew, which could also popularly depose him for any reason. Being democratically recalled often resulted in more than the loss of office. When pirate captain John Gow’s second-in-command, James Williams, grew violent and unruly, his crew “loaded him with Irons” and “resolved to put him on Board” a captured vessel “with Directions to the Master to deliver him on Board the first English Man of War they should meet with, in order to his being hang’d” (*An Account of the Conduct and Proceedings of the Late John Gow* 1725, p. 23).

In conjunction with their articles, pirate democracy greatly restricted the scope for quartermasters to abuse their authority. By specifying legally proscribed behaviors and penalties for those who engaged in them, pirates’ articles clarified whether a quartermaster’s punishment of some crewmember was justified or instead an abuse of office. Armed with this knowledge, pirates could use the reward of election and threat of deposition to ensure that quartermasters faithfully executed their office’s duties–and no more.

Democracy not only kept quartermasters honest; it encouraged the selection of crewmembers most skilled for that office. Aspiring quartermasters had to compete for crewmembers’ favor. Pirates who exhibited superior qualities for the job, such as fairness and skill in mediation, were the most likely to be elected.

 I have emphasized the powers that quartermasters exercised on pirate ships, giving short shrift to the powers of captains. So did pirates. Only while pirate crews were “in Chase, or Battle” did their captains wield special authority, when, “by their own Laws,” “The Captain’s Power is uncontroulable” (Johnson, pp. 139; 214). At all other times, pirate law treated the captain like any other member of the crew.

The modest scope of pirate captains’ authority was intentional. To avoid repeating their unhappy experiences as merchant sailors, pirates divided the authority traditionally concentrated in the office of captain between that office and the office of quartermaster, “so very industrious were they to avoid putting too much Power into the hands of one Man” (Hayward 1735, p. 42). Pirates’ idea was a now-familiar one: to constrain authority, it is useful to divide authority, enabling one office to “check and balance” the other.

Keen to prevent any encroachments that might deprive them of their authority, quartermasters had a strong incentive to monitor captains’ behavior and resist unlawful captain overreaching. As a result, Johnson remarked, “the Captain can undertake nothing which the Quarter-Master does not approve. We may say, the Quarter-Master is an humble Imitation of the Roman Tribune of the People; he speaks for, and looks after the Interest of the Crew” (Johnson 1726-1728, p. 423).

The quartermaster’s role in this regard was really a belts-and-braces approach, for pirate law provided crewmembers a more direct mechanism for controlling their captains–the same one it provided them for controlling their quartermasters: democratic elections. Crewmembers popularly elected their captains and could, and did, popularly depose them “as suited Interest or Humour” (Johnson 1726-1728, p. 194). It therefore behooved pirate captains to make good on the promises they made their crews, such as that which pirate captain Nathanial North made following his election to do “every Thing which may conduce to the publick Good” (Johnson 1726-1728, p. 525).

To say that pirate captains faced severe limits on their authority is not to say that they were unimportant members of pirate crews. Captains were vitally important. Their importance, however, derived from the necessity of a skilled military commander for successful piracy rather than from any sort of kingly status. An overly timid pirate captain would take too little risk in attacking potential prizes; an overly aggressive one would take too much. Profitable piracy required appropriately bold captains. It also required strategically clever captains who knew how to corner pirate-wary merchantmen. Pirates called these qualities of “superior . . . Knowledge and Boldness, Pistol Proof” (Johnson 1724-1728, p. 214).

Democracy helped pirates find “pistol-proof” captains. If the first captain that a crew elected turned out to be unfit for the task, the crew was not stuck with him, as it might have been if the captainship were an autocratic office. In such a case, crewmembers could recall their captain and elect a new one in his place, which is exactly what they did.

## Piratical Precedent for the American System of Government

The institutional features of pirate law should sound familiar. They are more-or-less those of the American system of government: constitutional democracy, separated powers, and checks and balances.

