

Patriot Pirates? A Reassessment of American Privateers in the Revolutionary War

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ABSTRACT

All major combatants of the American Revolutionary War (1776-1783) deployed privateers to disrupt shipping in the Atlantic Ocean. American privateers uniquely experienced the war as they broke the British blockade of North America, raided British territory, and disrupted international trade. American privateers are often depicted as legalized pirates or profiteers. However, the reality of privateering is much more complex. This article analyzes primary sources, including memoirs, correspondence, and secondary historiographical texts to explore how privateers have been misrepresented in history. These sources reveal a legally and personally complicated affair that does not align with existing understandings of the topic. This article posits that previous understandings of privateering, featured in select primary and secondary sources, are inaccurate and deny historians valuable information. This article seeks to recover privateers' place in the broader history of the American Revolution and allow for an integration of their experiences in future historiography by uncovering their muddled history.

KEYWORDS: American Revolution, Continental Navy, marque, privateer, piracy

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INTRODUCTION

Spurred by scenes of “exercising [...] soldiers, [...] the sound of martial music and the call for volunteers,” fourteen-year-old Andrew Sherburne hurried to enlist with the American forces during the early years of the American Revolution. Following his eldest brother’s footsteps, he enlisted with the Continental Navy. After two years aboard the Continental Navy sloop *Ranger*, he returned home in 1780 and discovered that his older brother and father had died. Unable to find reliable employment, Sherburne found himself without the means to provide for his mother and sisters.¹ He agreed to temporarily serve aboard a privateer ship, *Greyhound*, to make money before rejoining the Navy. Unfortunately, British privateers captured the *Greyhound* and its crew. Sherburne would be held as a pirate and traitor for the remainder of the war. For three years, he endured severe malnutrition at Mill Prison and prison ship *Jersey*.² Sherburne returned home in 1783 penniless and permanently handicapped.³ His memoir, published in 1831, provides a harrowing account that encompasses the experiences of thousands of other privateers. It does not detail famous battles or the experiences of officers and politicians. Sherburne’s memoir, at its core, is a “ground-up” view of how the general population experienced the war. However, the story of Andrew Sherburne and his fellow privateers is often forgotten or misrepresented in historical discussions.

During the American Revolutionary War, the United States, France, and Britain employed thousands of privateers on ships like *Greyhound* to disrupt merchant shipping in the Atlantic Ocean. Privateers were civilians that held special government commissions to engage in naval warfare.

Historians have struggled to represent the experiences of these sailors, depicting them as a vital supplement to the Continental Navy but also closely tied with piracy, greed, and unpatriotic behavior. An analysis of surviving memoirs, correspondence, letters of marque, and ordinances uncovers American privateers’ complex and muddled history during the war. These sources reveal that privateering was a legally complicated affair undertaken by individuals whose behaviors and motivations are difficult to homogenize. A reassessment of privateers thus helps resituate privateers within the history of the American Revolution and focus on the broad history of the war through the experiences of ordinary people. Privateers allow us to reexamine why and how people participated in the American Revolution, explore legal frameworks developed by the United States to deal with its constituents, and how its citizens interacted with the emerging nation-state.

HISTORICAL AND HISTORIOGRAPHICAL PERSPECTIVES ON PRIVATEERING

Given the nature of their occupation, privateers were subject to criticism from various groups. For instance, Continental Navy and Army officers were critical of privateers’ behaviors and effects on the war. Among members of the Continental Navy, Captain John Paul Jones was the most fervent critic of privateering. Jones protested that he had to sail alongside self-interested men who “pretend to love their country.”⁴ Jones’ principal concern was that privateers were siphoning human resources from the Navy by offering higher wages or employing deserters.⁵ In a letter to Robert Morris, Jones concludes that “sordid adventurers in privateers [sport] away

1 Robert H. Patton, *Patriot Pirates: The Privateer War for Freedom and Fortune in the American Revolution* (New York: Pantheon Books, 2008), 168-169.

