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The Rise, Fall, and Rise Again of Privateers

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ALEXANDER TABARROK

In August 1812, the *Hopewell*, a 346-ton ship laden with sugar, molasses, cotton, coffee, and cocoa, set sail from the Dutch colony of Surinam. Her captain was pleased because he reckoned that in London the cargo would sell for £40,000—the equivalent of at least several million dollars in today’s economy.¹ The *Hopewell* carried fourteen guns and a crew of twenty-five, and for protection she sailed in a squadron of five other vessels. It was difficult, however, to keep a squadron together in the vast expanse of the Atlantic Ocean, and on August 13 the *Hopewell* became separated from her sisters.

Two days later her crew spotted another ship, armed and approaching rapidly. At three hundred yards, the approaching schooner fired a round off the *Hopewell*’s bow and called for her to present her papers and prepare to be boarded, but the

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1. Translating amounts of money from distant times is as tricky as translating works of literature from foreign cultures and times. Taking into account only the change in the consumer price index (CPI), for example, tells us that an income of £40,000 in 1812 translates to an income of about \$2 million today: in 1812 someone with an income of £40,000 could buy, very roughly, a basket of goods worth \$2 million today. But even after taking into account changes in the CPI, millionaires are far more numerous today than they were in 1812. So if we want to get a sense of how it felt to be a millionaire in 1812, of how unusual it was to command that much purchasing power, it may be better to translate using the wage of unskilled labor or gross domestic product (GDP) per capita. If we use the wage of unskilled labor, an income of £40,000 in 1812 translates to an income of \$24 million today, but if we use GDP per capita, such an income is equivalent to roughly \$50 million today. Economic History Services has a useful online currency translator that can translate across countries as well as through time, using a variety of methods; it is available at <http://eh.net/hmit/compare/>. I relied on it here to compute numerical values.

The Independent Review, v. XI, n. 4, Spring 2007, ISSN 1086–1653, Copyright © 2007, pp. 565–577.

captain was not about to give up his cargo so easily, and he opened fire. A hail of musket and cannon balls tore into the *Hopewell* in return. Broadside after broadside was exchanged as the more nimble adversary bore down repeatedly. At last, the *Hopewell* could fight no longer, and her captain ordered the flag to be struck.

The attacker, an American schooner out of Baltimore, was neither a pirate ship nor a ship of the U.S. Navy, then next to nonexistent. In fact, it is best to think of the *Comet* not as a ship at all, but as a business enterprise. The *Comet's* owners and its crew, from Captain Thomas Boyle down to the lowliest cabin boy, were hunting the Atlantic for prizes: British commercial ships to be captured, condemned, and sold for profit. Piracy? Not at all. The *Comet* was a *privateer*, a ship licensed by the United States, then at war with Great Britain, to harass British vessels and confiscate their cargoes. The privateer's license was no mere formality. Without the license and a legal proceeding, the privateer could not sell its prizes legally. More important, courts throughout the world recognized a privateer's license as valid. Pirates, in contrast, were barbarians and operated outside the rule of law; if caught, they would be hanged. Even the British, then the enemy, recognized that a privateer acted within the law of nations, and its captain and crew, if captured, would be accorded the same rights as captured officers and crew of the U.S. Navy.

Students of the U.S. Constitution will remember the peculiar phrase used in Article 1, section 8, that gives Congress the power to "grant letters of marque and reprisal." A clue to the phrase's meaning and a sign of its importance may be surmised from the power granted immediately prior to it in the Constitution: Congress's power "to declare war."

Letters of marque and reprisal, granted as early as the twelfth century, were designed to bring the anarchy of retaliation under the rule of law. A merchant whose property had been stolen could apply to his sovereign for a permit to take limited actions for the purpose of restitution, not revenge, against specified agents. A private cause of action was initially required, but in wartime sovereigns began to issue letters of marque and reprisal that were good against any enemy ship. Thus, private means were used to wage public wars.

Public navies were expensive, especially because they had to be maintained in peacetime as well as in wartime, and, until the late nineteenth century, tax systems tended to be ineffectual and inefficient. Governments, therefore, sometimes relied heavily on private initiative and enterprise to fight their wars. With a few extra cannon and men, a merchant vessel could be converted into a commissioned vessel capable of capturing small prizes should any cross its trading route. The more adventurous might build ships solely for the purpose of capturing prizes. The merchant vessels went on "voyages"; the commissioned vessels "cruised" and became known as privateers. The great era of Elizabethan exploration and expansion, for example, was financed and run by privateers. Sir Francis Drake, Sir Martin Frobisher, and Sir Walter Raleigh all operated as privateers with the Crown as partner.

