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Authority and Consent: Politics, Power, and Plunder in Charleston, South Carolina, 1700-1745

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ABSTRACT PAGE

This localized study of privateering and piracy in Charleston, South Carolina between 1720 and 1755 offers an interpretation of these activities as an extension of a growing disconnect between the colonial residents and the vice admiralty court. In the wake of earlier pirate crises, local officials banded together with the imperial authorities to prosecute offenders and pass restrictive legislation. When that relationship deteriorated, colonial officials turned a blind eye to residents violating declaration and condemnation laws. These actions, illegal under the law but permitted by local government, indicate the emergence of a legal grey zone and a discrepancy between the authority vested by the Crown and the authority as recognized by the colonists. Perhaps even more important than the newfound quasi-legal supply of hard currency to the cash-strapped colony was the tension surrounding competing authorities as the Charleston merchant and planter bloc drifted further, socially and politically, from the Crown's appointed officials.

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Introduction: The Politics of Plunder

On June 22, 1745, three South Carolina men gathered to draft a deed of gift. An indentured servant-turned-privateer summoned a local justice of the peace and a lawyer to help him exchange plunder for his freedom. The justice sealed the document, the mistress emerged richer in coin, and the indentured entrepreneur was a free man.

These exchanges were common in Charleston during the 1740s. Their legality was at best ambiguous. All three parties' actions could have been called into question by imperial authority. Had the servant followed proper procedure in declaring the plunder? The answer, certainly not. Was the mistress remiss in accepting the plunder? According to the law, yes. Did the justice have the authority to seal and declare the gift valid? This question has no clear answer, and it perhaps the most interesting.

A historian making the case for increased scrutiny of historical crime declared that "because crime is a behavioral phenomenon which comes to the historian's attention only after proscription and prosecution, the history of crime is not simply social history but an important component of legal history."[1] But what of crime that is not so easily defined, behavior considered illegal by some and socially acceptable by others? When this type of action occurs in a place and time where law is in flux, can it be considered a crime?

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[1] Robert P. Weiss, ed., *Social History of Crime, Policing, and Punishment.* (Farnham: Ashgate Publishing, 1999), 309.

These three men chose to follow a common law, a social precedent of legality set not by legislation but by the inaction of local officials in prosecuting their transgression. Secure in their agreement, they put it forth in a legal document, which made its way from a justice of the peace's ledger to a folder at the South Carolina Department of Archives and History. Historians now have evidence of their "crime", and it is more a political phenomenon than a behavioral one.

The history of maritime activity, and especially its illegal element, cannot be fixed in a time or space. As a result, it is difficult to explain, understand, and even contextualize maritime crime and piracy. Efforts to bring piracy into the discussion of the Atlantic World broadly take two forms. One group of scholars treats piracy as an interesting anomaly and focuses on the so-called Golden Age of Piracy, which lasted from 1650 to 1720 with an especially virulent upswing in activity in the last decade in the Caribbean, along the North American coast, and across the Atlantic to West Africa and the Barbary Coast. Conflict between England, France, Spain, Portugal, and Holland led to a great number of privateers operating in the Atlantic; when the powers achieved peace and revoked the letters of marque, many of the privateers continued to run their operations despite their illegality. With peacetime came unemployment for naval men, and the skilled sailors proved attractive recruits for pirate crews. These historians portray piracy as a phenomenon embedded in international conflict, a side effect of the struggle for supremacy.[2]

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[2] The following three works are useful in their attention to the rise of piracy in an international context. Peter R. Galvin, *Patterns of Pillage: A Geography of Caribbean-based Piracy in Spanish America,*

The second approach to the study of pirates in this time period focuses on the social history of mariners and their trade. This vein of scholarship, advanced recently by Marcus Rediker, suggests an image of the pirate crew as an amalgam of downtrodden, oppressed people which function as a proletariat through piracy. The pirate ship provided a refuge where men with low socioeconomic mobility could achieve influence, and the democratically-run pirate crews stood in opposition to imperial, aristocratic rule. While these works provide a much-needed societal contextualization of piracy, the focus on the internal dynamics of the crew comes at the expense of the larger effect of near-continuous piracy in the Atlantic. Both approaches ignore post-Golden Age piracy and the era's impact on the colonial response to privateering and piracy.[3]

Both groups of scholars view piracy as a reaction to larger social and political forces, a critical component to understanding the trends of when, where, and why piracy occurred. Whether the pirate is a privateer gone rogue or a protester, he (and it is always a he, save for a few unusual instances) is committing an illegal act. The post-Golden Age period complicates the question of legality, and the very definition of crime.

1536-1718 (New York: Peter Land, 1990); Mark Gillies Hanna, *The Pirate Nest: The impact of piracy on Newport, Rhode Island and Charles Town, South Carolina, 1670--1730*. Ph.D. dissertation, Harvard University, 2006, esp. ch. 8; Mark Quintanilla, "The World of Alexander Campbell: An Eighteenth-Century Grenadian Planter," *Albion: A Quarterly Journal Concerned with British Studies* 35, no. 2 (Summer, 2003): 229-256.

[3] Stephen D. Behrendt, David Eltis, and David Richardson, "The Costs of Coercion: African Agency in the Pre-Modern Atlantic World." *The Economic History Review* 54, no. 3 (Aug., 2001): 454-476, esp. 460-64; Linda Colley, "Going Native, Telling Tales: Captivity, Collaborations and Empire." *Past and Present* no. 168 (Aug., 2000): 170-193.

A major issue in the historical examination of piracy is periodization. Scholars focusing on the Golden Age end their studies in the 1720s, while those interested in piracy in the context of international war are bounded by the dates of the conflict. Piracy, privateering, and especially the role of booty in legal proceedings and in the economic sphere require a continuum of study. Many of the social and legal changes which facilitated piratical activity in the 1740s began during the Golden Age and shifted in favor of the rogue seamen over the course of the interwar decades. Finally, officials' tolerance of overtly or subtly illegal maritime activity depended on public opinion. The political and social climate of Charleston at midcentury is most revealing when compared to the preceding decades. In looking at piracy, privateering, and public opinion over the first half of the eighteenth century in Charleston, a story of political competition between local officials, the vice admiralty court, and the alleged criminals emerges.

Robert C. Ritchie identified two types of piracy within the English empire. Officially sanctioned piracy "comprises acts that are clearly piratical under any system of law but that go unpunished because a particular government finds it convenient to ignore such activities", while commercial piracy is either associated with merchants or "with communities that practiced piracy as a major economic enterprise."[4] The latter definition clearly applies to Charleston. This paper will demonstrate that the first definition is also applicable, because the relevant "particular government" is the local administration, and not the imperial satellite vice admiralty court.

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[4] Robert C. Ritchie, *Captain Kidd and the War Against the Pirates* (Cambridge, Mass.: Harvard University Press, 1986),11, 17.

This paper is divided into two sections. The first deals with the Charleston colonists' public opinion of the government and its relationship with privateering and piracy between 1680 and 1725, when tensions between local and imperial authority were put aside in favor of collaboration against the pirates. Continuing anxiety over economic and social instability, ineffectual government and an inadequate legal system provide the context for the second section, an examination of why and how plunder trade opened again in Charleston after the 1720s crackdown, and the reasons for increased local support of plunder in defiance of the vice admiralty court. Economic, legal, and social pressures developed in parallel fashion between 1720 and 1755, which in turn fueled outwardly oppositional attitudes of Charleston residents toward the vice admiralty. By 1740, pirates were no longer the enemy, and behavior which sparked outrage and vigilantism in the 1710s was deemed necessary for the economic survival of the colony.

When public sentiment and English law and its enforcement arm diverged, a legal grey zone invited enterprising colonists to use the disjointed system to their political and economic advantage. What the vice admiralty court considered a crime, colonial officials called legal, and the Charleston residents called everyday business.

