PRIVATEERING: A HISTORICAL REVIEW
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It is popular in these, the last decades of the twentieth century, to deny or minimize the distinction between piracy and privateering. This denial creates a distortion of historical facts and obscures the vital role played by privateers in the settlement of North America in general and the attainment of independence by the United States of America in particular.

The purpose of this piece is to create a backdrop against which eighteenth- and nineteenth-century privateers can be seen, shorn of the prejudices against them. To accomplish this purpose, a broad-brush review from the earliest records of privateers to the present time will be made.

A privateer is defined as an armed private vessel commissioned by a government to cruise against vessels of an enemy. The term also refers to an officer or member of the crew of such vessel. The commission to cruise was issued in written form, most commonly a Letter of Marque. Possession of a Letter of Marque allowed the privateer to act in a military capacity, thus bringing it under international rules governing nations at war. This authorization was, of course, not extended to pirates. Early accounts reveal that the distinction between pirates and privateers was vague indeed, but with the passage of time the distinction became quite clear. The introduction of the Letter of Marque was an advance, since it attached rules and restrictions. The above definition pertains to the more modern privateer. In order to bring that definition into proper perspective, let us go back to ancient times.

Ancient Violence at Sea

Piracy and privateering existed on the Mediterranean Sea several centuries B.C. An account of a case of "right of reprisal" was found in an Egyptian papyrus of the reign of Ramses XII (c. 1118 - 1090 B.C.). Ormerod in Piracy in the Ancient World discusses in depth the common ancient origins of the pirate and privateer. He observed that "piracy and privateering were intimately connected, and the nomenclature in both cases almost identical. Moreover, the general practice of privateering in war-time gave a strong impetus to piracy of the ordinary type. Closely allied to privateering is the system of reprisals and distraint as recognised in ancient law."

The early pirates preyed upon the cattle of farmers and kidnapped well-to-do citizens for ransom. The products of their activities were considered by the community as a contribution to the gross national product. Through these activities the tribe was fed and clothed.

The plundering of neighbors was to the primitive inhabitant of the Mediterranean area a form of production, which was sanctioned and encouraged by the community, as long as it was directed against the people of a different tribe. Aristotle classified piracy as a means of production along with farming, hunting and fishing.

Julius Caesar was kidnapped and ransomed for the sum of fifty talents. The procedure for ransom illustrates the acceptance of such practices. While the exact method employed to ransom Caesar is unknown, the usual procedure was that a negotiator went to the pirates and an agreement was made upon a price. Then a feast was held to celebrate the occasion; the captive and negotiator were encouraged to attend. After the feast they bade him well with hopes of capturing him again. The agreement to release the captive was sealed with a handshake, and this was honored. It would have been bad for business to renege on the agreement.

In these early years there was no international law to guide relations between the citizens of various countries; therefore, when an individual was wronged by a citizen or government of another country, often the only recourse was by private reprisal. The "right of reprisal" was available to ordinary citizens even when there was no war. The state could undertake reprisals of its own, issuing right of reprisal to all citizens. This allowed them to plunder the citizens of another state even though there was no war declared. The Trojan War began as a reprisal for the rape of a woman.

Right of reprisal applied to civil, commercial, and criminal wrongs committed against individuals. Thus, a citizen who had a relative murdered by a citizen of another country could, under the right of reprisal, kill three citizens of the offending country, or he could pillage the country.