Privateering played a critical role in the American Revolution, with approximately seven hundred commissioned ships, compared to approximately one hundred ships in the U.S. Navy (Stivers 1975; U.S. Maritime Service Veterans 2005). Thomas Paine owned stock in privateers (Chidsey 1962, 44), as did General George Washington (Garitee 1977, 17). Benjamin Franklin did not own such stock, but he went to great lengths to commission privateers in France. He wanted to secure the release of American soldiers held in British prisons, but because the American military captured few prisoners, he had little with which to barter. Privateers provided a ready supply of prisoners for exchange.

The apogee of the privateering system undoubtedly occurred during the War of 1812. Both the British and the Americans used privateers, and the system was quite similar. Here, I focus on the American system.

On June 18, 1812, Congress declared

that war be and the same is hereby declared to exist between the United Kingdom of Great Britain and Ireland and the dependencies thereof, and the United States of America and their Territories; and that the President of the United States is hereby authorized to use the whole land and naval force of the United States to carry the same into effect, and to issue to private armed vessels of the United States commissions of marque and general reprisal, in such forms as he shall think proper, and under the seal of the United States, against the vessels, goods, and effects of the Government of the said United Kingdom of Great Britain and Ireland, and the subjects thereof.²

The privateers were ready. The *Comet*, for example, was owned by a group of wealthy Baltimore investors who had anticipated the war. Commissioned on June 29, just eleven days after the declaration of war, this ship cleared Baltimore's harbor along with several other privateers on July 12, and it captured its first prize on July 26 (Garitee 1977, 150). Thus, in less than thirty days a fleet of cruisers was launched from the U.S. coast ready to harass and imperil the British commercial fleet throughout the Western world.³ The privateers' entrepreneurial foresight stands in sharp contrast to that of the U.S. Navy. As the war began, the navy had just eight seaworthy ships (Chidsey 1962, 89).

On June 26, 1812, Congress followed up its declaration of war with greater detail on how privateers would be regulated.⁴ In doing so, they and the president, who added to the regulations, drew on hundreds of years of legal evolution and experience.

2. An Act Declaring War Between the United Kingdom of Great Britain and Ireland and the Dependencies Thereof, and the United States of America and Their Territories, *Annals of Congress*, 12th Cong., 1st sess., pp. 2322–323, available at <http://memory.loc.gov/ammem/amlaw/lwac.html>.

3. Garitee notes that “[t]he instructions given Captain Henry Dashiell of the privateer *Saranac* in January of 1815 reflected experiences gained in two and half years of war. . . . [T]hey instructed Dashiell to cruise for ten days east of Bermuda and then to head for Barbados for a twenty-day cruise. If he still had sufficient officers and men to man prizes, he was then to steer for Madeira. After Madeira, off the African coast, the captain was to use his discretion, but he was encouraged to cruise in and off the English and Irish channels” (1977, 144).

4. An Act Concerning Letters-of-Marque, Prizes, and Prize Goods, pp. 2327–328.

When a privateer captured a large, valuable prize, such as the *Hopewell*, the captured vessel would be manned with a prize master and crew and given instructions to set sail for the nearest friendly port. On reaching port, the cargo and ship could not be legally disturbed (no “breaking bulk”) or sold before the property had been properly “condemned” in a court of law. To condemn a vessel, the privateer had to prove that the enemy owned it. To prove ownership, the privateers relied on the prize’s own papers, including registers, cargo manifests, clearance certificates, and so forth. The prize’s officers, crew, and passengers were also questioned. If the prize was found to be lawful, it was sold at a court-ordered auction. Congress stipulated, however, that the court “shall and may decree restitution, in whole or in part, when the capture shall have been made without just cause. And if made without probable cause, or otherwise unreasonably, may order and decree damages and cost of life to the party injured, and for which the owners and commanders of the vessels making such capture, and also the vessel shall be liable.”⁵

In wartime, the courts are likely to be biased toward home-country plaintiffs or defendants, but, as Samuel Johnson might have remarked, it is a wonder that the courts were resorted to at all. In fact, they were surprisingly judicious toward enemy vessels and their owners. For example, a court declared the first two American prizes in the War of 1812 to be invalid because their skippers had not yet had the chance to learn of the state of war (Chidsey 1962, 88).⁶ The remarkable institutions of ransom and parole also illustrate how the law and custom of the seas regulated privateering.