Chapter One: Fear, Power, and the Legacy of the Golden Age in Charleston

Privateering and piracy, for all of the strongly-worded laws governing them by England, were not adjudicated uniformly in terms of the practice of law. Even when mariners engaged in obvious illegal activity, social circumstances often saved them from the gallows. In the North American colonies, English authorities and colonial officials tolerated piracy when the seamen also acted as paramilitary units against foreign powers or delivered rare goods, and openly supported privateering against enemies in times of war. Some colonial officials also consciously ignored the formation of pirates' nests in port cities and looked the other way as pirates and citizens brokered trade of undeclared plunder. When the populace supported the pirates' work, most were safe to continue extralegal business.[5]

Their safety depended on both general support from the public and either an overt or implicit acceptance by the crown. The judgments of the two entities could align in the pirates' favor or diverge to dangerous repercussions. A change in public opinion proved problematic for the pirates at the beginning of the eighteenth century. In the years leading up to the crackdown in the 1720s, colonists grew concerned that piracy, and associated maritime instability, threatened shipping and the development of the coastal economy. The administrators were forced into action in a more extreme fashion than before. Officials had to create economic and legal incentives for townspeople to break ties with the pirates, and apply social pressures to bring in the

[5] Ritchie, *Captain Kidd*, 146-151; Marcus Rediker, *Villains of All Nations: Atlantic Pirates in the Golden Age* (London: Verso, 2004), 28-29.

pirates themselves. When the popular and legal opinions reflected each other, colonial officials could carry out effective anticrime schemes. But even once the legality of piracy was no longer in flux, the authorities and residents of South Carolina still had to navigate the complicated relationship between their political system, a new economic system, and the multiple definitions of crime in play.

The colony of South Carolina had a particularly tumultuous relationship with pirates, due in part to a rocky political foundation and troubling economic conditions in its early years. South Carolina, in contrast to its immediate northern Chesapeake neighbors or southern sugar-producing Caribbean islands, floundered quickly under a failing proprietorship less than two decades after its inception. One scholar noted that "the Carolina proprietors in the early 1680's confronted the problem of a colony that returned neither profits nor obedience to its owners."[6] The colonists in turn were skeptical of the proprietors' ability to manage the colony. Colonial policy suffered the effects of internal factionalism between pro-proprietary English and Scots immigrants and anti-proprietary Barbadian transplants. Colonists and investors alike were continually worried by the lack of steady profit.

Tensions between England and Spain boiled over in 1686 with an invasion of troops into the Carolinas from Spanish Florida. The proprietors dispatched a new governor, James Colleton, with whom local officials refused to cooperate. The desires of the proprietors and the demands of the crown were in opposition to popular opinion,

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[6] M. Eugene Sirmans, "Politics in Colonial South Carolina: the Failure of Proprietary Reform, 1682-1694," *The William and Mary Quarterly* 3d series (Jan., 1966): 33.

especially on the issues of suppressing pirate and Indian trades which had taken hold in the colony and were generally viewed favorably. Some colonists believed that Colleton overstepped the power afforded to him in the charter by banning the trades, and when Colleton refused to recall the divided parliament in 1687, rhetoric of tyrannical government rapidly spread. The Glorious Revolution provided the basis for a series of more conservative uprisings: the colonists wanted to regain political power in the current system, rather than establish a new political order. The result, for South Carolina, was the expulsion of Colleton and an uneasy relationship between the colonists, their local officials, and the proprietors for the following three decades.[7]

Official policy on the suppression of piracy shifted from rapid trials and executions, as under Colleton in the 1680s, to tactics designed to promote long-term stability. The War of Spanish Succession produced a glut of privateers, encouraged and licensed by Queen Anne. But the war left the seaboard with a significant lingering problem: many of the once-legitimate privateers turned pirate after the Peace of Utrecht in 1713. The mass of unemployed sailors drove down wages paid by merchants for shiphands, and competition rose even for the lowest paying jobs. The privateers, turned out by the Royal Navy and disappointed by the conditions on merchants vessels, continued to plunder the triangular trade shipping routes between the Caribbean and the North American mainland, taking advantage of newly-obtained

[7] Thomas Cooper, ed. *Statutes at Large of South Carolina.* Vol. II (Columbia, S. C.: A. S. Johnston, 1837), 45.

Spanish markets through the terms of the *asiento*, a British monopoly of the slave trade to previously-closed Spanish markets in the wake of the Treaty of Utrecht.[8]

Pardons issued to pirates after 1717 were designed to absorb as many renegades back into society as possible. To this end the pardon procedure included a provision that permitted reformed pirates to keep their treasure if they freely renounced their prior rogue ways. British officials believed they could lure pirates away from their volatile and dangerous profession with the promise of the ability to settle down in the colonies with their 'savings.' A preventative measure directed towards seamen accompanied this policy. The crown approved a sliding scale of reward payments for bounty hunters bringing pirates back to mainland North America. British encouragement of pirate hunting proved to be both a profitable opportunity for industrious sailors and a safeguard against straight men turning to piracy. It was more lucrative to work against the pirates than to become one.[9]

England viewed its responsibility to act against pirates as part of a global effort. That piracy occurred on the seas and negatively influenced trade between nations only slightly complicated the question of authority in the eyes of the vice admiralty. "And the King of England hath not only an Empire and Sovereignty over the British Sea, but also an undoubted Jurisdiction and Power, in concurrency with

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[8] Kris E. Lane, *Pillaging the Empire: Piracy in the Americas, 1500-1750.* (Armonk, N. Y.: M. E. Sharpe, Inc., 1998), 172.
[9] Philip Gosse, *The History of Piracy* (New York: Tudor, 1934), 316-24; Hanna, "The Pirate Nest", 289-321.

other Princes and States" to prosecute pirates, even "in the most remote Parts of the World."[10]

The English law's specific definition of piracy also alluded to flexible jurisdiction. The description of crimes considered piracy was straightforward, but an important element of the definition was the location of the criminal activity. In order to be considered piracy, the criminal act had to be "committed in or upon the Sea, or in any other Haven, River, Creek, or Place where the Admiral or Admirals have or pretend to have Power, Authority, or Jurisdiction."[11] Piratical activity in or around English territories was a matter for England, and Parliament held hostage the right of localities to operate trials against pirates. Colonial officials had to petition to try pirates; when the petition was granted, strict instructions and trial procedures had to be followed.

Piracy was almost always considered as a capital offense by the jury. A 1718 description of trial procedures for piracy even condones vigilantism, stating that "in our Law they are terms Brutes, and Beasts of Prey; and that it is lawful for any one that takes them, if they cannot with safety to themselves bring them under some Government to be tried, to put them to Death."[12] In the event that the captors did hand the alleged pirates over to the government alive, the judge of the vice admiralty court commissioned a grand jury to hear evidence on the charges. Once an indictment was

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[10] *Tryals of Major Stede Bonnet and Other Pirate.* (London: Benjamin Crowse, 1719), xi.
[11] South Carolina Court of Vice-Admiralty, "Oct. 30, 1718", *Records of the South Carolina Court of Admirality 1716-1732.* Parts 1-2, AB (London, 1719).
[12] T. B. Howell, *A Complete Collection of State Trials and Proceedings for High Treason and Other Crimes and Misdemeanors from the Earliest Period to the Year 1783* (London: T. C; Hansard, 1816), 1235.

issued, the vice-admiralty court conducted a trial, often for a group of alleged pirates . The court first acknowledged witnesses supporting the case against the defendants. Any of the sitting members of the court could question the witnesses, after which the accused were afforded the opportunity to question their accusers. Then, the court directly questioned each alleged pirate.

