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RESEARCH ARTICLE

On Capture

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Abstract

Drawing on the articles in this forum, the essay considers continuities in the relation of raiding to regional reordering and reflects on capture as a sociolegal phenomenon. It comments on three dimensions of capture: the moment of capture, the transformation of booty into property, and the wider legal and institutional context of capture, from protection arrangements to jurisdictional politics.

Keywords: piracy; privateering; raiding; captivity; regions

It was an honor to be invited to deliver the inaugural Sylvia Thrupp lecture, and it is a privilege to have the chance to engage with three distinguished scholars who draw connections to their own work. Judith Scheele, Jatin Dua, and Nathan Perl-Rosenthal raise fascinating questions about the extent to which the history of privateering in the early nineteenth-century Atlantic world informs understandings of raiding and interpolity order in other regions and periods. Their insights also prompt reflections on capture as a sociolegal phenomenon.

In calling Atlantic privateers and pirates "sea raiders," I have sought to reorient the study of maritime violence by shifting attention away from the boundary between lawful and unlawful predation and by linking maritime captures to raiding on land. The conjuncture of proliferating states and commercial expansion in the early nineteenth-century Atlantic generated distinctive regional features, but we also find similarities to patterns of raiding and imperial policies in the Mediterranean, Pacific, and Indian Ocean worlds and in vast inland territories of the Americas, Eurasia, and Africa. Spaces that historians used to characterize as arenas of imperial expansion are better understood as complexes of capture.[1] We can identify a "global regime of plunder" that infused lived experience and political

[1]Gabriel Rocha develops this point in connecting the capture of the resources of the commons to the capture of humans in *The Atlantic Acceleration: Empires and Uprisings from the Oceanic Commons, 1400–1560* (Philadelphia: University of Pennsylvania Press, forthcoming).

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formations across the ancient, medieval, and early modern worlds.[2] Further, as Dua reminds us in his essay in this forum, raiding and capture continue in various forms into the present.

This perspective allows us to view the early nineteenth-century Atlantic as one among many settings where conflicts over capture became focal points in regional transformation. As I was writing "Piracy as Political Prism," I had in mind "Ordering the Oceans," a chapter in *Rage for Order*, the book I coauthored with Lisa Ford about British imperial reordering in the early nineteenth century.[3] That chapter connects two phenomena that are often analyzed separately: the patchy Atlantic regime aimed at ending the slave trade and the sprawling British anti-piracy campaign in nineteenth-century Southeast Asia. In both settings, politically useful comparisons of slave trading and piracy proved legally unworkable. Rulings in Atlantic prize cases rejected the analogy, affirming that slave trading was not, like piracy, defined by all states as a crime under the law of nations. British officials in Asia came up against the limits of piracy as a model of universal enmity as they repeatedly balked at extending imperial criminal jurisdiction over foreign raiders. Even the prosecution of Iranun slavers caught in the act of attacking vessels became entangled in debates about whether the raiders, who claimed to be privateers of the sultan of Sulu, could be punished as pirates. While failing to solve interlocking puzzles of sovereignty and jurisdiction, British officials justified naval actions against supposed pirates, including bombardments of villages on the Borneo coast, by defining the attacks as necessary measures for the protection of British subjects. Ford and I concluded that the resulting regional configurations, although hardly providing clear templates for the application of international law to problems of regional ordering, resembled "the compromised and constrained international legal framework of our own time." In familiar fashion, regional orders were structured around "the laws and the whims of states with hegemonic ambitions but weak and incomplete enforcement powers."[4]

Elsewhere in the same period, maritime violence was pivotal in regional reordering. The rise of a new Mediterranean order in the early nineteenth century centered on treaty negotiations with Barbary state rulers and inter-imperial violence against their sea raiding.[5] Terrestrial imperial raiding shared a similar logic and structure, as illustrated by serial small wars against semi-sedentary Indigenous Americans and armed incursions against Pacific islanders.[6] In the second half of the nineteenth century, empire-states began to recast such imperial violence as an internal matter—a tool of domestic order—while at the same time asserting the West's purview over international law, including the laws of war. As piracy and other forms of raiding continued, regulatory thrusts in earlier eras influenced strategies for organizing and legitimating, as Erik de Lange puts it, "repressive action against all sorts of perceived threats."[7] The transposition of piracy to terrorism—with both

[2]Lauren Benton, *They Called It Peace: Worlds of Imperial Violence* (Princeton: Princeton University Press, 2024), pt. 1.