Not all prizes were as valuable as the *Hopewell*. A smart captain such as Thomas Boyle would not risk a prize master and crew to bring into port a vessel full of fish. Better in that case to transfer the most valuable cargo to the privateer and sink the prize. But what should the privateer do when the prize was valuable, but its own crew was short and the prize far from a friendly port?

Captain Boyle faced this situation several times, and he did what any good businessman would do: he called on the captain of the prize and suggested a deal. If the captain would agree on behalf of the prize owners to pay a ransom, Boyle would release the prize and its crew. In addition, Boyle would give the captain of the ransomed ships papers guaranteeing that it would not be taken again by another American privateer. Such a deal is remarkable because the privateer already had physical control over and the legal right to the prize, so the ransom was nothing more than a promise to pay. When the owners of a prize received a bill for ransom due, why would they ever pay?

They did so for several reasons, not least because for centuries such contracts had been enforced in courts of law. Under the British common law, a promise made under duress was not enforceable. In the case of prizes, however, the duress was not personal,

5. An Act Concerning Letters-of-Marque, Prizes, and Prize Goods, pp. 2327–328.

6. See Garitee 1977, 156, and Petrie 1999, 160, for other examples of the courts invalidating prizes and enforcing payment of damages.

but against the cargo and ship that the privateer had the legal right to sink (Petrie 1999, 20). Although ransoms were enforceable in common law, legislation in 1782 had overruled the common law and made such promises unenforceable in a British court. Nevertheless, British merchants continued to pay ransom, sometimes against the wishes of their own government, because such promises were enforceable in the courts of other nations. If a British merchant refused to pay the ransom of an American privateer, for example, his assets in much of the rest of the world might be legally seized. Merchants without assets outside of Great Britain, however, might refuse to pay even if they were hounded in the courts (Petrie 1999, 30). Barring all such recourse, a privateer might choose to hold hostage the captain of the prize as a performance bond, although this option seems not to have been chosen very often (Petrie 1999, 21).

Similar problems sometimes arose with prisoners. Captain Boyle, this time commanding the *Chasseur* just off the coast of Cuba in February 1815, sighted a schooner and gave chase. The schooner fled, but the *Chasseur* closed on its prey. Seeing just three portholes and a handful of men, Boyle expected a quick capture, but just as he drew alongside, ten gun ports were hoisted up, ten cannon boomed, and swarms of British navy men emerged from hiding to rake the *Chasseur* with musket fire. Boyle's well-trained crew recovered quickly and replied in kind. Running alongside one another, the *Chasseur* and the British man-of-war exchanged broadsides until the British ship's mainmast went down and the British struck their colors.

Boyle won a bruising battle but had little to show for it. The British man-of-war was heavily damaged, and because it was a man-of-war, not a merchant ship as Boyle had originally thought, it had little cargo of commercial value. Boyle could have sunk the *St. Lawrence*, but that action would have required taking onboard approximately sixty prisoners and then feeding and guarding them for the remainder of the cruise.

Not wanting to take on prisoners and bearing in mind his instructions from Congress and the president that “[t]owards the enemy vessels and their crews, you are to proceed, in exercising the rights of war with all the justice and humanity which characterizes the nation of which you are members” (qtd. in Garitee 1977, 97–98), Boyle sat down with the *St. Lawrence*'s commander to strike a deal. Boyle would release the commander and his crew and return them to the *St. Lawrence* if they would agree to make immediately for the port of Havana with a promise not to take up arms voluntarily against the United States again. Such a promise, called a *parole*, had long been recognized as binding on both the parolee and his government. In practice, it was combined with another efficient and humanitarian institution—prisoner exchanges. Each prisoner's parole was treated as a debt. If the British released a captured American prisoner of equal rank, they thereby extinguished the debt and nullified the parole (Petrie 1999, 24–30).⁷

7. Commander Gordon of the *St. Lawrence* issued a certificate to Boyle in consideration of Boyle's treatment of British prisoners: “In the event of Captain Boyle's becoming a prisoner of war to any British cruiser, I consider it a tribute justly due to his humane and generous treatment of myself, the surviving officers and crew of His Majesty's late schooner *St. Lawrence*, to state that his obliging attention and watchful solicitude to preserve our effects, and render us comfortable, during the short time we were in his

Among the other instructions given to privateers were admonitions about the rights of neutrals: “You are to pay the strictest regard to the rights of neutral powers, and the usage of civilized nations, and in all your proceedings towards neutral vessels, you are to give them as little molestation or interruption as will consist with the right of ascertaining their neutral character. . . . You are particularly to avoid even the appearance of using force or reduction with a view to deprive such vessels of their crews, or of their passengers other than persons in the military service of the enemy”(qtd. in Garitee 1977, 97–98).