Most of the alleged pirates denied either direct criminal activity or knowledge of the piracy, or claimed the pirates forced them aboard by threat of death or slavery. Sometimes this strategy was successful, but only when supported by the Judge and the Attorney General. More often, claims of ignorance fell on deaf ears, as evidenced by this exchange between prisoner Thomas Carman and the Court.

> *Carman.* As for what I did on board Capt. Thatch, I was forced, but when I came to North Carolina, I would not have went on board, but Maj. Bonnet shewed me the Act of Grace: and when I enter'd myself on board, it was to get my Bread, I hopes to have went where I might have had Business; for when we left Topsail-Inlet, I had not signed the Articles.
>
> *Ignatius Pell* [witness for the King's Evidence]. But you gave the Captain your work that you would.
>
> *Carman.* When I was left in the Sloop, I endeavoured to make my escape with the Sloop.
>
> *Judge Trott.* So, I find you wanted a Vessel of your own.
>
> *Carman.* No, but to have got from them: but I could not.
>
> *Attorney General.* This confirms what the King's Evidence proves against them.[13]

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[13] *Tryals of Major Stede Bonnet and Other Pirates,* 16. In another installment of the trial, the Jury found Thomas Gerrard not guilty of piracy after both a hostage and Judge Trott claimed "he was threaten'd to be made a slave of; tho indeed he [had] better been made a slave than go a pirating", and that he was "faithful to his King and Country." Jonathan Clarke and Rowland Sharpe also make successful claims of innocence supported by the Attorney General because "none of the Evidence proves that he shared any of the Goods" the pirates stole; 31.

Thomas Carman and the seven other men tried along with him were condemned for piracy in the second installment of South Carolina's most famous piracy trial. Though Stede Bonnet and his partner Edward Thatch, better known colloquially as Blackbeard, later became figureheads of the Golden Age of Piracy in North America, the particular connection between the two pirates and the port of Charleston proved more important in the development of legal rhetoric and public memory surrounding piracy.

Thatch and Bonnet, aside from assembling a flotilla under the black flag and assuming a troubling presence for merchant vessels between South Carolina and Barbados, had in 1718 delivered an assault on Charleston in the form of a hostage crisis. As one eyewitness reported, after taking "five Prizes" off the bar of Charleston, the pirates devised a plan to "dispose of the Vessels and Prisoners and being then in want of Medicines, they resolved to demand a Chest from the Government, and detain them till they were sent." The pirates blockaded the Charleston harbor and sent one hostage, Mr. Marks, and two representatives of the pirate crew to make an application to the governor. The governor initially refused, upon which "the Pirates had unanimously resolved to murder all the Prisoners, and burn their Prizes" in the harbor. "The Pirates being too strong to cope with at the Time", the governor acquiesced to the pirates' request for medicine, after which the pirates "hurried the Prisoners to their Vessels the next Day, and made sail from this Coast." Officials found the event so bold and offensive that the Attorney General made a special plea in his opening

remarks for the Grand Jury to consider that "the Inhabitants of this Province have of late, to their great Cost and Damages, felt the Evil of Piracy", and further claimed that the extortion by the pirates "was putting the Province under Contribution."[14]

People in Charleston believed that instability attracted pirates, and many found fault with the proprietors for the state of the province. A 1720 letter from an unknown source implored the Crown to take over the colony, listing a number of social grievances the author believed to be linked. South Carolina was under siege from "negroes rising with a designe to destroy all the white people in the country and then to take the towne", "an increase dayly in slaves but decrease in white men", men "killed by the Indians to the Southward", and with little protection, the author expected they "shall now have more pyrates than ever." He speculated that if the colony came under royal direction, "doubtless Carolina will thrive again", but under the supervision of the proprietors "many of the best and richest inhabitants will leave the country."[15]

Another letter directly linked the government to the pirates, and indicates a growing worry among colonists that official support of piracy might topple the colonial economy and political structure. In a letter to the King, the Assembly of South Carolina reported on the inability of the proprietors to govern. Specifically, the authors expressed concern that the government proved incapable of protecting the colonists because the officials were directly involved in facilitating violent events.

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[14] *Tryals of Major Stede Bonnet,* 3-4.
[15] Letter to Mr. Boone, June 24, 1720, sec. 125, in Cecil Headlam, ed., *Calendar of State Papers, Colonial Series, America and West Indies 1720-1721* (afterwards noted CSPCS), 57-58.

They indicted the government of North Carolina for allowing Thatch to commit "several acts of piracy there in the very face of that Government", noting that "several parcels of pyratical goods were found in their governours and secretarys custody." The proprietors of South Carolina, according to the letter, did nothing to get rid of the pirate nest (as opposed to Virginia governor Alexander Spottswood), but "abandoned the Government to evil Ministers and exposed us [the colonists] to ye ravages of most barbarous enemys" which included not only pirates, but Indians and Spanish forces.[16]

The aftermath of Thatch's execution and the crew's trials was more than a lingering public memory. The incident exposed critical weaknesses in the colony's ability to protect itself, and the trial demonstrated the willingness of both South Carolina officials and the vice admiralty to put an end to piracy. Legal and procedural changes reflected the greater need for a hard line on piratical activity. Perhaps the largest departure from previous attempts to control piracy came in the form of an internal cleansing of ties to pirates and their goods. The pirate trade the South Carolina colonists had fought to protect against Colleton was threatening stability as colonists conspired with pirates to obtain goods at the expense of their shipping industry. Governors in the continental colonies asked the crown for proclamations permitting them to try both pirates and those colluding with pirates. In 1721 Parliament responded with a stronger bill to suppress piracy by holding accessories to piracy criminally responsible. The definition of an accessory was broad and included such activities as "trading with known pirates, or furnishing them with stores or

[16] Petition of the Council and Assembly of the Settlements in South Carolina to the King, Feb. 2, 1720, *CSPCS* 1720-1721, 333-337.

ammunition, or fitting out any vessel for that purpose, or in any wise consulting, combining, confederating, or corresponding with them." Any of these charges could result in a trial, with the colluder labeled a "pirate felon and robber."[17]

The new laws and corresponding enforcement proved effective in reducing piracy in the Caribbean and off the mainland coast through the 1720s. The effort was sustained by the support of "clergymen, royal officials, and publicists who sought through sermons, proclamations, pamphlets, and the newspaper press to create an image of the pirate that would legitimate his extermination."[18] The widespread piratical activity off the North American coast became a problem shared by the entirety of the colonies through systematic reprinting of pirate encounters. Some of the articles depicted pirate attacks as almost inevitable, stressing the degree to which pirate vessels effectively controlled high areas of trade traffic. One example detailed the immense loss of cargo due to pirates. The article quoted a letter from an agent in Kingston, Jamaica to a merchant in Charleston, noting that a snow which "had on board for the Merchants of this Place, a great quantity of Goods, and considerable parcels of Silver" was among "not less than six Sail of Vessels taken" by pirates as they were "going to and coming from said Island [Jamaica]." The article notes that the pirates intercepted "a considerable quantity of Silver" which was to be used to

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[17] William Blackstone, *Commentaries on the Laws of England,* IV (New York: W. E. Dean, 1832), 51; Gosse, *History of Piracy*, 316. A brief discussion of the interplay between British, French, and Spanish policies on privateering and piracy can be found in Anthony McFarlane, *The British in the Americas, 1480-1815* (London: Longman, 1994), 128-132.

[18] Rediker, *Devil and the Deep Blue Sea*, 285.