2 Andrew Sherburne, *Memoirs of Andrew Sherburn, a Pensioner of the Navy of the Revolution* (Providence: H.H. Brown, 1831), 35-36.

3 Sherburne, 126-127.

4 Kylie A. Hulbert, *The Untold War at Sea: America’s Revolutionary Privateers* (Athens: University of Georgia Press, 2022), 159.

5 See also C. Kevin Marshall, “Putting Privateers in Their Place: The Applicability of the Marque and Reprisal Clause to Undeclared Wars,” *The University of Chicago Law Review* 64 (1997), 970. The failure of the 1779 Penobscot Expedition also created animosity between priva-

the sinews of our marine.”⁶ Esek Hopkins, commander-in-chief of the Continental Navy, echoed Jones’ criticisms of privateering. Hopkins, in one letter, claimed that a third of the men assigned to Navy ships had joined privateers, leaving the Navy with a severe manpower shortage.⁷ Hopkins would later defend Jones in an incident where Jones boarded a ship and took four privateers into the Navy’s service as he suspected they were deserters.⁸ Finally, George Washington expressed his disapproval of privateers, characterizing them as “inconsistent and disloyal” and entirely self-interested.⁹ These primary sources depict privateers as a nuisance to the Continental Navy and as unpatriotic. Historians like Gardner W. Allen and James M. Volo have reiterated the criticisms levied against privateers. In the conclusion of Allen’s 1913 book *Naval History of the American Revolution*, he states that if one-half of the “men, money, and energy absorbed in privateering” had been invested into the Continental Navy, then it “would have provided a force able to act offensively against the British navy to some purpose.”¹⁰ Volo’s *Blue Water Patriots* asserts that privateers enlisted because of “simple economic self-interest” and created significant manpower shortages in the Navy.¹¹ Jones, Hopkins, Washington, and Allen hold unpatriotic privateers responsible for the Continental Navy’s shortcomings.

Other criticisms of privateering contributed to an association between pirates and privateers. In a 1789 article published

in the *Gazette of the United States*, Benjamin Franklin declared the practice a “remnant of the ancient piracy” and called for its abolishment. In his article, Franklin accused privateers of being pirates with government protections, “wantonly and unfeelingly” destroying families, and continuing that destruction in post-war America.¹² Officers of the British Navy, who took hundreds of privateers as prisoners, also did not differentiate between pirates and privateers. The letters of marque did not guarantee a privateer’s legal immunity from piracy charges. When captured by the British, privateers were “held under a bill of attainder charging them with both piracy and treason.”¹³ Privateers would be subject to poor conditions in prison ships like *Jersey* and many would die. Privateers were also excluded from prison exchanges by Britain, being a “foe unworthy and undeserving of such consideration.”¹⁴ Privateers were not differentiated from pirates by the British and Americans.

Historiographical discussions have also deepened privateers’ ties to piracy. Robert H. Patton’s 2008 book, *Patriot Pirates*, claims to be a history of privateering during the American Revolution. However, the book’s title only indicates that the negative perception of privateers persisted into the twenty-first century. The book’s flap copy and introduction describe American privateers as part of a “massive seaborne insurgency involving thousands of money-mad patriots plundering Britain’s maritime trade.”¹⁵ The terminology used

teers and the Continental Navy.

6 Hulbert, 159-169.

7 Hulbert, 151. See also *Thomas Butts to his cousin*. Butts, a British sailor captured by privateers, states that only “seasick country bumpkins” are available to the Continental Navy.

8 Hulbert, 151.

9 Hulbert, 159.

10 Gardner Weld Allen, *A Naval History of the American Revolution* (New York: Russell & Russell, 1962), 663.

11 James M. Volo, *Blue Water Patriots: The American Revolution Afloat* (Connecticut: Praeger Publishers, 2007), 45.

12 Benjamin Franklin, “Against Privateering.”

13 Volo, 45.

14 Hulbert, 66. See also Patton, 33-34. The 1777 Treason Act denied due process for privateers and only allowed them their freedom if they chose to serve in the British Royal Navy.