How were these and other instructions enforced? Section 3 of the Act Concerning Letters-of-Marque, Prizes, and Prize Goods contained a key regulation: “before any commission of letters of marque and reprisal shall be issued . . . the owners . . . shall give bond to the United States, with at least two responsible sureties, not interested in such vessel, in the penal sum of five thousand dollars; or if such vessel be provided with more than one hundred and fifty men, then in the penal sum of ten thousand dollars.”⁸ The performance bond ensured that privateers would follow the rules Congress laid down and the law of nations or face a potential penalty. In addition, the privateer itself was a form of collateral that might be sold by the courts to pay an adverse judgment. A typical privateer outfitted for approximately \$40,000.⁹

Such incentives were the key to the privateering system. Most obvious, privateers chased down and captured enemy merchant ships to lay claim to the vessel and its cargo. In pursuit of this final objective, however, incentives were used throughout the privateering system. A privateering firm earned revenues from ransoms and the sale of prizes. The captain and crew were paid almost entirely in shares in the firm. The owners typically kept half the shares, and the captain and crew the other half (with some shares allocated to the vessel’s repairs and maintenance and some reserved for the captain to reward especially meritorious conduct). The *Comet*’s articles of agreement were typical. When the *Comet* captured the *Hopewell*, Captain Boyle and his crew owned 256.75 shares in total (plus 13.25 shares at the captain’s disposal for rewards). Boyle himself owned 16 shares, the first lieutenant 9, the captain of marines 6, each able-bodied seaman 2, and so forth down to the greenhands, who owned 1 share each (Garitee 1977, 192).

Taxes, duties, and payments to auctioneers ate up about half of the value of a typical prize, but the crew of a privateer lucky enough to bring in prizes would still profit handsomely. The *Hopewell*’s capture paid an able-bodied crewman \$210.78, or about seven months worth of salary in alternative employment, and Captain

possession, were such as justly entitle him to the indulgence and respect of every British subject” (qtd. in Coggeshall [1856] 2004, 366).

8. An Act Concerning Letters-of-Marque, Prizes, and Prize Goods, pp. 2327–328.

9. The cost of a privateer is from Garitee 1977, 111, 125; \$40,000 during the War of 1812 is equivalent to \$584,000 in today’s dollars, using the CPI to make the translation.

Boyle's 16 shares were worth \$1,686.24, or at least \$90,000 today (Garitee 1977, 191). Of course, not all voyages were successful. Privateering was a high-risk, high-reward profession.

Sophisticated markets allowed crewmen to sell some of their shares forward. A crewman who wanted funds right away, for example, could sell his shares to speculators. Naturally, the owners were well aware that a crewman who sold too many shares would no longer have an incentive to work as hard once onboard the ship, so contracts usually limited forward sales to roughly half a crewman's total.¹⁰ A crewman who wanted to sell shares also had to obtain the services of a surety, a bonding agent, who would promise to make good on the shares should the crewman abscond entirely.

Shipbuilders commonly were paid partially in shares, thus improving their incentives for high-quality workmanship (Garitee 1977, 107). In addition, the captain used the shares he held in reserve as bonuses; the first sailor to spot a prize and the first to board a fighting prize, for example, received bonus shares. Injured crewmen also received insurance payments, and in the event of a crewman's death his shares were bequeathed to his heirs (see, for example, the articles of agreement of the privateer *Yankee* [Chidsey 1962, 104]). Assaults on any male prisoner or rudeness (!) to a female prisoner resulted in fines. Thus, incentives ranging from wage contracts to performance bonds were used throughout the privateering system.