"purchase a load of Rice" from Charleston, one of South Carolina's most important commodities.[19]

The newspaper accounts also portrayed the piratical activity as a direct and calculated assault on individuals, the colonies, and the crown. In the wake of Edward Thatch's patrol of the coast, *The Boston News-Letter* printed the story of William Wyer, captain of *Protestant Caesar,* a trading vessel which was overtaken by Thatch and his crew in the notorious *Queen Anne's Revenge.* Wyer's crew was so fearful of the pirates that they refused to fight and handed over the ship; in a meeting with Wyer, Thatch allegedly said he "was glad that he [Wyer] left his Ship, else his Men on Board his Sloop would have done him Damage for fighting with them" before adding that he "would burn his Ship because she belonged to Boston, adding he would burn all Vessels belong to New England for Executing the six Pirates at Boston."[20] Thus the Blackbeard incident became the trope of the Golden Age of piracy in South Carolina; the pirates, the collaborators, and permissive governors became the enemies of the colony and empire, and the upstanding officials, Royal Navy, and law-abiding colonist their heroes.

Despite both the colonial government's and the vice admiralty's commitment to eradicating the pirate problem and reordering the charter after the departure of the proprietors between 1715 and 1720, peace did not always exist between the bodies. In 1723 the Privy Council responded to reports of "ill treatment" of the Judge of the Vice

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[19] "Charlestown, South-Carolina, Feb. 19", *New England Weekly Journal,* Mar. 20, 1732, 2.
[20] *The Boston News-Letter*, issue 693, Jul. 15, 1717, 2.

Admiralty by Francis Nicholson, the governor, who also ignored the court's jurisdiction. The Privy Council demanded that "orders be sent to all Governors of Plantations that at their Perrils they do not themselves Molest, or interrupt the Judges and other Officers of the respective vice admiraltys", but instead they should "do use their utmost to Encourage and Support the aforesaid officers...in the Just and legall Execution of their Duty." The Privy Council concluded by stating that most of the problems warranting complaint by the colonists fell under the jurisdiction of the vice admiralty.[21]

The British officials were also concerned with what they identified as an independent spirit in South Carolina. On August 5, 1724 Governor Nicholson wrote a report to the Council of Trade and Plantations full of complaints against the colonists and their political conduct. According to Nicholson, he "found that the Lower House have very strangely acted (and in my humble opinion like Common Wealth men) assuming to make resolutions without the consent of H.M Honble. Council or myself nay even without advice and with submission to your Lords", and the colonists were "insisting on their old privilidges as they call it in ye Proprietours' time some of which I think very inconsistent with the King's Government."[22] Nicholson's account of the colonists' dissatisfaction with imperial intervention in their governmental proceedings suggests that while the colonists had been anxious and insistent in getting rid of the

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[21] *Acts of the Privy Council of England* Vol III (London: Authority of the Lords Commissioners, 1966), 57-58.

[22] Governor Nicholson to the Council of Trade and Plantations, Aug. 5, 1724, *CSPCS 1724-1725,* 198.

proprietorship, they were not fully prepared to accept the realities of operating in a royal colony.

Even with the Privy Council's decision to uphold the power of the vice admiralty in spite of complaints, the relationship between the vice admiralty, Charleston residents, and perpetrators of maritime crime remained complicated. The unifying moment of the piracy crackdown was gone, and a system of conditional permission and convoluted social attitudes toward privateering, piracy, and plunder replaced it. The Navy could not afford to stop the practice of privateering in wartime, even at the risk of another destructive rise of piracy. Similarly, the Charleston blockade was not the representative experience of the relationship between South Carolinians and pirates – the colonists had opposed Colleton's bullion ban not two decades before. The needs of the pirates were not always in direct contrast to the needs of the colonists; often, the pirates helped support the local economy with hard currency, and the colonists kept the pirates provisioned at port. Thus for all three groups, the space between the law and the demands of reality was sometimes changing and often contested.

Chapter Two: Coin, Councilors, and Courts in Political Contest

The British first made legal provisions for vice admiralty courts in South Carolina in 1696. One early act required all vessels exchanging goods in colonial ports to carry a valid register. Two individuals were responsible for inspecting registers and noting cargo: a naval officer affiliated with the vice-admiralty, and a collector, appointed by local officials. Both were required to submit reports to the custom commissioners in London, and both parties' signatures were required in the secretary's book. This arrangement became the norm for officials dealing with the enforcement of port regulations. Parliament handed down the law, the colonial officials oversaw the law's application, the vice admiralty court was in place for enforcement, and some combination of crown appointees and local selectmen determined who would go before the court, and who would not.[23]

At the turn of the century, colonial officials and the vice admiralty focused together on eradicating the pirate problem, and the presence of the Royal Navy warships, which patrolled the coast, gave the vice admiralty court a boost of power. The colonists welcomed the presence of the warships, a visible sign of security. If the colonial officials were mostly under the thumb of the crown, the official appointees' influence was dwarfed by the empowered and popular court. After the boom in piracy

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[23] Steven L. Snell, *Courts of Admiralty and the Common Law: Origins of the American Experiment in Concurrent Jurisdiction.*(Durham: Carolina Academic Press, 2007), 143-147.

trials in the 1720s, mechanisms for controlling and apprehending pirates shifted back toward crown-approved pardons.

English law made specific prescriptions for jurisprudence in the colonies. The colonial legal system relied on two overarching concepts: repugnancy and divergence. Colonial statutes could diverge from English law to accommodate unique needs, but the colony's laws must be in the spirit of, and in no way repugnant to, English law. This idea was built into the very foundations of the colonies, and their laws. The 1629 patent for Carolina dictates that the laws should "be consonant to reason and not repugnant or contrary, but (so far as conveniently may be) agreeable", and the 1663 charter had nearly identical language.[24] The repugnancy and divergence principles were significant because their codification resulted in the legal acknowledgment of distinct colonial needs. In turn, that provision empowered colonial officials to develop a legal system instead of directly transplanting an existing one. Over the first half of the eighteenth century, colonists' understanding of how the law should be applied grew more complicated; even when the laws were not repugnant to those of England, colonists' reaction to legal constraints, especially in the case of booty, often were.

Plunder must be considered as an element of Charleston's economy. Not only did Charleston's long history with piracy leave room for plunder trade, bullion played a divisive financial and political role in South Carolina affairs. Immediately following the piracy crackdown, South Carolina experienced economic growth which promoted

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[24] Mary Sarah Bilder, *The Transatlantic Constitution* (Cambridge, Mass.: Harvard University Press, 2004), 215.

financial and political organization around a plantation production and shipping distribution system. The rise of plantations and Charleston's booming shipping power impacted the relationship between the colonists and various governing boards. With the 1720 takeover of the colony by Britain from the failed proprietorship, the Board of Trade assumed control of the South Carolina council. These councilors were responsible for local governance, as well as maintaining correspondence with London. The council consisted of twelve men, all appointed, to be drawn from the suggestions of the governor and the Board's knowledge of the candidates' social and moral standing. The first appointees were placemen, lawyers, and visiting investors from London, with two thirds being staunch supporters of the rebellion and one third being proprietary holdovers. The Board hoped that allowing representation for the factions would create a council better suited to dealing with the aftermath of the power transfer.

Immediately the council challenged issues of jurisdiction in the colony. In his 1721 report, Francis Yonge, clerk of the Council of South Carolina, told the Council of Trade and Plantations that much of the council's time had "been taken up in disputes and settling the Custom House and Court of Admty. Affairs, that the Acts of Trade may be duely observed" in order to avoid both courts from "setting up an independant jurisdiction and power from that of the Government." Yonge then

credited Governor Nicholson with "a perfect tranquility owing to ye prudent administration" in the colony.[25]

The planters and merchants amassed great political capital relatively quickly. The most powerful planter families had ties to each other by blood and marriage, and supplied a large number of colonial officials, including multiple governors. The merchant elites were familiar to the Board of Trade by their business relationships with London partners and investors. In the second round of selections, the Board acknowledged the local influence of these groups by replacing the outgoing investors and placemen largely with merchants and planters. The Board invested power and relative independence to its selections, the most prominent, and often the most wealthy men of the colony.