[3]Lauren Benton and Lisa Ford, *Rage for Order: The British Empire and the Origins of International Law, 1800–1850* (Cambridge: Harvard University Press, 2016), chap. 5.

[4]Benton and Ford, *Rage for Order*, 147.

[5]Erik de Lange, *Menacing Tides: Security, Piracy and Empire in the Nineteenth-Century Mediterranean* (Cambridge: Cambridge University Press, 2024).

[6]Benton, *They Called It Peace*, chap. 5.

[7]De Lange, *Menacing Tides*, 306.

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phenomena represented as forms of universal enmity despite persistent jurisdictional and definitional problems—was one result; the gathering strength of calls for the removal of limits on state power was another.[8]

These findings underpin *historical* arguments about raiding and regional reordering. They also inform arguments about the character of capture as a *sociolegal* phenomenon. In showing that raids served as catalysts for restructuring political order in other places and periods—the Mediterranean in the eighteenth century, the Sahara in the nineteenth and twentieth centuries, and the Indian Ocean in the twenty-first century—the essays by Scheele, Perl-Rosenthal, and Dua in this forum point to capture's repeating, elemental features. We might group these qualities of capture under three headings: the moment of capture, the processes guiding the transformation of booty into property, and the ways that capture fit within a matrix of institutions and legal practices, including protection arrangements and jurisdictional conflicts.

Consider first the choreography of capture. Information about the moment of capture is available in scattered sources, most notably in testimony in court cases and diplomatic correspondence about captures. In the raids of the *Irresistible* that I analyze in this forum, for example, a handful of crew members gave detailed depositions about what transpired during attacks on individual ships. In other prize cases, as Perl-Rosenthal discusses in his essay, details about the moment of capture emerged in testimony and in information gathered by captors. The process of interpreting the lawfulness of captures began with this information gathering, an exercise that included scrutiny of ships' papers, inquiries about vessels' itineraries, inspections of ships' rigging and equipment, conjectures about the origins of cargo, and the perusal of flags and letters on board.[9] Other information about the events of capture surfaces in privateers' logbooks, correspondence by merchants and officials, insurance records, and a scattered array of other sources.

Many of these accounts reveal strategies of "legal posturing," the crafting of narratives to prepare for possible legal entanglements.[10] Captains' choices of which flags to hoist, their communication with captains of other vessels, their methods of boarding, and their management of crews and cargo—these and other actions were described in ways intended to support captains' efforts to evade legal jeopardy. Crew members, too, patched together exculpatory narratives, often rehearsing stories of how they were coerced to engage in unauthorized raiding. To a plethora of known examples, Scheele adds an account of raiders in Algeria trying to shed responsibility for an attack on a caravan by blaming French orders to conduct raids.

Scheele then offers the important qualification that not all behavior during captures amounted to legal posturing. This valuable insight reminds us to pay attention not only to what the sources tell us about the moment of capture but also to what is missing from these accounts. Violence during captures was routinely underreported. Recent research affirms both that captive taking was an integral part

[8]Lawrence Douglas, *The Criminal State: War, Atrocity, and the Dream of International Justice* (Princeton University Press, 2026); Benton, *They Called It Peace.*

[9]See especially Nathan Perl-Rosenthal, "Reading Cargoes: Letters and the Problem of Nationality in the Age of Privateering," in Lauren Benton and Nathan Perl-Rosenthal, eds., *A World at Sea: Maritime Practices and Global History* (Philadelphia: University of Pennsylvania Press, 2020), 75–88.

[10]On "legal posturing," see Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900* (Cambridge: Cambridge University Press, 2010), 24, 112–20.

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of most raids and that, whatever their ultimate intentions, raiders who targeted slave ships and slaving caravans had to reproduce systems of violence in order to hold and transport captives. Historians of the early modern Atlantic and Caribbean have documented systematic raiding by Europeans to seize captives from both Indigenous communities and European settlements.[11] Here and elsewhere, findings suggest that we have only scratched the surface of pervasive violence against female captives.[12] Scholars show, too, that violence was built into captures on land and sea even when slaving was not the principal object of raids. For example, the abolitionist-inspired campaign to capture slave ships produced systemic, often deadly violence against "liberated Africans."[13] In many cases, we simply do not know the fate of captives seized by would-be privateers, as in the case of the Portuguese slaver *Paquete do Maranhão* captured by John Daniels on the *Irresistible*. It is reasonable to infer that even privateers who styled themselves as revolutionaries and agents of Enlightenment thought participated in harsh regimes of violence against captives.