Evaluation

Although the War of 1812 is not much remembered today, it was the war that confirmed America's independence. In this second war of independence, the privateers were the first to launch. They swept out from America's coasts, capturing and sinking as many as 2,500 British ships and doing approximately \$40 million worth of damage to the British economy (approximately \$525 million in today's dollars). Despite some early successes, such as the defeat of the *Guerrrière* by the *Constitution*, the U.S. Navy was for the most part captured or bottled up in port by 1813. Only the privateers continued to venture out. Garitee sums up the situation well: "Private armed vessels were the only successful American offensive weapon after 1813 engaged in the War of 1812. According to a Baltimore editor, they 'sustained the honor of the country' almost single-handedly. In doing so, they were one important factor encouraging Britain to terminate the war. British shipowners, colonial merchants, and insurance companies suffered heavy losses, and British vessels paid high insurance rates just to cross the Irish Channel after American privateers began operating in larger numbers in British waters" (1977, 244). Aside from the direct military gains, the privateers

10. The articles of agreement for the *Yankee*, for example, stated "[t]hat no one of said company shall sell any more than one half of his share or right of claim thereto of any prize previous to her being taken" (qtd. in Chidsey 1962, 105).

brought revenue and goods into the country. Amazingly, the privateers had to pay import duties on their prize goods!

Privateers also performed well in the American Revolution and were successfully used by other countries for many centuries. Why then did privateering decline after the War of 1812 (appearing only briefly during the Civil War and the South America wars of independence), only to be banned almost everywhere with the Declaration of Paris in 1856?¹¹

To understand why privateering ended, it is important to understand that it was always a government program. Viewed from today's perspective, privateering looks like "privatization," but it was such only in the same poorly phrased way that private prisons are privatization. Private prisons and privateering more accurately exemplify the contracting out of government services (Tabarrok 2003). With privateering, government *uses* private enterprise to serve its own ends.

The use of privateering does not show that national defense can be provided privately (as argued by Anderson and Gifford 1991 and by Sechrest 2004). Privateering worked only because it was backed by a substantial system of law, not only the common law of property, but also statutory creations such as admiralty courts and bond requirements. In fact, a close analogy obtains between the privateer system and the patent system. A patent is to an inventor what a letter of marque and reprisal was to a privateer: a government-granted right to search out and claim prizes. Both systems take advantage of private incentives, but neither can operate without government. To understand why privateering ended, therefore, we must understand why privateering served the government's interest at one time but not at another.

Signs that privateering was in trouble can be seen as early as 1813. By the end of the war, the important institutions of parole and ransom were under attack. Both the British and U.S. governments, for example, made it illegal to pay or to demand ransom (Garitee 1977, 168). The British especially also began to deny the legitimacy of parole. Understanding why they did so is a first step toward explaining why privateering was ended.

Ransoming and parole had once been common on land as well as on sea (Frey and Buhofer 1988). As with naval privateering, these practices arose because sovereigns lacked the money or the power to buy warriors outright or to conscript them in large numbers. Soldiers were enticed to fight by the prospect of sharing in the spoils of war, including ransoms from the sale of prisoners. Ransoming grew so common that it was well accepted in law, and specialized middlemen arose who bought prisoners from captors and resold them to the prisoner's family.¹² Amazingly, in the age-old effort to cut out the middleman, captors would sometimes agree to parole their prisoners

11. The United States was not a signatory to the Declaration of Paris, but privateering declined nonetheless.

12. In an indication that family values have not changed much over time, there was no legal duty to ransom a relative, but the law established that children and wives could not inherit a husband's wealth if they had not first engaged in an honest attempt to have the husband released.

solely on a promise to pay on their honor—and most would do so. As a result of the ransoming system, battles in the European Middle Ages became less bloody. Once captors had an economic incentive in their prisoners, they benefited from not killing them. Of course, this mercy was not shown for humanitarian reasons, but for profit. A dead knight fetched no buyers.

Unfortunately for the knights, the cannon put an end to ransoming toward the end of the seventeenth century. To ransom a knight, one had to capture and subdue him personally in order to establish one's ownership of the property right to his ransom. Cannons, however, kill indiscriminately at long distances. Prospective ransomers, therefore, did not like cannons because these weapons cut into their income. Kings had a choice—ransoms or cannons—and they chose cannons. They were also nudged toward this choice by technological advances in communication and management that allowed them to increase taxes and thus to conscript and fund large armies. Thus, ransom bounties became less necessary at the same time that they became more costly. As the monetary incentives to refrain from killing prisoners declined, wars once again became more vicious (Frey and Buhofer 1988). International organizations such as the Red Cross and treaties such as the Geneva Conventions have since tried to make war more humane, but, if we judge by the results, money appears to have been a more effective motivator.