The South Carolina council only continued to gain local power and prestige through the 1720s. The governors deferred to the council, and in one case the council was illicitly permitted to elect its own president and select replacement councilors without gubernatorial oversight. The Board of Trade, at once obsessed and unable to deal with rising factionalism on the subject of currency, made several critical missteps in handling the paper money debates in the 1720s. First siding with a strict anti-emission hard money faction, the Board came under fire from pro-paper and more moderate members of the provincial government. Producers and factors railed against the Board's refusal to make any headway in alleviating the currency shortage.

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[25] Francis Yonge to the Council of Trade and Plantations, Oct. 28, 1721, *CSPCS 1721* sec. 702, pg. 479.

The colonial government took matters into their own hands. In November of 1729 Benjamin Whitaker wrote a letter to the Council of Trade and Plantations to report on new developments in the currency crisis. Whitaker alleged that Arthur Middleton, the president of South Carolina, "contrary to the express orders of his late Majesty", had "issues 30,000 in paper bills of credit (which by law ought to have been sunk) whereby the value of the said bills are greatly lessed, and the training people of Great Britain much injured." Whitaker expressed concern for the province more generally, stating that "H.M. subjects in Carolina have to fear from a state of anarchy and confusion to which they are now very near reduc'd", a condition only worsened by Middleton's "diverse...acts highly injurious to H.M. prerogative."[26]

Losing the battle on both paper money and the authority over it, the Board reversed position in 1729 and lent support to a moderate pro-emission council plurality. The Board then removed the reactionary hard money faction and the radical paper money advocates from the council. Though many colonists supported the 1729 decision on currency, the subsequent ousting of the political opponents left some deeply nervous of the Board's political designs on local government.

By 1730, the constant clash of the currency debates and the rise of local production and distribution provided the local government, the merchants and the planters, with considerable power. The provincial government was designed to relay English law to the colonists. This worked when the local government was either under the thumb or in agreement with those giving the orders from London. Throughout the

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[26] Benjamin Whitaker to the Council of Trade and Plantations, Nov. 13, 1729, *CSPCS 1729,* 240-241.

1730s, those requirements grew less applicable to the situation in South Carolina, and especially in Charleston. The planters and merchants' concerns revolved around the tangible needs of the colony. The Board of Trade's policy switch on currency emission demonstrated the power of the planter and merchant bloc. The vice admiralty had a similarly tenuous relationship with local authorities. The piracy crackdown had worked only because the officials delivered the pirates to the court. Local authorities needed approval of England's institutions in order to enforce their policy, but the enforcing institutions were dependent on the authorities for support and compliance.[27]

The relationship began to unravel in the 1730s. As acknowledged by scholars of the earlier period, Charleston had a set of unique issues that impacted public response to the law. The ongoing threat of Spanish, French, and Native American attack put colonists on the defensive, desperately trying to prove their loyalty to the crown and their commitment to stabilizing the colony. The colonists, for all their effort, were not pleased with the support they received from the imperial bodies in South Carolina. The continued ineffectualness of the Lords Proprietors and a growing, disgruntled upper-middle class left a legacy of political struggle in the southern shipping center.

During the decline in piracy in the 1720s, Charleston was a mid-sized town with a population of roughly 3,000. Still, Charleston handled virtually all trade in

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[27] Mary Sarah Bilder provides definitions and context for the competing legal approaches of repugnancy and divergence in Rhode Island in Bilder, *The Transatlantic Constitution*, 40-42.

South Carolina's cash crops through a system of contracting.[28] Charleston merchants acted as middlemen between the plantation owners producing rice and the British buyers. South Carolina's cash crop economy and British trade policies left the colony completely dependent on importation for manufactured items. It then follows that preserving the budding economic prosperity of Charleston, and the import-export pattern that supported the colony, was a priority of officials and colonists alike. Merchants involved in the export trade flocked to the port to collect contracts for rice and indigo. Charleston merchants also oversaw the steadily increasing import trade, though it was at their own risk. Merchants both extended and operated under lines of credit in a colony notorious for difficult debt-collecting.[29]

The lack of colonial merchant authority in the trade illuminates how heavily reliant South Carolina was on England, not only for dry goods, but also for direct investment and trade governance. As Britain strengthened a monopoly in South Carolina's manufacture import trade, British merchants transferred more fiscal responsibility on the local merchants. Factors in South Carolina received goods on long-term credit, which was especially critical for those engaged in the slave trade, and they accrued large debts to London capital providers.

This was sustainable so long as trade was reliable. The tipping point came when the effects of the 1720s separation of dry goods and staple trade diverted

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[28] R. C. Nash, "The Organization of Trade and Finance in the Atlantic Economy: Britain and South Carolina, 1670-1775" in *Money, Trade, and Power: The Evolution of Colonial South Carolina's Plantation System*, Jack P. Greene, Rosemary Brana-Shute, and Randy J. Sparks, eds. (Columbia, S.C.: University of South Carolina Press, 2001), 74-107.
[29] Ibid., 85.

commodity dealing from London to other ports. Export merchants no longer enjoyed credit exchanges with London, and the shift resulted in the English merchants being freed from their financial obligations. Instead, the South Carolina agents of English merchants had to come up with the resources to finance the trade. Heavily burdened, the Charleston factors attempted to guarantee some of their expenses by extracting bills of exchange from planters, which appears to have functioned for a time as an informal credit exchange. But by the end of the 1730s many planters, contractors and import factors were severely indebted to London, and to each other. When commodity prices collapsed in 1739 at the outbreak of the War of Austrian Succession, all groups fell under tremendous pressure to inflate prices, continue shipping, and most importantly, avoid crumbling under the debt.

An important social issue in South Carolina further tested Charleston residents' trust in British governance. Slavery was long prevalent in the colony, but the urban slavery of Charleston was a specialized system. White residents of the town fluctuated between strong confidence and uneasiness. Charleston slavery was primary rent-seeking; slaves were trained in a skill, then hired out for the financial benefit of the master. But Charleston was not geographically far from the large-scale agricultural slavery so characteristic of southern plantations. Early laws on the subject provided little more than a definition of slavery, which stipulated that those of African descent and Native Americans could be made slaves for life and their children would

be born into slavery. As the slave population increased with the success of labor-intensive rice, so too did the debates on legislation for the slave society.[30]

Ongoing marronage and insurrection in the Caribbean concerned South Carolinians. They were well aware of the 1733 revolt on Danish St. John, in which slaves overtook and held estates in the northern part of the island for several months until French ships from Martinique put down the rebellion. In those months, planter families fled to neighboring St. Thomas and also to St. Croix. The 1733 revolt was a true attempt at a takeover: slaves murdered white families, then took possession of the fields with the hope of reviving production. That the slaves sought to capture and run plantations heightened fear in Charleston's surrounding rice regions. Slave conspiracies unveiled in Antigua and the Bahamas provided more evidence of the potential danger slaves might possess to South Carolina.[31]

The Jamaican situation exposed another, more insidious danger. Since the institution of slavery on the island, maroon communities established in the forested hills of the island attracted runaways. The maroons, still dependent on plantations for goods, raided nearby farms and houses, and white planters accused them of encouraging mass runaway attempts. The communities bordering the maroon settlements implored the local officials to disperse the maroons. The First Maroon War began in 1731, but the British had little luck in finding and fighting the maroons.

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[30] Peter H. Wood, *Black Majority: Negroes in Colonial South Carolina from 1670 through the Stono Rebellion* (New York: W. W. Norton, 1975), 196-200.