As this example suggests, claims that certain kinds of captures were peaceful merit close attention. Although most captains and crews of merchant ships readily surrendered to privateers without a fight, detaining ships and boarding them were not uniformly nonviolent acts. The evidence is in the sources if we look—in the easy slide of some privateers into slave trading, for example, and in the routine dangers of all captures. Recall that one of the criminal cases brought against Daniels involved a murder charge for ordering the *Irresistible* crew to fire on a surrendering British vessel, a volley that caused the captain's death.

Imperial agents and officials recognized that it was prudent not only to play down or disguise violence but also to render the use of force as routine or necessary. A key legal approach was for raiders to represent themselves as authorized agents in war—by definition, privateering encapsulated this strategy. But captures, as we have seen, often stretched the temporal and spatial limits of war and blurred the boundary between public and private violence.[14] Legal ambiguities connected the regulation of capture to a wider ambit of institutional and legal practice.

The insertion of captures in this broader framework is especially visible in the transformation of booty into property. A seemingly well-defined legal logic generated doctrinal adaptations while reverberating through institutional fields and sets of cultural practices. Legal historians note the influence of the Roman principle that enemy property became the property of captors, a doctrine based on the capture of wild beasts as a model for the acquisition of property. The analogy infused legal tracts and practices shaping European property law as well as discourses about claims to imperial territory.[15] Prize adjudication belonged to this tradition. As Perl-Rosenthal

[11]Casey Schmitt, *The Predatory Sea: Human Trafficking and Captivity in the Seventeenth-Century Caribbean* (Philadelphia: University of Pennsylvania Press, 2025); April Lee Hatfield, *Boundaries of Belonging: English Jamaica and the Spanish Caribbean, 1655–1715* (Philadelphia: University of Pennsylvania Press, 2023), chap. 3; Rocha, *The Atlantic Acceleration.*

[12]From a vast literature, see, for example, Juliana Barr, "From Captives to Slaves: Commodifying Indian Women in the Borderlands," *Journal of American History* 92, 1 (June 2005): 19–46.

[13]Jake Subryan Richards, *The Bonds of Freedom: Liberated Africans and the End of the Slave Trade* (New Haven: Yale University Press, 2025).

[14]Benton, *They Called It Peace*, chaps. 1 and 2.

[15]James Q. Whitman, *From Masters to Slaves to Lords of Lands: The Transformation of Ownership in the Western World* (New Haven: Yale University Press, 2025), 162. And see Lauren Benton and Benjamin Straumann, "Acquiring Empire by Law: From Roman Doctrine to Early Modern European Practice," *Law and History Review* 28, 1 (2010): 1–38.

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notes, prize courts exercised jurisdiction over seized ships and cargoes and could not try or punish pirates or slavers. The courts by definition straddled legal and political systems since they adjudicated captures in wartime.[16] Given its focus, it is tempting to view prize law as paradigmatic in the regulation of capture. But prize courts were also part of a capacious framework that extended across a matrix of institutions, broadly defined, from customary commercial relations to the exercise of jurisdiction by household heads, town councils, religious officials, planters, and other legal authorities.

The example of ransom illustrates this varied institutional mix. Rather than asserting permanent property claims, some raiders sought profit in exchanging captives or goods. The early modern Mediterranean hosted an elaborate system for ransoming captives across religious lines, with intermediaries (Trinitarian and Mercedarian friars, Jewish merchants, and others) and processes for raising ransom that reached across institutions and into remote corners of the region.[17] In the Americas, imperial agents readily adapted ransoming procedures to encourage and manage vast systems of slaving that in turn shaped the contours of colonial governance.[18] In Somalia, as Dua discusses, the capture of vessels for ransom depended on the workings of financial and insurance markets supported by a broad regulatory framework centered thousands of miles away.