Trade need not be monetary to run afoul of government interests. Surprisingly, the brutality of battle along the Western front in World War I was interspersed with regions and times of considerable peace. Trench warfare brought the same small groups of German and British troops into close opposition for long periods. Tacit understandings often developed between opposing troops with regard to when and where fighting would be allowed. For example, certain times and locations were off limits to snipers. Shots were fired at other times and places with such regularity that they became ritual rather than real aggression (Axelrod 1984, 73–87). Trade between British and German troops made them better off but was not in the interests of their commanders, who tried to undermine such trade by rotating units before tacit understandings could develop and by forcing periodic raids in which troop leaders had to prove their earnestness by bringing back either prisoners or casualties.

In a similar way, ransoming and parole served the interests of the privateers and their captures, but were not always in the interests of their governments. A ransomed ship lived to carry cargo another day, whereas, all else being equal, the government preferred to burn and sink enemy ships (much as kings preferred a dead enemy knight to a ransomed one).¹³ A paroled prisoner or a prisoner exchange would not appear

13. The condition “all else being equal” is important. In the short run, for example, the owners of a British ship benefited from the ability to pay ransom (otherwise they would not have paid). If the British were better off, it would seem to follow that the Americans must have been worse off, but such was not necessarily the case. The right to demand ransom attracted more American privateers into the capture business. On net, therefore, the legal right to demand and enforce payment of ransom could benefit either the Americans or the British, depending on how responsive privateers were to the opportunity to exercise these rights. The British made *payment* of ransom illegal in 1782, which suggests that they believed the privateers were highly responsive to prospective ransom (as noted in the text, British merchants often ignored the

to make any government worse off—one enemy prisoner is lost, and one soldier is returned—but in any war at least one side (and, because of hubris, often both sides) thinks that the other side is harmed by attrition more than it is itself. As a result, governments often begrudged paroles by privateers, yet accepted them as a necessity when they could not maintain their own navies.

As governments grew stronger, they no longer had to accept ransoming and parole. At first, they simply modified the privateering system. Instead of banning parole, for example, the U.S. Congress made it less desirable by raising the bounty on captured enemy prisoners from \$20 in 1812 to \$25 in 1813 and \$100 in 1814 (Garitee 1977, 168). Similarly, in March 1813, Congress offered a substitute for ransom: the U.S. government would pay to any privateer who would “burn, sink or destroy” any *armed* British vessel half the value of that vessel (An Act to Encourage the Destruction of the Armed Vessels of War of the Enemy, March 3, 1813, 12th Cong., 2nd sess., p. 816. Available at <http://memory.loc.gov/ammem/amlaw/lwac.html>).¹⁴ In this way, privateers became more like government contractors. Still, why have a system of complicated incentives when direct command is possible?

To work well, direct incentives require careful monitoring. If a privateer claimed to have sunk a valuable armed vessel, how was this claim to be verified? The number of prisoners a privateer brought into port could be counted easily, but what could the government do if it wanted soldiers killed rather than captured?

If direct incentives were always superior to bureaucratic production, firms would use piece rates instead of long-term, time-rate employment. Piece rates are the exception rather than the rule, however, because firms often cannot measure output. It is difficult, for example, to measure how much a single assembly line worker contributes to the final product or how well a human-resources office performs its functions. Piece rates also suffer from the problem of multitasking. Even if most of what a firm wants an employee to do can be monitored, so long as *some* tasks cannot be monitored, piece rates will not work well. Suppose a clothing firm wants its sales staff to sell products *and* to develop a rapport and trust with customers (to boost long-term sales). These two tasks often go hand in hand, but sometimes the development of trust requires a salesperson to say, “That shirt just doesn’t look good on you.” A sale may be lost today, but future sales, which will probably go to a different salesperson, will be increased. Sales can be measured, but how can the manager measure rapport building? If it cannot be measured, then tying wages to sales is a bad idea because salespeople will focus on making sales at the expense

British rule because it was not in their interest). Somewhat surprisingly, however, the United States later forbade American privateers to demand ransom, which suggests that the U.S. government believed that the privateers’ responsiveness to prospective ransom was low. Both governments’ actions are probably better understood, however, as a movement away from privateering altogether and toward permanent government navies.

14. Chidsey (1962) says the armed qualification was not important because most ships were armed. Petric argues that the payment applied only to official navy warships (1999, 45–46).

of building rapport. Weak incentives can be better than strong incentives to do the wrong thing.