Another and lesser form of permission
was a Letter of "Let Pass." This letter was issued to English vessels in the West Indies. It merely identified the bearer and requested that he be allowed to pass. These were sometimes honored and sometimes flung aside contemptuously.7

By the time of Queen Elizabeth I, England was Protestant, Spain under Philip II was rigidly Catholic, and France, the long-term enemy of England, was in the throes of religious strife between Protestants and Catholics. Suddenly, Spain was England's main enemy and, by means of its North American gold, was gaining strength and territory. Meanwhile, England, contrary to popular perception, was not yet a major sea power. In 1585 relations between Spain and England collapsed and Spain seized all British merchant ships which happened to be in Spanish ports. Queen Elizabeth I immediately began issuing Letters of Reprisal to counter the Spanish action. The original Letters of Reprisal were issued to allow merchants to recover merchandise they lost on the high seas and, in this case, while in port. These letters were issued for six months and allowed the merchant to recover only the amount lost. In order to obtain a letter, the merchant had to have a witness who could accurately describe the loss. The government, of course, received a percentage of the value of the captured prize. Privateering was initially tightly controlled under Queen Elizabeth I, but control gradually lessened as government officials began taking payments, rather than testimony, in issuing letters. The Queen invested in privateering as a private citizen.8

After the Spanish Armada came against England in 1588, privateering grew rapidly. Approximately one hundred letters per year were issued by England in the years following that event. English privateers could make a handsome profit and perform a noble, patriotic, and religious duty in one fell swoop. They often gave their ships religious names. John Watts, Sir Walter Raleigh, and Sir Francis Drake were among the most active privateers during these years.9

Raleigh selected the fateful site of Roanoke in which to settle his colony. The selection was based principally upon its suitability as a base for privateering and not as a good place to found a colony.10 The Roanoke Colony was neglected in part because privateering opportunities took precedence over efforts to send relief to the colonists. The colonists were lost, never to be seen again by Europeans. This was not the first instance of callousness on the part of Raleigh, who had earlier killed over six hundred men, women, and children in one day in an Irish town after having promised to spare them if they surrendered.

By the eighteenth century piracy was greatly diminished, but privateering was growing rapidly in activity and popularity. England instituted the Letter of Marque in June, 1739. France institutionalized privateering by leasing its naval ships for that purpose and creating a pension system for privateers. England, France, Spain, and America had large contingents of privateers at their disposal. Governments benefited from the privateers by not having to invest in capital costs of shipbuilding and vessel operation and also from the revenue generated by their cut of the prize money. Moreover, the government could order the privateers to hit specific enemy targets, as when Queen Elizabeth I ordered the attack on the Spanish Armada. In the eighteenth and nineteenth centuries privateering was dominated economically by gentlemen, merchants, and government officials. In America, John Paul Jones and Jean Lafitte were among the most famous privateers. By the time of the War of Jenkins's Ear and King George's War (1739 - 1748) privateering was well established in America. This latter war was popular in America because it allowed for profitable privateering.11

American Revolutionary War

The Continental Congress, in its Resolution of November 25, 1775, recommended that each state set up vice-admiralty courts to hear cases of prizes brought in by privateers. After the establishment of the U.S. Supreme Court in 1779 that court also heard such cases. These courts administered Prize Law under the Law of Nations. This meant that prize suits and claims arising from privateering activity were adjudicated not by state or municipal law, but under the broader Law of Nations. In some instances the states and the U.S. Supreme Court had joint jurisdiction. The U.S. Supreme Court heard so many cases involving prizes that it had a world-wide impact on such law. Only the U.S. Congress could hear appeals.

Among the rules of privateering:
- only ships belonging to the enemies of the nation issuing Letters of Marque could be taken; thus, they could operate only in times of war
- the flag being flown on the prize was
decisive in identifying the country it represented
- the privateer, however, could legally fly the flag of another country as a ruse
- the privateer could board and inspect any ship, letting neutrals go
- prizes were not to resist
- all prizes taken were to be brought to a vice-admiralty court
- privateers who took unlawful prizes were liable for actual and punitive damages, and bond was posted as surety.

Without privateering, the outcome of the American Revolution may have been quite different. The number of government vessels operating during the war diminished from thirty-one in 1776 to seven in 1782, while more than two thousand privateers were active. These privateers captured approximately three thousand British vessels during the war; approximately 2,500 of these were merchant vessels. Privateers were treated as heroes all along the U.S. eastern seaboard.