Historians continue to uncover the links between capture and institutions or entities that at first may seem disconnected. Scheele notes recent research on households as legal entities that absorbed and held human captives seized in raids. Households served as legal entities authorized to punish war captives, substituting captivity for death in an implied act of mercy. Enslaved captives suffered the consequences of this logic whether they were seized in war or purchased.[19] Further, as Holly Brewer has shown in tracing the origins of slavery in English colonies in the Americas, turning captives into property required layers of legislation and systematic metropolitan interventions.[20] Other institutions bent to similar purposes in regulating markets for goods seized on land and sea. When John Daniels placed his booty in the Marine Bank of Baltimore, as Perl-Rosenthal comments, he was demonstrating his reliance on the underlying "commercial logic" of Baltimore's port and its institutions. For Somali raiders, Dua writes, booty was enfolded in "social worlds" that "anchored" raiders and calibrated the status value of their exploits. Similarly, Scheele observes that the capacity to "constitute property as lawful" was simultaneously "good business" and an aid to

[16]Nathan Perl-Rosenthal, "An Interpolity Legal Regime in the Eighteenth Century: Procedural Law of Prize," in Renaud Morieux and Jeppe Mulich, eds., "Ordering the Oceans, Ordering the World," *Past & Present* 265, Supplement 17 (November 2024): 169–192. On prize jurisdiction and its limits as a tool for slave trade abolition, see Lauren Benton, "Abolition and Imperial Law, 1780–1820," *Journal of Imperial and Commonwealth History* 39, 3 (2011): 355–74.

[17]From the vast literature on Mediterranean ransom, see Daniel Hershenzon, *The Captive Sea: Slavery, Communication, and Commerce in Early Modern Spain and the Mediterranean* (Philadelphia: University of Pennsylvania Press, 2018).

[18]Casey Schmitt, "Economies of Ransom: The Many Captivities and Rescates of Francisco García, ca. 1655–1682," *Annales* 81, 2 (forthcoming); Alexandre Pelegrino, "From Slaves to Índios: Empire, Slavery, and Race (Maranhão, Brazil, c. 1740–90)," *Law and History Review* 40, 4 (2022): 789–815.

[19]Benton, *They Called It Peace*, chap. 3.

[20]Holly Brewer, *The King's Slaves: The British Empire and the Origins of American Slavery* (Princeton: Princeton University Press, forthcoming).

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projecting power across the pluri-political Sahara. In oases, raiding was a vehicle for creating both property and nodes of partial sovereignty.

Oases as spaces of partial sovereignty—the pairing turns our attention to jurisdictional gambits and raiding. It is easy to see how efforts to contain raiding, as well as acts of reprisal or punishment, reflected the exercise of jurisdiction. Perhaps less apparent are the ways that raids themselves might serve to mark jurisdiction and lines of authority, draping a stippled tissue of governance over unbounded land and sea spaces. Scheele sums up this effect in describing raiding as "one technique of governance among others" that served to extend French power across corridors and enclaves of the Sahara.

Raiding as jurisdiction might have been subtle, but it was also recognized by early modern legal writers. Hugo Grotius reasoned that the mere presence of fighting forces could turn patches of land into pieces of the realm and stretches of sea into jurisdictional corridors. Such "spaces of war," as Annabel Brett calls them, allowed captors to fulfill the requirement to bring booty within the confines of the sovereign's realm to convert it into property.[21] The formula recognized a kinetic kind of jurisdiction in the passage or presence of raiders, one that could reinforce unstable and insecure claims while generating nodes of partial or incomplete sovereignty.

Partial sovereignty, indeterminate sovereignty—these terms highlight how historical actors were grappling with what Perl-Rosenthal describes, in commenting on one of the core themes of "Piracy as Political Prism," as capture's "messy demonstration of sovereignty's limits." Rubin explained in his classic work on the law of piracy that judgments about the lawfulness of captures required assessments, if sometimes implied, of the status of sponsors. But there were still fundamental disagreements (between Alberico Gentili and Hugo Grotius, for example) about the kinds of political communities that could lawfully sponsor raiding and those that had standing to judge the capacity of other polities to make war.[22] There was no easy toggle point between sovereignty and non-sovereignty, in other words, and no clean line separating the inside and outside of shared legal worlds. Nor was there a clear distinction between war and peace, another necessary determination in prize law. The in-between conditions of sovereignty mirrored in-between categories of violence, such as civil war and rebellion, and actions to protect subjects or property. Lawyers often debated these questions with a crispness that was lacking in the murky worlds of raiding, where shifting rationales for captures and multi-sided conflicts involving parties of uncertain standing made lawfulness always open to interpretation.