15 Patton, flap copy text.

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in this synopsis portrays privateers as an unsanctioned group of sailors, like pirates, greedily hunting down merchant ships. A more objective perception would acknowledge the gray area privateers occupied during the war. Some privateers committed illegal captures, employed deserters, and offered higher wages to draw sailors away from the Continental Navy.¹⁶ Other privateers were praised for their contribution to the war effort and demonstrated alternative perspectives not found in oversimplified descriptions of privateers.

Individuals like John Adams and Nathanael Greene were in favor of privateering. While both John Adams and John Paul Jones advocated for a larger Continental Navy, Adams conceded that privateers were an effective way to bolster the nation's naval fighting capabilities.¹⁷ Bureaucratic issues delayed the organization of the Continental Navy in its early years. Conversely, there was an established precedent for using privateers in wartime, such as during King George's War. State governments could hire privateers in such a way that allowed hundreds of ships to sail out. In a letter to Pennsylvania delegate Benjamin Rush, Adams wrote that "there should not be the least obstruction to privateering [...] I firmly believe that one sailor will do us more good than two soldiers."¹⁸ While Benjamin Franklin denounced them after the war, he assisted privateers operating from France. Franklin also organized a strategy that intensified attacks on "British shipping [...] in order to fan the fire of public resentment against the further prosecution of the war."¹⁹ Privateers were a persistent threat to the British economy throughout the war, exacerbating war weariness in

England. Like Adams and Franklin, Nathanael Greene saw their potential and financed several privateers throughout the war. Greene never explicitly stated any criticisms about privateers or their behaviors but did believe that they were a vital extension of the nation's formal armed forces.²⁰ Opinions on privateering among ordinary American people seemed to vary; they were seen as the "lifeblood of New England" as they brought in goods and supplies that were otherwise scarce. However, they were also periodically blamed by the public for the limited availability and high prices of goods.²¹ Although these perspectives of privateering by other figures of the American Revolution do not address the criticisms laid out by Allen, Franklin, or Jones, they indicate that perspectives on privateering were contested before the American Revolution was over.

THE LEGAL AND PERSONAL COMPLEXITIES OF PRIVATEERING

To better understand privateering's nature, it is crucial to recognize that privateers, in contrast to pirates, had to operate under strict regulations and oversight. An overview of relevant ordinances and law demonstrates how they were regulated and organized. Instructions published in April 1776, for example, outlined rules for all privateers serving under the Continental Congress' letters of marque.²² These rules specified whom privateers could target, that being any ship transporting "soldiers, arms, gunpowder, ammunition, provisions or any other contraband goods, to

16 See *Thomas Butts to his cousin*. Butts recalls his capture by privateers disguised as a friendly British vessel.

17 See Allen, *A Naval History of the American Revolution*, 662-664. Although Gardner Allen argues that a stronger navy would be more effective, he recognizes that privateers emerged out of necessity.

18 Hulbert, 141.

19 Volo, 224.

20 Patton, 107-108.

21 Marshall, 964. See also Marshall, 966-968. Preexisting moral criticisms from before the American Revolution were also a source of the public's animosity towards privateers.

22 The same instructions published in 1776 had been in effect in Massachusetts since late 1775 through the *Act For Encouraging The Fixing Out Of Armed Vessels*.

any of the British Armies or Ships [...] employed against the colonies.”²³ The document also instructed privateers that they had an obligation to report any captures to an admiralty court immediately and ensure the humane treatment of all prisoners. Finally, the instructions warned that any privateers found breaking the rules would have their letter of marque revoked, bond forfeited, and forced to pay reparations.²⁴ These rules emphasized the lawful seizure of goods and dissuaded privateers from recklessly attacking merchant shipping or causing unnecessary damage.