[31] David Barry Gaspar, *Bondsmen and Rebels: a Study of Master-Slave Relations in Antigua.* (Baltimore: Johns Hopkins University Press, 1985); David Barry Gaspar, "The Antigua Slave Conspiracy of 1736: A Case Study of the Origins of Collective Resistance," *William and Mary Quarterly* 3rd ser., 35 no. 2 (Apr. 1978): 308-323.

Conflict continued until 1739, when the Captain General negotiated a treaty with the maroons. The terms of the treaty granted acreage and freedom to the maroons in exchange for their work as bounty hunters of runaway slaves. The treaty served the needs of the community, which no longer feared theft of goods and slaves by the maroons. The Jamaican Council wrote an open letter, published in Boston and then reprinted, declaring that the "the Council of Island of Jamaica, do with the utmost Satisfaction congratulate your Excellency upon the late successful Expedition against the Negroes in Rebellion, and the Treaty so happily concluded with them."[32]

In South Carolina, where permanent marronage had never taken hold but remained a perceived threat among white residents, the crown's willingness to accept a treaty which guaranteed rebellious runaway slaves their freedom was no matter for celebration. In granting the maroons freedom, the Jamaican governor had essentially taken property from the citizens. More seriously, the military expedition against the maroons had failed, and instead of eliminating the maroon threat, the government pacified the runaways by gifting land. Finally, the treaty usurped local control of the slave population. The British saw the maroons as guerilla fighters; South Carolinians saw them as someone's incorrigible missing property. As South Carolina slaveholders debated how to handle the volume of slaves attempting to run to St. Augustine, the Maroon Treaty dealt a blow to their confidence in British assistance in regulating the matter.

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[32]Kenneth M. Bilby, *True-Born Maroons* (Gainesville: University of Florida Press, 2008); "Behalf of the Inhabitants of the Island of Jamaica", *Boston Evening Post.* June 11, 1739, 1.

In 1739, a slave insurrection at Stono brought home to Charleston what has been described as "a decade of slave unrest throughout the New World plantation complex." On the ninth of September, a group of twenty slaves staged an uprising roughly twenty miles from Charleston. The active revolt lasted 48 hours, at the end of which forty whites and most of the slaves involved were dead, but the event had enormous ramifications in the legal arena. What Philip D. Morgan observed as "oscillat[ion] between protracted stretches of near-complacency and brief spasms of paranoia" at the threat of insurrection turned to proactive legislation in the wake of Stono.[33]

Charleston's citizens were long locked in vigorous debates over who controlled slaves, masters or the government. The populace had for decades been split on matter of the Security Act, which required white men to carry guns on Sunday to police slave activity during free hours. The issue of slaves forming cabals while their masters were in church was one of substantial discussion since the mid 1720s, but the law had never been consistently enforced due to widespread opposition: South Carolinians balked at a law which allowed others to police their slaves and demanded their action. After Stono, the 1740 Negro Act strengthened the existing Security Act, but in further regulating slave movements and activity the Act diminished the power of the master. Slaves were to be supervised during travel and work, and were forbidden to learn to write or carry weapons. Masters were no longer permitted to manumit their slaves. Only the government could approve manumission. This change

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[33] Philip D. Morgan, *Slave Counterpoint: Black Culture in the Eighteenth-Century Chesapeake and Lowcountry* (Chapel Hill: University of North Carolina Press, 1998), 239.

meant that in order to secure freedom, a slave had to run away and disappear, petition the government, or arrange to purchase their freedom, which was upheld through deeds of gift. [34]

From an urban slave's perspective, restricted manumission dealt a large blow to their work system. Masters often permitted urban slaves to keep a portion of their wages, or if not, to hire themselves out on their free time. In some cases urban slavery resembled indenture, with the master willing to negotiate freedom in exchange for a number of years or amount of income earned. Urban slaves had access to goods and money, and under some circumstances such a slave could hope to save enough money to purchase his or his family's freedom. If the slaves could not travel alone or work unsupervised, their ability to make their own income decreased substantially. Under these new laws, an opportunity for freedom through privateering emerged.

Within Charleston, many slaves had skills that were useful aboard a ship, and some were routinely hired out as shiphands on merchant vessels. This was a particularly lucrative situation for a master, since merchants often paid a lump sum for the labor of a slave sailor.[35] The slave couldn't hope to see much personal profit for working on the merchant vessel, but during wartime, when crews turned privateers, a slave might see one prize that could afford him his freedom.

For those with an acknowledged claim to a prize, booty or future plunder was a viable commodity in the economy. Prior to 1740, informal credit exchanges were

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[34] Wood, *Black Majority*, 103.
[35] W. Jeffrey Bolster, *Black Jacks: African American Seamen in the Age of Sail* (Cambridge, Mass.: Harvard University Press, 1997), 20, 138.

standard procedure for many colonists to guarantee some of their cargo or cover overhead costs of outfitting ships. In a common style of power of attorney document, mariner Francis Surley appointed "Joseph Shute of Charles Town in the Province Aforesaid Merchant to be our true and Lawfull Agent & Attorney for us & in our behalf to do & transact all Matters & things" related to their venture. What made this document out of the ordinary was the fact that Surley named Shute the beneficiary of any "Lawfull Prize" they captured. [36]

The word "prize" usually referred to a captured ship, while cargo items fell under the inclusive term "plunder". This distinction is present in testimonies and deeds from Charleston. In an affidavit dated March 4, 1745, Captain William Dunbar reported "a Spanish ship Bahama & Esperance lately seized and taken on the High Seas as lawfull prize".[37] The remainder of the affidavit contains Dunbar's testimony that the Spanish ship intended to take his sloop of war as a prize and his crew responded to the attack – a self-defense argument which protected Dunbar and his crew against allegation of piracy.

By the 1740s the late Golden Age hysteria over piracy had dulled, but the War of Austrian Succession created a political situation that from the ocean resembled the War of the Spanish Succession three decades earlier. Merchants, sailors, servants, and debtors took to the sea on their own accord in hopes of turning a profit. The mariners of Charleston had long contended with the threat of French and Spanish hostility in the

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[36] Surley, Francis. Power of Attorney Contract. June 29, 1745. South Carolina Department of Archives and History (afterwards noted as SCDAH), Columbia S. C.
[37] Affidavit of William Dunbar, Mar. 4, 1745. SCDAH.

Caribbean. Though historians cannot determine the individual motivations for knowingly breaking the law to "go on the account" in the 1740s, Charleston's documents provide two insights into how maritime crime affected the city. Mariners intended to and did use plundered goods to reduce their debt and in some cases win their freedom from bondage. Secondly, the presence of records of prize and plunder in court documents indicate that the colonial authorities were recognized or even tolerated these men's use of plunder outside the bounds of the vice admiralty court.[38]

During times of war, British officials openly encouraged the plundering of enemies. This was no less true for the Austrian conflict as it had been in the War of Spanish Succession, but the economic situation of the colonies created divides in policy and a heightened sense of desperation in Charleston. A period of serious depreciation ended in 1731, and concerns in the legislature over economic tensions with Britain led to a currency act, passed in 1736, which called for the balancing of the account with Britain and a limit on the circulation of paper money. In an attempt to encourage use of specie, the legislature approved a discount on import duties. Colonial merchants expressed concerns over the prevalence of paper notes, but the Board of Trade refused to grant petitions for an increase in paper money, due to fears of another round of depreciation.[39]

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[38] Deposition of John Schermerhorne regarding a Standoff with a Spanish ship, Aug. 23, 1745. SCDAH.
[39] Richard M. Jellison, "Antecedents of the South Carolina Currency Acts of 1736 and 1746", *The William and Mary Quarterly* 3rd series (Oct., 1959), 556-67. This article details the struggle between colonial merchants who advocated for paper money and the crown's concerns over securing debt payments. Kenneth Morgan, "The Organization of the Colonial American Rice Trade", *The William and Mary Quarterly* 3rd series (Jul., 1995), 433-52, esp. 445. Morgan focuses on the impact of specie on trade, specifically the crises stemming from credit refusals.