References to protection offered a way to dull demands for sharp judgments about sovereignty. Both states that were widely recognized as sovereign and polities of uncertain status could fall under the protection of more powerful empires and states. A local leader, a raider, or an official—sometimes overlapping roles—could claim the status of protector in relation to subordinates and subjects without committing to rule over a specific political formation.[23] Such open-endedness of protection as a

[21]Annabel Brett, "The Space of Politics and the Space of War in Hugo Grotius's *De iure belli ac pacis*," *Global Intellectual History* 1, 1 (2016): 33–60; Alfred P. Rubin, *The Law of Piracy* (Newport: Naval War College Press, 1988), 30.

[22]Rubin, *The Law of Piracy*, 26–31.

[23]Lauren Benton, Adam Clulow, and Bain Attwood, eds., *Protection and Empire: A Global History* (Cambridge: Cambridge University Press, 2017).

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discourse and practice infused Artigas's constitutional politics and even the terms in which he described himself as a political leader. In Somalia, as Dua shows, protection talk pervaded the politics of piracy, and even pirates deployed it to describe themselves. Protection made determinations of sovereignty fuzzy in ways that facilitated and stabilized regimes of raiding.

Yet we also need to look beyond the contrast between muddy realities and clear legal theory. Historians sometimes depict legal doctrine (about property, jurisdiction, or capture) as a house when it was more like the proverbial bundle of sticks.[24] As we have seen, seasoned lawyers with similar training could mount opposing, cogent arguments over fundamentals: the character of sovereignty, signs of political legitimacy, the definition of piracy. In the U.S. courts that heard cases involving Daniels, justices clashed over the definition of piracy in the law of nations and how to regulate its reception into domestic law. In Saharan encounters, European and American ports, and Somali gatherings, captors showed that they had good reasons not just to maneuver around the law but also to look away from it.

One tempting move was to represent captures as everyday occurrences requiring little explanation, legal or otherwise. Dua describes how Somali raiders went to great lengths to portray their captures as mere business transactions. This strategy involved, he intriguingly suggests, a deeply political decision to define capture as apolitical. Scheele observes that raiders also worked hard to color their actions as ordinary. Sometimes, these actors insisted, a raid was just a raid. But Scheele also reminds us that raiding could acquire stable meaning only if it matched expectations shaped through lived experience and framed by thick social and cultural milieux. I would add that we can approach the study of this habitus for raiding from a different angle by expanding our interpretation of "law" and "legal" beyond the contents of imagined normative orders. What historical actors considered "law" not only flowed from legislation, judgments, treaties, and legal discourse but also emerged through conflicts over rights and authority, perceptions of the mere regularity of practices, and vernacular expressions of the limits and possibilities of justice.[25]

This anthropological approach to legalities of capture is also historical. It allows us to analyze how the politics and patterns of raiding could prove pivotal to major shifts in regional orders and global regimes. Conflicts about capture formed a highly refractive political prism, one that split opinions about sovereignty, splayed political solidarities, and projected imperial power in new forms and directions. The intimate experiences of capture and its systemic qualities came together in phases of oceanic and territorial reordering. A raid, we can confidently conclude, was never just a raid.

[24]The metaphor of a bundle of rights is commonplace in theories of property law. See Anna di Robilant, "Property: A Bundle of Sticks or a Tree?" *Vanderbilt Law Review* 66, 3 (2013): 869–932. For the metaphor in relation to native jurisdiction, see Bianca Premo and Yanna Yannakakis, "A Court of Sticks and Branches: Indian Jurisdiction in Colonial Mexico and Beyond," *American Historical Review* 124, 1 (2019): 28–55.

[25]See the last chapter of Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400–1900* (Cambridge: Cambridge University Press, 2002); and, on moral possibility as a discourse about law, see Annabel Brett, *Moral Possibility: Rights, Resistance, and the Limits of Law in Seventeenth-Century Political Thought* (Oxford: Oxford University Press, forthcoming).

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