The reasons that pirates introduced these institutions on their ships should also sound familiar. They are more-or-less the reasons that America’s Founding Fathers gave in the *Federalist Papers* for introducing such institutions in American government: the need to empower authorities to facilitate the protection of life and property and the simultaneous need to constrain authorities so that they do not misuse their power.

The most notable difference between pirate law and the American system of government is not their substance but when they were created and by whom. Pirate law was created by mostly illiterate, violent criminals in the early eighteenth century. The American system of government was created by the most educated and respected Europeans of their era more than half a century later. Perhaps the Founding Fathers cribbed from pirates. Or perhaps Captain Charles Johnson was the *non de plume* of the spirit of the not-yet-born James Madison.

## Was Pirate Law Successful?

 Pirate law must have been at least somewhat successful in governing pirates or early eighteenth-century Caribbean piracy would not have existed. Left unsolved, the cooperative problems that pirates confronted would have precluded piracy. More than simply existing, however, for a brief period at least, Caribbean piracy flourished, much to the chagrin and vociferous consternation of Europe’s governments and international merchant community.

One way of evaluating pirate law’s success in governing pirates is to evaluate the success of pirate crews. It is impossible to know what the average early eighteenth-century pirate earned, and the scant available figures must be interpreted with caution: surely the largest pirate hauls were the most likely to be recorded. Still, these figures suggest that at least some pirate crews were incredibly successful.

The members of the early eighteenth-century pirate crew captained by John Bowen, for example, earned £500 per man in a single cruise–the equivalent of 20 years’ income for an average early eighteenth-century able seaman. The members of the pirate crew captained by Thomas White did better yet: each earned £1,200 from their expedition. In 1720, the pirates captained by Christopher Condent earned £3,000 apiece. And in 1721, those captained by John Taylor and Olivier Levasseur earned an astonishing £4,000 per man.

Many pirates, of course, were not so lucky. Nevertheless, those whose crews were fortunate enough to come across remarkably rich prizes were only able to take advantage of their fortune because they managed to cooperate for long periods at sea. And they only managed to do that because of pirate law.

## Piratical Ploys

Unsurprisingly, criminals clever enough to anticipate the American system of government were clever in other ways. Take, for example, the so-called “pirate press.” As most fans of pirate fiction know, pirate crews were composed predominantly of pressed sailors–pirate conscripts. Except they were not. Like many other pirate myths, the popular perception that pirate crews pressed most of their members into their service is the result of a pirate ruse–a crafty public-image campaign engaged in to improve the profitability of piracy.

Eighteenth-century governments punished piracy with hanging. Interested in avoiding this fate if captured, pirates discovered a legal loophole: courts would not convict persons whom pirates forced to join their crews. Banditry on the high seas was criminal, but being taken prisoner by persons who were engaged in banditry on the high seas and forced to do their bidding at sword point was not.

Pirates exploited this loophole by pretending to conscript sailors who joined their ranks voluntarily. Since pirates actually did compel some men to join their companies, the impressment defense was plausible–provided that the person claiming it could supply convincing evidence that he had been coerced.

Such evidence was not hard to concoct. After pirates overwhelmed their ship, merchant sailors who wanted to join up would pull aside the pirate captain or quartermaster and inform him of their desire to enter the company. The pirates would then make a spectacle of compelling the sailors’ service to convince those who did not desire to join that their comrades had been conscripted.

“[T]he pretended Constraint,” as Johnson put it, was in fact “a Complotment between Parties equally willing” (Johnson 1726-1728, p. 248). If a pirate crew were subsequently captured, its members could call credible witnesses who observed their supposed impressment to provide compelling testimony at their trials.

Some pirates took this idea a step further. They had witnesses to their ostensible conscription publish advertisements declaring it in popular newspapers. After being “forced on Board” a pirate ship captained by Bart Roberts, Edward Thornden, for instance, “desired one of his Ship-Mates . . . to take notice of it, and incert it in the *Gazette*” (*A Full and Exact Account, of the Tryal of all the Pyrates, Lately Taken by Captain Ogle* 1723, p. 14).