Several amendments were made to the initial ruleset throughout the war to deter overzealous privateers from illegally capturing ships. A 1781 ordinance published by the Continental Congress, for instance, clarified the pretenses under which a privateer could condemn a vessel and reiterated a privateer’s duty to bring all prizes back to an admiralty court.²⁵ Another ordinance, published in 1782, resolved the “variance in the decisions of several maritime courts” regarding prizes by clarifying who was entitled to receive payment in the event of a successful capture.²⁶

Privateers in service to the Continental Congress were under strict regulation and liable to lose their commissions and lawsuits if they violated the rules. Barzilla Smith and Gustavus Conyngham are examples of privateers punished for breaking these rules. John Hancock issued a \$5,000 bond and a letter of marque to Smith in October 1776.²⁷ A letter from September 1777 indicates that Hancock revoked Smith’s

bond as a result of illegal capture and signed it over to the owners of the captured vessel.²⁸ Similarly, French authorities detained Gustavus Conyngham when he brought British ships to Dunkirk.²⁹ Like all American privateers, Conyngham and Smith had little time to make decisions and were isolated from Congress and the admiralty courts. However, these types of events were rare.³⁰ In addition, cases of illegal captures were not always purposeful and sometimes were a result of intentional deceit by merchants attempting to evade capture by disposing of paperwork.³¹ Privateers, in contrast to pirates, were tightly restricted by law and had unique considerations that carried serious legal and personal risks.

People from all social classes signed up to become privateers without discussing their motivations. While there were cases of enslaved men put into service in privateers, most privateers were volunteers. Christopher Vail left a detailed account of his life during the war. Yet, the reasons why he became a privateer remain elusive. Vail enlisted in several units of the Continental Army and privateer vessels throughout the war. He was imprisoned twice by the British and held in deplorable conditions. Like Andrew Sherburne, Vail joined new privateer ships after escaping prison. In discussing Vail’s journal, John O. Sands notes that Vail never gives “evidence of strong political opinions nor an awareness of the issues over which the war was fought.”³² However, Vail had some eagerness to fight as he served several tours with the Army and privateers throughout the war despite experiencing the conditions of British prisons and impressment. Nathaniel

23 *Instructions to the commanders of private ships or vessels of war*, II.

24 *Instructions*, III-VII.

25 *An Ordinance, Relative to the Capture and Condemnation of Prizes*.

26 *An Ordinance, for Amending the Ordinance, Ascertainning What Captures on Water Shall Be Lawful*.

27 *Privateer bond of Barzilla Smith, Joseph Chapman, and Elijah F. Payne*.

28 *Assignment of privateer’s bond by John Hancock to Joseph Hewes and Robert Smith*.

29 Hulbert, 68-69.

30 Marshall, 971 citing Gardner Weld Allen, *Massachusetts Privateers of the Revolution* (Massachusetts: Massachusetts Historical Society, 1927), 15.

31 Hulbert, 68-69.

32 John O. Sands, “Christopher Vail, Soldier and Seaman in the American Revolution,” *Winterthur Portfolio* 11 (1976), 54.

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Fanning's story is like Vail's. He served as an officer in the Continental Navy, working under John Paul Jones before leaving to take charge of a privateer, having "found Jones so insufferable that he politely refused any [...] place among his officers"³³ He also endured poor conditions under British capture. Nonetheless, he enlisted with another privateer after his release. It seems that some men joined privateers because they wanted to fight.

Unlike Vail or Fanning, Nathanael Greene became involved in privateering through the financing of the purchase of ships, arms, and provisions. Greene invested significant parts of his pay into funding privateers, reasoning that his "business" as a Continental Army officer required the materials supplied by privateers' captures. His investment was not for financial gain but to "annoy the enemy and consequently favor our cause."³⁴ While Greene's motivations are not explicitly patriotic, it was strategic with military matters prompting his involvement.