Privateering was similar to a piece-rate system. It never accomplished exactly what the government wanted, but when governments could not easily raise the funds to maintain large navies and when monitoring of the navies was difficult, privateering was a good option. Navies, however, gave governments greater flexibility: governments could order navy personnel to do what they wanted them to do without having to change piece rates on the fly. So when navies became more economic and easier to monitor, privateering became relatively less useful.¹⁵ New and more expensive technologies also furthered privateering's demise.

When merchant vessels could be transformed easily into privateers, the privateering system meant that in wartime a ready stock of potential privateers could be drawn from at low cost. As military technology developed, however, substitution between private and military use became more difficult, and the cost-saving advantages of privateering declined. It was one thing to transform a merchant vessel into a privateer and quite another to build a nuclear submarine. In theory, a private firm could build a submarine to military specifications and stand ready to man it on behalf of the government, but such a system raises the twin problems of monopoly and monopsony. If the private supplier were a monopolist, the price demanded in wartime would be inefficiently high, leading to ex post undersupply. Alternatively, if the government were the sole buyer, it could enforce inefficiently low prices, leading to ex ante undersupply. In either case, government provision, which is not subject to holdup problems, can be more efficient.

Privateering continues to exist and has grown in recent years in the one area where capital costs are low, private and military applications are ready substitutes, and competing buyers and sellers exist—as, for example, in the sale of military labor. Private military firms have played important roles in Sierra Leone, Kosovo, Angola, and especially in Iraq. During the past ten years, the United States has spent more than \$300 billion on private forces, including contracts for the protection of Paul Bremer while he served as head of the Coalition Provisional Authority. The private British firm Global Risk International, which promotes itself as “a more bespoke approach to the security industry,” operates the sixth-largest military force in Iraq (Singer 2003, 2005).¹⁶

15. Privateering also had a network problem: for it to work, both sides had to recognize its legality. The great advantage of holding a letter of marque and reprisal was that the enemy recognized it, and it distinguished the privateer from a pirate. Privateering, therefore, could also not survive once the major sea power of the day, Great Britain, abandoned it. For this reason, even though the United States never signed the 1856 Declaration of Paris, Congress has not issued true privateering commissions in more than a hundred years.

16. One might wonder why privateering was abandoned entirely. Why not just leave it in place *and* have large navies? One reason is that the navy competed with privateers for men and materials. Even during the War of 1812, when the U.S. Navy was very small, the better working conditions and higher wages on privateers made it difficult for it to hire men (Garitee 1977, 128). It could have raised seamen's wages, but governments sometimes prefer to tax their competitors rather than raise the wages they themselves offer. Competition between the military and private firms for skilled workers has also been an issue in Iraq.

Today's wars are smaller and more labor and skill intensive, and they require quicker responses than wars did during the Cold War era, when the use of nuclear missiles and mutually assured destruction were the operating strategies. Privateers once again have a relative advantage because of their better incentives and greater flexibility. Therefore, we can expect to see continued "contracting out" of military services to private military forces, but this does not represent a genuine "privatization" of the military or of government.¹⁷

Conclusion

Government's growing power made the end of privateering inevitable. The rise and decline of an organizational form, in and of itself, has no great significance, but privateering's decline signaled an important change in Americans' understanding of their country. The Founders feared and despised standing armies as a threat to liberty. For them, the country's defense was best left to citizens who would take up arms in times of national peril, form militias, overcome the peril, and then return to their normal lives (Friedman 1969; Reid 1981). The Second Amendment protects and reflects this understanding, and privateering fit neatly within this line of thinking. Explaining why the United States would not sign the Treaty of Paris, Secretary of State William Marcy said:

The United States consider powerful navies and large standing armies as permanent establishments to be detrimental to national prosperity and dangerous to civil liberty. The expense of keeping them up is burdensome to the people; they are in some degree a menace to peace among nations. A large force ever ready to be devoted to the purposes of war is a temptation to rush into it. The policy of the United States has ever been, and never more than now, adverse to such establishments, and they can never be brought to acquiesce in any change in International Law which may render it necessary for them to maintain a powerful navy or large standing army in time of peace. (qtd. in Maine [1887] 2006)

Privateering's recent return in the form of private military firms is even more now than it was earlier a government-run contracting out of military services and not the beginning of the end to standing armies and powerful navies.

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17. See Benson 2007 for an important, closely related analysis.

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