Pirates’ impressment ploy was far from perfect. Courts grew wise to it, and many pirates who claimed to have been conscripted were nevertheless convicted. Still, some managed to escape the gallows because of this ruse.

A much better-known piratical ploy is pirates’ infamous flag: Jolly Roger. Similar to their articles, each pirate crew had its own flag, but they flags were similar. The typical pirate ensign was black and featured a man, or some part of him, often in skeleton form. Hollywood pirates’ favorite variation depicts a skull and crossbones.

Most bandits do not announce their presence to their victims and potentially the authorities by publicly displaying a distinctive bandit logo. Yet that is what pirates did. From afar, pirate ships would fly legitimate colors–the flags of various European nations–so as not to alert their prey prematurely. Once they were closer, they would hoist the Jolly Roger, making their piratical identity known.

Such identification was very important to pirates. Their ships were not the only hostile vessels that eighteenth-century merchantmen might encounter at sea. Government-commissioned coast-guard vessels in search of “interlopers”–ships trading in violation of mercantilist prohibitions–also stalked the lanes that merchantmen plied. Coast guards seized allegedly contraband cargo from merchantmen they stopped, which their licenses permitted them to do. Often, however, their behavior shaded into piracy–or at least that is how it seemed from the perspective of accosted merchantmen and their governments.

As government-commissioned ships, coast-guard vessels were limited in how they could respond to merchant crews that resisted them. A coast guard could not murder fleeing sailors in cold blood if it ultimately caught up with them. Consequently, merchantmen were often willing to resist coast guards.

Faced with a pirate attacker, merchantmen’s calculus was different. Pirates had a well-deserved reputation for mercilessness toward resistors, which they earned by adhering to a simple policy: surrender or die. Pirates adopted this policy to minimize the cost of taking prizes. Violent confrontations with prey were expensive. They could injure or kill pirate crewmembers, damage the pirate ship, or damage the prize. More-peaceful piracy was therefore more-profitable piracy, secured, ironically enough, by pirates’ promise to slaughter resistors.

Convicted pirates faced the same punishment–execution–whether they murdered resistant victims or not, and pirates’ superior manpower and firepower strongly favored their victory in violent conflicts with prey. Thus, pirates’ deadly promise was credible, and they followed through on it, advertising this fact to the seafaring community by releasing captives who spread word of their deeds. Consequently, most merchantmen were unwilling to resist pirates.

To profit from this fact, pirates needed to ensure that their victims knew when they were being accosted by pirates rather than by coast guards. A victim could not discern its attacker’s identity from the appearance of its attacker’s ship; pirates and coast guards used the same vessels. But they did not use the same flags. With few exceptions, only pirates flew the Jolly Roger, which is precisely why they did so.

Coast guards overwhelmingly eschewed flying the Jolly Roger despite its ability to elicit merchantmen’s compliance because, for most of them, to do otherwise was to take an unacceptable risk. Pirates did not have valid government commissions that licensed them to accost merchant ships. If authorities captured a crew engaged in such activity without a valid commission, its members were tried as pirates. Coast guards, however, did have such commissions, which protected them from being prosecuted for piracy unless they engaged in flagrantly piratical behavior–such as flying the Jolly Roger. In that case, coast guards’ commissions no longer protected them, and they, too, could be tried as pirates.

Because of this fact, there was no free lunch for pirate imitators. To act like a pirate was potentially to face the legal penalty for piracy. Those actually engaged in piracy already faced this penalty. But for those who only wanted to imitate pirates, the difference could be the hangman’s noose. Thus, pirates flew the Jolly Roger, and most coast guards did not.

1. To answer this question, I wrote several articles and a book about pirates and their law (Leeson 2007, 2009a, 2009b, 2009c, 2010a, 2010b). This chapter is based on that work. [↑](#footnote-ref-1)
2. See Cordingly (2006, p. xx). [↑](#footnote-ref-2)
3. I.e. pounds. [↑](#footnote-ref-3)