Promises of payment and wages made joining a privateer more attractive than the Continental Navy and allured many men. Men, like John Whiting, explicitly stated that they would only serve until they received payment.³⁵ Andrew Sherburne joined to support his widowed mother.³⁶ The promise of capturing a ship and cashing out a large prize was an attractive incentive to those who enlisted. However, privateers also knew that financial gain was not guaranteed as admiralty courts often prevented them from profiting in their venture. Admiralty courts forced privateers to prove

that their captures were legal in cases that could take years to settle. Congress only established a formal court of appeals in May 1780, five years into the war. For most of the war, a privateer's right to appeal their case was not guaranteed in some states, and attempting to appeal a case carried the risk of exorbitant legal fees.³⁷

Thomas Rutenbrough spent a year in court trying to prove that they had conducted a legal capture as the captured ship's crew had thrown all identifying paperwork overboard. Rutenbrough would lose the case and his prize and try to appeal. The courts denied Rutenbrough's appeal and forced him to pay legal fees to Congress, resulting in lost funds for capturing an enemy ship.³⁸ Hugh Hill also had his prize confiscated by the Continental Congress and spent \$1,056 in legal fees.³⁹ Gustavus Conyngham, mentioned previously, appealed to Congress for back pay owed him from prizes he had captured. The courts and commissioners would dismiss the appeal eighteen years after Conyngham's request.⁴⁰ These cases also influenced public opinion. In her discussion of the admiralty courts, Kylie Hulbert suggests that their legal battles left privateers in an "unpatriotic position" as they "came to be viewed as profiteers" despite acting on the Continental Congress' orders.⁴¹ As a result of complex and constantly changing legal systems established by Congress, the privateering business could not guarantee financial gain. Even if Nathanael Greene did have underlying motivations based on the profit potential, the fact that he was bankrupt by the end of the war only further indicates that privateering was

33 Volo, 223.

34 Patton, 108.

35 Hulbert 30.

36 See also Sherburne, 35. Sherburne describes children "not a dozen years old" aboard *Greyhound*. It is not clear why they had joined the privateer ship.

37 Hulbert, 114.

38 Hulbert, 122.

39 Hulbert, 1-2.

40 Patton, 183-184.

41 Hulbert, 135.

not a completely profitable venture.⁴² The admiralty courts prevented privateers from making a profit and unintentionally made privateers appear to be overly preoccupied with money.

Within the crews of the thousands of privateer ships that sailed during the war, there may have been several men who were the unpatriotic, self-interested pirates and deserters that Jones or Washington believed privateers to be. However, the notion that money solely motivated all privateers is invalid, as privateers knew admiralty courts were challenging to navigate. Many privateers adhered to the rules established by the Continental Congress even as Congress periodically placed embargoes on them and forced them to give up potential prizes. There was no uniformity in what motivated men to enlist as privateers. As a collective, privateers stand in a gray area where they can neither be classified as uncontrolled pirates nor hard-line patriots.

The captains, crews, and financiers of the two thousand privateer ships commissioned by the United States during the American Revolution represent a significant component of the American Revolution that has been subject to inaccurate characterizations that do not consider their unique circumstances. Understanding that privateering was legally complex and that privateers were not homogenous in their behaviors allows for a more productive discussion of privateers and their role in history. Some contemporary histories have demonstrated a new trend in the interpretation and integration of privateers into the popular history of the American Revolution. Kylie A. Hulbert's *The Untold War at Sea* discusses privateering from the privateers' perspective and explores the legal challenges they encountered. Nathan Perl-Rosenthal's *Citizen Sailors* does not exclusively explore privateering. However, he depicts privateers as a racially and ethnically diverse group that prototyped American citizenship. While privateers still stand in a gray area regarding their

motivations and behaviors, historiography has trended toward a discussion that acknowledges and discusses the complexities of privateering.

CONCLUSION AND CONSIDERATIONS FOR FUTURE RESEARCH

By comparing the characterization of American privateers presented by individuals like John Paul Jones or Gardner Weld Allen and the information offered by memoirs, legal documents, and accounts, it is evident that privateers are misrepresented in American history. As with many other groups that participated in the war, American privateers were a diverse group whose motives and behaviors are difficult to generalize. Documents and historiographical accounts place privateers in an unclear position that is distinct from pirates and navy sailors but integral to the history of the American Revolution.

