The Strongest Hand and the Longest Sword: Colonial Politics, Trade, and the Courts in the Golden Age of Piracy (1695-1726)

Cameron LaPoint, 2013
Adviser: Michael Jarvis, Ph.D.
Department of History

“W hat will not thirst of gold lead men to attempt, that will not thirst of blood lead men to spare? When you are conscious that there is no sufficient power to check them?” When Governor Jeremiah Basse of New Jersey posed this question to William Popham of the Board of Trade in 1676, the English colonies in America were plagued by the anarchy of war, political imperatives, and the pirates of all nations who threatened their coastal trade. New Jersey, known at the time as the proprietary colonies of West and East Jersey, had no official fortifications, courts, or even a government with which to “not only protect the people but repress injuries and violence.” At a time when England was engaged in cyclical conflict during the Seven Years’ War (1688-1697) and later against France and Spain in the War of the Spanish Succession (1701-1713), the plight of New Jersey was certainly not unique to the rest of England’s colonies in America. Merchants of the proprietary and chartered colonies alike suffered from the leadership of ineffective and unscrupulous governors and the lack of jurisdictional power to combat pirates and those who harbored them on land.

In this context of England as an imperial power being stretched to its limits in the late eighteenth century, acts of maritime predation became increasingly frequent and a significant blight on mercantile trade between England and her American colonies. The profession of piracy became an attractive alternative for the seamen of the merchant shipping industry and the Royal Navy who received pay for their hands over other occupations were subjected to the vicissitudes of a dangerous life at sea. Pirates, in contrast to royal or merchant seamen, performed less work and enjoyed the benefits of higher pay in the form of shares of plunder and the absence of a captain with unscrupulous intent. Some historians argue that the autocratic presence of the captain on board merchant vessels drove many seamen to active piracy.

The pirates of the late seventeenth century benefited particularly from wartime chaos and a limited amount of direct Parliamentary governance as they engaged in illegal trade and plundered vessels of both friend and foe on these coasts, but also the West Indies over, which doth run trade ten times worse than a war.” After failing to solicit the aid of Governor Penn in ending men for his part, Basse paid mercenaries to help him apprehend suspected pirates in Virginia. Disappointed by the inability of the colonial governments to effectively suppress piracy, Quay was hoping to receive a reward of 10 £ each for each pirate he apprehended to offset the costs he inured as a loyal subject of the Crown.

Quay’s case illustrates the fear merchants had of the pirates, now newly unemployed from their former pirating professions. Colonial trade with England began to recover as demand for textiles, lumber, and tobacco increased after the signing of the Peace of Ryswick (1697) with France. Unfortunately for the “dly and empty” merchants in centers of commodity trade, their ability to profit from this excess demand for goods in the West Indies and England was tempered by reports of the successes of pirate captains in capturing merchant vessels.

When the Federalist Party of the private commission given to Captain Thomas Tew in 1674 by deposed Governor Benjamin Fletcher of New York and his descent into piracy off the coast of East Africa, as well as of the illicit deals linking Fletcher and his council to members of Captain Avery’s crew? Deputy Governor Markham of Pennsylvania was known to have granted legal protection to Avery’s crew and “had a great present made to him.” Captain William Kidd’s capture of the largest of the Grandes Marques in 1698 after the Earl of Bellomont had commissioned him to hunt down Tew was no less scandalous. The subsequent political backhald that Bellomont precipitated occurred mainly because Kidd’s “Piracies so alarmed our Merchants that some Motions were made in Parliament, to enquire into the Commission that was given him, and the Persons who filled him out.”

It was out of the sensationalized reports and rumors about the experience of the Crown’s officials and the barbarous plundering of ships by specific pirates that the Board of Trade and Plantations and the Commissioners of Customs took legal action. The passage of the Act of Trade in 1696 directly followed Avery and Tew’s capture of the Mogul Emperor’s cargo-Siris, in an attempt by the Board of Trade and customs officials to limit the illegal trade of East Indian goods originating from the English. This new Act of Trade undertook the embargo on colonial trade with European powers other than England and included a provision for the establishment of vice-admiralty courts. However, war was subject to diplomatic debate and scrutiny by the colonial assemblies and the governors and their respective councils up until the passage of the Act for the More Effectual Suppression of Piracy in 1700. Shortly after the passage of the Act of Trade, Lieutenant Governor Stoughton of New York and Governor Basse of New Jersey requested greater admiralty power in their respective provinces. Under the Act “the strongest hand and the longest sword will be the best title to estate.” Basse went so far as to assert that the prudent establishment of vice-admiralty courts in New Jersey would persuade the passage of an Act of the civil law and piracy at home. While these proposals were met with some enthusiasm by those in the colonial assemblies, common law proceedings before a sympathetic or
fearful jury it made even more unlikely that a pirate could be convicted for more than one act. Vice-admiralty courts were a matter of political conflict from 1697-1714, for their powers were still largely undeclared during this period. The capital punishment for pirates convicted in the courts was still in question from 1697-1698.23 A lack of regulation of court fees for the trying of actions against pirates caused various court fees to be too high. These high court fees, which continued into the eighteenth century, discouraged merchant seamen from bringing suit against able-bodied pirates and limited the capacity of able-bodied pirates to retain an adequate legal defense.24 Regardless of these deficiencies and the recalcitrance of the colonies, the Council of Trade saw the vice-admiralty courts as a great success by the time they were formalized in the Act for the More Effectual Suppression of Piracy. The Lords of Trade even went so far as to declare that they “have proved of great encouragement to legal trade.”25 The validity of this statement, however, was tested in the following two decades, during the height of pirate hegemony in colonial waters.