Responding to the boom in privateering, the Privy Council sent uniform instructions to the governors of their colonies to streamline procedures. In September of 1741 the governors received "an Alteration in the Instructions formerly given to the said Governors concerning the Colours to be worn by all Ships to whom the said Governors shall grant Private Commissions or Letters of Marque or Reprizal", the point of which was to "make the same conformable to those given by his Majesty's Commissioners." A 1745 addendum forbade "Men of War or Privateers ransoming prisoners or ships" and included instructions for the governors to "see that all Privateers send their Journals regularly to the Secretary of the Admiralty."[40]

By regulating privateers and mainstreaming policies throughout the colonies, the Admiralty hoped to avoid a repeat of the post-War of Spanish Succession piracy epidemic. The Admiralty also wished to strengthen condemnation procedures in the vice admiralty courts. With increased regulation of privateering came concerns of authoritarian abuse. Two observable forms of resistance to the vice admiralty court policies emerged. Firstly, the colonists worked within the legal system to challenge jurisdiction and interpretation of the laws. In doing so, they used appeals to the Privy Council and political maneuvering within their own governmental bodies to try and reduce the vice admiralty court's power. The second method of resistance could be termed non-participation in vice admiralty court proceedings. Here, the colonists simply bypassed the entire condemnation process. These methods were mutually reinforcing. The colonial officials could challenge the vice admiralty court in the legal

[40] *Acts of the Privy Council of England* Vol. III, 814.

realm because they had the support of the populace, and individual colonists could engage in non-participation because the officials were complicit in their resistance.

South Carolina's colonists worried that the vice admiralty was manipulating legislation for its own favor at the expense of the privateers. A report in the Commons Journal makes note of a petition filed by Thomas Frankland on behalf of the captors of the French ship *La Conception*. The privateers followed procedure for the condemnation of *La Conception*, which "together with her Guns, Tackle, Furniture and Apparel, and also the Moneys, Effects and other Things taken and seized In her" was processed as a "lawful Prize" by the vice admiralty court. The inventory of the ship included cocoa nuts and raw animal hides, two items which warranted a duty. [41]

Frankland argued that the law was intended to permit the collection of duties on cocoa or hides "imported in a mercantile Way" as opposed to that obtained as a prize. In submitting his petition, Frankland implored "his Excellency and their Honours...to explain the Intention of the aforesaid Act". Frankland included a charged suggestion, that if prizes were subject to duty, "then for the Encouragement of Capors of Prizes to bring them into this Port the said Duties may be remitted".[42]

In addition to suspicion over the vice admiralty court's enforcement of import duties, colonists clashed with the court again on the matter of service fees. The South Carolina House of Commons decided to press the issue of authority over vice admiralty court fees by appointing a council to review the law and ask for

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[41] South Carolina General Assembly, *The Journal of the Commons House of Assembly, Nov. 14, 1751-Oct. 7, 1752* (Columbia, S. C.: Historical Commission of South Carolina, 1951), 300.
[42] Ibid.

clarification. The council had two goals, "to enquire whether any Act hath been made by the Parliament of Great Britain for ascertaining the Fees of the Judge and other Officers of the Court of Vice Admiralty with respect to the condemnation of Prizes", and "consider and report to the House some effectual Method for reducing the exorbitant Fees which are taken by that Court in this Province."[43] Unfortunately for those hoping the Assembly might wrest control of the fee scale, the committee invoked the repugnancy principle in concluding that "an Act of Parliament concerning the condemnation of Prizes ought to be a Rule to the Court of Vice Admiralty in this Province, and that no Act of the General Assembly of this Province ought to operate against it."[44]

At times the conflict with the vice admiralty court had a very direct impact on the everyday lives of Charleston residents. As late as 1746 the court conducted business in a private home of a Charleston resident. Thomas Blythe submitted a petition to either recoup costs exceeding the one hundred pounds allotted to him yearly or have the court's proceedings moved to another location altogether. Blythe claimed that he was "put to great Inconvenience" for having to provide multiple rooms and candles for the evening meetings of three separate courts.[45]

Unable to influence the fees, the location, or the economic agenda of the vice admiralty court through legal means, some colonists opted to employ a different strategy of influence: ignoring the court and navigating alternative paths to securing

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[43] South Carolina General Assembly, *The Journal of the Commons House of Assembly, Nov. 21, 1752-Sep. 6, 1754* (Columbia, S. C.: Historical Commission of South Carolina, 1989), 24.
[44] Ibid., 37.
[45] Ibid., 74

and using booty. This option was especially appealing given the economic clime. Specie from prizes was necessary to combat the staggering debt of the colony, and the Charleston merchants were often at the bottom of the debt chain.

The poorer mariners and factors were indebted to Charleston merchants and contractors, but their lenders were also indebted to capital firms in London. When London firms pressured colonial lenders for payments, the lenders desperately attempted to collect from the factors. Unable to produce coinage, mariners began to include their lenders as beneficiaries in their wills or including promissory notes, and the term "Merchant Attorney" is prevalent in deeds, signifying that local lenders served as executors and held powers of attorney.[46]

Because the status of a debtor and lender brought informal agreements into the formal legal arena, officials used deeds to open new avenues of securing or pursuing money, be it legally obtained or otherwise. In a bond signed in Jamaica and sent to Charleston for affirmation, James Ramadge guaranteed that if "10 pounds and 17 pounds of Jamaica money are in fact not paid by the said Captain Gordon to the said Dallas as the same are charged then I will pay or cause to be paid to the sum of 27 pounds money of Jamaica" to settle a dispute between John Gordon, captain of Ramadge's schooner, and Robert Dallas and Joseph Whitfield over the capture of a prize ship. Instead of bringing the matter before the vice admiralty court for a

[46] Power of Attorney document of John Ferguson, Oct. 25, 1742. SCDAH.

decision, Ramadge chose to mediate and relied upon the justice of the peace to make the agreement legally binding.[47]

Some seamen with plunder could not afford to take chances with the vice admiralty court because more than a bit of money was at stake. Another effect of increased plunder trade was the use of booty as, or in lieu of, valued goods in the colonial economy. In the 1745 case of Thomas Jolly, the indentured servant of Joseph Robinson, freedom would elude him if he could not maintain possession of the plunder. Jolly was put to work as a foremastman on a snow bound for the Caribbean; the snow engaged in a privateering expedition off of Jamaica. Upon his return, Jolly found that his master had died, and decided to offer his share of the loot from French prizes to Robinson's widow in exchange for release from his indenture. In a deed of gift Jolly reported that "for consideration of the said Joan Robinson cancelling and Delivering up to me the said Thomas Jolly the herein before indenture" he would pay the remainder of his term with "the French ships and their loading and cargoes and my Share and portion of the Money arising by and from".[48] Joan Robinson accepted the offer and Jolly was released from servitude. Going on the account afforded Jolly the savings he needed to purchase his freedom, and utilizing allied colonial officials to make the exchange guaranteed the transaction.

Thomas Jolly's ability to buy his indenture reflects a shift in attitudes towards labor in the 1740s. By this period virtually all willing indentures, as Jolly was, were

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[47] Bond issued by John Ramadge in Kingston Parish, Jamaica. Aug. 20, 1748. SCDAH.
[48] Deed of Gift from Thomas Jolly to Joan Robinson. Jun. 22, 1745. SCDAH.

skilled workers from England serving indentures of four to six years upon arrival in the colonies. This development is markedly different than the indentured servitude of the previous century, which involved mainly unskilled workers employed in agricultural labor who could be held in extended sentences. It is also reflective of Charleston's urban, rent-seeking system of indentured and slave labor, where laborers were hired out by their masters for money. Jolly fit the portrait of the average mariner of the day: poor, possessing enough skills for his master to hire him out but deprived of the opportunity to purchase his freedom directly. Jolly was able to take advantage of a system that had a tradition of equating indentured labor with money, but only because he chose to make arrangements for his freedom in the quasi-legal grey zone. Jolly reappears in the colonial records once again after securing his freedom, when he submitted a petition for a land-grant in nearby Colleton County.[49] Thomas Jolly arrived in South Carolina a bound servant and died a landholder.