In the conclusion of her book, Kylie Hulbert suggests that a nuanced discussion of privateers can provide a “new thread into the complex story of the American Revolution [and] of the American experience.”⁴³ Whereas the exploits of the Continental Army and Navy are well known, Hulbert believes that privateers were excluded because their “actions and experiences were unfamiliar and unique unto themselves”⁴⁴ By publicizing their experiences and making previously unfamiliar actions clear, privateers can enter the mainstream history of the American Revolution. Addressing the misconceptions surrounding privateering and understanding their conditions allows them to exist as more than a historical oddity or “legal pirates.” Historians can then recognize privateers for their uniqueness and their potential historical value.

My research and that of other historians will allow privateers

42 Patton, 211.

43 Hulbert, 181.

44 Hulbert, 5.

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to be better represented in future historiography of the American Revolutionary War. For example, historians of the “New Social History” school and the “Neo-Progressive” movement, as defined by Michael D. Hattem, would gain a valuable source of experiences by looking at privateers. The New Social History originated in the 1970s focuses on the lives of everyday people. This historiographical movement studies “history from the bottom up” as opposed to “Great Man” history. The Neo-Progressive movement, similarly, deals with the experiences of individuals. This movement highlights people’s involvement in political and social change, “thereby integrating them into the larger political narrative of the Revolution.”⁴⁵ Historians belonging to either of these historiographical movements can integrate the stories and experiences of privateers as they are better understood and removed from previous misrepresentations that sullied their standing in history.

Furthermore, Kylie Hulbert suggests that a better understanding of privateers will allow for their introductions into works that follow the “current trend that posits the war in its global context.”⁴⁶ The “Atlantic” or “Neo-Imperial” schools of interpretation analyze the war beyond the North American continent and discuss the global consequences of the war.⁴⁷ Nathan Perl-Rosenthal’s book fits into this school and represents a recent integration of privateers into a broader history. Perl-Rosenthal discusses privateers’ relationship with concepts of citizenship and the Atlantic world. Privateers were some of the few Americans that went beyond the shores of North America, making them a valuable resource for historians of this movement.

Research into privateers still needs to be completed. Robert Patton asserts that “no study of Revolutionary privateering

could pretend to give a complete picture of that complex era.”⁴⁸ However, additional research into primary sources like memoirs and correspondence may help create a more accurate understanding of privateering and its role in the Revolutionary War. Kylie Hulbert’s book represents a recent discussion of privateering that considers privateers’ unique conditions. She compiled several anecdotes and stories of their everyday experiences to present a more definitive picture of privateering. Hulbert’s book and sources present historians with a base that future discussions can expand or integrate into broader histories.

In the future, my research will examine how the masses viewed privateers. In this article, I focused much of my attention on how a few notable politicians and military officers described privateers. Examining how ordinary people perceived privateers would be conducive to a better and broader understanding of how privateers were perceived. This paper did not discuss some historiographical accounts that should be included in future analyses. Donald Shomette’s *Privateers of the Revolution*, Eric Dolin’s *Rebels at Sea*, and Edgar Maclay’s *History of American Privateers* are notable texts that discuss privateers but are not accounted for in this article. Furthermore, research into privateering in other eighteenth-century conflicts, like King George’s War or the Seven Years’ War, would also help explain preexisting animosity against privateers that Kevin Marshall briefly mentions in his article. Although further research is necessary, privateers are now becoming more visible in history than ever before.

45 Michael D. Hattem, “The Historiography of the American Revolution,” 2017, https://cdn.knightlab.com/libs/timeline3/latest/embed/index.html?source=19P0MD9TrV5Tx62DC3fImj_uNLA5lAsnV6TmRu2fWdL4.

46 Hulbert, 181.

47 Hattem.

48 Patton, XXI.

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