Pirates as Barriers or Facilitators of Trade?

Blackbeard “struck three lighted Matches under his Hat, which, appearing on each Side of his Face, his Eyes naturally looking fierce and wild, made him altogether such a Figure, that Imagination cannot form an Idea of a Fury, from Hell, to look more frightful.”26 Captain Teach, also Blackbeard, was among the most dastardly and feared pirates that sailed the New World. Although the Articles of War against pirates that existed from Britain and the West Indies, successful trade depended heavily on the swiftness of transactions and traffic within the harbor. Accounts of Blackbeard at Charleston expressed the merchants’ frustration with an inept and crippled South Carolina government in the aftermath of the Yamase War against the Native Americans in the southern colonies, and resentful merchants had been on record complaining of Governor Eden’s neglect of the pirates. The council of trade had expressed their concerns over the pirates’ use of the port of Charleston, and Blackbeard had been accused of robbing shipping agents. This was one of the reasons why Governor Eden had also on accounts blamed the government for incorrectly believing that the pirates would be effective and for misjudging the deceitful nature of pirates, many of whom had returned to their old ways after accepting His Majesty’s clemency. One assemblyman even argued that “most of those that took up with the Proclamation are now return’d to the same imployment which has rather prov’d an encouragement than in the end, that the three for one there was before the Proclamation was put out.”27 This argument would seem valid, given that Blackbeard and his crew, along with Major Bonnet, reportedly received certificates of pardon from Governor Charles Eden of North Carolina before returning to commit further acts of piracy.28

The immediate effect of piracy was a reduction in the commodities available to consumers because merchants became less willing to ship their goods to Britain and the colonies of the British Empire. This was true of the vice-admiralty courts for the merchants who shipped the commodities because they knew they had to pay for insurance on their vessels and cargoes. Costs also rose indirectly for the Crown, Britain’s profit from colonial trade was diminished by the costs incurred to supply goods for vulnerable merchant vessels.29 The failure of legal means to sufficiently eliminate piracy as a threat to trade in the colonies necessitated an event that is characteristic of any legislation in Blackbeard’s reign: the Royal Navy purloining colonial waters.30 But the very forces employed by Britain to clear the seas for free trade with her colonies also contributed to the desiccation of trade in vessels on both sides of the Atlantic.31

Indeed, the merchants of the American colonies suspected that the Royal Navy, being in colonial waters on the pretense of expelling piracy and press ganging seamen, conducted its own trade with the cargoes seized as illegal piracy when given to the British government.32 Governor Eden himself was accused of obtaining his supplies of rice, pork, and plantations that local merchants claimed that the Royal Navy had become a barrier to trade by carrying stolen cargoes on board His Majesty’s Ships.33 Laws even went so far as to attribute the loss of trade in the New World to piracy. His reputation as the man who brought down Blackbeard and his crew became so pronounced that in 1724 he began to be regarded even in the New World as a public benefactor. After 1720, the capture of the pirate ship Sultana in the Gulf of Mexico resulted in even more accusations against the vice-admiralty courts being used to frustrate trade instead of stopping piracy. After the war, Governor Eden was replaced by Governor James Wright, who, within a year after his time, should take or destroy any Pirate.”34 The news of Maynard’s victorious campaign and killing of Blackbeard enhanced Stockford’s reputation as being a harsh judge, and the capture and destruction of the pirate ship Sultana in the Gulf of Mexico resulted in even more accusations against the vice-admiralty courts being used to frustrate trade instead of stopping piracy. After the war, Governor Eden was replaced by Governor James Wright, who, within a year after his time, should take or destroy any Pirate.”34

The Role of the Governors and Justices of the Vice-Admiralty

In many ways the governors of colonial America were faced with the spirit of independence that began to distinguish British citizens from their colonial counterparts. As the previous examples of the improprieties of Governors Fletcher and Markham illustrate, the interests of some colonial governors often ran counter to the interests of the Crown and the powers that appointed and commissioned them. It would seem from Defoe’s account of Captain Teach’s notorious end at Ocracoke Island in 1718 that pirates may have been the impetus for this disruption of trade caused by private naval trading, but it also catalyzed the active, albeit marginally successful, legal warfare against piracy. The complicity of governors in the destruction of disgraced colonial merchants.

The Act for the More Effectual Suppression of Piracy also created new positions within the vice-admiralty courts that came to be known as Justices or Judges of Admiralty. These individuals presided over an increasing number of cases involving acts of maritime piracy during the height of piracy in colonial America. But by the 1720s, the common law courts and the vice-admiralty courts were the only source of justice for the pirates.35 The judges of Admiralty were thus charged with the responsibility of enforcing the law. Many of the cases heard in the vice-admiralty courts were the result of the pirates’ actions in the New World.36

The influence of the common law courts on vice-admiralty jurisdiction would not reach its zenith until several decades after the Act for the More Effectual Suppression of Piracy was passed in 1760, when Britain enacted greater restrictions on colonial trade with the Revenue Act (1764) and the Stamp Act (1765), the judicial independence of the vice-admiralty courts was threatened. The British government was now able to shift dramatically from the vestigial legal proclamations of the late seventeenth century.37 The interests of the colonial merchants and traders who had previously opposed the continuation of the vice-admiralty courts were protected by the growing hindrance of the common law courts to cases of smuggling.38 The Act for the More Effectual Suppression of Piracy resulted in a peculiar situation following Britain’s financially damaging Seven Years’ War (1756-1763) they encouraged a careful revision of the powers of the vice-admiralty courts in response to the New England colonists’ efforts to evade colonial trade and new and aggressive measures by the crown in an attempt to bolster the New England economies. In the years following these events led to the consolidation of powers traditionally held