Slaves working the ship decks took advantage of the opportunities afforded by privateering. One such man was Benjamin Elden. Elden was a black man of ambiguous status aboard a vessel called the *Pearl* out of Charleston, when Spanish privateers took him captive off the coast of St. Augustine. Elden, along with Robert Pratt and William Maxwell, escaped to Port Royal, where Pratt and Maxwell gave testimony to the Justice of the Peace that Elden had helped them survive the ordeal and gave their word he was a free man. The Justice of the Peace issued a statement to the governor and Judge of the Vice Admiralty, declaring that "Benjamin Eldin [sic] a

[49] Plat for 100 Acres to Thomas Jolly, Sep. 30, 1768, SCDAH.

Negro Man is a Free Man...and not the Slave of any one within this said Majesty's Dominions".[50] Regardless of whether Elden was free before the incident, his actions earned him the respect of his white crewmates, and the corresponding testimony afforded him greater protection against enslavement in the Caribbean.

Scholars have written extensively on the social dynamics of those engaged in privateering and piracy. Privateers historically had some maritime training or practical skill that enabled them to work aboard ships. In the 1720s the demographic shifted, as many wealthier privateers accepted pardons and assimilated back into society. Poorer privateers had fewer options. Some were runaway slaves, or slaves hired out to the ships by their masters, and the prospect of returning to slavery inspired these individuals to continue pirating.[51] Others were men pressed into service off of captured merchant vessels who discovered some degree of increased freedom or social mobility within the pirate crew. Even those pressed from the navy sometimes opted to remain, as conditions were sometimes preferable aboard the privateering vessel. Excepting Africans seized as cargo by some pirates, pressed members of the crew had a say in group decisions and claimed a cut of the lucrative prizes.[52]

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[50] Correspondence between John Dart and James Glen, July 3, 1747. SCDAH.
[51] Bolster, *Black Jacks,* 137-39.

[52] Rediker, *Devil and the Deep Blue Sea*, 260-68, appendix C1. Rediker's table of merchant shipping wages from 1730-1750 demonstrates the significant increase in merchant wages throughout the 1740s. Rediker argues, and Admiralty Court records verify, that some of this increase is due to the destruction of shipping competition through privateering. Rediker uses these statistics to argue that merchant ships were also involved in privateering; in this paper they are more useful in providing evidence for continued demand for mariners in the time period.

The privateering demographics in 1740 skewed towards the poorer sailors for two major reasons. Jobs aboard merchant vessels were plentiful in the shipping boom, and an influx of mariners into Charleston resulted in a prime market for privateers. Secondly, the indebted poor were willing to enter the dangerous profession of privateering for the chance to pay their debts and secure their business or land. The latter issue demarcates the 1740s situation from the post-Spanish Succession piracy boom. The economic conditions in South Carolina coupled with the Austrian conflict afforded poor privateers the opportunity to make some money through capturing prizes with little chance of government action against them.

A combination of local developments and international conflicts set the stage for a resurgence in plunder trade in Charleston. The issue of privateering brought local economic pressures to the surface. With the pre-war debt touching most of the domestic economy, upper and lower classes alike looked to the black market to provide financial relief. Just as Thomas Jolly saw privateering, and pirating booty, as a mechanism for obtaining freedom, so too did Mrs. Robinson view it as a method for obtaining much-needed specie. Charleston's two most pervasive points of debate, economic depression and unfree labor, were resolved between these two parties.

Conclusion: Competing Definitions, Competing Authorities

Whether Thomas Jolly and Mrs. Robinson violated the law in their agreement would depend on which law, and which enforcement institution, was involved, invoked, and respected. The colonial officials saw nothing wrong with the transaction: Jolly had simply bought out his indenture, fulfilling the terms of the contract, and Mrs. Robinson received due value in exchange for the loss of her laborer. The vice admiralty could have had both parties on trial, for the booty Jolly exchanged for his freedom had not been processed through the proper channels as outlined by maritime law, and statutes afforded the court the ability to charge Mrs. Robinson as a conspirator.

During the War of Austrian Succession, the vice admiralty continued to actively condemn prizes and distributed plunder according to regulation. The typical register of a ship brought before the vice-admiralty court contained the name, size, and weight of the ship, the cargo, and listed the owners and masters of the ship. Considering the regulations, it is clear why men like Jolly, low-ranking and desperate, preferred to section off the booty before, or instead of, the vice-admiralty court division.

Still, Jolly and men like him didn't stash, hide, or lie about the origins of the plunder. Jolly involved local officials in negotiating the payoff to Mrs. Robinson. Similarly, John Ferguson explicitly stated in a will that his investor was entitled to his

plunder. Colonial authorities were complicit in the plunder trade. Instances such as the testimony of Robert Pratt and William Maxwell, and William Dunbar's self-defense claims, suggest that the vice admiralty court still had jurisdiction, and theoretical ability, to adjudicate these cases, and that colonists were aware of their authority.

"Aware of" and "accepting of" proved far apart in the backroom dealings in plunder in Charleston, and on the floor of the Commons House. Charleston residents consistently challenged the authority of the vice admiralty court between 1720 and 1755, but they were not in a state of revolutionary rebellion. The steady string of appeals to the Privy Council and petitions to Parliament suggest that the colonists hoped for an internal remedy to their problems with the vice admiralty court. But sustained disdain for the court broke down its practical authority, while panic over economic depression and slave revolts led Charleston to question imperial interests in what they considered their own affairs. The court had alienated local residents and Parliament had not intervened on behalf of the colonists.

The combined effect of internal crisis and colonial-imperial tension was a grey zone in which colonial politicians could assert practical control and privateers could pirate goods. Instead of challenging the laws on the divergence principle, politicians and privateers avoided the court altogether. The extralegal space in which Thomas Jolly and Benjamin Elden operated was an opportunity fixed by domestic and international conflict, and sustained by popular and local official support.

London learned from the conflicting opinions of the major legal bodies during the War of Austrian Succession. By the time the Seven Years War broke out in 1756, the vice admiralty satellite courts received an effective ally in the appointed prize agents, who also ordered and oversaw aggressive vessel registration within the ports. Colonial officials were supportive of these strategies; in their eyes, finally Parliament had sent parties to assist and report on the vice admiralty courts. This new practice became so entrenched in maritime governance proceedings that the colonists would employ a nearly identical one against the British during the American Revolution.

Colonial complicity with British imperial institutions was situational in Charleston. In the first half of the eighteenth century, local government enjoyed the respect of its citizens during the drive toward stability. Faced with prolonged economic and political unrest, the constituency grew increasingly skeptical of British understanding of their interests and situations. From this dissatisfaction sprouted contests for authority. Charleston's citizens were always willing to utilize proper chains of communication to voice their complaints, but they were also prepared to follow a different authority, that of the planter-merchant bloc which supported locally-popular but imperially-forbidden policies relating to trade, money, and security. The vice admiralty court could not compete in the cycle of practicing power. The bloc had earned the authority to override the word of the law, and by permitting technically-illegal activity, strengthened their popularity and, in turn, authority. The power of the local governance lay in its participants' ability to open and close windows of

opportunity strategically, taking action when their political needs and public demand aligned against the Crown's wishes and in favor of divergence.

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