**War of 1812**

Privateers provided a valuable service again in the War of 1812. Much of the government fleet was bottled up for part of the war and while it was out of action the privateers shouldered most of the burden. Congress was so dependent upon them that a pension fund was established for privateers who were wounded in service, and a bounty of one half the value of a warship captured or destroyed was offered. In a further effort to encourage privateering, Congress also expedited sales of prize goods, and reduced some fees and duty, which amounted to about 40 percent.

Privateers went into the English Channel and took or destroyed ships at the doorstep of the enemy. In one raid, the Governor Thompkins stripped and burned fourteen prizes in the English Channel and the Prince-de-Neuchatel captured or destroyed one million dollars in British property in a single cruise.

The United States Navy consisted of just twenty-two vessels but there were 526 privateers in operation. The prizes taken by privateers numbered at least 1,341.

**Republic of Texas**

The Republic of Texas issued Letters of Marque, and for the most part was not as concerned with accountability as other governments had been. They issued blank letters that were filled in by the interested parties, and apparently no bond was required. The Republic had no admiralty courts in which to condemn questionable prizes.

**Civil War**

When the U.S. went to war with Mexico in 1848, the Mexican maritime presence was in such poverty it was not felt that a privateer force was needed. At the beginning of hostilities in the War Between the States the same thinking prevailed. Initially no provisions were made by the Washington government for issuance of Letters of Marque. However, privately armed vessels from New York and other states representing the Union steamed forth against the Confederate privateers without commissions or Letters of Marque, thus acting as true pirates. Prizes from these private northern ventures were sent to admiralty courts. Later, some of the vessels were bought by the navy and those manning them were enlisted in the navy, but this was after the privateer/piratical actions were completed. When the owners of the Pembroke applied for a Letter of Marque the government demurred on the basis that issuance of such a letter would be tantamount to recognizing the Confederacy as a separate nation at war rather than an insurgent group. The government proposed instead "letters permissive." The ship's owners rejected this offer. In 1863 a law was passed empowering the President to issue Letters of Marque. The navy chose instead to bring such vessels into the navy department and appoint officers to manage them, providing a façade of legality to their activities. In this manner they could claim the moral high ground.

Thus the privateer activities of the Union were unauthorized or disguised to give them pseudo-legitimacy. The Union captured a Confederate privateer carrying a Letter of Marque, but refused to honor the letter. The Washington government proposed to treat the privateers as pirates. This proposal stirred a storm of controversy at home and abroad. President Jefferson Davis wrote President Lincoln that if the threat were carried out he would retaliate against Union prisoners of war held in Confederate camps. The privateers were paraded in public but did not suffer the ultimate penal fate of pirates.

Upon the declaration of war, the Confederacy immediately authorized the issuance of Letters of Marque. High standards...
were set and rigidly enforced for such issuance. Among other requirements, a bond was demanded of prospective privateers. Confederate privateers operated with enthusiasm, skill, and fortitude, wrecking much havoc upon Union commerce. Confederate privateers operated in a limited manner in the Pacific, where they sought Spanish gold and oil from the U.S. fishing interests. Confederate privateers developed the only privateer submarine known to history, the Pioneer.

America put such value on privateering that it was one of a few nations that refused to sign an accord banning the practice, the Declaration of Paris of 1859. It was not until 1890 that America banned privateering.

Without doubt, the isolation of the high seas and the excitement of the chase provided an atmosphere in which the ephemeral line between pirating and privateering could easily be crossed. Indeed, some were now pirates and then privateers. Nevertheless, there was, as has been shown, a legitimate difference between these two activities. The contribution of privateers to the independence and protection of early America should not be lost as a result of the confusion between the two activities, nor should the debt owed to them be forgotten.

Endnotes
2. Ibid., p. 61.
3. Ibid., p. 68.
4. Ibid., pp. 32-33.
5. Ibid., pp. 62-63.
6. Ibid., p. 73.
10. Ibid., pp. 13-14.